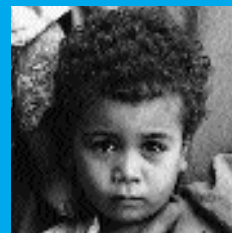
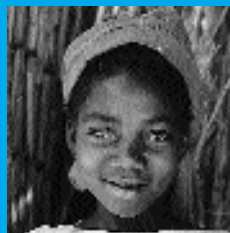
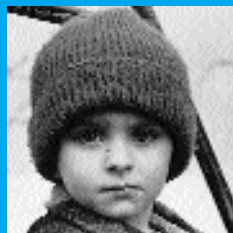


Implementation Handbook

for the Convention
on the

Rights



of the
Child

FULLY REVISED EDITION

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Child

Fully revised edition

prepared for UNICEF
by Rachel Hodgkin and Peter Newell

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ISBN 92-806-3782-2

Sales No. E.02.XX.6

UNICEF, UNICEF House,
Three United Nations Plaza,
New York, NY 10017, USA

UNICEF Regional Office for Europe
Palais des Nations
1211 Geneva 10, Switzerland

Cover photographs (left to right) : UNICEF/5376/Isaac; UNICEF/94-0971/Craig; UNICEF/95-1185/Pirozzi; UNICEF/HQ96-0224/Toutounji; UNICEF/3933/90/Sprague.

Inside photographs: p. XX, UNICEF/97-0507/Murray-Lee; p. 18, UNICEF/DOI93-1185/Horner; p. 38, UNICEF/97-0484/Murray-Lee; p. 52, UNICEF/5131/Isaac; p. 84, UNICEF/97-0494/Murray-Lee; p. 130, UNICEF/1095/85/Budd Gray; p. 144, UNICEF/94-0227/Isaac; p. 226, UNICEF/5391/Isaac; p. 256, UNICEF/Noorani; p. 304, UNICEF/3200/Bregnard; p. 318, UNICEF/DOI-94-0989/Press; p. 388, UNICEF/HQ96-0245/Toutounji; p. 404, UNICEF/5761/Goodsmith; p. 464, UNICEF/DOI94-0876/Lemoyne; p. 532, DOI95-0570/Pirozzi; p. 624, UNICEF/4404Z/Murray-Lee; p. 636, UNICEF/HQ97-0279/Noorani.

Designed by Philippe Terrigeol
Typeset and printed on chlorine-free paper
by Atar SA, Geneva, Switzerland
English original, first printing, January 1998
Second printing, June 1998
Third printing, December 2000
Fully revised edition, June 2002

The Implementation Handbook is also available in French and Spanish.

For Orders from Europe, Middle East and Africa:

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Foreword



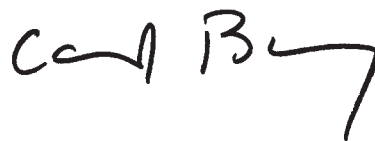
The nearly universal ratification of the Convention on the Rights of the Child is a remarkable achievement. The fact that virtually every country in the world has committed itself to a code of binding obligations towards its children gives us tremendous hope for the future and puts children's rights at the cutting edge of the global struggle for human rights. It also places a tremendous responsibility on governments and civil society to live up to these commitments.

The United Nations Children's Fund is mandated 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. We are guided in doing this by the provisions and principles of the Convention on the Rights of the Child. Of course achieving this mission requires concrete actions with direct impact on children. As part of our effort to help turn words into action, UNICEF is pleased to publish this Handbook on implementation of the Convention on the Rights of the Child. The Handbook is intended to advance the efforts of governments, NGOs, and United

Nations organizations in making human rights a reality for each and every child on this planet.

It is our hope that the Handbook will be used as a reference in the day-to-day practical process of improving the quality of children's lives. It has been structured in a way that allows users to easily consult those chapters most relevant to their work and has been written in clear language which should be accessible to all.

We believe that the Implementation Handbook is an important tool which will assist UNICEF and its partners in the collective endeavour to promote and protect children's rights.



Carol Bellamy
Executive Director
UNICEF

Preface

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

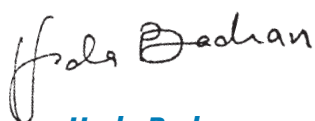
The Handbook provides a detailed reference for the implementation of law, policy and practice to promote and protect the rights of children. The Handbook brings together under each article of the Convention an analysis of the Committee's growing interpretation during its first nine years and the examination of over 150 Initial and Second Reports of States Parties. It places these in the context of key comments, decisions and reports of the other treaty bodies and relevant United Nations bodies.

The Handbook also provides a concise description of the role, powers and procedures, and developing

activities of the Committee and its appendices include a guide to related United Nations bodies and the texts of key international instruments.

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

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



Hoda Badran

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1995-1997




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Acknowledgements

The idea of this Handbook was born in conversations with past and present members of the Committee on the Rights of the Child and with Bilge Ogün Bassani, former Deputy Regional Director of UNICEF's Regional Office for Europe in Geneva. We are grateful for the considerable support and assistance we have received during the preparation of the Handbook from André Roberfroid, then Regional Director; Ms. Bassani; and from Lesley Miller, Child Rights Project Officer, UNICEF Regional Office for Europe.

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

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

The Office of the High Commissioner for Human Rights, in particular: Soussan Raadi-Ayarakhchi, Paolo David, Secretariat of the Committee on the Rights of the Child, and the Support Team.

Those from all over the world who were asked to review all or part of various drafts of the first edition of the Handbook, and who have provided encouragement and comments: Birgit Arellano, Ulla Armyr, Carlos Arnaldo, Mark A. Belsey, Julie Bissland, Paul Bloem, Neil Boothby, Denis Broun, Nigel Cantwell, Geert Cappelaere, Eva Clärhall, David Clark, Shalini Dewan, Bruce Dick, Abdel Wahed El Abassi, Carl von Essen, Preeti Ghelano, Målfrid Grude Flekkøy, Kimberly Gamble-Payne, Savitri Gooneskere, Christina Gynnå Oguz, Ian Hassall, James R. Himes, Caroline Hunt, Rachel Hurst, Urban Johnsson, June Kane, Gerison Lansdown, Janis Marshall, Kathleen Marshall, Marta Mauras, Sarah McNeill, Vitit Muntarbhorn, Marjorie Newman-Williams, Yoshie Noguchi, Alfhild Petré, Rebecca Rios-Kohn, Philippa Russell, Hélène Sackstein, Ben Schonveld, Robert Smith, Rodolfo Stavenhagen, Laura Theytaz-Bergman, Trond Waage.

Those who helped with research, editing and verifying quotations: Françoise De Luca Lacoste and Hélène Martin.

*Rachel Hodgkin and Peter Newell
London, May 2002*

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Introduction

Aim

and structure

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

Under each article the Handbook brings together, analyzes and summarizes:

- comments and recommendations of the Committee on the Rights of the Child, recognized as the highest authority for interpretation of the Convention, from the official reports of its first 28 sessions (1991 to September/October 2001), and relevant extracts from the Committee's reporting guidelines. It includes the Committee's first General Comment, issued in 2001, on article 29(1) of the Convention. In particular, it analyzes the Committee's "Concluding Observations" on Initial and Second Reports submitted by States Parties. When the Committee is speaking as the Committee (for example in its Concluding Observations

and in official reports of its sessions and of the General Discussions which it has convened on topics related to the Convention), the special significance of the Committee's comments are highlighted in the text in blue (individual Committee members are also quoted, but the quotations are not highlighted, as they do not carry the same authority);

- illustrative comments from the *Travaux préparatoires* of the Convention, the reports of the sessions of the Working Group which drafted the Convention;
- reservations and declarations made by States when ratifying or acceding to the Convention;
- relevant provisions from other international instruments, for example from the Universal Declaration of Human Rights and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights (many of the Convention's articles have their origin in these instruments), other Declarations and Conventions, United Nations rules and

guidelines on juvenile justice, the Standard Minimum Rules on the Equalization of Opportunities for Persons with Disabilities, Conventions of the International Labour Organization (ILO) and the Hague Conventions;

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

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

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

The Handbook is not intended as a guide to the progress of implementation in individual countries. The purpose of quoting the Committee’s comments and recommendations to States, and the purpose of the boxed examples from Initial and Second Reports and other sources, is to illustrate and expand interpretation of the Convention.

Those who wish to analyze progress in particular States are encouraged to obtain the Initial Report and

subsequent Periodic Reports of the State, together with the records of the Committee’s examination of these reports, and its Concluding Observations.

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

- a concise summary of the article’s implications and its relationship with other articles;
- relevant extracts from the *Guidelines for Initial Reports* and the *Guidelines for Periodic Reports* prepared by the Committee on the Rights of the Child (the full text of the *Guidelines for Periodic Reports* is also included in Appendix 3, page 674);
- detailed consideration of the background to and implications of individual elements of the article;
- occasional boxed examples from States Parties’ Reports and other official reports and recommendations (the Handbook has not attempted to analyze reports and other information provided by non-governmental organizations). These boxes are not intended necessarily to denote good or best practice, but to illustrate and illuminate issues raised by the article. The examples used have not been evaluated, and may not even describe current practice;
- a concluding “Implementation Checklist”: this emphasizes that the articles of the Convention are interdependent and identifies other closely related articles. The Checklist poses questions designed to be used to investigate progress towards implementation.
- the appendices include the full texts of the Convention on the Rights of the Child, the two Optional Protocols and other key instruments, and of the Committee’s *Guidelines for Periodic Reports*. In addition there is a guide to United Nations and United Nations-related agencies, and a bibliography.

How to use the “Implementation Checklists”

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

The Checklists concern implementation, not reporting. They should not be confused with the official *Guidelines* for reporting prepared by the Committee on the Rights of the Child to advise States Parties in the preparation of Initial and Periodic Reports under the Convention (relevant extracts from these Guidelines are included under each article in the *Handbook*).

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

Each Checklist starts with a standard set of questions about general measures of implementation for the article in question: have the responsible government departments and other agencies been identified and appropriately coordinated, has there been a comprehensive review and adoption of an implementation strategy, budgetary analysis and

allocation of resources, development of monitoring and evaluation and necessary training and so on. Further questions relate to the detail of implementation.

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

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

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

Explanation of references

Abbreviated references are included in the text throughout, with a bibliography giving full references, and a list of the international instruments referred to, in Appendix 1, page 654. Commonly used acronyms are explained on page 762.

Official reports of the Committee on the Rights of the Child

The following abbreviated versions of references to certain series of the Official Reports of the Committee on the Rights of the Child are used:

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

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

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

IR: Initial Report – the report which States Parties must submit within two years of ratifying the Convention. (States must subsequently submit Periodic Reports, five years after the date on which their Initial Report was due. **2R** designates the Second Report submitted by a State Party.

IRCO: Initial Report Concluding Observations (and **2RCO** – Second Report Concluding Observations). Thus “Nigeria IRCO, Add.61, para. 39” refers to paragraph 39 of the Committee’s Concluding Observations on Nigeria’s Initial Report; “Add.61” comes from the full official reference “CRC/C/15/Add.61”.

Also **IR Prelim. Obs.:** Initial Report Preliminary Observations (the Committee sometimes issues these when it wishes a State to submit further information). All Concluding Observations and Preliminary Observations on States Parties’ Initial Reports are in the series “CRC/C/15/Add. ...”.

SR: Summary Record of sessions of the Committee on the Rights of the Child, mostly of discussions between State Party representatives and the Committee, in each case identifying the State concerned (all Summary Records of Committee sessions are in the series “CRC/C/SR. ...”).

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

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

Other key documents

Other key documents frequently referred to include:

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

Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies. This document is regularly updated. The version referred to in the text is HRI/GEN/1/Rev.5.

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

Manual on Human Rights Reporting: a first edition, covering major international human rights instruments but not the Convention on the Rights of the Child, was jointly published by the United Nations Centre for Human Rights and the United Nations Institute for Training and Research (UNITAR) in 1991. A new edition, published in 1997, includes a section on “The Convention on the Rights of the Child” by Marta Santos Pais, who was first Rapporteur of the Committee on the Rights of the Child (this edition is jointly published by the Office of the High Commissioner for Human Rights, Geneva; United Nations Institute for Training and Research (UNITAR); United Nations Staff College Project, Turin; United Nations, Geneva, 1997). In the *Handbook*, the two editions are referred to as the *Manual on Human Rights Reporting*, 1991, and the *Manual on Human Rights Reporting*, 1997.

How to get the Committee's reports

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

Distribution and Sales Section,
Palais des Nations,
8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland

They are also available electronically:
<http://www.unhchr.ch>





Definition of the child



Text of Article 1

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

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

Setting an age for the acquisition of certain rights or for the loss of certain protections is a complex matter. It balances the concept of the child as a subject of rights whose evolving capacities must be respected (acknowledged in articles 5 and 14) with the concept of the State’s obligation to provide special protection. On some issues, the Convention sets a clear line: no capital punishment or life imprisonment without the possibility of release for those under the age of 18 (article 37); no recruitment into the armed forces or direct participation in hostilities for those under the age of 15 (article 38 and see Optional Protocol on the involvement of children in armed conflict, page 641). On other issues, States are required to set

minimum ages: for employment (article 32) and for criminal responsibility (article 40). The requirement to make primary education compulsory also implies setting an age (article 28).

The Committee on the Rights of the Child has emphasized that, when States define minimum ages in legislation, they must do so in the context of the basic principles within the Convention, in particular the principle of non-discrimination (article 2, for example challenging different marriage ages for boys and girls), as well as the principles of best interests of the child (article 3) and the right to life and maximum survival and development (article 6). There must be respect for the child’s “evolving capacities” (article 5). And there should be consistency, for example, in the ages set for the completion of compulsory education and for admission to employment.

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

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Definition of the child

Under this section, States Parties are requested to provide relevant information, pursuant to article 1 of the Convention, concerning the definition of a child under their laws and regulations. In particular, States Parties are requested to provide information on the age of attainment of majority and on the legal minimum ages established for various purposes, including, inter alia, legal or medical counselling without parental consent, end of compulsory education, part-time employment, full-time employment, hazardous employment, sexual consent, marriage, voluntary enlistment into the armed forces, conscription into the armed forces, voluntarily giving testimony in court, criminal liability, deprivation of liberty, imprisonment and consumption of alcohol or other controlled substances.”

(CRC/C/5, para. 12)

Guidelines for Periodic Reports

“II. DEFINITION OF THE CHILD (art.1)

Under this section, States Parties are requested to provide relevant information with respect to article 1 of the Convention, including on:

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

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

Legal and medical counselling without parental consent;

Medical treatment or surgery without parental consent;

End of compulsory education;

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

Marriage;

Sexual consent;

Voluntary enlistment in the armed forces;

Conscription into the armed forces;

Participation in hostilities;

Criminal responsibility;

Deprivation of liberty, including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions;

Capital punishment and life imprisonment;

Giving testimony in court, in civil and criminal cases;

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

Participating in administrative and judicial proceedings affecting the child;

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

Having access to information concerning the biological family;

Legal capacity to inherit, to conduct property transactions;

To create and join associations;

Choosing a religion or attending religious school teaching;

Consumption of alcohol and other controlled substances;

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

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

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

(CRC/C/58, para. 24. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 107, 124-125, 134, 147, 153; for full text of *Guidelines*, see Appendix 3, page 674.)



Starting point of childhood for purposes of Convention

Neither the 1924 nor the 1959 Declaration of the Rights of the Child define the beginning or end of childhood. But the Convention's Preamble draws attention to the statement in the Preamble to the 1959 Declaration "that the child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, *before as well as after birth*" (editors' emphasis).

As mentioned previously, the wording of article 1 of the Convention avoids setting a starting point for childhood. The intention of those who drafted the article was to avoid taking a position on abortion and other pre-birth issues, which would have threatened the Convention's universal acceptance. Thus the *Manual on Human Rights Reporting*, 1997, advises: "The wording of article 1 does not specifically address the question of the moment at which 'childhood' should be considered to begin, thus intentionally avoiding, in view of the prevailing diversity of national legal solutions, a single solution common to all States.

"By avoiding a clear reference to either birth or the moment of conception, the Convention endorses a flexible and open solution, leaving to the national legislation the specification of the moment when childhood or life begins." (*Manual*, p. 413)

The preambular statement from the 1959 Declaration, quoted above, caused difficulties within the Working Group that drafted the Convention. In order to reach consensus, the Group agreed that a statement should be placed in the *travaux préparatoires* to the effect that "In adopting this

preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties" (E/CN.4/1989/48, pp. 8-15; Detrick, p. 110).

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

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

For example, Argentina stated: "Concerning article 1 of the Convention, the Argentine Republic declares that the article must be interpreted to the effect that a child means every human being from the moment of conception up to the age of 18." (CRC/C/2/Rev.8, p. 13) This reflects the Argentinean Civil Code, which states: "Human existence begins from conception in the womb; and a person may acquire certain antenatal rights, as if he had already been born. These rights remain irrevocably acquired if those conceived in the womb are born alive, even though only for moments after being separated from their mother." (Argentina IR, para. 38)



The Holy See, in its declaration, “recognizes that the Convention represents an enactment of principles previously adopted by the United Nations and, once effective as a ratified instrument, will safeguard the rights of the child before as well as after birth, as expressly affirmed in the Declaration of the Rights of the Child and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted, in conformity with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969.” (CRC/C/2/Rev.8, p. 4)

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

The Committee on the Rights of the Child has suggested that reservations to preserve State laws on abortion are unnecessary. But the Committee has commented adversely on high rates of abortion, on the use of abortion as a method of family planning and on “clandestine” abortions, and has encouraged measures to reduce the incidence of abortion. The report on the follow-up to the Fourth World Conference on Women encourages governments to “consider reviewing laws containing punitive measures against women who have undergone illegal abortions” (A/RES/S-23/3, para. 72(o)). For further discussion see article 6, page 97).

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

The Committee, consistent with its general practice of urging all States to withdraw reservations, commented:

“In the light of the discussion in the Committee on the question of the continuing need for the State Party’s reservation to article 6 of the Convention and the information provided by the State Party that it is open to considering making adjustments in regard to its reservation, the Committee encourages the State Party to review its reservation to the Convention with a view to its withdrawal.” (China IRCO, Add.56, para. 24)

Luxembourg stated: “The Government of Luxembourg declares that article 6 of the present Convention presents no obstacle to implementation of the provisions of Luxembourg legislation

concerning sex information, the prevention of back-street abortion and the regulation of pregnancy termination.” (CRC/C/2/Rev.8, p. 28)

Other States have declared that they would interpret article 1 in conformity with their own legislation or constitutions (see, for example, CRC/C/2/Rev.8: Botswana, p. 15; Indonesia, p. 25).

The end of childhood

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

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

“The Committee is concerned at the lack of clarity on the status of children aged between 16 and 18 years....

“The Committee recommends that the State Party raise the legal age of definition of the child, which is currently set at 16 years. In this regard, the legal minimum ages for marriage and criminal responsibility should be reviewed.” (Maldives IRCO, Add.91, paras. 13 and 33)

“While the Minors Act sets the age of majority at 18 years of age, other legislation appears to set many limits on the levels of protection available for children over 16 years of age. The Protection of Children Act, 1990, offers protection from exploitation in pornography to all children under 18, but the Committee is concerned that the Sexual Offences Act, 1992, offers no special protection to children over the age of 16 and only limited protection to those between 14 and 16 years of age. Children over 16 years of age also appear to receive limited protection in legislation regulating the prevention of cruelty to children. The Committee recommends that existing legislation be reviewed so as to increase the level of protection accorded to all children under 18 years of age.” (Barbados IRCO, Add.103, para. 14)

The *Manual on Human Rights Reporting*, 1997, refers to the age of 18 as “a general upper benchmark”:

“This age limit should thus be used by States Parties as a rule and a reference for the establishment of any other particular age for any specific purpose or activity. This provision further stresses the need for States Parties to ensure special protection to every child below such a limit.

“While setting a general upper limit at 18, article 1 allows for the child’s majority to be attained earlier under the law applicable to the child. Such expression should in no way be interpreted as a general escape clause, nor should it allow ages to be established which might be contrary to the principles and provisions of the Convention...” (*Manual*, p. 414)

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

Article 24 of the Covenant recognizes the right of every child, without any discrimination, to receive from his or her family, society and the State the protection required by his or her status as “a minor”. The Covenant does not define “minor”, nor does it indicate the age at which a child should attain majority. The 1989 General Comment by the Human Rights Committee states: “This is to be determined by each State Party in the light of the relevant social and cultural conditions. In this respect, States should indicate in their reports the age at which the child attains his majority in civil matters and assumes criminal responsibility. States should also indicate the age at which a child is legally entitled to work and the age at which he is treated as an adult under labour law. States should further indicate the age at which a child is considered adult for the purposes of article 10, paragraphs 2 and 3 [which cover separate treatment for juvenile offenders]. However, the Committee notes that the age for the above purposes should not be set unreason-

ably low and that in any case a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133)

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

It was clear from discussions in the Working Group drafting the Convention that there is no generally agreed upon definition of majority in use, and that in some cases majority can be attained for some purposes by satisfying criteria other than age (for example status of marriage, acquisition of “sufficient understanding”). Reference was made to the fact that the concept of majority age “varied widely between countries and also within national legislation, according to whether the civil, penal, political or other aspects of majority were at issue” (E/CN.4/L.1542, pp. 5-6; Detrick, p. 116). Such differences have been fully illustrated in the Initial Reports of States Parties and in discussions



Definition of the child – a dilemma

India discusses the problems of defining childhood in its 1997 Initial Report, examined by the Committee in 2000:

“Legal enactments invoke differential age-specifics creating a dilemma whether the same human being is or is not a child, depending upon the law which is being invoked in a given case. Given the fact that a deprived child’s birth is either inadequately or incorrectly recorded, the reliability and impact of the laws cannot be fully regulated in terms of age... The disparity between the age-identified child and the laws applicable in terms of maturity levels and the child’s ability to articulate needs, requires congruent thinking in policy, law statements and their enactments.

“The acceptance of the definition of the child given in the Convention on the Rights of the Child is likely to have implications on programme planning and budgetary provisions. The Government of India is, therefore, reviewing the legislation and is considering adopting the definition of the child set out in article 1 of the Convention, wherever it is feasible and applicable, so that the rights of children are protected in the society under all circumstances.” (India IR, paras. 68 and 69)



between States' representatives and the Committee on the Rights of the Child.

Reviewing the definition of "child"

In most societies, until they ratified the Convention, there had been no comprehensive consideration of the various laws defining childhood. Article 1 provokes such a review of all relevant legislation in each State Party. The *Guidelines for Periodic Reports* also requests information on "any differences between national legislation and the Convention on the definition of the child". The Committee encourages States to review and harmonize laws with the Convention's definition. For example:

"... The Committee further recommends that the prescribed age in the various national laws be harmonized so as to eliminate inconsistencies, contradictions and gender disparities, and that the national legislation be brought into conformity with the Convention..." (Uganda IRCO, Add.80, para. 26)

"The Committee recommends that the State Party review, and amend as appropriate, existing legislation in order to harmonize the age of majority and the overall definition of the child, to introduce one minimum legal age for marriage, to increase the minimum age for criminal responsibility, to address concerns related to the minimum age for consulting a doctor without parental consent and to establish one minimum age for sexual consent." (Lesotho IRCO, Add.147, para. 24)

Defining specific minimum ages in legislation

The following section discusses briefly the various issues raised by the Committee's *Guidelines for Initial and Periodic Reports* (see box, page 2) in relation to article 1 and the definition of the child. Both *Guidelines* request information on "the minimum legal age defined by the national legislation" for various purposes. Many of the issues covered relate to other articles in the Convention; further interpretation and discussion will be found in the sections of this Handbook on those articles.

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

rights and evolving capacities, where a more flexible system, sensitive to the needs of the individual child, may be needed.

Some of the minimum ages the Committee seeks information on in the *Guidelines* relate to children's acquisition of autonomous rights, as opposed to protective rights: rights to take actions and make decisions on their own behalf (for example to obtain legal and medical counselling and to consent to medical treatment or surgery without parental consent; to create and join associations, choose a religion, give consent to adoption and to changes of identity).

The Convention does not provide direction on the specific age, or ages, at which children should acquire such rights, but it does provide a framework of principles. Under article 12, children capable of forming views have the right to express their views freely in all matters affecting them. Their views must be given "due weight in accordance with the age and maturity of the child". And the Convention emphasizes the importance of respecting children's "evolving capacities" (article 5, see page 89; also article 14, see page 198). In some States, in addition to setting in legislation certain ages for the acquisition of particular rights, the flexible concept of the child's evolving capacities has been reflected by the inclusion in the law of a general principle: that children acquire rights to make decisions for themselves on certain matters once they have acquired "sufficient understanding" (see box, page 8). The advantage of such formulas is that they avoid rigid age barriers; the disadvantage is that they leave judgements on when children have acquired sufficient understanding to adults, who may not respect the concept of evolving capacities.

Respect for Convention's general principles

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

"... there is a need to consider seriously questions relating to the legal definition of the child, in particular the minimum age for marriage, employment, military service and testimony before a court. It appears that these provisions do not sufficiently take into consideration the principles of the best interests of the child and non-discrimination." (El Salvador IRCO, Add.9, para. 10. See also Sudan IRCO, Add.10, para. 18)

The importance of the non-discrimination principle (article 2) in relation to the definition of the child is stressed in the Committee's *Guidelines for Periodic Reports*, which asks specifically for information “in cases where there is a difference in the legislation between girls and boys, including in relation to marriage and sexual consent, the extent to which article 2 of the Convention has been given consideration”; and also “in cases where the criteria of puberty is used under criminal law, the extent to which this provision is differently applied to girls and boys, and whether the principles and provisions of the Convention are taken into consideration” (para. 24; see box on page 2). For example:

“The Committee recommends that the State Party review its legislation so that the definition of the child and minimum age requirements conform to the principles and provisions of the Convention, and in particular that they are gender neutral and ensure that they are enforced.” (Islamic Republic of Iran IRCO, Add.123, para. 20)

More generally, the Committee has noted that physical development – puberty – is not a reliable guide to the transition from childhood to adulthood. In comments to individual States, the Committee has recommended that certain protective minimum ages should be raised – particularly those relating to sexual consent, access to employment and criminal responsibility (for Committee comments, see below, pages 9 and 12, and also article 34, page 513; article 32, page 488; and article 40, page 601).

As the *Manual on Human Rights Reporting*, 1997, states: “It would be in fact unrealistic to set a single uniform age for all these possible purposes which would apply in all countries in the world. Yet, in the light of the principles and provisions of the Convention, such limits cannot be set at an unreasonably low level or on the basis of arbitrary criteria. They particularly have to take the best interests of the child as a primary consideration, pursuant to article 3, and never give rise to discrimination as determined by article 2. Moreover, in the light of article 41, the most conducive solution for the child should always prevail, which would always prevent lowering the minimum level of protection provided by the Convention as a whole or depriving from all meaningful content the obligations arising therefrom...” (*Manual*, pp. 414-415)

Some “minimum age” issues relate both to increased autonomy and to protection. For example, the child’s right to seek legal and medical counselling and to lodge complaints without parental consent, and to give testimony in court,

may be crucial to protection from abuse within the family. It is not in the child’s interests that a minimum age should be defined for such purposes.

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

In relation to monitoring implementation of the whole Convention, the Committee has suggested *“that the collection and analysis of statistical data by age group be guided by the provisions of article 1 of the Convention...”* (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 22)

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

The following section covers the various issues listed in the *Guidelines* that the Committee seeks information about under article 1.

Legal or medical counselling without parental consent

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

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





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

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

the child may acquire an independent right to consent to medical treatment – see below.

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

In recommendations relating to the health needs of adolescents, the Committee has emphasized that they must have access to confidential advice and counselling. For example:

"Additionally, it is recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent, where in the best interests of the child..." (Benin IRCO, Add.106, para. 25)

"The Committee urges the State Party to address the sexual and reproductive health-

Medical advice and consent for minors

France's Initial Report indicates that French law permits minors of either sex to have access to contraception and to be supplied with contraceptives on an anonymous basis. A recent law provides for minors, at their request, to be tested and treated for sexually transmitted diseases free of charge and anonymously in authorized locations. The law requires that a female below the age of majority must consent to voluntary interruption of pregnancy and such consent to be given without her parents being present (France IR, paras. 154-156)

The United Kingdom's Initial Report states that under the Children Act 1989, a child can refuse to consent to a psychiatric or medical examination or other assessment in child protection proceedings if he or she is judged to be of "sufficient understanding". Following the *Gillick* case in 1985, under common law children of any age have had the right to give consent to clinical care and treatment provided they have the maturity to understand the implications of the proposed care and treatment. A more recent case held that the courts have jurisdiction to override a child's refusal of treatment when that refusal threatens the child's life (United Kingdom IR, para. 66)

In Sweden, "Contraceptive guidance is given to children and young persons without their parents being informed, if this is the child's wish. Consideration is paid, however, to the child's maturity. Nor are parents informed of an abortion performed on a minor if the child has objected to this information being given and there is a presumption that the minor will suffer significant detriment if the information is divulged to the custodian." (Sweden 2R, para. 212)

Norway's Initial Report states that "Doctors shall provide information about the condition, illness and treatment to their patients aged 12 years or older... Children between 12 and 16 years may request the doctor not to give specific information to their parents. Such a request shall be complied with if the doctor finds that the children's wishes should be respected. The child's degree of maturity is a factor in this evaluation." (Norway IR, para. 73)

Finnish legislation provides for children of sufficient maturity to make their own medical decisions (medical personnel assess maturity in the given situation); if a child aged 12 or more refuses psychiatric care, any decision on involuntary treatment must be submitted to the Provincial Court and the child has the right to appeal. (Finland IR, paras. 36 and 37)

care needs of older children, including those married at a young age and those in vulnerable situations. It recommends that the State Party provide access to information about sexual and reproductive health, and that services in this area be user friendly and address the concerns and need for confidentiality of adolescents...” (Djibouti IRCO, Add.131, para. 46)

Medical treatment or surgery without parental consent

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

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

When compulsory education ends

Article 28(1) (a) and (b) require States to achieve the child’s right to education “progressively and on the basis of equal opportunity”; primary education must be compulsory, and the development of different forms of secondary education must be encouraged and made “available and accessible to every child”. The ages of primary and secondary education are not defined by the Convention (see article 28, page 405). Article 32 requires States to protect the child from any work that is likely to interfere with the child’s education. The Committee on the Rights of the Child has indicated the need to coordinate the age at which compulsory education ends with the age for access to full-time employment; and the *Guidelines for Periodic Reports* reinforces this, asking, “How the minimum age for employment relates to the age of completion of compulsory schooling, how it affects the right of the child to education and how relevant international instruments are taken into account” (see also article 32, page 488). In several cases, the Committee has expressed concern at “discrepancies” between the ages and proposed “an equal age” (see page 489).

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

Article 32 requires States to protect children from “any work that is likely to be hazardous or to interfere with the child’s education”, to “pro-

vide for a minimum age or minimum ages for admission to employment” and to “provide for appropriate regulation of the hours and conditions of employment”. The Committee on the Rights of the Child has in several cases recommended that minimum ages should be raised, and, further, has frequently recommended that States should ratify the relevant International Labour Organization’s Conventions on minimum ages for employment (see article 32, page 489).

Sexual consent

In most countries, a minimum age is set below which children are judged incapable of consenting to any form of sexual activity with others. The definition of sexual abuse and exploitation includes not only conduct involving violence or other forms of coercion, but also all sexual conduct with a child below a certain age, even when it was or appeared to be consensual (see also article 19, page 264 and article 34, page 513). Consequently sexual intercourse with a child below the age of consent renders the perpetrator automatically liable to the charge of rape.

The Committee on the Rights of the Child has emphasized the importance of setting a minimum age below which a child’s consent is not to be considered valid.

The Committee has proposed to various countries that the age set should be raised.

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

During discussion of Uruguay’s Initial Report, a Committee member noted that the age of consent was fixed at 14 years for boys and 12 years for girls; the Convention did not countenance a distinction of that nature (Uruguay SR.326, para. 18). In some cases, the Committee has noted that there is no age for consent for boys (see, for example, India IRCO, Add.115, para. 26; Lesotho IRCO, Add.147, para. 23).

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

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





While the Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.

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

Marriage

In many societies, an age is set when children may marry without parental consent (usually the age of majority), and a lower age is set when they may marry with parental consent. In some societies, marriage is permitted in exceptional cases at an earlier age with the permission of a court or other authority, for example when a girl is pregnant or has a child. Marriage age is of particular significance because in many countries upon marrying children are assumed to acquire majority and thus to lose their protective rights under the Convention. During discussion of Senegal's Initial Report, a Committee member commented on this form of discrimination against girls: "It was argued by some countries that a low marriage age for girls was an advantage because it would legitimize the relationship in case of pregnancy, but, in the Committee's view, that was not a very strong argument when set against the negative consequences in later life." (Senegal SR.248, para. 11)

The Committee on the Elimination of Discrimination against Women has proposed in a General Recommendation that the minimum age for marriage should be 18 years (see page 11).

The Committee on the Rights of the Child has emphasized to many States Parties that the age of marriage for both girls and boys must be the same to conform with article 2 of the Convention and that ages should not be set too low (implying in its comments that 14 years old is too low) to conform with other general principles such as the best interests of the child and the right to maximum survival and development:

"The Committee is concerned that the national legislation establishes a different minimum age for marriage between boys and girls and that it authorizes the marriages of girls as young as 14 years of age who have obtained parental consent from the father or the mother. Such situations may raise the question of compatibility with the principles of non-discrimination and the best interests of the

child, in particular as these children will be considered as adults and therefore no longer eligible for the protection afforded by the Convention." (Madagascar IRCO, Add.26, para. 9)

In recommending equalization of the legal age for marriage, the Committee has emphasized that it should be achieved by raising the age for girls, not lowering that for boys. Thus, following examination of Yemen's Second Report, it stated:

"The Committee remains concerned that the legal 'ages of maturity', which refer to the criterion of puberty, set at 10 years for boys and at 9 years for girls, are too low Furthermore, the Committee reiterates its deep concern (see Yemen IRCO, Add.47, para. 7) at the fact that the State Party has lowered the minimum legal age for marriage of boys from 18 to 15, instead of increasing that of girls. The Committee recommends that the State Party introduce adequate reforms into its legislation in order to raise the ages of maturity and criminal responsibility and the minimum age for marriage, with a view to bringing them into full conformity with the principles and provisions of the Convention. In this regard, the Committee encourages the State Party to undertake awareness-raising campaigns regarding the harmful effects of early marriages." (Yemen 2RCO, Add.102, para. 16)

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

"The Committee is worried about the existence of disparities concerning the three different laws (Sri Lankan, Kandyan and Muslim) regulating the minimum age for marriage. These legislations establish different minimum ages for marriage between boys and girls and authorize the marriages of girls as young as 12 years of age who have obtained parental consent from the parents. Such situations may raise the question of compatibility with the principles of non-discrimination and the best interests of the child..."

"The Committee strongly recommends that consideration should be given to raising and standardizing the age for contracting marriage in all communities..." (Sri Lanka IRCO, Add.40, paras. 11 and 28)

"The Committee welcomes the decision of the State Party to review the legislation setting a lower age for marriage for children resident in or nationals of other States. The Committee encourages the State Party to consider

changes in the legislation with a view to increasing protection against the harmful effects of early marriage and to eliminating discrimination among children within its jurisdiction.” (Sweden 2RCO, Add.101, para. 10)

The Universal Declaration of Human Rights, in article 16, states that men and women “of full age” have the right to marry and to found a family. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) notes this in its Preamble and goes on to reaffirm that all States should take all appropriate measures to eliminate completely child marriages and the betrothal of young girls before the age of puberty. Its article 2 requires State Parties to “take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses.”

Thus this Convention does not set a minimum age for marriage. But a General Assembly Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1965 proposes in Principle II that the minimum age prescribed in law “in any case shall not be less than fifteen years of age”.

In 1994 the Committee on the Elimination of Discrimination against Women (CEDAW) made a General Recommendation on equality in marriage and family relations, which proposes that the minimum age for marriage should be 18 for both women and men. Within the Recommendation, CEDAW analyzes three articles in the Convention on the Elimination of All Forms of Discrimination against Women that have special significance for the status of women in the family, as a contribution to the International Year of the Family (1994). Article 16 of the Convention requires States to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Paragraph 2 requires that “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.”

CEDAW comments: “In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discrim-

inate against and cause harm to the girl child. Article 16(2) and the provisions of the Convention on the Rights of the Child preclude States Parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, ‘a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier’.

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

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

“States Parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.” (Committee on the Elimination of Discrimination against Women, General Recommendation 21, 1994, HRI/GEN/1/Rev.5, pp. 229 and 230)

Voluntary enlistment and conscription into armed forces; participation in hostilities

Article 38 of the Convention on the Rights of the Child requires States to refrain from recruiting into their armed forces anyone who has not attained the age of 15, and, in recruiting children between the ages of 15 and 18, “to give priority to those who are oldest”. In addition States Parties must “take all feasible measures to ensure





that persons who have not attained the age of fifteen years do not take a direct part in hostilities”. In May 2000 the United Nations General Assembly adopted the Optional Protocol to the Convention on the involvement of children in armed conflict to increase protection and the Committee encourages all States Parties to sign and ratify the Protocol without delay (for full discussion, see pag 641).

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

Criminal responsibility

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

The report of the Committee’s General Discussion on “Administration of juvenile justice” states:

“It was particularly felt that the general principles of the Convention had not been adequately reflected in national legislation or practice. In relation to non-discrimination, particular concern was expressed about instances where criteria of a subjective and arbitrary nature (such as with regard to the attainment of puberty, the age of discernment or the personality of the child) still prevailed in the assessment of the criminal responsibility of children and in deciding upon the measures applicable to them.” (Report on the tenth session, October/November 1995, CRC/C/46, para. 218)

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

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

“The Committee expresses concern regarding the low legal age of criminal responsibility (10 years).

“The Committee recommends that the State Party raise the legal age of criminal responsibility to a more internationally acceptable age by amending its legislation in this regard.” (Suriname IRCO, Add.130, paras. 19 and 20)

“The Committee urges the State Party to raise the minimum age of criminal responsibility and to ensure that children aged 15 to 18 years are accorded the protection of juvenile justice provisions and are not treated as adults...” (Ethiopia 2RCO, Add.144, para. 29)

The Committee has also indicated that the age of criminal responsibility must be consistent throughout a State’s jurisdiction. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”, proposes in rule 4: “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity” (for further discussion and text of the Committee’s comments, see article 40, page 601).

Deprivation of liberty; imprisonment

Article 37(b) requires that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. While the Convention on the Rights of the Child sets no lower age limit on restriction of liberty, it is clear from the Committee’s comments that it believes that the minimum age should be set in relation to the other basic principles of the Convention, and in particular to articles 2, 3 and 6; and the Committee has expressed concern at restriction of the liberty of young children. In article 9, the principle that a child shall only be separated from his or her parents when such separation “is necessary for the best interests of the child” places further limits on restriction of liberty away from the family.

The *Guidelines for Periodic Reports* expands on the information requested: that it should cover the minimum legal age defined in the national legislation for “Deprivation of liberty, including by arrest, detention and imprisonment, *inter alia* in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions” (para. 24; see also article 37, page 549), emphasizing that article 37 applies to any restriction of liberty of the child, not just to that occurring within the penal system.

Capital punishment and life imprisonment

Article 37(a) of the Convention on the Rights of the Child bars the imposition of capital punishment and life imprisonment without the possibility of release for offences committed before the age of 18. In several cases, the Committee has expressed concern at breaches of this clear prohibition. In addition, the Committee has expressed concern at situations in which the law technically still allows capital punishment of those under the age of 18, although the sentence is not applied in practice, and at situations where suspended sentences of death are permitted for under-18s (see article 37, page 547).

Giving testimony in court, in civil and criminal cases

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

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

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

The Committee has noted the importance of enabling children to give evidence in cases involving the prevention of violence and exploitation, including the sexual exploitation of children. It has commended States that have made special arrangements to hear evidence from children in such cases (see article 19, page 274).

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

The Committee on the Rights of the Child has indicated that the full implementation of article 12 requires the child to have access to complaints procedures (see page 171). The child's ability to lodge complaints and seek redress without parental consent before a court is particularly

important in relation to complaints concerning violence or exploitation, including sexual exploitation, within the family. There is no suggestion in the Convention that children below a certain age should not be able to lodge complaints or apply to courts or other bodies for redress, with or without parental consent; any decision to exclude a child from such rights would have to be made in the context of the general principles including non-discrimination and best interests.

Participating in administrative and judicial procedures affecting the child

As noted above, article 12(2) of the Convention on the Rights of the Child requires that the child is provided with an opportunity to be heard in any judicial and administrative proceedings affecting him or her. The Convention sets no age limit on this right (see article 12, page 165).

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

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

The request for information on these individual aspects of change of identity is included in the *Guidelines for Periodic Reports*, but was not in the *Guidelines for Initial Reports*, so few Initial Reports have included comprehensive information and there has been little discussion with the Committee. Many States did indicate in Initial Reports that they have established an age at which the child has a right to consent or refuse consent to his or her adoption. The Committee has welcomed moves to reduce the age at which the child's consent is required for adoption, for example from 15 in Belgium (see article 21, page 298).

Having access to information about the child's biological family

Article 7 of the Convention on the Rights of the Child requires that the child has "as far as possible, the right to know ... his or her parents". The right to knowledge of biological parents is of particular importance to adopted children and children born through artificial means of conception. In many States, legislation places limits both on the information made available to the child and the age at which any information is





available to the child. Implementation of this right depends on sufficient information being included in the registration of the child's birth and on how the information is made accessible to the child (see article 7, page 116). In many States adopted children up to the age of 18 do not have a right of access to information about their biological parents, which appears to breach article 7.

The *Guidelines for Periodic Reports*, in addition to seeking information on the minimum age defined in legislation for the child's access to this information, also asks in its section on adoption (para. 83) for information on "the effects of adoption on the rights of the child, particularly his or her civil rights, including the child's identity and the right of the child to know his or her biological parents".

Legal capacity to inherit, to conduct property transactions

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

The Committee on the Elimination of Discrimination against Women (CEDAW), in a General Recommendation, notes that, in many countries, law and practice concerning inheritance and property result in serious discrimination against women: "...Women may receive a smaller share of the husband's or father's property at his death than would widowers and sons" (Committee on the Elimination of Discrimination against Women, General Recommendation 21, 1994, HRI/GEN/1/Rev.5, p. 229). Such discrimination may also affect those under 18 years old, in which case it raises an issue under the Convention on the Rights of the Child. The Committee on the Rights of the Child has commented on discrimination in inheritance:

"...The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property." (Nepal IRCO, Add.57, para. 10)

Legal capacity to create or join associations

The child's right to freedom of association is recognized in the Convention on the Rights of

the Child under article 15, and the Committee has emphasized that this right is linked to articles 12 and 13 in realizing the child's rights to participation.

Some States indicated in their Initial Reports that there is an age below which children are not permitted to join associations or to do so without the agreement of their parents. The Convention provides no support for arbitrary limitations on the child's right to freedom of association (see article 15, page 205).

Choosing a religion; attending religious education in school

Article 14 requires respect for the child's right to freedom of thought, conscience and religion. Few States as yet have legislation specifically upholding the child's right to freedom of religion, but in some States an age is specified when decisions concerning religious upbringing and education transfer from the parent to the child. In States in which religious education is allowed in schools, there may be provisions in legislation allowing students to opt out of particular religious teaching and/or worship, and/or giving them a right to alternative teaching. Article 14(2) requires States to respect the rights and duties of parents "to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" (see article 14, page 193).

Consumption of alcohol and other controlled substances

Article 33 requires States to take "all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties..." Many States have made it an offence to sell alcohol and tobacco products and any other controlled substances to children below a certain age. The setting of such ages should be related to the basic principles of articles 2, 3 and 6 (see article 33, page 495).

The Committee commented on the low age set in United Kingdom law:

"...Concern is also expressed at the low minimum age for the consumption of alcohol in private in the Falkland Islands (5 years)..." (United Kingdom – Overseas Territories IRCO, Add.135, para. 21)

Implementation Checklist



● General measures of implementation

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

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (definition of the child in article 1 is relevant to **all government departments**)
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?

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

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

● Specific issues in implementing article 1

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

- ☐ at birth?
- ☐ for some purposes before birth?
- ☐ Does a child acquire all adult rights by his or her 18th birthday or earlier?

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

- ☐ at 18?
- ☐ before 18?

Are protective minimum ages defined in legislation for the following:

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

How to use the checklists, *see page XVII*



- ☐ full-time work?
 - ☐ giving a valid consent to sexual activities?
 - ☐ marriage?
 - ☐ access to certain categories of violent/pornographic media?
 - ☐ buying/consuming alcohol or other controlled substances?
 - ☐ voluntary enlistment in the armed forces?
 - ☐ criminal responsibility?
 - ☐ deprivation of liberty in any situation, including in the juvenile justice system; immigration, including asylum-seeking; and in education, welfare and health institutions?
 - ☐ Are capital punishment and life imprisonment prohibited for offences committed below the age of 18?
 - ☐ Is conscription into the armed forces prohibited below the age of 18?
 - ☐ Does the State take all feasible measures to ensure that under 18 year-olds do not take a direct part in hostilities?
 - ☐ Is any general principle established in legislation that once a child has acquired "sufficient understanding", he or she acquires certain rights of decision-making?
 - ☐ Are there mechanisms for assessing the capacity/competence of a child?
 - ☐ Can a child appeal against such assessments?
 - ☐ Are there other ways in which legislation respects the concept of the child's "evolving capacities"?
- Do children acquire rights, either at prescribed ages, or in defined circumstances, for
- ☐ having medical treatment or surgery without parental consent?
 - giving testimony in court
 - ☐ in civil cases?
 - ☐ in criminal cases?
 - ☐ leaving home without parental consent?
 - ☐ choosing residence and contact arrangements when parents separate?
 - ☐ acquiring a passport?
 - ☐ lodging complaints and seeking redress before a court or other relevant authority without parental consent?
 - ☐ participating in administrative and judicial proceedings affecting the child?
 - ☐ giving consent to change of identity, including
 - ☐ change of name?
 - ☐ nationality?
 - ☐ modification of family relations?
 - ☐ adoption?
 - ☐ guardianship?
 - ☐ having access to information concerning his or her biological origins (e.g. in cases of adoption, artificial forms of conception, etc.)?
 - ☐ having legal capacity to inherit?

How to use the checklists, see page XVII



- ☐ conducting property transactions?
- ☐ creating and joining associations?
- ☐ choosing a religion?
- ☐ choosing to attend/not attend religious education in school?
- ☐ joining a religious community?
- ☐ Where such minimum ages are defined in legislation, have they been reviewed in the light of the Convention's basic principles, in particular of non-discrimination, best interests of the child and right to maximum survival and development (articles 2, 3, and 6)?
- ☐ Do the legal provisions relating to the attainment of majority, acquisition of specific rights at a particular age or set minimum ages, as mentioned above, apply to all children without discrimination on any ground?

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

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

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

Article 5: respect for the child's "evolving capacities" (also article 14(2))

Article 24: access to medical advice and counselling; consent to treatment

Article 28: ages for compulsory education

Article 32: setting of ages for admission to employment

Article 34: age of sexual consent

Article 37: no capital punishment or life imprisonment for offences committed below the age of 18

Article 38: minimum age for recruitment into armed forces and participation in hostilities

Article 40: age of criminal responsibility

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



Non-discrimination

article

2

Text of Article 2

- 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
- 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

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

In a relevant General Comment, the Human Rights Committee proposes that the term “discrimination” should be understood to imply “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.

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

Summary

The implications of discrimination in relation to particular rights of the child are covered in this *Implementation Handbook* under the other corresponding Convention articles. Certain articles set out special provisions for children particularly prone to forms of discrimination, for example, disabled children (article 23), and refugee children (article 22). Because discrimination is at the

root of various forms of child exploitation, other articles to protect the child call for action that involves challenging discrimination.

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



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"General principles

Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

(a) Non-discrimination (art. 2);

...

In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines."

(CRC/C/5, paras. 13 and 14)

Guidelines for Periodic Reports

"III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)

Reports should indicate whether the principle of non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions. Reports should further indicate the measures adopted to ensure the rights set forth in the Convention to each child under the jurisdiction of the State without discrimination of any kind, including non-nationals, refugees and asylum-seekers.

Information should be provided on steps taken to ensure that discrimination is prevented and combated, both in law and practice, including discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his/her parents or legal guardians.

Please indicate the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers, and children who are living and/or working on the streets.

Please provide information on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women.

Please indicate measures taken to collect disaggregated data for the various groups of children mentioned above.

What measures have been taken to prevent and eliminate attitudes to and prejudice against children contributing to social or ethnic tension, racism and xenophobia?

Information should also be provided on the measures pursuant to article 2, paragraph 2 taken 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.

Please indicate major problems encountered in implementing the provisions of article 2 and plans to solve these problems, as well as any evaluation of progress in preventing and combating all forms of discrimination, including those arising from negative traditional practices."

(CRC/C/58, paras. 25 - 32. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 64, 65, 74, 76, 80, 87, 92, 93, 106, 109, 115, 118, 120, 128, 132, 138, 143, 152, 159, 161, 164, 166; for full text of *Guidelines*, see Appendix 3, page 674.)



Definition of “discrimination”

The term “discrimination” is not defined in the Convention, nor is it defined in the International Covenant on Civil and Political Rights, which includes a similar non-discrimination principle. The Committee on the Rights of the Child has asserted the fundamental importance of article 2 and raises the issue of non-discrimination in its consideration of each State Party report. The Committee has not, as at May 2002, issued any interpretative General Comment on article 2. But in its first General Comment, issued in 2001, on the aims of education, the Committee states:

“Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.”

It goes on to detail discriminatory practices which

“are in direct contradiction with the requirements in article 29(1)(a) that education be directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential’.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, p. 257. See article 29, page 434.)

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

Under article 2 of the International Covenant on Civil and Political Rights, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and

subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 24(1) of the Covenant also requires that “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State...”

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

The Human Rights Committee, in its 1989 General Comment, emphasizes that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights”. The Human Rights Committee notes that “the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.



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

The Human Rights Committee goes on to emphasize that the “enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance”. The principle of equality sometimes requires States Parties “to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.” And finally, it states that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”. (Human Rights Committee, General Comment 18, 1989, HRI/GEN/1/Rev.5, pp. 135-137)

In relation to discrimination against children and the Covenant, another Human Rights Committee General Comment, also issued in 1989, states: “The Covenant requires that children should be protected against discrimination on any grounds such as race, colour, sex, language, religion, national or social origin, property or birth. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from article 2 and their equality before the law from article 26, the non-discrimination clause contained in article 24 relates specifically to the measures of protection referred to in that provision. Reports by States Parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field, including inheritance, particularly as between children who are nationals and children who are aliens, or as between legitimate children and children born out of wedlock.” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133)

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

The language of article 2 itself and its interpretation by the Committee on the Rights of the Child emphasize that the obligation of States Parties to prevent discrimination is an active one, requiring, like other aspects of implementation, a range of measures that include review, strategic plan-

ning, legislation, monitoring, awareness-raising, education and information campaigns, and evaluation of measures taken to reduce disparities.

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

An “active” approach to implementing the principle

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

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

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

Reviewing legislation and writing non-discrimination principle into legislation

The Committee on the Rights of the Child has indicated to many States that, as with the other articles identified as general principles, the non-discrimination principle should be written into legislation as well as into any national policies on children and implementation. And it has emphasized that there should be the possibility to challenge discrimination before the courts. For example:

“The Committee recommends that the general principles of the Convention, in particular the provisions of its articles 2, 3 and 12, be appropriately integrated in all relevant legislation concerning children and applied in all political, judicial and administrative decisions and in projects, programmes and services which have an impact on all children, including non-citizen

children, and guide the determination of policy-making at every level and actions taken by social and health welfare institutions, courts of law and administrative authorities.” (Latvia IRCO, Add.142, para. 22. See also Mexico IRCO, Add.13, paras. 7 and 15; Indonesia IRCO, Add.25, para. 18; Denmark IRCO, Add.33, para. 24; Canada IRCO, Add.37, para. 11; Sri Lanka IRCO, Add.40, para. 25; Senegal IRCO, Add.44, para. 25; Finland IRCO, Add.53, para. 13)

The *Guidelines for Periodic Reports* asks whether non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children “and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions”. In some States, a non-discrimination clause is written into the Constitution and therefore applies to all children. In others, non-discrimination principles are included in human rights legislation with reference to children. The Convention, like

treatment between children born in and out of wedlock.” (Italy IRCO, Add.41, para. 16. See also Germany IRCO, Add.43, para. 28)

In examining Initial and Second Reports the Committee frequently comes across instances in which some forms of discrimination are written into existing legislation. A particularly common example of discrimination by gender is legislation defining different minimum ages for boys and girls to marry (for further discussion, see below, page 33 and article 1, page 10); another example is the discrimination inherent in some State legislation dealing with children of married parents and those born out of wedlock, referred to as non-marital children (see below, page 35). Policies intended to discourage population growth by limiting the size of families must not discriminate against individual children:

“In the light of article 2 of the Convention, the Committee recommends that the State Party find alternative means to implement the three child policy, other than excluding



Protection against discrimination on the grounds of age

Certain human rights laws in the provinces of Canada have outlawed discrimination based on age (with some exceptions), according to information in Canada’s Initial Report. Until 1992, New Brunswick’s Human Rights Act covered discrimination on grounds of age for those aged 19 or above only; following revision, children are covered against discrimination on the grounds of age. In Nova Scotia, the Human Rights Act was revised in 1991, and the prohibition on discrimination on the basis of age was expanded to cover all age groups. The Initial Report states that the Act does, however, allow for exceptions so that children can be conferred some appropriate benefit or protection with respect to services or facilities (Canada IR, paras. 1034, 1126).

other human rights instruments, does not require States to have a Constitution. But where there is a Constitution, its provisions must be consistent with the Convention, or, in the terms of article 41, must be more conducive to the realization of the rights of the child.

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

“The State Party should pursue its efforts with a view to fully reflecting in its legislation and practice the provisions and principles of the Convention, in particular the principles of non-discrimination, the best interests of the child and the right of the child to freely express his or her views. In this regard, the Committee recommends that existing legislation be modified to fully ensure equal

the fourth child from social service benefits, and ensure that all children have equal access to such assistance without discrimination.”

(The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 17)

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

“The Committee notes with concern that ... the principle of non-discrimination does not apply to private professionals or institutions...”

(Zimbabwe IRCO, Add.55, para. 12)

Other active measures to challenge discrimination

The Committee on the Rights of the Child recognizes that the reflection of the principle of non-discrimination in the law, while fundamental to implementation, is not in itself sufficient; other strategies are needed to implement the principle,



in particular to challenge traditional and other discriminatory attitudes and customs.

During discussions with Mongolia, a Committee member stated: "... the Committee was often told that a country was free of discrimination, but such assertions meant only that the law prohibited discrimination. The Committee wanted to encourage an additional effort to improve the situation of some groups of children in Mongolia which might suffer de facto..." (Mongolia SR.265, paras. 31 and 32).

The Committee has identified traditional attitudes and customs that perpetuate discrimination in many societies, whether the discrimination is reflected in legislation or not:

"The Committee is also preoccupied by the widespread discriminatory attitudes towards girls and disabled children..." (El Salvador IRCO, Add.9, para. 12)

"... The Committee is also concerned that lasting prejudices and traditional beliefs affect certain groups of children, including disabled children and children born on a certain day of the week (considered to bring bad luck), preventing them from fully enjoying the rights recognized by the Convention." (Madagascar IRCO, Add.26, para. 8)

"The Committee is concerned that traditional attitudes prevailing in the country may not be conducive to the realization of the general principles of the Convention, in particular as regards the persistence of gender stereotypes

and the existing role distribution between boys and girls, the abusive sexual practices which might affect very young girls and the discriminatory attitude towards certain categories of particularly vulnerable children such as young single mothers, disabled children, children affected by HIV/AIDS or Rastafarian children." (Jamaica IRCO, Add.32, para. 11)

"With regard to the implementation of article 2 of the Convention, the Committee expresses its concern at the persistence of discriminatory attitudes and harmful practices affecting girls, as illustrated by serious disparities, sometimes starting at birth and affecting the enjoyment of the rights to survival, health, nutrition and education. The Committee also notes the persistence of harmful practices such as dowry and early marriage. Discriminatory attitudes towards children born out of wedlock, children who are living and/or working on the street, child victims of sexual exploitation, children with disabilities, refugee children and children belonging to tribal minorities are also a matter of concern..."

"...Measures, including studies and campaigns, should be taken to combat traditional attitudes and stereotypes and to sensitize society, to the situation and needs of the girl child, children born out of wedlock, children living and/or working on the street, child victims of sexual abuse and exploitation, children with disabilities, refugee children and children

Between law and reality

In some cases, States themselves have identified the persistence of discrimination through traditional customs: "...non-discrimination is a general principle of the law of the protection of children in Madagascar. Between law and fact, however, lies an area of loopholes, confusion and practice based on actual social life. Some traditions, particularly in rural areas, are still very strong and will disappear completely only if coordinated information and civic and moral education activities are carried out. There are still traditional 'rejections', a customary means of exclusion that has particularly adverse effects. The village community, the *fokonolona*, the family group or simply the parents may reject a child because of the conditions in which his birth took place (born a twin, born on an unlucky day, born with certain deformities that are regarded as a threat to the social group, born in abnormal conditions, etc.). The lawmakers have tried to combat such rejections by prohibiting the rejection of minors ... It is not obvious, however, that this prohibition has had tangible results. Rejection of children has definitely been on the decline, but basically as a result of the dedicated work of NGOs, religious missions and welfare organizations which contact families and take in children in danger of rejection." (Madagascar IR, paras. 14 and 15)

During discussions with the Committee on the Rights of the Child, the Madagascar representative responded: "It had been asked what steps were being taken to change the attitude of parents to those children traditionally believed to be unlucky. No official measures had been adopted. Efforts in that direction were being made by religious organizations and other NGOs, and children were taught in primary schools not to reject others; but no official attempt had as yet been made to educate parents ..." (Madagascar SR.164, para. 20)

belonging to tribal minorities.” (Bangladesh IRCO, Add.74, paras. 15 and 35)

“In accordance with article 17 of the Constitution and article 2 of the Convention, the Committee recommends that the State Party take steps to ensure states abolish the discriminatory practice of ‘untouchability’, prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with article 46 of the Constitution, the State Party is encouraged to implement, inter alia, affirmative measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act. The Committee encourages the State Party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination. In line with the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13), the Committee stresses the importance of the equal enjoyment by members of these groups of the rights in the Convention, including access to health care, education, work, and public places and services, such as wells.” (India IRCO, Add.115, para. 31)

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

- studies of discrimination – the Committee’s *Guidelines for Periodic Reports* emphasises throughout the importance of collecting disaggregated statistics and other information in order to identify discrimination in access to rights (see article 4, page 73, for details);
- development of comprehensive strategies;
- information and awareness-raising campaigns, including public campaigns to challenge discriminatory attitudes and practices – a “comprehensive and integrated public information campaign”;
- involvement of political, religious and community leaders in influencing attitudes and discouraging discrimination.

For example:

“Strategies and educational programmes along with the adequate dissemination of information should be undertaken in order to counter certain prejudices which affect children negatively, such as gender-based discrimination (known as ‘machismo’) and discrimination against disabled children (specially in rural areas)...” (El Salvador IRCO, Add.9, para. 18)

“The Committee suggests that the Government develop public campaigns on the rights of the child with a view to effectively addressing the problem of persisting discriminatory attitudes and practices against particular groups of children such as girl children, children belonging to a minority or indigenous group and poor children. It is also suggested that further proactive measures be developed to improve the status of these groups of children.” (Nicaragua IRCO, Add.36, para. 31)

“In order to effectively combat persisting discriminatory attitudes and negative traditions affecting girls, the Committee encourages the State Party to launch a comprehensive and integrated public information campaign aimed at promoting children’s rights within the society, and particularly within the family.” (Nepal IRCO, Add.57, para. 26)

In its first General Comment on the aims of education, the Committee underlines the importance of education in combating discrimination, including racism :

“Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, p. 258. See article 29, page 431)

Implementation “irrespective of budgetary constraints”

The Committee has emphasized that implementation of the general principles in articles 2 and 3 of the Convention must not be “made dependent on budgetary constraints”. In practice, poverty is clearly a major cause of discrimination affecting children. The Committee’s intention is to ensure that non-discrimination and the best interests of children are primary considerations in setting budgets and allocating available resources. In its *Guidelines for Periodic Reports* the Committee asks for information on “The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector” (para. 20).





The Committee consistently emphasizes the need for affirmative action – positive discrimination – on behalf of disadvantaged and vulnerable groups. For example:

“The Committee expresses its concern at the limited budget allocations and mobilization for the social sector, in particular for those areas addressing the needs of the most vulnerable groups of children...”

“The Committee reiterates its recommendation that all measures to implement economic, social and cultural rights should be undertaken ‘to the maximum extent of ... available resources’ in light of articles 2, 3 and 4 of the Convention and that particular attention be paid to effective budget mobilization and allocation, in particular for the protection of children belonging to vulnerable and marginalized groups.” (Dominican Republic IRCO, Add.150, paras. 15 and 16)

Monitoring and evaluation

It is essential to monitor the realization of all rights within the Convention for all children, without discrimination. Thus the monitoring process and the indicators used must be sensitive to the various issues specifically mentioned in the article: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. As the wording indicates, the list is not exhaustive but merely illustrative, and States must consider other grounds that might cause discrimination. The *Guidelines for Periodic Reports* requests disaggregated data under many articles, for example by age, gender, region, rural/urban area, social and ethnic origin (for full list of disaggregated data requested by the Committee, see article 4, page 74). The purpose is to ensure that States Parties have sufficient information to judge whether there is discrimination in implementing the article or provision concerned.

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

In addition, the Committee on the Rights of the Child has suggested that strategies to combat discrimination should be evaluated:

“The Committee would like to suggest that further consideration be given to evaluating the effectiveness of measures to raise awareness for the prevention and combating

of discrimination and promoting tolerance, particularly with respect to discrimination on the grounds of gender, ethnic origin, discrimination against disabled children and children born out of wedlock” (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 24).

“...to each child within their jurisdiction...”

Article 2 emphasizes that all the rights in the Convention on the Rights of the Child must apply to all children in the State, including visitors, refugees, children of migrant workers and those in the State illegally.

The Committee on the Rights of the Child has on several occasions raised the issue of “alien” children and pointed out that the Convention accords them equal rights:

“The Committee notes that all children who have had their asylum requests rejected but remain in the country have had their rights to health care and education provided de facto but not de jure. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of articles 2 and 3 of the Convention.” (Norway IRCO, Add.23, para. 12)

It followed this up when it examined Norway’s Second Report :

“The Committee expresses appreciation of the State Party’s efforts to ensure that, in practice, children within Norwegian jurisdiction, including those whose presence is not in line with legal requirements, benefit from the rights defined in the Convention. The Committee expresses its concern, nevertheless, that this principle is not established in all relevant domestic legislation, that the absence of a legal guarantee may deprive some children without Norwegian nationality of their rights, and that some limitations are placed on these children’s access to health and education services.

“The Committee recommends that the State Party consider the full, including long-term impact of this situation on the rights of children without Norwegian nationality and without legal status living within Norwegian jurisdiction. The Committee further encourages the State Party to consider amendments to national legislation which would ensure the full applicability of article 2 of the Convention.” (Norway 2RCO, Add.126, paras. 20 and 21. See also Belgium IRCO, Add.38, para. 9; Denmark IRCO, Add.33, para. 30; Portugal IRCO, Add.45, para. 21; Sweden 2RCO, Add.101, para. 11)

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

In discussions with Canadian Government representatives, a Committee member stated that “under article 2 States Parties were required to ‘respect and ensure’ the rights of children under the terms of the Convention, irrespective of factors such as race, sex, or ‘other status’. He took that as implying that the Federal Government was obliged to ensure that equal protection was given to the rights of children in all the different provinces and territories. The Committee had been entrusted with the task of monitoring progress made by States Parties in the implementation of the Convention and was therefore obliged to ensure that the Convention was applied throughout Canada, irrespective of regional differences.” (Canada SR.214, para. 45)

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

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

“The Committee notes that article 2 of the Convention requires States Parties to ensure the implementation of the Convention for areas under their jurisdiction, which therefore includes the obligation to report on progress achieved in all its territories.” (Australia IRCO, Add.79, para. 2)

“The Committee is concerned that the federal system in the State Party may on occasion pose difficulties for the federal authorities in their effort to implement the provisions of the Convention while ensuring the principle of non-discrimination, in accordance with the provisions of article 2 of the Convention. The Committee urges the State Party to ensure that the existing mechanisms of coordination and reliance on general constitutional principles are fully utilized so as to protect children fully from any disparity regarding fields within the ‘exclusive competence’ of the Länder.” (Austria IRCO, Add.98, para. 8)

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

“The Committee notes with concern that the State Party has not yet extended the Convention to all of its Crown Dependencies, specifically Jersey and Guernsey.

“The Committee recommends that the State Party submits in its next periodic report, information concerning the measures taken to extend the Convention to all of its Crown Dependencies.” (United Kingdom – Isle of Man IRCO, Add.134, paras. 4 and 5)

On occasion, the Committee has proposed reforms to ensure that non-discrimination legislation is in force throughout the jurisdiction, as in the case of the United Kingdom:

“The Committee recommends that race relations legislation be introduced in Northern Ireland as a matter of urgency and is encouraged by the information presented by the delegation of the State Party regarding the Government’s intention to follow up on this matter.” (United Kingdom IRCO, Add.34, para. 28)

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

“The Committee expresses its concern at the unequal distribution of the national wealth in the country and the disparities and discrepancies in the enforcement of the rights provided for under the Convention between the different regions of the country, to the detriment of rural children and children belonging to minorities or indigenous communities.” (Mexico IRCO, Add.13, para. 9)

“The Committee expresses its concern at the existing geographical and social disparities in the enjoyment of the rights provided for under the Convention.” (Chile IRCO, Add.22, para. 13)

“The Committee is also concerned about persisting and significant economic and social disparities between the northern and southern parts of the country, which bear a negative impact on the situation of children.” (Italy IRCO, Add.41, para. 10)

“The Committee is concerned about the prevailing disparities between urban and rural areas and between regions in relation to the provision of and access to social services, including education, health and social security.” (China IRCO, Add.56, para. 11)

“...the Committee expresses its concern at the existing disparities between children living on the capital island of Male and those living on remote islands.” (Maldives IRCO, Add.91, para. 15)





Grounds for discrimination against children

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

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

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

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

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

“The Committee ... remains concerned that some of the criteria listed as prohibited grounds of discrimination under the Convention on the Rights of the Child are absent from the State Party constitution.

“The Committee recommends that the State Party review the Constitution and other relevant national legal instruments, enlarging the list of prohibited grounds of discrimination to include ‘disability, birth, other [than political] opinion’, as provided for in article 2 of the Convention.” (Sierra Leone IRCO, Add.116, paras. 30 and 31)

The Committee has identified numerous grounds for discrimination in its examination of States Parties’ reports (see box opposite), including, for example, sexual orientation:

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

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

The Committee also raised discrimination on grounds of sexual orientation in the context of HIV/AIDS, following its 1998 General Discussion on “Children living in a world with HIV/AIDS”:

“...Particular attention should also be given to discrimination based on sexual orientation, as homosexual boys and girls often face acute discrimination while being a particularly vulnerable group in the context of HIV/AIDS.”

The Committee adopted more general recommendations to prevent discrimination in the context of HIV/AIDS:

“...States should review existing laws or enact new legislation to implement fully article 2 of the Convention on the Rights of the Child, in particular to prohibit expressly discrimination based on real or perceived HIV status and to prohibit mandatory testing.

“Urgent attention should be given to the ways in which gender-based discrimination places girls at higher risk in relation to HIV/AIDS. Girls should be specifically targeted for access to services, information and participation in HIV/AIDS related programmes, while the gender-based roles predominant in each situation should be carefully considered when planning strategies for specific communities. States should also review existing law or enact new legislation to guarantee inheritance rights and security of tenure for children irrespective of their gender.” (Report on the nineteenth session, September/October 1998, CRC/C/80, para. 243)

Other Convention articles highlight groups of children who may also suffer particular forms of discrimination, for example children without families (article 20), refugee children (article 22), disabled children (article 23), children of minorities or indigenous communities (article 30), children suffering economic and other exploitation (articles 32, 34, 36), children involved in the juvenile justice system and children whose liberty is restricted (articles 37 and 40), and children in situations of armed conflict (article 38). A discussion of gender discrimination follows (page 31) and also appears in this Handbook under other relevant articles of the Convention.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in August 2001, provided a new global agenda to challenge discrimination on such grounds (A/CONF.189/12. See box, page 30). As one contribution to preparations for the Conference, the Committee drafted its first General Comment on the aims of education (see article 29, page 434).



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

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

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

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

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

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

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

Legitimate forms of discrimination

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

The Convention’s Preamble recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration”. Inevitably, the category of children living in exceptionally difficult conditions includes children with widely different problems requiring widely different remedies. The situation of such

children is best defined in terms of discrimination in the realization and enjoyment of various rights in the Convention.

The *Guidelines for Periodic Reports* seeks information on “the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers, and children who are living and/or working on the streets”. The *Guidelines* also asks, under various articles, for information on special or specific measures adopted for disadvantaged children.

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

"The Committee is concerned that society is not sufficiently sensitive to the needs and situation of children from particularly vulnerable and disadvantaged groups, such as the disabled, in the light of article 2 of the Convention." (Russian Federation IRCO, Add.4, para. 9)

"The Committee is deeply concerned at gross violations of the right to be protected from discrimination and at the impact of discrimination upon children in the State Party, and notes that discrimination takes different forms including by ethnic origin, gender, geographical origin (within the country) and social status. The Committee notes that killings and other acts committed in the armed conflict, and which have affected children, have frequently been perpetrated on the basis of ethnic origin. The Committee notes in addition that other forms of discrimination lead to concerns with regard to, inter alia, access to resources, inheritance of property, the right to a nationality and the access of girls to education. Further, the Committee is concerned that the State Party does not appear to have taken fully into account either the provisions of article 2 or the Convention's other principles in its legislation and administrative and judicial practice as well as in programmes on behalf of children.

"The Committee urges the State Party to make every effort to end all discriminatory practices, to ensure equal respect for the rights of all children in the State Party and to reinforce and ensure the implementation of existing laws related to non-discrimination..." (Burundi IRCO, Add.133, paras. 26 and 27)

Discrimination against girls

The Committee has paid particular attention to the issue of discrimination against girls. The *Guidelines for Periodic Reports* asks for information on "the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women" (para. 28).

The Committee held a General Discussion on "The girl child", in January 1995, intended to prepare the contribution of the Committee to the Fourth World Conference on Women: Action for Equality, Development and Peace, held at

Beijing, in September 1995. A recommendation adopted by the Committee, on "Participation and contribution" to the Beijing Conference, reaffirmed

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

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

"have a complementary and mutually reinforcing nature",

and recommended that

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

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

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

The General Discussion report states:

"Addressing the questions of inequality and discrimination on the basis of gender did not imply that they had to be seen in a complete isolation, as if girls were a special group entitled to special rights. In fact, girls are simply human beings who should be seen as individuals and not just as daughters, sisters, wives or mothers, and who should fully enjoy the fundamental rights inherent to their human dignity... Within the larger movement for the realization of women's rights, history had clearly shown that it was essential to focus on the girl child in order to break down the cycle of harmful traditions and prejudices against women. Only through a comprehensive strategy to promote and protect the rights of girls, starting with the younger generation, would it be possible to build a shared and lasting approach and a wide movement of advocacy and awareness





aimed at promoting the self-esteem of women and allowing for the acquisition of skills which will prepare them to participate actively in decisions and activities affecting them. Such an approach must be based on the recognition of human rights as a universal and unquestionable reality, free from gender bias...."

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

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

Other recommendations the Committee noted included:

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

The Committee also noted that

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

"The Committee had also identified certain areas where law reform should be undertaken, in both the civil and penal spheres, such as the minimum age for

marriage and the linking of the age of criminal responsibility to the attainment of puberty."

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

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

There was further concern about the situation of working girls:

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

The Discussion concluded that there was an urgent need to gather gender-disaggregated data, *"in a comprehensive and integrated manner, at the international, regional, national and local levels, with a view to assessing the prevailing reality affecting girls, identifying persisting problems and challenging the prevalence of invisibility, which in turn allows for the perpetuation of vulnerability"*. (Report on the eighth session, January 1995, CRC/C/38, pp. 47-52)

The Platform for Action unanimously adopted by representatives from 189 countries at the Fourth World Conference on Women (Beijing, September 1995) includes a detailed section on "Strategic Objectives and Actions" for the girl child (A.CONF.177/20/Rev.1, section L, pp. 145 et seq.). In 2000 a special session of the United Nations General Assembly reviewed progress in the five years since the World Conference and adopted further actions and initiatives to implement the Declaration and Plan of Action. The report includes a section on "achievements" and "obstacles" in relation to the girl child as well as detailed proposals for governments and others (section L, p. 18 and pp. 25 et seq., A/RES/S-23/3).

In examining States Parties' reports, the Committee very frequently expresses concern at

discriminatory attitudes and practices affecting girls. For example:

"The Committee encourages the State Party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family. To assist in these efforts, political, religious and community leaders should be mobilized to support efforts to eradicate traditional practices and attitudes which discriminate against girls." (India IRCO, Add.115, para. 33)

"The Committee is concerned that discrimination on the grounds of gender persists de facto and expresses its concern at the persistence of negative stereotypical attitudes relating to the roles and responsibilities of women and men. In particular, the Committee is concerned that families that cannot afford the costs imposed by school attendance, frequently give preference to the education of male children. "The Committee encourages the State Party to launch comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family." (Tajikistan IRCO, Add.136, paras. 22 and 23)

The Committee has raised discrimination against boys as well as girls:

"The Committee recommends that the State Party continue and increase its efforts to address discrimination arising from the inappropriate socialization of boys and girls into inappropriate gender roles and the resulting determination of social attitudes concerning children based on gender." (Barbados IRCO, Add.103, para. 16)

"While acknowledging the difficulties that girls continue to face in many areas, the Committee is also concerned about the situation of boys, particularly as regards their generally 'low self-esteem' and academic under-achievement in comparison to that of girls. The Committee recommends that the State Party undertake a study on child rearing practices and how they affect boys and girls. The Committee further recommends that the State Party implement programmes to address the self-esteem of boys and address discrimination arising from the socialization of boys and girls into rigid gender roles and the resulting determination of family and social attitudes concerning children based on gender." (Grenada IRCO, Add.121, para. 13)

As noted above (page 23), the Committee is concerned at the low age at which marriage is allowed in many States, at discrimination in the age set, and at arranged or forced marriages (see also article 1, page 10). For example:

"The Committee is very concerned at the practice of arranging marriages – under customary law – for very young girls, in particular against the free will of the child. The Committee notes that such practices violate the provisions and principles of the Convention on the Rights of the Child. "The Committee recommends that the State Party undertake child rights promotional activities in communities which apply such customary law practices, explaining the rights of children in this regard with a view to ensuring that a minimum age for marriage is established, that it is the same for both boys and girls, and that girls are not forced into marriage." (Sierra Leone IRCO, Add.116, paras. 24 and 25)

"Noting efforts to raise the minimum age for marriage to 18 for both boys and girls, the Committee is concerned that the existing age-limits of 15 years for girls and 16 years for boys are too low and are discriminatory. The Committee is also concerned about early and forced marriages, primarily in rural areas. "The Committee recommends to the State Party to review its legislation to ensure that the definition of the child and minimum age requirements conform to the principles and provisions of the Convention and are gender neutral, and take steps to enact any necessary amendments promptly and ensure that they are enforced. In addition, the Committee recommends to the State Party to continue its efforts in respect of public education campaigns to combat early and forced marriages, particularly in rural areas." (Jordan 2RCO, Add.125, paras. 27 and 28. See also, for example, Egypt 2RCO, Add.145, paras. 25 and 26)

It has noted legislative reforms allowing applications to declare forced marriages null and void:

"The Committee notes, further, ... amendments to the 1994 Marriage Act allowing a party to a marriage to initiate proceedings to declare the marriage null and void if he or she was forced into the marriage..." (Norway 2RCO, Add.126, para. 9)

The Committee has suggested to some States that "narrow interpretations of Islamic texts" by authorities were impeding implementation of the Convention:

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

"In accordance with the findings of the Human Rights Committee (CCPR/C/79/Add.35), the Committee on the Elimination of Discrimination against Women (CEDAW)





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

Integration of gender perspective throughout United Nations system. In 1999 a report was presented to the Commission on Human Rights, summarizing steps which have been taken to integrate gender perspectives fully into the United Nations human rights system (E/CN.4/1999/67). It includes a section on the Committee on the Rights of the Child (paras. 50-53), noting that the Committee has designated one of its members to follow on a regular basis the work of the Committee on the Elimination of Discrimination against Women (CEDAW). Increasingly, the Committee has noted in Concluding Observations its agreement with recommendations made by CEDAW to States.

Children living and/or working on the streets

Most, if not all, States Parties have reported, or acknowledged during discussion with the Committee on the Rights of the Child, that they have some children living and/or working on the streets. Their situation, being among the most disadvantaged and vulnerable children, has been a major issue of concern and a focus for recommendations by the Committee (see also article 9, page 131, and article 20, page 279).

In the Report on its sixth (special) session, the Committee noted resolution 1994/93 of the

Commission on Human Rights on “The plight of street children”:

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

On occasion the Committee has proposed a “comprehensive study” and various other strategies:

“The Committee recommends that measures be taken to give appropriate support to all children living at risk, especially children living on the streets. The Committee suggests that a comprehensive study be undertaken by the authorities so that they may be in a position to promote and implement policies and programmes.” (Portugal IRCO, Add.45, para. 24)

“The Committee recommends that the State Party take all appropriate measures to combat the phenomenon of children working and/or living on the street. Pupil retention programmes and vocational training for drop-outs should be encouraged. The Committee also recommends that the authorities provide special training to law enforcement personnel to prevent the stigmatization, abuse and ill-treatment of these children.” (Paraguay IRCO, Add.75, para. 44)

“The Committee is concerned at the large and increasing number of children living and/or working on the streets, who are among the most marginalized groups of children in India.

“The Committee recommends that the State Party establish mechanisms to ensure these children are provided with identity documents, nutrition, clothing and housing. Moreover, the State Party should ensure these children have access to health care; rehabilitation services for physical, sexual and substance abuse; services for reconciliation with families; education, including vocational and life-skills training; and access to legal aid. The Committee recommends that the State Party cooperate and coordinate its efforts with civil society in this regard.” (India IRCO, Add.115, paras. 54 and 55. See also, for example, Georgia IRCO, Add.124, paras. 62 and 63)

“The Committee is concerned at the situation of children living and working on the streets and children living on their own and without proper housing in the hills. The Committee is concerned, inter alia, by the poor access of such children to health, education and other services, about reports that the number of children living or working on the streets is continuing to increase, and about the particular vulnerability of girls in these situations.

“The Committee recommends that the State Party reinforce the current efforts on behalf of street and ‘hill’ children and ensure that these children are protected and have access to health and education services. Taking into consideration the limited availability of social workers and the scarcity of resources, the Committee recommends that the State Party give greater support to the work of NGOs in this domain and provide the police services with training on children’s rights so that the police contribute to the protection of children from acts of violence or other abuse while on the street. The Committee recommends that special attention be given to improving the situation of girls. The Committee recommends further that the State Party seek assistance from UNICEF in this regard.” (Burundi IRCO, Add.133, paras. 69 and 70)

The Committee has expressed specific concern about child begging :

“The Committee recommends that the State Party continue to promote programmes to discourage and prevent child begging and to ensure that such programmes are implemented in all areas where child begging is a concern.” (Mali IRCO, Add.113, para. 33)

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

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

In its examination of reports, the Committee has noted a variety of examples of the child suffering discrimination covered by paragraph 2. Implementation requires States to ensure that any existing Constitution, relevant legislation, court decisions and administrative policy and practice comply with this principle. For example, are “all appropriate measures” taken to protect children from discrimination or punishment when their parents are subject to action on the grounds of criminal behaviour or immigration status? (In addition, article 9 emphasizes that children must be separated from their parents only when separation is necessary for the best interests of the child; see page 133). Are children penalized because of their parents’ marital status? The Committee has focused frequently on discrimination of children born “out of wedlock” – non-marital children. For example:

“The Committee is particularly concerned about legal provisions explicitly permitting discrimination, such as article 900(4) of the Civil Code which prescribes that the right to inheritance of a child born out of wedlock shall be half that of a child born within a marriage, and about mention of birth out of wedlock in official documents.” (Japan IRCO, Add.90, para. 14. See also Libyan Arab Jamahiriya IRCO, Add.84, para. 12; Fiji IRCO, Add.89, para. 14; Luxembourg IRCO, Add.92, para. 27; Kuwait IRCO, Add.96, para. 23; Malta IRCO, Add.129, para. 24)

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



Implementation Checklist



● General measures of implementation

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

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (the principle of non-discrimination in article 2 is relevant to **all government departments**)?
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?
- (Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)*
- ☐ budgetary analysis and allocation of necessary resources?
 - ☐ development of mechanisms for monitoring and evaluation?
 - ☐ making the implications of article 2 widely known to adults and children?
 - ☐ development of appropriate training and awareness-raising?

● Specific issues in implementing article 2

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

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

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

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

- ☐ race?
- ☐ colour?

How to use the checklists, see page XVII



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

(for a full list of grounds of discrimination identified by the Committee on the Rights of the Child, see box, page 28)

- ☐ Is disaggregated data collected to enable effective monitoring of potential discrimination on all of these grounds in the enjoyment of rights, and discrimination between children in different regions, and rural and urban areas?
- ☐ Has the State developed in relation to girls an implementation strategy for the Platform for Action adopted at the Fourth World Conference on Women, taking into account the recommendations of the 2000 Review?
- ☐ Does monitoring of the realization of each right guaranteed in the Convention include consideration of the principle of non-discrimination?

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

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

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

Particular regard should be paid to: The other general principles

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

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

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



Best interests of the child



Text of Article 3

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

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

that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies.

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

- separation from parents: The child shall not be separated from his or her parents against his or her will “except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”; and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis “except if it is

Summary



contrary to the child's best interests" (article 9(1) and (3));

- parental responsibilities: Both parents have primary responsibility for the upbringing of their child and "the best interests of the child will be their basic concern" (article 18(1));
- deprivation of family environment: Children temporarily or permanently deprived of their family environment "or in whose own best interests cannot be allowed to remain in that environment", are entitled to special protection and assistance (article 20);
- adoption: States should ensure that "the best interests of the child shall be the paramount consideration" (article 21);
- restriction of liberty: Children who are deprived of liberty must be separated from adults "unless it is considered in the child's best interest not to do so" (article 37(c));

- court hearings of penal matters involving a juvenile: Parents or legal guardians should be present "unless it is considered not to be in the best interest of the child" (article 40(2)(b)(iii)).

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

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

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"General principles

Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

...

(b) Best interests of the child (art. 3);

...

In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines."

(CRC/C/5, paras. 13 and 14)

Guidelines for Periodic Reports

"III. GENERAL PRINCIPLES

...

B. Best interests of the child (art. 3)

Reports should indicate whether the principle of the best interests of the child and the need for it to be a primary consideration in all actions concerning children is reflected in the Constitution and relevant national legislation and regulations.

Please provide information on the consideration given to this principle by courts of law, administrative authorities or legislative bodies, as well as by public or private social welfare agencies.

Please provide information on how the best interests of the child have been given primary consideration in family life, school life, social life and in areas such as:

Budgetary allocations, including at the central, regional and local levels, and where appropriate at the federal and provincial levels, and within governmental departments;

Planning and development policies, including housing, transport and environmental policies;

Adoption;

Immigration, asylum-seeking and refugee procedures;

The administration of juvenile justice;

The placement and care of children in institutions;

Social security.

Information should be included on the measures taken in the light of article 3, paragraph 2, including of a legislative and administrative nature, to ensure children such protection and care as is necessary for their well-being.

Information should also be provided on the steps taken pursuant to article 3, paragraph 3, to establish appropriate standards for all public and private institutions, services and facilities responsible for the care and protection of children and to ensure that they conform with such standards, particularly in the areas of safety, health, number and suitability of their staff, as well as competent supervision.

In the light of the legislative and administrative measures taken to ensure the consideration of the best interests of the child, please indicate the main problems remaining in this respect.

Please indicate in what ways the principle of the 'best interests of the child' is made part of the training of professionals dealing with children's rights."

(CRC/C/58, paras. 33 - 39. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 20, 64, 65, 74, 76, 80, 87, 93, 101, 106, 114, 115, 118, 120, 128, 132, 138, 143, 152, 159, 161, 164, 166; for full text of *Guidelines*, see Appendix 3, page 674.)



Article 3(1)

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

The principle is included in two articles of the 1979 Convention on the Elimination of All Forms of Discrimination against Women: article 5(b) requires States Parties to that Convention to “ensure that family education includes a proper understanding of maternity as a social function

and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of children is the primordial consideration in all cases.” Similarly, article 16(1)(d) provides that in all matters relating to marriage and family relations “the interests of the children shall be paramount”.

The principle does not appear in either of the International Covenants, but the Human Rights Committee, in two of its General Comments on interpretation of the International Covenant on Civil and Political Rights, has referred to the child’s interest being “paramount” in cases of parental separation or divorce (Human Rights Committee, General Comments 17 and 19, HRI/GEN/1/Rev.5, pp. 133 and 138).

In relation to refugees, the Executive Committee of the United Nations High Commissioner for Refugees has formally stressed “that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity” (see article 22, page 305).



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

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

In its reporting *Guidelines* and in its examination of States Parties’ reports, the Committee on the Rights of the Child has emphasized that consideration of the best interests of the child should be built into national plans and policies for children and into the workings of parliaments and government, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels. The assessment of child impact and building the results into the development of law, policy and practice thus become an obligation (see article 4, page 70).

“...the best interests of the child...”

The Working Group drafting the Convention did not discuss any further definition of “best interests”, and the Committee on the Rights of the Child has not as yet attempted to propose criteria by which the best interests of the child should be judged in general or in relation to particular circumstances, aside from emphasizing that the general values and principles of the Convention should be applied to the context in question.

The Committee has repeatedly stressed that the Convention should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12). Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what are the best interests of a child in a particular situation, as well as to determining the best interests of children as a group. And consideration of best interests must embrace both short- and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections. States cannot interpret best interests in an overly culturally relativist way and cannot use their interpretation of “best interests” to deny rights now guaranteed

to children by the Convention, for example to protection against traditional practices and violent punishments (see pages 365 and 267).

The Committee has stressed that the principle should be applied along with the other general principles in all those instances in which the Convention does not set a precise standard. One example, in relation to the definition of the child, is that the Convention requires that a minimum age of criminal responsibility be set (article 40(3)(a)). In determining the age, the principles of non-discrimination, best interests and maximum survival and development should all be applied (see article 1, page 6).

Another specific issue arose when it examined Austria’s Initial Report:

“The Committee regrets that forced sterilization of mentally disabled children is legal with parental consent. The Committee recommends that existing legislation be reviewed so as to make sterilization of mentally disabled children require the intervention of the courts, and that care and counselling services be provided to ensure that this intervention is in accordance with the provisions of the Convention, especially article 3 on the best interests of the child and article 12.” (Austria IRCO, Add.98, para. 17)

It commented to Belize:

“...The Committee is also concerned that the law does not allow children, particularly adolescents, seek medical or legal counselling without parental consent, even when it is in the best interests of the child...” (Belize IRCO, Add.99, para. 14)

The Committee has proposed consideration of the best interests and other general principles in relation to many issues. For example:

“... Of equal concern to the Committee is the insufficient consideration of the principle of the best interests of the child to tackle situations of detention, institutionalization, abandonment of children and as well as in relation to the right of the child to testify in court.” (Bulgaria IRCO, Add.66, para. 12)

(See also further Committee comments on significance of all the identified general principles under article 2, page 22; article 4, page 65; article 6, page 95; and article 12, page 161.)

“...shall be a primary consideration”

The wording indicates that the best interests of the child will not always be the single, overriding factor to be considered; there may be competing or conflicting human rights interests, for

example between individual children, between different groups of children and between children and adults. The child's interests, however, must be the subject of active consideration. It needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration.

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

Where the phrase "best interests" is used elsewhere in the Convention (see above, page 39), the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child's interests are the paramount consideration (as stated explicitly in relation to adoption in article 21; see page 293).

A guiding principle in implementation: requirement to assess "child impact" in government

The Committee on the Rights of the Child has emphasized that article 3(1) is fundamental to the overall duty to undertake all appropriate measures to implement the Convention for all children under article 4. For example:

"...the best interests of the child must be a guiding principle in the application of the Convention." (Mexico IRCO, Add.13, para. 16)

"[The Committee] also emphasizes the value of adopting a comprehensive approach to the implementation of the rights of the child which is both effective and consistent with the provisions and general principles of the Convention, particularly the best interests of the child and non-discrimination which apply irrespective of budgetary resources." (France IRCO, Add.20, para. 19)

"With regard to the implementation of article 4 of the Convention, the Committee would like to suggest that the general principles of the Convention, particularly the provisions of its article 3, relating to the best interests of the child, should guide the determination of policy-making at both the central and local levels of government..." (United Kingdom IRCO, Add.34, para. 24)

"The Committee welcomes the information provided in the State Party's answers to the

list of issues concerning implementation of the best interests principle and encourages the State Party to continue to integrate the principle into all legislative and administrative practices, and to review its decision-making and implementation procedures so as to ensure that the best interests of the child are a primary consideration." (The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 18)

"The Committee, noting that the State party's general approach is more welfare oriented rather than child rights based, is concerned that the principles of the best interests of the child (art. 3) and the right to life and development (art. 6) are not fully reflected in the State Party's legislation, its administrative and judicial decisions, or its policies and programmes relevant to children..."

"The Committee recommends that the general principles of the Convention, in particular the provisions of its articles 3 and 6, should be appropriately integrated in all revisions to legislation as well as in judicial and administrative decisions and in projects, programmes and services which have an impact on children and should guide the determination of policy-making at every level and in particular actions taken by social welfare institutions, courts of law and administrative authorities." (Marshall Islands IRCO, Add.139, paras. 26 and 27. See also Lebanon IRCO, Add.54, para. 35; Zimbabwe IRCO, Add.55, para. 29, etc.)

Where a plan of action for children is proposed, the "best interests" principle should be fully integrated. Integration of the principle must imply the development of mechanisms to assess the impact of government actions on children and to incorporate the results of the assessment in policy development (see article 4, page 70).

In relation to the vital issue of resource allocation, the best interests principle demands first that within the overall central government budget, and regional and local budgets, there be an adequate allocation for children (for further discussion, see article 4, page 71). There must therefore be sufficient analyses of relevant budgets to determine the proportion and amount allocated to children. In considering priorities in resource allocation, both between and within services at the national and local level, best interests must be a primary consideration. The non-discrimination principle is also important; but as emphasized under article 2 (page 30), the non-discrimination principle allows for positive discrimination – that is, affirmative action – on behalf of particularly disadvantaged or vulnerable groups of children. Thus, the setting of priorities and targeting within resource allocation is vital to reducing discrimination in overall implementation.





The Committee has paid increasing attention to the importance of budget analysis in its examination of reports and in its discussions with representatives of States Parties. Its *Guidelines for Periodic Reports* seeks information on: the proportion of the budget devoted to social expenditure for children at all levels; budget trends; the “arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified”; and “the steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policy-making” (para. 20):

“...With regard to budgetary priorities in the allocation of available resources, the State Party should be guided by the principle of the best interest of the child, as provided for in article 3 of the Convention, particularly as this applies to the most vulnerable groups of children, such as girl children, indigenous children, and children living in poverty, including abandoned children.” (Bolivia IRCO, Add.1, para. 14)

“The best interests of the child is a guiding principle in the implementation of the Convention, including its article 4, and, in this connection, the Committee notes the importance of the implementation of that principle, ensuring that the maximum extent of resources are made available for children’s programmes, in reviewing budget allocations to the social sector, both at the federal and provincial levels.” (Pakistan IRCO, Add.18, para. 26)

“The Committee recommends that the State Party, in the light of articles 3 and 4 of the Convention, undertake all appropriate measures to the maximum extent of the available resources to ensure that sufficient budgetary allocation is provided to services for children, particularly in the areas of education and health, and that particular attention is paid to the protection of the rights of children belonging to vulnerable groups.” (Colombia IRCO, Add.30, para. 16. See also, for example, Nepal IRCO, Add.57, para. 30)

Similarly, the impact on children of economic adjustment policies and budgetary cuts must be considered in the light of the best interests principle and other basic principles. This consideration is also highlighted in the *Guidelines for Periodic Reports*: “The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector” (para. 20).

The Committee commented to Sweden, that *“...the Government should ensure that spending cuts carried out by municipalities are effected with due regard for the best interests of children, particularly those from the most vulnerable groups...” (Sweden IRCO, Add.2, para. 10)*

It followed this up when it examined Sweden’s Second Report :

“ While welcoming the decision of the State Party to give priority in the use of additional resources to children with special support needs, the Committee remains concerned about the introduction of charges and cutbacks in educational and social services provided by some municipalities as the result of budgetary austerity measures. The Committee recommends that the State Party review the impact of the budgetary cuts so as to renew efforts to implement the Convention to the maximum extent of available resources, in accordance with article 4. ” (Sweden 2RCO, Add.101, para. 9)

It commented similarly to Norway and Finland :

“...the Committee is concerned that in the context of the role of municipal authorities the best interests of the child are not always taken into full consideration and, further, that the best interests of children with an imprisoned parent, unaccompanied child asylum-seekers or refugees are not always a primary consideration.

“The Committee recommends that the State Party, in consultation with the office of the ombudsperson and with civil society, consider the implications of the best interests principle in the context of the above situations and that further efforts be made to ensure that the principle is a primary consideration in decisions which affect children.” (Norway 2RCO, Add.126, paras. 22 and 23. See also Finland 2RCO, Add.132, paras. 25 and 26)

The Committee looks for processes which ensure that the best interests of children are considered in policy formulation, and it has promoted the concept of child impact assessment (see article 4, page 70).

During discussion of Senegal’s Initial Report, a Committee member noted that the principle of the best interests of the child was both broader and deeper than the issue of custody in divorce cases. “That notion – a cornerstone of the Convention – meant that, when conflicts of interest arose, the best interests of the child should be the primary consideration. In the legal, judicial and administrative spheres, such an approach called for the creation of a new set of decision-making procedures. UNICEF was, for instance, exploring the use of ‘child-impact analyses’, which

would assess the effect of a decision on a child before that decision had been taken..." (Senegal SR.248, para. 43)

The best interests principle should guide the deliberations of parliaments as well as the policies of governments:

"The Committee also welcomes the decision taken by the Government to submit an annual report to the Parliamentary Assemblies on the implementation of the Convention and on its policies in relation to the situation of children in the world. This procedure will contribute to emphasizing the importance of the principle of the best interests of the child, which is a primary consideration to be taken into account in all actions concerning children, including those undertaken by legislative bodies." (France IRCO, Add.20, para. 6)

"The Committee recommends that special efforts should be made by the Government in order to fully harmonize the existing legislation with the provisions of the Convention and in the light of its general principles as well as to ensure that the best interests of the child, as stipulated in article 3 of the Convention, be a primary consideration in all actions concerning children, including those undertaken by Parliament." (Chile IRCO, Add.22, para. 14)

Best interests principle to be reflected in legislation

The Committee has consistently emphasized that article 3, together with other identified general principles in the Convention, should be reflected in legislation and integrated into all relevant decision-making. For example:

"It is the Committee's view that further efforts must be undertaken to ensure that the general principles of the Convention, in particular articles 3 and 12, not only guide policy discussions and formulation and decision-making, but also are appropriately integrated into any judicial and administrative decisions and in the development and implementation of all projects, programmes and services which have an impact on children." (Azerbaijan IRCO, Add.77, para. 3)

"The Committee recommends that the State Party take all appropriate measures to ensure that the general principle of the best interests of the child is appropriately integrated in all legal provisions as well as in judicial and administrative decisions and in projects, programmes and services which have an impact on children." (Georgia IRCO, Add.124, para. 27. See also Trinidad and Tobago IRCO, Add.82, para. 29)

The Committee has indicated that it expects the best interests principle to be written into legislation in a way that enables it to be invoked before the courts:

"... Principles relating to the best interests of the child and prohibition of discrimination in relation to children should be incorporated into domestic law, and it should be possible to invoke them before the courts." (Indonesia IRCO, Add.25, para. 18. See also, for example, Denmark IRCO, Add.33, para. 24; Canada IRCO, Add.37, para. 11; Sri Lanka IRCO, Add.40, para. 25; Germany IRCO, Add.43, para. 16)

In examining Second Reports, the Committee continues to express concern that in practice the general principles contained in articles 3 and 12 are not respected:

"While the Committee notes that the principles of the 'best interests of the child' (art. 3) and 'respect for the views of the child' (art. 12) have been incorporated in domestic legislation, it remains concerned that in practice, as it is recognized in the report, these principles are not respected owing to the fact that children are not yet perceived as persons entitled to rights and that the rights of the child are undermined by adults' interests. The Committee recommends that further efforts be made to ensure the implementation of the principles of the 'best interests of the child' and 'respect for the views of the child', especially his or her rights to participate in the family, at school, within other institutions and in society in general. These principles should also be reflected in all policies and programmes relating to children. Awareness-raising among the public at large, including traditional communities and religious leaders, as well as educational programmes on the implementation of these principles should be reinforced." (Bolivia 2RCO, Add.95, para. 18)

"The Committee is concerned that in all actions concerning children, the general principle of the best interests of the child contained in article 3 of the Convention is not a primary consideration, including in matters relating to family law (e.g. duration of custody under the Personal Status Law is arbitrary as it is determined by the child's age, and is discriminatory against the mother). The Committee recommends to the State Party to review its legislation and administrative measures to ensure that article 3 of the Convention is duly reflected therein." (Jordan 2RCO, Add.125, paras. 33 and 34)

When a best interests principle is already reflected in national legislation, it is generally in relation to decision-making about individual children, in which the child is the primary, or a primary, subject or object – for example in family proceedings following separation or divorce of parents, in adoption and in state intervention to protect children from ill-treatment. It is much less common to find the principle in





legislation covering other “actions” that concern groups of children or all children but may not be specifically directed at children. The principle should apply, for example, to policy-making on employment, planning, transport and so on. Even within services whose major purpose is children’s development, for example education or health, the principle is often not written into the legislative framework. Thus, in relation to the United Kingdom, the Committee noted its concern

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

Not subject to derogation

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

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

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

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

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

Disaster response

Perhaps as a result of the Chernobyl disaster, the Belarus Rights of the Child Act includes a provision in its article 28 for “Rights of children who are victims of natural calamities or accidents or disasters”. The State must provide such children with “prompt free assistance, take urgent measures to remove them from the danger zone, take care of reuniting them with their families and provide the necessary medical help, including in other countries. In the event of the loss of their parents, these children shall be afforded the same social protection as any child who has been deprived of parental care” (Belarus IR, para. 102).

Paraguay’s National Constitution (1992) includes an article on the protection of the child (article 53): “The family, society and the State shall have the duty to guarantee the child full and harmonious development and full enjoyment of his rights, and shall protect him against neglect, malnutrition, violence, abuse, trafficking and exploitation. All persons shall have the right to demand that the competent authority complies with these guarantees and punishes those who infringe them” (Paraguay IR, para. 27).

not stated in limited or negative terms (such as ‘to protect the child from harm’) but rather in relation to the comprehensive ideal of ensuring the child’s ‘well-being’...” (Philip Alston, “The Legal framework of the Convention on the Rights of the Child”, *Bulletin of Human Rights*, 91/2, p. 9)

The Committee on the Rights of the Child has very frequently referred to circumstances in which the State is failing to adequately provide for particular groups of vulnerable children. The most common category are children living and/or working on the street, identified as existing in significant numbers in most States (see article 2, page 34 and article 20, page 287). Article 3(2) makes clear that, notwithstanding the rights and duties of parents and any others legally responsible, the State has an active obligation to ensure such children’s well-being. This general obligation is linked to its obligations under the other general principles of the Convention in articles 2, 6, and 12 and to any relevant specific obligations – for example to provide “appropriate assistance to parents and legal guardians” in their child-rearing responsibilities under article 18(2), to provide “special protection and assistance” to children deprived of their family environment (article 20(1)), to recognize the rights of children to benefit from social security and to an adequate standard of living (articles 26 and 27) and to protect children from all forms of violence and exploitation (articles 19, 32, 33, 34, 35, 36, 37).

Similarly, in times of economic recession or crisis, or of environmental disaster or armed conflict this overriding active obligation comes into play, linked to other more specific provisions. In order to be able to fulfil its obligations, the State must ensure that it knows, as far as possible, when a child’s well-being is threatened and additional State action is required. The Committee has frequently expressed concern as to whether the most disadvantaged children in a State have been identified

“... in order to ensure that adequate safety nets are in place to prevent a deterioration of the rights they are entitled to under the Convention...”

The Committee recommended

“... that programmes be carefully targeted to the needs of both rural and urban children and that adequate social safety nets are in place for the most disadvantaged groups of children.” (Belarus IRCO, Add.17, paras. 7 and 15)

The Committee has welcomed the inclusion of a legislative duty reflecting that of paragraph 2 of article 3:

“[The Committee] particularly welcomes the inclusion in the Constitution of a provision directly based on article 3, paragraph 2, of the Convention...” (Iceland IRCO, Add.50, para. 5)

The requirement to take account of the rights and responsibilities of parents and others legally responsible does not prevent the State on occasion from having to intervene without their agreement. The article, together with article 9 in particular (see page 131), covers situations in which parents and others threaten the well-being of individual children, through child abuse or neglect, for example.

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

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

The provision covers not only state-provided institutions, services and facilities but also all those “responsible” for the care or protection of children. In many countries, much of the non-family care of children is provided by voluntary or private bodies, and in some States policies of privatization of services are taking more institutions out of direct State control. Article 3(3) requires standards to be established for all such institutions, services and facilities by competent bodies. Together with the non-discrimination principle in article 2, the standards must be consistent and conform to the rest of the Convention.

The provision does not provide an exhaustive list of the areas in which standards must be established but it does mention “particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.” In addition, services and institutions providing care and protection must comply with all other provisions of the Convention, respecting, for example, the principles of non-discrimination and best interests and the right of children





to have their views and other civil rights respected and to be protected from all forms of violence and exploitation (articles 2, 3, 12, 13, 14, 15, 16, 19, 32-37). In addition, article 25 (see page 373) sets out the right of a child who has been placed for care, protection or treatment “to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

Implementation of article 3(3) requires a comprehensive review of the legislative framework applying to all such institutions and services, whether run directly by the State, or by voluntary and private bodies. The review needs to cover all services – care, including foster care and day-care, health, education, penal institutions and so on. Consistent standards should be applied to all, with adequate independent inspection and monitoring. In institutions, widespread abuse of children, both physical and sexual, has been uncovered in recent years in many States, emphasizing the lack of appropriate safeguards, including independent inspection and effective complaint procedures (see also article 12, page 171).

The Committee on the Rights of the Child has frequently commented on inadequate monitoring and supervision, in particular of institutions, and has also commented on the over-use of institutional placement (see article 20, page 279):

“The Committee recommends that alternatives to institutionalization in boarding schools, such as foster care, should be actively sought. The Committee also recommends the further training of personnel in all institutions, such as social, legal or educational workers. An important part of such training should be to emphasize the promotion and protection of the child’s sense of dignity and the issue of child neglect and maltreatment. Mechanisms to evaluate the ongoing training of personnel dealing with children are also required.” (Russian Federation IRCO, Add.4, para. 19)

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

“...In the light of article 3, paragraph 3, of the Convention, the Committee further recommends the reform, including legal reform, of the institutional system by the establishment of standards for conditions in institutions and their regular inspection, in particular by reinforcing the role and powers of independent inspection mechanisms and ensuring their right to inspect foster homes

and public institutions without warning...” (Russian Federation 2RCO, Add.110, para. 39)

“The Committee encourages the State Party to address the situation of children in institutions, with a view to envisaging and making available possible alternatives to institutional care and to establishing effective monitoring mechanisms of the realization of the rights of the child placed in an institution.” (Poland IRCO, Add.31, para. 34. See also, for example, Nicaragua IRCO, Add.36, para. 18; China IRCO, Add.56, para. 18)

The Committee has expressed concern at lack of qualified staff, set standards and independent inspection :

“The Committee is concerned at the lack of qualified staff working in the care institutions. While taking note of the recent measures taken to improve the monitoring of care institutions, the Committee remains concerned about the persistence of reported cases of abuse...”

“The Committee recommends that the State Party strengthen its efforts to monitor efficiently the institutions of alternative care and develop appropriate training for the staff of these institutions.” (Trinidad and Tobago IRCO, Add.82, paras. 18 and 34)

On many occasions, the Committee has noted its concern at ill-treatment of children in institutions or alternative care:

“The Committee is very much alarmed at reports it has received of the ill-treatment of children in detention centres. In view of the seriousness of such alleged violations, the Committee is concerned about the insufficient training provided to law enforcement officials and personnel of detention centres on the provisions and principles of the Convention and other relevant international instruments...” (Paraguay Prelim. Obs., Add.27, para. 13)

“The Committee regrets that appropriate measures have not yet been taken to effectively prevent and combat ill-treatment of children in schools or in institutions where children may be placed...”

“The Committee also recommends the establishment of effective monitoring mechanisms of the realization of the rights of the child placed in an institution.” (Ukraine IRCO, Add.42, paras. 14 and 27)

“The Committee recommends that the system of foster care be carefully monitored in order to eliminate any possible acts of abuse against the children placed in such care.” (Croatia IRCO, Add.52, para. 25)

Implementation Checklist



● General measures of implementation

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

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (implementation of article 3 is relevant to **all departments of government**)?
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?

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

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

● Specific issues in implementing article 3

Article 3(1)

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

- ☐ the Constitution (if any)?
- relevant legislation applying to
- ☐ public social welfare institutions?
 - ☐ private social welfare institutions?
 - ☐ courts of law?
 - ☐ administrative authorities?
 - ☐ legislative bodies?

How to use the checklists, *see page XVII*



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

- ☐ budget allocations to the social sector and to children, and between and within departments of government?
 - ☐ social security?
 - ☐ planning and development?
 - ☐ the environment?
 - ☐ housing?
 - ☐ transport?
 - ☐ health?
 - ☐ education?
 - ☐ employment?
 - ☐ administration of juvenile justice?
 - ☐ the criminal law (e.g. the effects of the sentencing of parents on children, etc.)?
 - ☐ nationality and immigration, including asylum-seeking?
 - ☐ any rules governing alternative care, including institutions for children?
- ☐ Are there legislative provisions relating to children in which the best interests of the child are to be the “paramount” rather than primary consideration?
- ☐ Where legislation requires determination of the best interests of a child in particular circumstances, have criteria been adopted for the purpose which are compatible with the principles of the Convention?

Article 3(2)

- ☐ Does legislation require the State to provide such care and protection as is necessary for the well-being of any child in cases where it is not otherwise being provided?
- ☐ Does legislation provide for such care and protection at times of national disaster?
- ☐ Is there adequate monitoring to determine whether this provision is fully implemented for all children?

Article 3(3)

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

- ☐ safety?
- ☐ health?
- ☐ protection of children from all forms of violence and abuse?

How to use the checklists, *see page XVII*



- ☐ the number and suitability of staff?
- ☐ conformity with all provisions of the Convention?
- ☐ independent inspection and supervision?

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

Particular regard should be paid to: Other general principles

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

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

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

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

Article 9: separation from parents

Article 18: parental responsibilities for their children

Article 20: deprivation of family environment

Article 21: adoption

Article 37(c): separation from adults in detention

Article 40(2)(b)(iii): presence of parents at court hearings of penal matters involving a juvenile

Article 3(3)

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



Implementation of rights in the Convention



Text of Article 4

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

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

Other general implementation obligations on States Parties are provided by article 2 (to respect and ensure the rights in the Convention to all children without discrimination, see page 22), and article 3(2) (to "undertake to ensure the child such protection and care as is necessary for his or her well-being...", see page 46).

While emphasizing that there is no favoured legislative or administrative model for implementa-

tion, the Committee on the Rights of the Child has proposed a wide range of strategies to ensure Governments give appropriate priority and attention to children in order to implement the whole Convention effectively. From the beginning, in its *Guidelines for Initial Reports*, the Committee has emphasized the particular importance of ensuring that all domestic legislation is compatible with the Convention and that there is appropriate coordination of policy affecting children within and between all levels of government. For the purposes of reporting under the Convention, the Committee has grouped the Convention's provisions into eight "clusters" (see page 629). The first cluster is entitled "General Measures of Implementation". The *Guidelines for Periodic Reports* seeks detailed information on a wide range of measures, including legislative and administrative ones.

In its *Guidelines* the Committee has linked the obligations of article 4 with those of article 42, to make the provisions and principles of the Convention widely known to adults and children (see page 611), and also with the requirement in article 44(6), to make reports under the Convention widely known (see page 635). ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"General measures of implementation

Under this section, States Parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on:

- (a) The measures taken to harmonize national law and policy with the provisions of the Convention; and
- (b) Existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.

In addition, States Parties are requested to 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, by appropriate and active means, to adults and children alike.

States Parties are also requested to describe those measures undertaken or foreseen, pursuant to article 44, paragraph 6, of the Convention, to make their reports widely available to the public at large in their own countries."

(CRC/C/5, paras. 9 - 11)

Guidelines for Periodic Reports

"I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42 and 44, paragraph 6 of the Convention)

In the spirit of the World Conference on Human Rights, which encouraged States to consider reviewing any reservation with a view to withdrawing it (see A/CONF.157/23, II, paras. 5 and 46), please indicate whether the Government considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.

*States Parties are requested to provide relevant information pursuant to **article 4** of the Convention, including information on the measures adopted to bring national legislation and practice into full conformity with the principles and provisions of the Convention, together with details of:*

Any comprehensive review of the domestic legislation to ensure compliance with the Convention;

Any new laws or codes adopted, as well as amendments introduced into domestic legislation to ensure implementation of the Convention.

Please indicate the status of the Convention in domestic law:

With respect to recognition in the Constitution or other national legislation of the rights set forth in the Convention;

With respect to the possibility for the provisions of the Convention to be directly invoked before the courts and applied by the national authorities;

In the event of a conflict with national legislation.

*In the light of **article 41** of the Convention, please indicate any provisions of the national legislation which are more conducive to the realization of the rights of the child.*

Please provide information on judicial decisions applying the principles and provisions of the Convention.

Please provide information on remedies available in cases of violation of the rights recognized by the Convention.

Please indicate any steps taken or envisaged to adopt a comprehensive national strategy for children in the framework of the Convention, such as a national plan of action on children's rights and relevant goals established.

Please provide information on existing or planned mechanisms at the national, regional and local levels, and when relevant at the federal and provincial levels, for ensuring implementation of the Convention, for coordinating policies relevant to children and for monitoring progress achieved, including information on:

The governmental departments competent in the areas covered by the Convention, the steps taken to ensure the effective coordination of their activities, as well as to monitor the progress made by them;

The steps taken to ensure effective coordination of activities between central, regional and local authorities, and where relevant between federal and provincial authorities;

Any governmental institutions created to promote the rights of the child and monitor implementation, and how they relate to non-governmental organizations;

Any independent body established to promote and protect the rights of the child, such as an Ombudsperson or Commissioner;

The measures taken to ensure the systematic gathering of data on children and their fundamental rights and to assess existing trends at the national, regional and local levels, and where appropriate at the federal and provincial levels, as well as the steps taken to develop mechanisms for the identification and gathering of appropriate indicators, statistics, relevant research and other relevant information as a basis for policy-making in the field of children's rights;

The steps taken to ensure a periodic evaluation of progress in the implementation of the Convention at the national, regional and local levels, and where appropriate at the federal and provincial levels, including through the preparation of any periodic report by the Government to the Parliament.

Please indicate any initiatives taken in cooperation with the civil society (for example, professional groups, non-governmental organizations) and any mechanisms developed to evaluate progress achieved.

Using indicators or target figures where necessary, please indicate the measures undertaken to ensure the implementation at the national, regional and local levels, and where relevant at the federal and provincial levels, of the economic, social and cultural rights of children to the maximum extent of available resources, including:

The steps undertaken to ensure coordination between economic and social policies;

The proportion of the budget devoted to social expenditures for children, including health, welfare and education, at the central, regional and local levels, and where appropriate at the federal and provincial levels;

The budget trends over the period covered by the report;

Arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified;

The steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policy-making;

The measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services;

The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.

Please indicate the extent to which international cooperation relevant to the State Party is designed to foster the implementation of the Convention, including economic, social and cultural rights of children. Please indicate the proportion of international aid at the multilateral and bilateral levels allocated to programmes for children and the promotion of their rights and, where appropriate, the assistance received from regional and international financial institutions. Please also indicate the percentage of international cooperation contributed during the reporting period in the total government budget, as well as the percentages of such cooperation respectively allocated to the health sector, to the education sector, to the social sector and to other sectors. Please further indicate any relevant measures adopted as a follow-up to the Declaration and Programme of Action of the World Summit for Social Development."

(CRC/C/58, paras. 11-21. The following paragraphs of the Guidelines for Periodic Reports are also relevant to reporting under this article: introduction, paras. 3 and 5; for full text of Guidelines, see Appendix 3, page 674.)



General measures of implementation

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

In determining measures for implementation, States Parties must respect the general principles identified by the Committee in articles 2, 3(1), 6 and 12. The Committee has particularly emphasized the best interests principle.

Following its General Discussion on "Economic exploitation of children" (4 October 1993), the Committee adopted a set of general recommendations designed to improve the system of prevention, protection and rehabilitation regarding children in situations of economic exploitation. These asserted the importance of the overall framework provided by the Convention's general principles, and made comments of general relevance on key measures of implementation:

"Here, as elsewhere, the Convention calls upon States Parties to take action through the establishment, in conformity with its principles and provisions, of an adequate legal framework and necessary mechanisms of implementation..." (Report on the fifth session, January 1994, CRC/C/24, pp. 38 - 43)

The Committee further expanded on its understanding of general measures of implementation in recommendations endorsed following its 1999 workshop on the theme "Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges" (see box, page 58).

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

Article 2 of the International Covenant on Civil and Political Rights, on implementation, includes as its first paragraph the non-discrimination principle, equivalent to article 2(1) of the Convention. Paragraph 2 states: "Where not already provided for by existing legislative or

other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." Paragraph 3 requires States Parties to the Covenant to ensure an "effective remedy" for any person whose rights or freedoms as recognized by the Covenant are violated. There is no parallel to this provision in the Convention, but in its *Guidelines for Periodic Reports*, the Committee requests information "on remedies available in cases of violation of the rights recognized by the Convention" (para. 16).

In an early General Comment, the Human Rights Committee notes that article 2 of the Covenant on Civil and Political Rights "generally leaves it to the State Parties concerned to choose their method of implementation in their territories, within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not *per se* sufficient. The [Human Rights] Committee considers it necessary to draw the attention of States Parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States Parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States Parties to enable individuals to enjoy their rights..." The General Comment goes on to emphasize the importance of ensuring that individuals know what their rights are – an obligation included in the Convention on the Rights of the Child in article 42 (see page 611) (Human Rights Committee, General Comment 3, 1981, HRI/GEN/1/Rev.5, p. 112).

Review and withdrawal of reservations

The first item raised by the Committee under General Measures of Implementation in the *Guidelines for Periodic Reports* is the review and withdrawal of any reservations which the State Party may have made: "In the spirit of the World Conference on Human Rights, which encouraged States to consider reviewing any reservation with a view to withdrawing it (see A/CONF.157/123, II, paras. 5 and 46), please indicate whether the Government considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them." (para. 11)



In 1999, the Committee, together with the Office of the High Commissioner for Human Rights, held a two-day workshop: “Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges”, on 30 September and 1 October 1999. The Committee endorsed detailed recommendations concerning reservations (see box, page 58).

In examining States Parties’ reports, the Committee consistently asks States to review and withdraw reservations, in particular where a reservation appears incompatible with the object and purpose of the Convention (article 51 states: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted.” – see also article 51, page 639). For example:

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

“The Committee is concerned that the broad and imprecise nature of the reservation to article 14 potentially gives rise to infringements of the freedoms of thought, conscience and religion, and raises questions of its compatibility with the object and purpose of the Convention. “In light of its previous recommendation (Jordan IRCO, Add.21), the Committee recommends to the State Party to study its reservation to article 14 with a view to narrowing it, taking account of the Human Rights Committee’s General Comment 22 and recommendations (CCPR/C/79/Add.35), and eventually, to withdraw it in accordance with the Vienna Declaration and Programme of Action.” (Jordan 2RCO, Add.125, paras. 12 and 13)

“The Committee is concerned that the broad and imprecise nature of the State Party’s general reservation potentially negates many of the Convention’s provisions and raises concern as to its compatibility with the object and purpose of the Convention, as well as the overall implementation of the Convention. “The Committee recommends that the State Party withdraw its reservation, in accordance with the Declaration and Plan of Action of the World Conference on Human Rights (1993).” (Saudi Arabia IRCO, Add.148, paras. 7 and 8)

Ratification of other international instruments

The Committee consistently encourages States Parties to consider signing and ratifying or acceding to other international human rights instruments, including new ones like, for

example, the ILO Worst Forms of Child Labour Convention, 1999 (No.182), the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction (1997), the Hague Conventions and the Convention relating to the Status of Refugees.

Ratifying Optional Protocols to the Convention on the Rights of the Child

From its twenty-sixth session (January 2001), the Committee has encouraged all States Parties to sign and ratify the two Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict (see page 641) and on the sale of children, child prostitution and child pornography (see page 647). For example:

“The Committee is aware that the State Party has signed the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

“The Committee encourages the State Party to reinforce its efforts to ratify these instruments.”
(Liechtenstein IRCO, Add.143, paras. 32 and 33)

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

During the drafting of the Convention, an early version of what was to become article 4 qualified States Parties’ obligations by including the phrase “in accordance with their available resources”. A number of delegates proposed its deletion, on the grounds that the civil and political rights guaranteed in the International Covenant on Civil and Political Rights were not subject to the availability of resources, and that the Covenant’s standards should not be limited in the new Convention. But some delegates argued for the retention of the qualification (E/CN.4/1989/48, pp. 30-31; Detrick, p. 155). The compromise proposal that was accepted differentiates civil and political rights from economic, social and cultural rights. States Parties are to undertake “all appropriate legislative, administrative and other measures” for the implementation of all rights recognized in the Convention. But in relation to economic, social and cultural rights, these measures are to be undertaken “to the maximum extent of their available resources and, where needed, within the framework of international cooperation”.



Two-day workshop: “Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges”

The Committee decided at its twenty-first session (May/June 1999) to postpone its regular General Discussion day to 2000 and co-organize with the Office of the High Commissioner for Human Rights a two-day workshop (on 30 September and 1 October 1999) to commemorate the tenth anniversary of the adoption of the Convention (outline in Report on the twenty-first session, May/June 1999, CRC/C/87, Annex IV, p. 94).

Following the workshop the Committee adopted the following conclusions:

“The Committee on the Rights of the Child acknowledges that it would be impossible to reflect the full complexity of the differing perspectives and rich debates that took place during the commemorative meeting in a comprehensive manner. On the basis of the recommendations presented by the rapporteurs of the Roundtables and the discussions held during the two-day meeting, the Committee decided to note and endorse the following conclusions:

- (a) The Committee on the Rights of the Child wishes to restate that it represents the values and provisions of the Convention and is guided in its work by the general principles of the Convention.
 - The Committee has a decisive role to play in monitoring the implementation of the Convention and progress made by States Parties in the realization of children’s rights. This monitoring role includes the assessment of measures undertaken to ensure full compatibility of law and practice with the Convention as well as to remove obstacles to its implementation.
 - Democratic participation and public pressure, facilitated by public awareness and training, are critical in bringing about the commitment and political will necessary for the achievement of child rights. In the same way that optimal implementation of the Convention requires the involvement of governments, civil society, children, and international cooperation, each component of the implementation process - including reporting - requires this broad involvement.
 - Child rights must be viewed as the human rights of children. The experience of general human rights activities over recent decades should be analysed and used to promote respect for the rights of the child, and to avoid the perseverance of the charity mentality and paternalistic approaches to children’s issues.
- (b) The Committee has a decisive role to play in the assessment of the validity and impact of reservations made by States Parties, and will continue to systematically raise this issue with States Parties.
 - The Committee will continue to encourage the review of reservations by States Parties, as well as their withdrawal with a view to achieving the highest level of implementation of the Convention, and will consider adopting a General Comment on the subject of reservations.
 - The Committee will raise with States Parties the compatibility of reservations with the ‘object and purpose of the Convention’, clarify the situations where a lack of compatibility exists and reservations may be invalid, and suggest specific steps to reverse such situations.
 - The Committee encourages the provision of technical assistance to assist States Parties in their effort to review reservations with a view to their withdrawal.
- (c) The Committee will request that a detailed study be carried out on existing reservations, including on the experience of the Committee, follow up given to its recommendations for withdrawal, comparison with reservations entered by the same States Parties to other human rights treaties, and potential implications of the alternative approaches the Committee could adopt.
- (d) The Committee will give increased and detailed attention to the need for a systematic approach to the issue of the legal status of the Convention during its examination of reports,

both initial and periodic. Of particular importance in this regard are the need to clarify the extent of applicability of the Convention in States where the principle of ‘self-execution’ is applicable, and the precise meaning of statements indicating that the Convention ‘has constitutional status’ or ‘has been incorporated’ in the national legal order. The request that States Parties take appropriate measures, as required by article 4, to ensure that the provisions of the Convention are given legal effect within their domestic legal systems should be considered of fundamental importance for the implementation of the Convention. These measures should include effective remedies for the children, their parents and other relevant individuals or groups, and be in accordance with Article 27 of the Vienna Convention on the Law of Treaties.

- (e) The Committee points out that giving primacy to the Convention in their domestic legal orders does not preclude the need for States to take action to harmonize fully their national legislation with the provisions of the Convention, and to adopt complementary legislation and enforcement mechanisms, including in particular judicial and administrative remedies, to ensure its full implementation.
- (f) The Committee recommends to States Parties that they set up a mechanism to ensure that all proposed and existing legislative and administrative measures are systematically reviewed to ensure compatibility with the Convention on the Rights of the Child. Such reviews should be carried out by considering all the provisions of the Convention, and be guided by its general principles; they should also give adequate attention to the need to ensure appropriate consultation with and involvement of civil society during the review process.
- (g) The Committee encourages non-governmental organizations, and legal professionals and scholars, to give priority attention to providing legal analyses of existing legislation and its compatibility with the Convention to the Committee, so they can be of use in its examination of reports presented by States Parties, including in areas not usually scrutinised with regard to their compatibility with the provisions of the Convention on the Rights of the Child.
- (h) The Committee encourages non-governmental organizations, academics and other individual experts to carry out more detailed and systematic studies of court cases on the interpretation or application of the provisions of the Convention on the Rights of the Child, in all types of legal systems, and in all areas of the Convention. Information obtained from such studies should, if possible, be provided to the Committee, as an input for examination of reports from specific States Parties.
- (i) The Committee will continue to provide improved guidance and illustrations on the interpretation of the provisions of the Convention, including in the form of General Comments, and will attempt to do so in particular for the aspects that render provisions of the Convention justiciable. The Committee will give increased attention to the aspects of the examination of reports which most clearly affect the impact of the provisions of the Convention on the legal and judicial systems of States Parties. The Committee encourages legal professionals and non-governmental organizations to make increased use of the Convention in bringing cases to national and international courts.
- (j) The Committee will consider initiating discussions on an Optional Protocol to the Convention providing a mechanism for individual communications, to ensure the availability of legal remedies at the international level with regard to the Convention on the Rights of the Child. The Committee encourages States Parties to support its efforts in this respect.
- (k) The Committee recalls 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.
- (l) 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.

- (m) The Committee calls attention to the fact that economic policies are never child-rights neutral. The Committee calls on civil society to assist it in seeking the support of key international leaders, and in particular the High Commissioner for Human Rights, the Executive Director of UNICEF, and the President of the World Bank, to examine how macro-economic and fiscal policies impact on children's rights, and how these policies can be reformed so as to make them more beneficial to the implementation of the rights of the child.
- (n) With regard to article 4 of the Convention, the Committee calls for action to promote and disseminate evidence that demonstrates that investing in children and basic social services makes excellent economic sense, and that their neglect undermines economic and social development. States Parties and civil society actors need to make budget documentation and processes more transparent and accessible to as many people as possible, and invest in raising the 'economic literacy' of the public.
- (o) The Committee reminds States Parties that resource allocation for basic social services has the greatest impact on the realization of child rights. This means that 'the maximum extent of available resources' as emphasized in article 4, should prioritise children in resource allocation, facilitating universal provision of quality basic social services for children. Investment in children today is the best guarantor of equitable and sustainable development tomorrow. Universal access to an integrated package of basic social services is within the financial reach of the world community, though it will often require early and steep debt relief and greater reductions in military spending. In particular, States Parties should provide free primary education for all children, in accordance with article 28 of the Convention, and strive for the enjoyment of the highest attainable standard of health for all children, in line with article 24 of the Convention.
- (p) The Committee requests States Parties to give increased attention to the provision of information regarding fiscal commitment to children, which should be transparent and adequately reported (including national and sub-national government commitment to children). In this respect, the Committee wishes to call attention to its guidelines regarding the form and content of periodic reports.
- (q) The Committee requests that attention be given to the inclusion of the review of the '20/20 initiative' and its implementation at the 'Special Session of the General Assembly in the year 2000 for the overall review and appraisal of the implementation of the outcome of the World Summit for Social Development', and at the 'Special Session of the General Assembly on the Follow-Up of the World Summit for Children in 2001'.
- (r) The Committee reminds States Parties that they should take all necessary measures to ensure that wide consultation takes place during the preparation of reports, and that the report preparation process serves to stimulate public debate and awareness regarding the implementation of the Convention.
- (s) The Committee will give increased consideration to looking for ways in which the reporting burden on States could be reduced to facilitate improvements in the report preparation process. The Committee may, if necessary and on a case-by-case basis, consider identifying priorities in reporting or reducing expectations in that regard, while ensuring continuous monitoring of the rights of the child. Any efforts in this respect will be carefully considered to ensure co-ordination with approaches used by other Treaty Bodies monitoring the implementation of international human rights treaties.
- (t) The Committee points out that every national, as well as state and local, level of government, must place coordinating responsibility for child rights within a senior level of government. It recommends that these coordinating bodies be at the appropriate level, such as in the office of the President or similar executive levels in state and local governments. Each coordinating body should be vested with the status and financial and human resources to enable it to carry out its duties and to obtain or demand cooperation from all government departments in implementing children's rights.



- (u) The Committee recalls that coordination of implementation efforts should be accompanied by provision for effective review and monitoring of achievement. The Committee considers that permanent structures and mechanisms that exist for the promotion of human rights – such as ombudspersons or national human rights commissions – can be effectively used for the human rights of children, provided sufficient importance is in practice given to this population group, for example through a specific focal point within the structure concerned. The establishment of independent monitoring mechanisms, whether specifically for child rights or within the functions of national human rights institutions is thus particularly encouraged. The establishment of such mechanisms should build on the requirements of the Convention, the ‘Paris Principles’, and the practical experiences of existing institutions. Guidelines should be developed for the effective promotion of the human rights of children by national human rights institutions.
- (v) The Committee recommends that the relationship between governments, NGOs, children and other actors, in the implementation of child rights be continuously reviewed, so as to ensure the avoidance of negative impacts on children’s rights of reduced financial support for programmes, in accordance with the spirit of the Convention. The Committee recommends that States Parties ensure:
 - that they do not devolve responsibility for the implementation of children’s rights to non-governmental organisations without the necessary provision of resources, including training, and that the involvement of non-governmental organizations in implementation efforts does not lead to the abdication of responsibility by the States Parties;
 - that the provision of financial or other resources by States or others does not threaten the independent role of civil society;
 - that in any decentralisation or privatisation process, the Government retains clear responsibility and capacity for ensuring respect of its obligations under the Convention.
- (w) The Committee will consider adopting, as a priority, a comprehensive general comment on child participation as envisaged in the Convention (and more particularly in articles 12 through 17) bearing in mind that participation includes, but is not limited to, consultation and proactive initiatives by children themselves. The Committee reminds States Parties of the need to give adequate consideration to the requirements of these provisions. Such attention should include:
 - taking appropriate measures to support the right of children to express their views;
 - ensuring that schools, as well as other bodies providing services for children, establish permanent ways of consulting with children in all decisions concerning their functioning, the content of the curriculum or other activities;
 - increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organizations, NGOs, and the media;
 - encouraging and facilitating the creation of structures and organizations run by and for children and youth.
- (x) The Committee encourages States Parties, non-governmental organizations, and others preparing reports, to include the views of children, in particular on the status of children’s rights and the impact of the Convention on their lives, in monitoring and reporting on the implementation of the Convention.
- (y) The Committee will give careful consideration to the need to ensure the most appropriate approach to the participation of children in its own work.”

(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291)



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

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

The Committee on Economic, Social and Cultural Rights made a detailed General Comment on the nature of States Parties’ obligations in 1990. Those relating to the adoption of legal measures are quoted below (page 63). As regards progressive realization through the maximum use of available resources, the Committee states: “The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être* of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and

in the context of the full use of the maximum available resources...

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

“The Committee wishes to emphasize, however, that even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints...” (Committee on Economic, Social and Cultural Rights, General Comment 3, 1990, HRI/GEN/1/Rev.5, pp. 20 and 21)

The approach of the Committee on Economic, Social and Cultural Rights to the concept of “the maximum of available resources” is applicable to interpretation of article 4 of the Convention on the Rights of the Child. The identification of “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” for children has been further developed recently under the “20/20 initiative”, designed by the main United Nations agencies and recommended in the Programme of Action of the World Summit for Social Development in 1995. This proposes a compact between donor and developing countries to meet basic

human development targets worldwide (see page 80).

“Available resources”

The “available resources” which can be harnessed within a State for the implementation of rights extend well beyond financial resources; there are also human and organizational resources. (For detailed discussion, see David Parker “Resources and Child Rights: an Economic Perspective”, in *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries*, edited by James R. Himes, UNICEF International Child Development Centre, Martinus Nijhoff, 1995, pp. 35-37.)

“all appropriate ... legislative ... measures”

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

The Convention does not identify which of its rights are “economic, social, and cultural”, but the *Guidelines* for both Initial and Periodic Reports group articles 7, 8, 13 - 17 and 37(a) under the heading “Civil Rights and Freedoms”. However, the *Guidelines for Periodic Reports* indicates that these are not the only civil rights guaranteed under the Convention. In fact, it is clear that almost all other articles include at least elements that constitute civil/political rights.

Although lack of available resources may restrict full implementation of some Convention rights, and no law on its own can make poverty or unacceptable inequalities disappear, this does not mean that economic, social and cultural rights cannot be defined in legislation or are non-justiciable. The Convention requires States, for example, to define a period of compulsory, free education, ages for admission to employment, and so on. Rights can be drafted as goals towards which the State undertakes to work; or the legislation can expressly include the principle of “the maximum extent of available resources”. Where the Convention is self-executing some States have held that its economic rights are non-justiciable, but others have, for example, applied the “stand-still” principle, whereby economic entitlements under international treaties must not fall

below the level in operation at the date of ratification.

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

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

“The other is the undertaking in article 2(1) ‘to take steps’, which, in itself, is not qualified or limited by other considerations. The full meaning of the phrase can also be gauged by noting some of the different language versions. In English the undertaking is ‘to take steps’, in French it is ‘to act’ (*s’engage à agir*) and in Spanish it is





‘to adopt measures’ (*a adoptar medidas*). Thus, while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short term after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete, and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

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

“Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable. The Committee notes, for example that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies. Indeed those States Parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of articles 2(1), 2(3), 3 and 26 of that Covenant) to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, ‘shall have an effective remedy’ (article 2(3)(a)). In addition, there are a number of other provisions, including articles 3, 7(a)(i), 8, 10(3), 13(2)(a), 13(3), 13(4) and 15(3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain.”

Some of the provisions in the articles referred to here also appear in the Convention on the Rights of the Child. The Covenant’s article 10(3) provides for special protection and assistance for children without discrimination, for their protection from economic and social exploitation, for their employment in harmful work to be punishable by law and for age limits for paid

employment of children. Article 13(2)(a) of the Covenant provides for free compulsory primary education and 13(3) and (4) include rights to set up private schools along the lines of article 29(2) of the Convention on the Rights of the Child.

The Committee on Economic, Social and Cultural Rights goes on to comment: “Where specific policies aimed directly at the realization of the rights recognized in the Covenant have been adopted in legislative form, the Committee would wish to be informed, *inter alia*, as to whether such laws create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized. In cases where constitutional recognition has been accorded to specific economic, social and cultural rights, or where the provisions of the Covenant have been incorporated directly into national law, the Committee would wish to receive information as to the extent to which these rights are considered to be justiciable (i.e. able to be invoked before the courts). The Committee would also wish to receive specific information as to any instances in which existing constitutional provisions relating to economic, social and cultural rights have been weakened or significantly changed.” (Committee on Economic, Social and Cultural Rights, General Comment 3, 1990, HRI/GEN/1/Rev.5, pp.18 and 19)

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

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

The General Comment notes that “In general, legally binding international human rights standards should operate directly and immediately

within the domestic legal system of each State Party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals. The rule requiring the exhaustion of domestic remedies reinforces the primacy of national remedies in this respect. The existence and further development of international procedures for the pursuit of individual claims is important, but such procedures are ultimately only supplementary to effective national remedies.”

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

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

The General Comment also emphasizes the importance of courts applying the principles of the Covenant either directly or as interpretive standards. (Committee on Economic, Social and Cultural Rights, General Comment 9, 1998, HRI/GEN/1/Rev.5, pp. 58-62)

Ensuring all legislation is fully compatible with the Convention

The Committee on the Rights of the Child has emphasized in examining all Initial and Second Reports that an essential aspect of implementation is ensuring that all legislation is “fully compatible” with the provisions and principles of the Convention, requiring a comprehensive review of all legislation (where necessary, it has pro-

posed that countries should seek technical assistance within the framework of international cooperation). It has followed this up during the examination of Periodic Reports. In 1999, at the two-day workshop on “Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges” (see box, page 58) it made detailed recommendations concerning the process of reviewing legislation for compatibility with the Convention and ensuring that the Convention has an appropriate impact on legal and judicial systems. (paras. (d) to (i))

Any systems of “customary” or regional or local law must also be reviewed and made compatible with the Convention:

“The Committee also recommends that the State Party, in undertaking a comprehensive review of the national legal framework and its conformity with the principles and provisions of the Convention, should also take into account the compatibility of the system of customary law and regional and local laws with the articles of the Convention.” (Nigeria IRCO, Add.61, para. 27)

“... the Committee remains concerned that the law, and in particular customary law, still does not fully reflect the principles and provisions of the Convention.” (South Africa IRCO, Add.122, para. 10)

“The Committee recommends that the State Party take all appropriate measures to complete the process of law review and, where appropriate, adopt or amend legislation so as to ensure the harmonization of applicable provisions of the different jurisdictions (traditional, Islamic and civil law) ensuring their conformity with the provisions and principles of the Convention.” (Comoros IRCO, Add.141, para. 10)

Importance of reflecting the Convention’s general principles in legislation

In particular, the Committee has highlighted the importance of ensuring that domestic law reflects the identified “general principles” in the Convention (articles 2, 3, 6 and 12) and the Convention’s emphasis on the child as holder of rights. For example:

“The Committee would like to suggest that greater priority be given to incorporating the general principles of the Convention, especially the provisions of its article 3, relating to the best interests of the child, and article 12, concerning the child’s right to make their views known and to have those views given due weight, in the legislative and administrative measures and in policies undertaken to implement the rights of the child.” (United Kingdom IRCO, Add.34, para. 27)





The Committee has stressed that it should be possible to invoke the general principles of the Convention before the courts (see box, page 58, para (d)). It has also welcomed developments that have come about through public interest litigation:

"The Committee welcomes the growing involvement of NGOs and other grass-roots organizations in activities to enhance the protection of human rights, including through 'public interest litigation'." (India IRCO, Add.115, para. 4)

Incorporation of Convention in domestic law

The Committee on the Rights of the Child has promoted the incorporation of the Convention into domestic law:

"The Committee welcomes the incorporation of the Convention on the Rights of the Child, as well as other human rights treaties ratified by Argentina, into the domestic legal system and the high legal status attributed to them by virtue of which they are given precedence over national laws." (Argentina IRCO, Add.35, para. 6)

"The Committee notes with appreciation that the Convention is fully incorporated into domestic law, and that the Civil Code and the Code of Criminal Procedure expressly provide that their provisions shall not apply in case they conflict with a provision of an international Convention in force in Syria..." (Syrian Arab Republic IRCO, Add.70, para. 3)

It has also commended situations in which the Convention clearly takes precedence over domestic law where the two conflict. In Belgium, domestic courts have quoted articles of the Convention, including articles 3 and 9. In addition, the country's highest court has "unequivocally asserted the primacy of international treaty law over domestic provisions, even those enacted subsequently" (Belgium SR.222, paras. 10-14). The Committee commented:

"The Committee welcomes the fact that the Convention is self-executing and that its provisions may be, and in practice have been in several instances, invoked before the court. It also notes with satisfaction the fact that Belgium applies the principle of the primacy of international human rights standards over national legislation in case of conflict of law." (Belgium IRCO, Add.38, para. 6)

Developing consolidated statutes for the rights of the child

The Committee on the Rights of the Child has commended the existence in some countries of consolidated acts on the rights of the child – noting it as a positive aspect in Belarus, for example

(Belarus IRCO, Add.17, para. 3) – and has encouraged moves towards such statutes in other States. Among its recommendations to Burkina Faso, it proposed special efforts

"to pursue the process of bringing the existing legislation into line with the provisions of the Convention and to take fully into account the interests of the child in the course of drafting new legislation, including through the possibility of considering a comprehensive legislative act on the rights of the child..." (Burkina Faso IRCO, Add.19, para. 15)

"The Committee also notes with concern that the legal provisions relating to the protection and promotion of the rights of the child are scattered throughout domestic laws, making it difficult to assess the actual legal framework in the field of children's rights..."

"The Committee recommends that the State Party bring existing legislation into line with the principles and provisions of the Convention, and that it consider the possibility of enacting a comprehensive code for children." (Algeria IRCO, Add.76, paras. 12 and 29)

"The Committee also suggests that the State Party envisage the adoption of a specific code or legislation for children, with a separate section on children who need a special protection." (Lao People's Democratic Republic IRCO, Add.78, para. 30)

Rights of the child in constitutions

Many countries have constitutions that appear to meet various requirements of the Convention, in so far as they guarantee all citizens – including children – specific rights and freedoms. However, this is generally an illusion, since in practice children manifestly cannot claim these rights on an equal basis with adults – first because domestic law may contradict the rights (for example, children of compulsory school age do not have freedom of movement; in law young children are not permitted to have sexual relationships or enter into financial contracts; children cannot vote, and so on) and, second, because constitutions themselves often explicitly uphold parents' rights to bring up and educate their children as they see fit, without reference to the child's own rights.

Because of children's physical, emotional and economic dependence on adults, they may deserve special measures of protection within the constitution; and because the future prosperity of the State depends on them, it is also in the State's interest to accord them special constitutional rights.

The Committee has welcomed instances in which existing or new constitutions have incorporated special sections on children, reflecting at

Children's rights in South Africa's Constitution

Following the ratification of the Convention on the Rights of the Child in June 1995, the Government sought to bring legislation, policy and practice in line with the requirements of the Convention. This is clearly reflected in article 28 of the Bill of Rights of the Constitution (1996), which deals specifically with the rights of children, in addition to the rights they enjoy elsewhere in the Bill of Rights. It reads as follows:

“28 (1) Every child has the right:

- (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that
 - (i) are inappropriate for a person of the child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35 [relating to freedom and security of the person and rights of arrested, detained and accused persons], the child may be detained only for the shortest appropriate period of time, and the right to be:
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age; and
 - (h) to have a legal practitioner assigned to the child by the State, and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section 'child' means a person under the age of 18 years.”

(South Africa IR, para. 1)



least some of the Convention's principles. Commenting on Nepal's Initial Report,

“The Committee notes the efforts made by the Government in the field of law reform, especially the adoption of a new Constitution – with a special section to ensure the rights of the child – and the Children's Act which covers many areas concerning children's rights...”

(Nepal IRCO, Add.57, para. 3)

The Committee welcomed South Africa's adoption of a new Constitution (1996; see box above),

“in particular article 28, which guarantees children a number of specific rights and freedoms also provided for under the Convention”.

(South Africa IRCO, Add.122, para. 3)

“all appropriate ... administrative, and other measures ...”

The Committee's *Guidelines for Periodic Reports* asks in particular for information on existing or planned mechanisms at national or

local level for coordinating policies relating to children and for monitoring the implementation of the Convention (para. 18).

A “comprehensive national strategy” for children

The Committee on the Rights of the Child, often quoting the principle of “first call for children”, promoted at the World Summit for Children, has emphasized that children must be accorded a high, or higher, priority. In stressing the need for a comprehensive approach to the implementation of children's rights, the Committee has frequently promoted the need for a national policy or plan of action reflecting not only the World Summit goals but also the implementation of the whole Convention.

The Committee's *Guidelines for Periodic Reports* asks for information on “any steps taken or envisaged to adopt a comprehensive national strategy for children in the framework of the Convention...” (para. 17). For example:

“The Committee recommends that the State Party adopt a comprehensive national plan of action, based on a child rights approach, to



implement the Convention. The Committee recommends that attention be given to intersectoral coordination and cooperation at and between central, state and municipal levels of government. The State Party is encouraged to provide support to local authorities, including capacity-building, for implementation of the Convention.” (India IRCO, Add.115, para. 15)

“The Committee recommends that the State Party develop a coherent and comprehensive national plan for the implementation of the Convention that is clear and understandable to all, children and adults alike, and can easily be implemented at the central, regional and local levels.” (Colombia 2RCO, Add.137, para. 22. See also Bulgaria IRCO, Add.66, para. 9; New Zealand IRCO, Add.71, paras. 9 and 22)

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 urged all nations “to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans...” (A/CONF.157/23, para. 47).

Such plans, together with the process of implementation, should pay particular attention to the general principles of the Convention on the Rights of the Child.

India's National Plan of Action

“The National Plan of Action for children is an important tool for the Government to monitor the progress of its own commitment. Concerted measures are being taken to achieve targets within the stipulated time-frame. Some of the goals are well within reach, while in the case of others much more needs to be done. With competitive demands from other sectors, resource scarcity is going to impose a serious constraint in achieving goals. Optimal utilization and mobilization of internal and external resources is thus being attempted. The measures to be adopted for achieving these goals require multi-pronged strategies to be initiated simultaneously. The process has already begun; it includes sharpening of strategies, strengthening of the implementation process, convergence of services, coordination and decentralization of development activities.”

(India IR, para. 318)

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities emphasizes that “the needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately” (rule 14.3).

Permanent government mechanisms

The Committee has made it clear that it sees the process of implementation as a continuing process requiring “permanent” mechanisms. For example, in its Concluding Observations on Germany’s Initial Report, it recommended that the State Party give further consideration

“to the establishment of a permanent and effective coordination mechanism on the rights of the child at the Federal, Land and local levels”. (Germany IRCO, Add.43, para. 23)

“The Committee recommends that the State Party take all available measures to accelerate its current process of institutional reform of the coordinating bodies in charge of the implementation of the Convention. The Committee suggests that, before the establishment of the new National Council for the Attention and Integral Protection of Children, the State Party undertake a comprehensive review of the mandates and activities of all the governmental institutions working on children’s issues in order to maximize its financial and human resources and improve their efficiency for the benefit of children.” (Nicaragua 2RCO, Add.108, para. 17)

“The Committee recommends that the State Party consider establishing a focal point for children within the Government, which would be in charge of coordinating the work of the various ministries and that of the central and local authorities, in order to establish a better coordinated policy and action for the realization of children’s rights, including stronger cooperation with non-governmental organizations.” (Lithuania IRCO, Add.146, para. 12)

Where permanent mechanisms have been established, the Committee has welcomed them. For example (to Denmark):

“The Committee is encouraged to note the existence of the Government’s Children’s Committee, and the Inter-Ministerial Committee on Children which is composed of civil servants from 16 ministries”.

The Committee went on to recommend that the Convention should be established as the framework for these two bodies (Denmark IRCO, Add.33, paras. 4 and 17).

In the recommendations arising from the Committee’s 1999 two-day workshop, it emphas-

ized that permanent bodies must have high status (see box, page 58, para. (t)).

On occasion, the Committee has proposed the establishment of particular mechanisms – for example an inter-ministerial committee – both to facilitate coordination and monitoring:

“The Committee emphasizes the importance and value of setting up a coordinating mechanism with the mandate of determining priorities and regularly monitoring and evaluating progress in the implementation of the rights of the child at the federal, provincial and local levels. As a first step in this direction, the Committee suggests that the State Party consider the possibility of setting up an interministerial committee or similar body with political authority to review initially and determine appropriate action to follow up on the observations made during the constructive dialogue between the State Party and the Committee.” (Pakistan IRCO, Add.18, para. 25. See also Portugal IRCO, Add.45, para. 9)

Effective coordination

One of the most common “subjects of concern” expressed by the Committee in its Concluding Observations on States Parties’ Initial and Second Reports has been a lack of coordination, and it has made frequent recommendations for “effective coordination”. One product of coordi-

nation across government is the comprehensive national strategy or plan of action for children (see above, page 67). This then in turn becomes the framework for coordinated action for the realization of children’s rights:

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

“The Committee recommends that the State Party develop a cross-ministerial plan of action for the implementation of children’s rights... and ensure coordination of policy making and implementation. The Committee further urges the State Party to adopt a holistic child rights approach to implementing the Convention and to consider seeking technical assistance from UNICEF in this domain.” (The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 11)

The Committee has referred to lack of coordination between government departments and ministries and other governmental bodies, between federal or central government and provincial,



Framework of the National Programme of Action for South African Children

Ratification of the Convention on the Rights of the Child committed South Africa to implementing a “first call for children” whereby the needs of children are considered paramount throughout the Government’s development strategies, policies, programmes and services. This principle was adopted by the Reconstruction and Development Programme (RDP) and is the basis of South Africa’s commitments to children.

The National Programme of Action (NPA) is the instrument by which South Africa’s commitments to children are being carried out. It is a mechanism for identifying all the plans for children developed by government departments, non-governmental organizations (NGOs) and other child-related structures, and for ensuring that these plans converge in the framework provided by the Convention, the goals of the World Summit for Children, and the country’s development programme.

In April 1996, the Cabinet approved the NPA framework and its implementation by relevant ministries and departments. The NPA is therefore not a separate plan for children; it is an integration of all the policies and plans developed by government departments and NGOs to promote the rights of children as embodied in the Convention.

The NPA has been structured by policy cluster areas. For each policy cluster, goals have been set, and relevant responsible departments and their national strategies identified. Implementation of a monitoring system is in progress.

Its development has been constrained by difficulties encountered in defining indicators with which to measure the overall well-being and rights of children, and not just their survival, development and protection.

(South Africa IR, paras. 3 – 7)



regional or local government, between government and public and private bodies, including non-governmental organizations dealing with human rights and children's rights, and between such bodies themselves.

For example:

"Coordination between the various governmental agencies involved in the implementation of the Convention and its monitoring should be ensured, and efforts should be made towards closer cooperation with non-governmental organizations." (Philippines IRCO, Add.29, para. 19)

"The Committee recommends that the State Party strengthen coordination among the various governmental bodies and mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention." (Ghana IRCO, Add.73, para. 29).

"The Committee recommends that the State Party strengthen and expand the scope of existing mechanisms for coordinating and monitoring children's rights in order to reach local-level governments. In this regard, the Committee suggests that structures dealing with children's issues be established in the various local governments. The relationship between the Coordination Council for Children and Youth Affairs and the various relevant structures in the local governments needs to be defined." (Hungary IRCO, Add.87, para. 25)

The Committee has criticised over-centralization of decision-making and policy implementation, but also drawn attention to the threat decentralization can pose to the realization of the rights of the child :

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

"While noting the positive aspects of decentralization in the provision of services by the municipalities, the Committee is concerned that it has caused inconsistencies in policies and disparities in the provision or accessibility of services to children and their families. In line with its earlier recommendation (see Sweden IRCO, Add.2, para. 10), the Committee recommends that the State Party increase its efforts to ensure that municipalities respect

the framework of government policies designed to protect children fully from any discrimination in the implementation of the Convention." (Sweden 2RCO, Add.101, para. 7)

"The Committee is concerned that, in the past, the delivery of services and the overall implementation of children's rights have been severely hampered by an over-centralization of decision-making and policy implementation authority in the capital city.

"The Committee recommends that the State Party strengthen ongoing efforts at decentralization of authority to the districts and local levels with regard to the implementation of the Convention." (Sierra Leone IRCO, Add.116, paras. 12 and 13. See also Norway 2RCO, Add.126, paras. 14 and 15; Finland 2RCO, Add.132, paras. 13 and 14)

One recommendation arising from the Committee's two-day workshop in 1999 was

"that in any decentralization or privatization process, the Government retains clear responsibility and capacity for ensuring respect of its obligations under the Convention".

(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (v))

Child impact analysis

The Committee has looked for processes which ensure that children's interests are considered in policy formulation. Article 3 requires States to ensure that the best interests of the child are a primary consideration in all actions concerning children (see article 3, page 43). This requires consistent analysis of the potential and actual impact on children of government actions. So the Committee has begun to propose that States should adopt a comprehensive system of "child impact assessment":

"The implementation of the principles and provisions of the Convention requires that priority be given to children's issues, particularly in the light of the principle of the 'best interest of the child' and of the fact that Governments have, in international forums, agreed to the principle of 'First Call for Children', including in the final document adopted by the World Conference on Human Rights. It is recommended, therefore, that in the formulation of policy options and proposals there should be an accompanying assessment of its impact on children so that decision makers can be better advised when formulating policy as to its effect on the rights of the child." (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 20)

To Myanmar, in a comment on budgetary issues,

"... the Committee suggests that the 'child impact' of decisions taken by the authorities

be assessed on an ongoing basis.” (Myanmar IRCO, Add.69, para. 32)

In comments on New Zealand’s Initial Report,

“The Committee notes with interest the increasing emphasis on monitoring and evaluation of the impact on children of proposed legislation and policies affecting children. In particular, it welcomes the inclusion of specific monitoring and evaluation procedures for new policy proposals submitted to Cabinet.” (New Zealand IRCO, Add.71, para. 4)

Budgeting and budgetary analysis

The Committee has emphasized that States’ obligation to implement economic, social and cultural rights “to the maximum extent of their available resources” implies adequate budgetary analysis. The *Guidelines for Periodic Reports* seeks information on:

- the steps undertaken to ensure coordination between economic and social policies;
- the proportion of the budget devoted to social expenditures for children, including health, welfare and education at the central, regional and local levels, and where appropriate at the federal and provincial levels;
- the budget trends over the period covered by the report;
- the steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and to evaluate the priority given to children in their policy-making;
- the measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services;
- the measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.

It is extremely rare for children to be as visible in the economic policies of government as the *Guidelines for Periodic Reports* implies they should be. Most government departments have no idea what proportion of their budget is spent on children, few know what impact their expenditure has on children. The Committee has emphasized that monitoring and evaluation in this sphere, as in all others, is essential for any effective strategies. For example:

“... The Committee urges the State Party to develop ways to establish a systematic assessment of the impact of budgetary allocations and macroeconomic policies on the

implementation of children’s rights and to collect and disseminate information in this regard.” (Netherlands IRCO, Add. 114, para. 13)

“The Committee regrets the lack of adequate information and apparent lack of transparency concerning the State budget resources allocated for the implementation of economic, social and cultural rights of children.

“The Committee recommends that the State Party implement article 4 of the Convention in the light of articles 3 and 6 in such a way that the proportions of the State budget that is allocated, to the maximum extent of available resources, and in accordance with legislation and policies, for economic, social and cultural rights, are easily identifiable and presented in a transparent way.” (Slovakia IRCO, Add.140, paras. 13 and 14)

“The Committee further encourages the State Party to clearly identify its priorities with respect to child rights issues and to identify the amount and proportion of the budget spent on children at the national and local levels in order to evaluate the impact of the expenditures on children.” (Lithuania IRCO, Add.146, para. 14. See also, for example, Latvia IRCO, Add.142, para. 12)

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

“In the light of article 4 of the Convention, the Committee recommends that the State Party pursue its goals to increase budgetary allocations in the health and education sectors to at least 25 per cent of the national budget and to ensure adequate resource distribution for the implementation of the Convention as a whole.” (Central African Republic IRCO, Add.138, para. 19)

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

“The Committee also recommends that, in the light of article 4 of the Convention, priority be given in budget allocations to the realization of the economic, social and cultural rights of children, with particular emphasis on health and education, and on the enjoyment of these rights by children belonging to the most disadvantaged groups. In this regard, the





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

The Committee has expressed concern at the impact of tax evasion and corruption on available resources:

“Concern is also expressed at the widespread practices of tax evasion and corruption which are believed to have an effect on the level of resources available for the implementation of the Convention.

“The Committee recommends that the State Party undertake all appropriate measures to improve its system of tax collection and reinforce its efforts to eradicate corruption.” (Georgia IRCO, Add.124, paras. 18 and 19)

The Committee has been highly sensitive to the impact on children of the world recession, economic adjustments and cutbacks that have occurred during the 1990s.

It endorsed the following recommendation during its 1999 two-day workshop :

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

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

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

Effects of transition to market economy

The Committee has expressed consistent concern at the effects of transition to a market economy on children. For example :

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

“[The Committee] notes that the transition to a market economy has led to increased rates of unemployment, poverty and other social problems, and has had a serious impact on the welfare of the population, in particular on all vulnerable groups, including children.” (Czech Republic IRCO, Add.81, para. 7)

“The Committee acknowledges that the economic and social difficulties facing the State Party, including increased unemployment and poverty, caused mainly by the transition to a market economy, have had a negative impact on the situation of children and have impeded and are still impeding the full implementation of the Convention.” (Latvia IRCO, Add.142, para. 6. See also, for example, Lithuania IRCO, Add.146, para. 8)

Economic sanctions and respect for economic, social and cultural rights

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

The General Comment emphasizes the importance of reducing to a minimum the negative impact of sanctions on vulnerable groups within the society – including children: “In adopting this General Comment the sole aim of the Committee is to draw attention to the fact that the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security. The aim is not to give support or encouragement to such leaders, nor is it to undermine the legit-

imate interests of the international community in enforcing respect for the provisions of the Charter of the United Nations and the general principles of international law. Rather, it is to insist that lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action.” (Committee on Economic, Social and Cultural Rights, General Comment 8, 1997, HRI/GEN/1/Rev.5, pp. 54 and 57)

The Committee on the Rights of the Child has drawn attention to this General Comment in its Concluding Observations in some cases. For example:

“In light of General Comment No. 8 adopted by the Committee on Economic, Social and Cultural Rights (1997), the Committee notes that the imposition by the Security Council of an aerial embargo on the State Party has adversely affected the economy and many aspects of the daily life of its citizens, thereby impeding the full enjoyment by the State Party’s population, including children, of their rights to health and education.” (Libyan Arab Jamahiriya IRCO, Add.84, para. 5)

“In light of General Comment No.8 adopted by the Committee on Economic, Social and Cultural Rights (1997) and Decision 1998/114 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee notes that the embargo imposed by the Security Council has adversely affected the economy and many aspects of daily life, thereby impeding the full enjoyment by the State Party’s population, particularly children, of their rights to survival, health and education.” (Iraq IRCO, Add.94, para. 5)

Monitoring and data collection

The Committee has frequently noted that without sufficient data collection, including disaggregated data, it is impossible to assess the extent to which the Convention has been implemented.

In its *Guidelines for Periodic Reports* the Committee asks for detailed statistical and other information under most articles (see box, page 74).

The Committee recommended to Colombia:

“... that reliable quantitative and qualitative information be systematically collected and analyzed to evaluate progress in the realization of the rights of the child and to monitor closely the situation of marginalized children, including those belonging to the poorest sectors of society and to indigenous groups.” (Colombia IRCO, Add.30, para.15)

Similar recommendations are contained in many Concluding Observations. For example:

“...The establishment of a comprehensive network for the collection of data covering all areas of the Convention and taking into account all groups of children within Canadian jurisdiction is recommended.”

(Canada IRCO, Add.37, para. 20. See also Spain IRCO, Add.28, para. 13; Philippines IRCO, Add.29, para. 20; Belgium IRCO, Add.38, para. 14; Tunisia IRCO, Add.39, para. 12; Senegal IRCO, Add.44, para. 10; China IRCO, Add.56, para. 28; Nepal IRCO, Add.57, para. 29; Guatemala IRCO, Add.58, para. 27; Mauritius IRCO, Add.64, para. 24; New Zealand IRCO, Add.71, para. 25)

The Committee frequently emphasizes the need to collect data on all children up to age of 18:

“The Committee recommends that the State Party intensify its efforts to establish a central registry for data collection and introduce a comprehensive system of data collection incorporating all the areas covered by the Convention. Such a system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including children with disabilities; children living in poverty; children in the juvenile justice system; children of single-parent families; sexually abused children; and institutionalized children.” (Grenada IRCO, Add. 121, para. 8)

One recommendation arising from the 1999 two-day workshop, was that

“The Committee encourages States Parties, non-governmental organizations, and others preparing reports, to include the views of children, in particular on the status of children’s rights and the impact of the Convention on their lives, in monitoring and reporting on the implementation of the Convention.” (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (x))

The Committee has also proposed independent studies to aid monitoring of implementation, for example in relation to Denmark, where it proposed that the newly-established National Council for Children should carry out such studies. (Denmark IRCO, Add.33, para. 20)

Participation of civil society

The Committee has stressed that coordination and action to implement the Convention should extend beyond government to all segments of society. Also, in the Introduction to its *Guidelines for Periodic Reports*, it emphasizes that the process of preparing a report “should encourage and facilitate popular participation and public scrutiny of government policies” (para. 3). It has stressed the importance of the involvement of non-governmental organizations (NGOs) and civil society, and in particular the direct



Statistical information requested by the Committee on the Rights of the Child in its *Guidelines for Periodic Reports*

In paragraph 7 of the introduction to the *Guidelines for Periodic Reports*, the Committee on the Rights of the Child asks that reports should be accompanied by “detailed statistical information, indicators referred to therein and relevant research... Quantitative information should indicate variations between various areas of the country and within areas and between groups of children and include:

- changes in the status of children;
- variations by age, gender, region, rural/urban area, and social and ethnic group;
- changes in community systems serving children;
- changes in budget allocations and expenditure for sectors serving children;
- changes in the extent of international cooperation received or contributed for the realization of children’s rights.”

In the *Guidelines*, the Committee asks for further statistical information in relation to the implementation of various articles, as listed below:

Article 2: Measures taken to collect disaggregated data on the most disadvantaged groups of children including: children belonging to minorities or indigenous communities; disabled children; children born out of wedlock; children who are non-nationals; migrants, displaced, refugees or asylum-seekers; and children who are living and/or working on the streets (paras. 27 and 29).

Article 4 (budget): Proportion of budget devoted to social expenditures for children, including health, welfare and education, at the central, regional and local levels, and where appropriate at the federal and provincial levels; budget trends over period covered by report;

arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified;

measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services [implies budgetary analysis];

measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations to the social sector;

proportion of international aid at the multilateral and bilateral levels allocated to programmes for children and the promotion of their rights and, where appropriate, the assistance received from regional and international financial institutions;

the percentage of international cooperation contributed during the reporting period in the total government budget, as well as the percentages of such cooperation respectively allocated to the health, education, social and other sectors (paras. 20 and 21).

Article 6: Disaggregated data for deaths and causes of deaths of children, including incidence of suicide (para. 41).

Article 9: Relevant disaggregated information, *inter alia*, in relation to situations of detention, imprisonment, exile, deportation or death causing separation of child from parents (para. 72).

Article 10: Disaggregated information on applications for family reunification and how they are dealt with (para. 74).

Article 11: Data on children concerned in illicit transfer and non-return of children abroad, including by gender, age, national origin, place of residence, family status and relationship with perpetrator of illicit transfer (para. 78).

Article 18(1) and (2): Relevant disaggregated information (for example by gender, age, region, rural/urban areas and social and ethnic origin) on children who have benefited from measures adopted to assist parents/guardians in child-rearing, and on institutions, facilities and services developed for the care of children; also information on resources allocated to them (para. 67).

Article 18(3): Disaggregated information on coverage in relation to services and facilities provided for working parents and financial implications, and on children benefiting from such measures, including by age, gender and national, social and ethnic origin (para. 101).

Article 19: Relevant data on children suffering all forms of violence, abuse, neglect, maltreatment or exploitation including within the family, in institutional or other care (welfare, educational, penal), disaggregated by age, gender, family situation, rural/urban, social and ethnic origin (para. 88; numbers of cases of violence in relation to exploitation also raised in para. 159).

Article 20: Relevant disaggregated data on children deprived of their family environment, including by nature of alternative care provided (para. 81).

Article 21: Relevant disaggregated data on children involved in intercountry adoption, including by age, gender, status of the child, situation of the child’s family of origin and of adoption, as well as country of origin and of adoption (para. 85).

Article 22: Disaggregated data on asylum-seeking and refugee children, including numbers going to school and covered by health services, and trained staff handling them (para. 120).

Article 23: System for identification and tracking disabled children; children covered, including by type of disability, the coverage of the assistance provided, programmes and services made available, including in the fields of education, training, care, rehabilitation, employment and recreation, including financial and other resources allocated, data to be disaggregated *inter alia* by gender, age, rural/urban area, and social and ethnic origin (para. 92).

Article 24: Infant and child mortality, including average rates and providing disaggregated data, including by gender, age, region, rural/urban area, ethnic and social origin;

distribution of both general and primary healthcare services in rural and urban areas and balance between preventive and curative health care; information on children having access to and benefiting from medical assistance and health care, as well as persisting gaps, by gender, age, ethnic and social origin;

disaggregated data on: immunization rates; proportion of children with low birthweight; most common diseases and impact on children; proportion of child population affected by malnutrition (chronic and severe) and lack of clean drinking water; children provided with adequate nutritious food; risks from environmental pollution;

coverage of appropriate pre- and post-natal health care of mothers, rate of mortality and main causes (average and disaggregated *inter alia* by age, gender, region, urban/rural area, social and ethnic origin);

proportion of pregnant women who have access to and benefit from pre- and post-natal health care, trained personnel and hospital care and delivery;

disaggregated data on health education for all segments of society, including, in particular, parents and children;

disaggregated data on the incidence of pregnancy among children, including by age, region, rural/urban area, and social and ethnic origin (para. 95).



prevalence of HIV/AIDS, including incidence among general population and children, coverage of treatment and management of HIV infection and AIDS, in urban and rural areas (para. 96).

assessment of traditional practices prejudicial to children's rights (para. 97).

Article 25: Relevant data on periodic reviews of placement and treatment of children, including in situations of abandonment, disability, asylum-seeking and refugees, including unaccompanied children, and in situations of conflict with the law; disaggregated *inter alia* by age, gender, national, ethnic and social origin, family situation and place of residence, as well as by duration of placement and frequency of its review (para. 87).

Article 26: Disaggregated information concerning coverage and financial implications of children's right to social security, including incidence by age, gender, number of children per family, civil status of the parents, the situation of single parents, and the relationship of social security to unemployment (para. 100).

Article 27(1) - (3): Incidence of "adequate standard of living" among child population, including by gender, age, region, rural/urban area, social and ethnic origin, and family situation;

assistance made available to parents and others to implement right to an adequate standard of living, including budget implications, relationship to cost of living and impact on population (information to be disaggregated where relevant);

population addressed by measures for material assistance and support programmes, in particular nutrition, clothing and housing, including by gender, age, rural/urban area, social and ethnic origin, the proportion of budget allocated, the coverage ensured (para. 103).

Article 27(4): Relevant disaggregated data concerning recovery of maintenance from parents or others having financial responsibility for the child (para. 79).

Article 28: Proportion of overall budget (at the central, regional and local, and where appropriate at the federal and provincial levels) devoted to children and allocated to the various levels of education;

real cost to the family of the child's education and support provided;

measures of sufficiency of teachers, adequacy of educational facilities and accessibility to all children;

rate of illiteracy below and over 18 years, and rate of enrolment in literacy classes, including by age, gender, region, rural/urban area and social and ethnic origin;

other relevant disaggregated data on children concerned including on education outcomes;

proportion of children enrolled in primary education, and who complete primary education, as well as any relevant disaggregated data including by age, gender, region, urban/rural area, national, social and ethnic origin, service coverage and budgetary allocation;

concerning secondary education, disaggregated data on children enrolled, financial assistance provided and budget allocated;

rate of access to higher education, disaggregated by age, gender and national, social and ethnic origin;

relevant disaggregated data on availability and accessibility of educational and vocational information and guidance;

disaggregated data on drop-out rates and measures to reduce them, school attendance and retention, and children excluded from school;

disaggregated data on children who do not enjoy the right to education and circumstances in which children are temporarily or permanently excluded from school; for example disability, deprivation of liberty, pregnancy, HIV/AIDS infection (paras. 106-108).

Article 30: Relevant disaggregated data on children belonging to ethnic, religious or linguistic minorities and who are indigenous and on children affected by measures adopted to protect their rights (para. 166).

Article 31: Disaggregated data on implementation of children's rights to leisure, play, recreation, cultural activities and so on (para. 118).

Article 32: Relevant disaggregated data on children involved in child labour, including by age, gender, region, rural/urban area and social and ethnic origin, as well as on infringements observed by inspectors and sanctions applied (para. 154).

Article 33: Any relevant disaggregated data on the incidence of drug abuse among children and their involvement in illicit production and trafficking;

Relevant disaggregated data on the use by children of alcohol, tobacco and other substances that may be prejudicial to their health and may be available, with or without restriction, to adults (paras. 156 and 157).

Article 34: Relevant disaggregated data on children involved in sexual exploitation, including number of cases of commercial sexual exploitation and sexual abuse (para. 159).

Article 35: Relevant disaggregated data on children involved, including numbers of cases of sale of children, and abduction of children (paras. 162, 159).

Article 36: Relevant disaggregated data on children involved in the measures adopted to protect children from all forms of exploitation prejudicial to children's welfare (para. 164).

Article 37(b)-(d): Alternatives to deprivation of liberty, frequency with which they are used and disaggregated data on the children concerned; disaggregated data on all children deprived of their liberty – unlawfully, arbitrarily and within the law – and on the reasons for and period of deprivation of liberty;

details of cases concerning children who have been deprived of their liberty, including the percentage of cases in which legal or other assistance has been provided, and in which the legality of the deprivation of liberty has been challenged before an appropriate authority, together with the results of such challenges (paras. 139, 141 and 145).

Article 38: Where relevant, proportion of children participating in hostilities, including by age, gender and social and ethnic origin;

proportion of children being recruited or voluntarily enlisted into armed forces, including by age, gender and social and ethnic origin;

children involved in humanitarian assistance and relief programmes;

also number of child casualties due to armed conflict, as well as the number of children displaced by armed conflict (paras. 124-127).

Article 39: Numbers of children who received physical and/or psychological treatment as a consequence of armed conflict (para. 130);

measures to promote physical and psychological recovery and social re-integration of children involved with the system of administration of juvenile justice, and disaggregated data on the children concerned (para. 150).

also on children concerned in rehabilitative measures for child victims of sexual abuse and exploitation (para. 159).

Article 40: Disaggregated data on the children alleged as, accused of or recognized as having infringed the penal law, *inter alia* by age, gender, region, rural/urban area, national, social and ethnic origin, offence and disposition made available (para. 137).





involvement of children and young people (see also article 12, page 159). The Committee expanded on this in recommendations following its two-day workshop in 1999:

“Democratic participation and public pressure, facilitated by public awareness and training, are critical in bringing about the commitment and political will necessary for the achievement of child rights. In the same way that optimal implementation of the Convention requires the involvement of governments, civil society, children, and international cooperation, each component of the implementation process – including reporting – requires this broad involvement.” (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291(a))

The Committee frequently proposes civil society involvement in its Concluding Observations:

“The Committee welcomes the election of the Youth Parliament of Georgia (April 2000) which is mandated to consider relevant youth issues and prepare recommendations in this regard to the National Parliament of Georgia. The Committee notes that 50 per cent of the Youth Parliament’s 166 members are between the ages of 14 and 18 years.” (Georgia IRCO, Add.124, para. 8)

“...the Committee is concerned that insufficient efforts have been made to involve civil society in the implementation of the Convention. Recognizing that the process of transition has led to the dismantling of many public social regulators, the Committee emphasizes the important role civil society plays as a partner in implementing the provisions of the Convention, including with respect to civil rights and freedoms, ill-treatment and juvenile justice. The Committee recommends that the State Party consider a systematic approach to involve civil society, especially children’s associations and advocacy groups, throughout all stages of the implementation of the Convention, including policy-making. In this regard, the Committee recommends that greater efforts be made to involve relevant State actors, such as local government officials and the police, in the dialogue with civil society; and further encouraged the State Party to support initiatives aimed at strengthening the role of civil society and to equip State actors with the knowledge and skills essential for working in partnership with local institutions.” (Kyrgyzstan IRCO, Add.127, paras. 11 and 12)

“The Committee recommends that the State Party to consider a systematic approach to involving civil society, especially children’s associations and advocacy groups, throughout all stages of the implementation of the Convention, including policy-making. The

Committee recommends that greater efforts be made to involve relevant State actors in the dialogue with civil society, such as local government officials, and the police; and further encourages the State Party to support initiatives aimed at strengthening the role of civil society.” (Saudi Arabia IRCO, Add.148, para.14)

The Committee has proposed a legal framework for non-governmental organizations:

“The Committee is concerned at the lack of a legislative framework for the creation of national independent non-governmental organizations...”

“The Committee also recommends that a legislative framework be adopted in order to encourage the establishment of national non-governmental organizations.” (Lao People’s Democratic Republic IRCO, Add.78, paras. 13 and 38)

A focus on the private sector’s contribution to promoting and protecting human rights has come from the United Nations inspired “Global Compact”. At the World Economic Forum, held in Davos on 31 January 1999, the United Nations Secretary-General challenged world business leaders to “embrace and enact” a Global Compact of basic principles, both in individual corporate practices and by supporting appropriate public policies. The principles cover human rights, labour and environment, principle 5 calling for the effective abolition of child labour (see article 32, page 485).

Awareness-raising and training

The Committee has linked the obligation under article 42, to make the provisions and principles of the Convention widely known to adults and children alike, to article 4. In the overall process of awareness-raising, the Committee has emphasized the importance of incorporating the Convention in the school curriculum as well as in training for those working with and for children (for discussion, see article 42, page 611).

Accountability to Parliament

The Committee has also commended the idea of a periodic report to Parliament (see *Guidelines for Periodic Reports*, para. 18).

In addition, it has consistently proposed that there should be parliamentary debate on States’ reports under the Convention and on the Committee’s Concluding Observations (see *Guidelines for Periodic Reports*, para. 23, and article 44(6), page 635).

Independent human rights institutions for children

The Committee now consistently recommends the establishment of independent human rights institutions – a children’s ombudsman, commis-

sion or commissioner, or focal points for children developed within human rights commissions.

In its comments on Norway's Initial Report, it noted

"that Norway was the first country in the world to establish an ombudsman working for the benefit of children. It also notes the spirit of dialogue existing between the Government, the municipalities and the ombudsman and civil society including the non-governmental community." (Norway IRCO, Add.23, para. 3)

When it examined Norway's Second Report, the Committee commented :

"The Committee ... commends the State Party on the very positive and independent role of the office of the ombudsperson for children..." (Norway 2RCO, Add.126, para. 4)

During its twenty-first session (May/June 1999) the United Nations High Commissioner for Human Rights reported to the Committee on the importance she attaches to supporting the establishment of national institutions for the promotion and protection of human rights; in view of the tenth anniversary of the Convention, she has systematically suggested that those institutions focus on and assess their work in the field of child rights (Report on the twenty-first session, May/June 1999, CRC/C/87, para. 14).

The Committee has been concerned that States should understand the importance of establishing institutions that are independent of government and equipped to monitor, promote and protect children's rights effectively. It has proposed that in developing institutions, States should have regard to the Paris Principles. These Principles

relating to the status of national institutions were adopted by the United Nations General Assembly in 1993. They emphasize the importance of establishing institutions with appropriate legislative powers and duties and guarantees of independence (A/RES/48/134).

The Committee has referred to the Paris Principles in Concluding Observations on a number of States Parties' reports :

"The Committee recommends that the State Party proceed rapidly with the establishment of the Human Rights Commission. The Committee recommends, further, the establishment of an independent monitoring body with responsibility for monitoring implementation of the Convention, in accordance with the Paris Principles, either as part of the Human Rights Commission or as a separate body such as a children's ombudsperson. The Committee recommends that consideration also be given to providing a mechanism through which children can make complaints of abuses of their rights." (Lesotho IRCO, Add.147, para. 14. See also United Kingdom – Isle of Man IRCO, Add.134, paras. 14 and 15; Marshall Islands IRCO, Add.147, para. 14; Saudi Arabia IRCO, Add.148, para. 18)

The conclusions of the Committee's 1999 two-day workshop emphasize:

"The establishment of independent monitoring mechanisms, whether specifically for child rights or within the functions of national human rights institutions is thus particularly encouraged. The establishment of such mechanisms should build on the requirements of the Convention, the 'Paris Principles', and the practical experiences of existing institutions. Guidelines should be developed for the effective promotion of the human



European Network of Ombudspersons for Children (ENOC)

The European Network of Ombudspersons for Children (ENOC) was formed at a meeting in Trondheim, Norway, in 1997, initially with independent human rights institutions for children from 10 European States. ENOC – "a new voice for children in Europe", aims to "improve the lives of all children in Europe" in ways which include:

- encouraging the fullest possible implementation of the Convention on the Rights of the Child;
- supporting individual and collective lobbying for children's rights and interests to Europe-wide and international bodies;
- sharing information, approaches and strategies for the benefit of children;
- providing a forum for individual offices to generate new ideas and gain support;
- promoting and supporting the development of effective institutions able to advocate independently for children;
- acting collectively to ensure positive national policies for children;
- monitoring the state of children and the impact of political and economic changes on children.

ENOC's website gives details of member-offices and their activities – <http://www.ombudsnet.org/>



rights of children by national human rights institutions.” (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (u))

The Committee often questions the degree of independence of monitoring bodies. It proposes that where institutions include complaints procedures for use by children, they must be child-friendly in design, accessible and well-publicized to children:

“The Committee is concerned at the absence of an independent body with a mandate to monitor the implementation of the rights of children. It notes that the monitoring system of ‘Civil Liberties Commissioners for the Rights of the Child’ in its present form lacks independence from the Government as well as the authority and powers necessary to fully ensure the effective monitoring of children’s rights.” (Japan IRCO, Add.90, para. 10)

“The Committee expresses concern at the absence of an independent mechanism to

register and address complaints from children concerning violations of their rights under the Convention. The Committee suggests that an independent child-friendly mechanism be made accessible to children to deal with complaints of violations of their rights and to provide remedies for such violations. The Committee also suggests that the State Party institute an awareness-raising campaign to facilitate the effective use by children of such a mechanism.” (Thailand IRCO, Add.97, para. 13)

“The Committee recommends that the State Party consider the establishment of an independent Ombudsman for children at the federal level, with clear links to similar mechanisms at regional levels, each with a clearly defined and appropriate mandate, including the monitoring of care and juvenile justice structures, and powers and resources sufficient to guarantee effectiveness.” (Russian Federation 2RCO, Add.110, para. 9)

The world’s first children’s commissioner

Norway’s Initial Report describes the establishment in 1981 and the activities of the world’s first Office of Commissioner for Children (or children’s ombudsman). Norway has a number of national ombudsman offices: “The position of the Commissioner for Children is rather different from that of the other ombudsmen. The Commissioner for Children does not deal with complaints related to specific areas of law, but serves as spokesman for children’s concerns in most aspects of society. The role of the children’s ombudsman as a spokesman, and as the person responsible for safeguarding the rights of children, applies to all areas of Norwegian legislation that affect children...”.

Main points of the Act and Regulations relating to the Commissioner for Children are:

- “(a) The Commissioner shall be an independent spokesman for children in Norway;
- (b) The Commissioner has a general mandate to observe and make efforts to improve the living conditions for children between the ages of 0 and 17;
- (c) The Commissioner has the right to make his own professional priorities and determine how issues are to be dealt with;
- (d) The Commissioner has the right of access to all documents in all matters affecting children that are dealt with by the public authorities. He also has the right of access to all children’s institutions”.

The report notes that “The only areas that are not the concern of the Commissioner are individual family conflicts and matters that are the subject of legal proceedings. The Commissioner must therefore consider all areas of society, make people aware of any developments that are harmful to children, and propose changes in order to improve the situation of children. The Commissioner must be alert to the consequences and implications of all areas of Norwegian legislation and regulations which may affect children. The Commissioner for Children has no powers of decision, nor does he or she have the right to rescind the decisions of other authorities. In consequence the main instruments at the disposal of the Commissioner are information, acting as spokesman for children, and issuing well-documented statements...” Norway’s Second Report (1998) notes that in 1994 a Committee was appointed to evaluate the Office and that its report resulted in an amendment to the Act establishing the Commissioner, requiring the Commissioner to monitor law enforcement and administrative practice and “verify whether this practice corresponds to Norway’s obligations according to the Convention on the Rights of the Child”. (Norway IR, paras. 34-41; Norway 2R, para. 55)

"The Committee encourages the State Party to establish a statutory, independent national commission for children with the mandate of, inter alia, regularly monitoring and evaluating progress in the implementation of the Convention at the federal, state and local levels. Further, such a commission should be empowered to receive and address complaints of violations of child rights, including with reference to the security forces." (India IRCO, Add.115, para. 19)

"The Committee encourages the State Party to take effective measures to ensure that adequate resources (both human and financial) are allocated to ensure the effective functioning of the South African Human Rights Commission. The Committee recommends that the State Party establish clear child-friendly procedures to register and address complaints from children regarding violations of their rights and to guarantee adequate remedies for such violations. The Committee further suggests that the State Party introduce an awareness-raising campaign to facilitate the effective use by children of such a procedure." (South Africa IRCO, Add.122, para. 13. See also, for example, Nepal IRCO, Add.57, para. 29; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 20; Mauritius IRCO, Add.64, para. 25; New Zealand IRCO, Add.71, para. 24; Malta IRCO, Add.129, para. 12)

In 1998 the Committee on Economic, Social and Cultural Rights adopted a General Comment on the role of national human rights institutions in the protection of economic, social and cultural rights. It notes that these institutions "have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions." (Committee on Economic, Social and Cultural Rights, General Comment 10, 1998, HRI/GEN/1/Rev.5, pp. 62 and 63)

In 2001 the Committee on the Rights of the Child resolved to develop a General Comment on independent human rights institutions for children.

International cooperation for implementation

In its comments on general measures of implementation, the Committee has urged many countries to seek and use international cooperation and technical assistance. It has also encouraged donor countries to ensure that their aid pro-

grammes follow the lines of the Convention and establish a clear priority for children. Its *Guidelines for Periodic Reports* asks for information on "the extent to which international cooperation relevant to the State Party is designed to foster implementation of the Convention, including economic, social and cultural rights of children." The *Guidelines* requires from donor countries identification of the amount of international aid as a proportion of the total government budget and details of the allocation to health, education and other sectors.

International assistance should be linked to implementation by both donors and recipients:

"...The Committee is also concerned that the State Party's international cooperation policies do not yet fully give priority to children." (Portugal IRCO, Add.45, para. 12)

"International cooperation resources should be channelled towards the realization of children's rights and effort should be pursued to reduce the negative impact of foreign debt and debt servicing on children." (Nepal IRCO, Add.57, para. 30)

The Committee has emphasized that the Convention should form the framework for international development assistance. For example:

"The Committee encourages the State Party to allocate special funds in its international cooperation programmes and schemes to children. The Committee also encourages the State Party to use the principles and provisions of the Convention as a framework for its programme of international development assistance." (Australia IRCO, Add.79, para. 25)

It has urged States to meet United Nations targets for international assistance:

"The Committee welcomes the statement of the delegation that the Government of Luxembourg has the intention of increasing its contribution to international development assistance from 0.36 per cent to the 0.7 per cent United Nations target of its Gross Domestic Product by the end of 1999." (Luxembourg IRCO, Add.92, para. 4)

"The Committee encourages the State Party to consider allocating a fixed percentage of its international development cooperation funds to programmes and schemes for children. The Committee also encourages the State Party to strive to achieve the United Nations target of 0.7 per cent of GDP for international development assistance." (Austria IRCO, Add.98, para. 12)

In the conclusions adopted following the 1999 two-day workshop, the Committee states:





The 20/20 Initiative and its follow-up

At the World Summit for Social Development, held in Copenhagen in March 1995, agreement was reached on a mutual commitment between interested developing and industrialised countries to allocate adequate resources for the implementation of the Copenhagen Declaration on Social Development and Programme of Action. At the heart of the 20/20 initiative is the shared responsibility between developing and donor countries to achieve universal access to basic social services of good quality on a sustainable basis, as agreed at the Social summit.

In 1996, interested countries met in Oslo to discuss the implementation of the 20/20 initiative. The meeting concluded with the Oslo Consensus, a commitment to review and assess progress in implementing the initiative after a two-year period. This review took place in Hanoi (Viet Nam) from 27-29 October 1998. The meeting was hosted by the Government of Viet Nam and co-sponsored by the Governments of Norway and the Netherlands. Participants came from 29 developing countries and 19 donor countries, as well as 11 international NGOs and 13 multilateral development organizations.

At the meeting, consensus was reached on the following:

An ethical and economic imperative

The meeting underlined that the goal of universal access to basic social services is based on ethical, legal and economic grounds.

In spite of the growing consensus that access to basic social services should be universal, millions of people, particularly women and children, continue to be deprived of basic education, primary health care (including reproductive health and population programmes), nutrition, and safe water and sanitation. The meeting agreed that the current economic and financial crises add to the relevance of the 20/20 initiative to protect the access to basic social services of the most vulnerable people.

At the global level, the initiative suggests an indicative allocation of 20 per cent of national budgets in developing countries and 20 per cent of official development assistance (ODA) to basic social services, in order to close the gap between current spending and the minimum level required to achieve universal access. The meeting agreed that it will be difficult for many countries to meet the goals identified at the Social Summit within the time-frame agreed to unless additional financial resources are allocated to basic social services and unless efficiency in resources use is increased. The meeting identified the 20/20 initiative as addressing the input dimension of the “Development Partnerships Strategy of the Development Assistance Committee (DAC) in Shaping the 21st Century: The Contribution of Development Co-operation”. At the country level, the share needed will vary, depending on country-specific circumstances.

The meeting reiterated the need to increase investments in basic social services in order to reach the goal of universal access. It emphasised that investing in a country's basic social services is investing in its future. Promoting access for all to basic social services lays the foundation for sustainable and equitable development and is a prerequisite for eradicating poverty.

The role of the public sector in ensuring universal access to basic social services was considered critical.

The meeting reaffirmed the need for a mutual commitment by developing countries and their development partners to give higher priority to basic social services and to translate this commitment into financial terms. Through such a partnership, universal access to basic social services can be achieved by all countries, even those with relatively low per capita income.

The meeting reiterated that achieving adequate provision of basic social services to the poor will not only require financial resources but also strong political commitment and a renewed emphasis on the quality, equity and efficiency with which services are provided.

The meeting recognized the need for greater coherence and consistency between macro-economic and social policies of both the developing and donor countries. Without such coherence, macro-economic policies may undermine the gains made as a result of greater social spending.

“...Investment in children today is the best guarantor of equitable and sustainable development tomorrow. Universal access to an integrated package of basic social services is within the financial reach of the world community, though it will often require early and steep debt relief and greater reductions in military spending...” (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (o))

The 20/20 Initiative (see box) has been designed by leading United Nations agencies to promote a collaborative approach to achieving basic human development goals worldwide.

Some 40 governments along with NGOs, United Nations agencies, the World Bank and the International Monetary Fund (IMF) met in Oslo in 1996 to discuss the future of the 20/20 Initiative and there was a further follow-up meeting in Hanoi in 1998.

In 2000 a special session of the United Nations General Assembly reviewed progress since

the World Summit for Social Development (Copenhagen, 1995). It adopted a detailed resolution on further initiatives for social development (Twenty-fourth special session, A/RES/S-24/2). It noted: “The 20/20 initiative has encouraged interested Governments and donors to increase the amount of resources earmarked for basic social services and to enhance equity and efficiency in their use. It has also emphasized the need for additional resources in order to pursue effectively the social development agenda, while highlighting the difficulties and limitations of many countries, in particular developing countries, in raising or reallocating domestic resources.” It urges that special attention should be given to the least developed countries, in particular those in sub-Saharan Africa, in the implementation of the 20/20 initiative in cooperation with civil society in order to ensure access to basic social services for all. (paras. 38 and 120)



Implementation Checklist



● General measures of implementation

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

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

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

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

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

- ☐ to ensure appropriate coordination of policy?
 - ☐ between provinces/regions, etc.?
 - ☐ between central government departments?
 - ☐ between central and local government?
 - ☐ between economic and social policies?
- ☐ to ensure effective evaluation of policy relating to children?
- ☐ to ensure effective monitoring of implementation?
- ☐ Are such mechanisms directly linked to the institutions of government that determine overall policy and budgets in the State?
- ☐ Is the principle that the best interests of the child should be a primary consideration formally adopted at all levels of policy-making and budgeting?

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

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

How to use the checklists, see page XVII



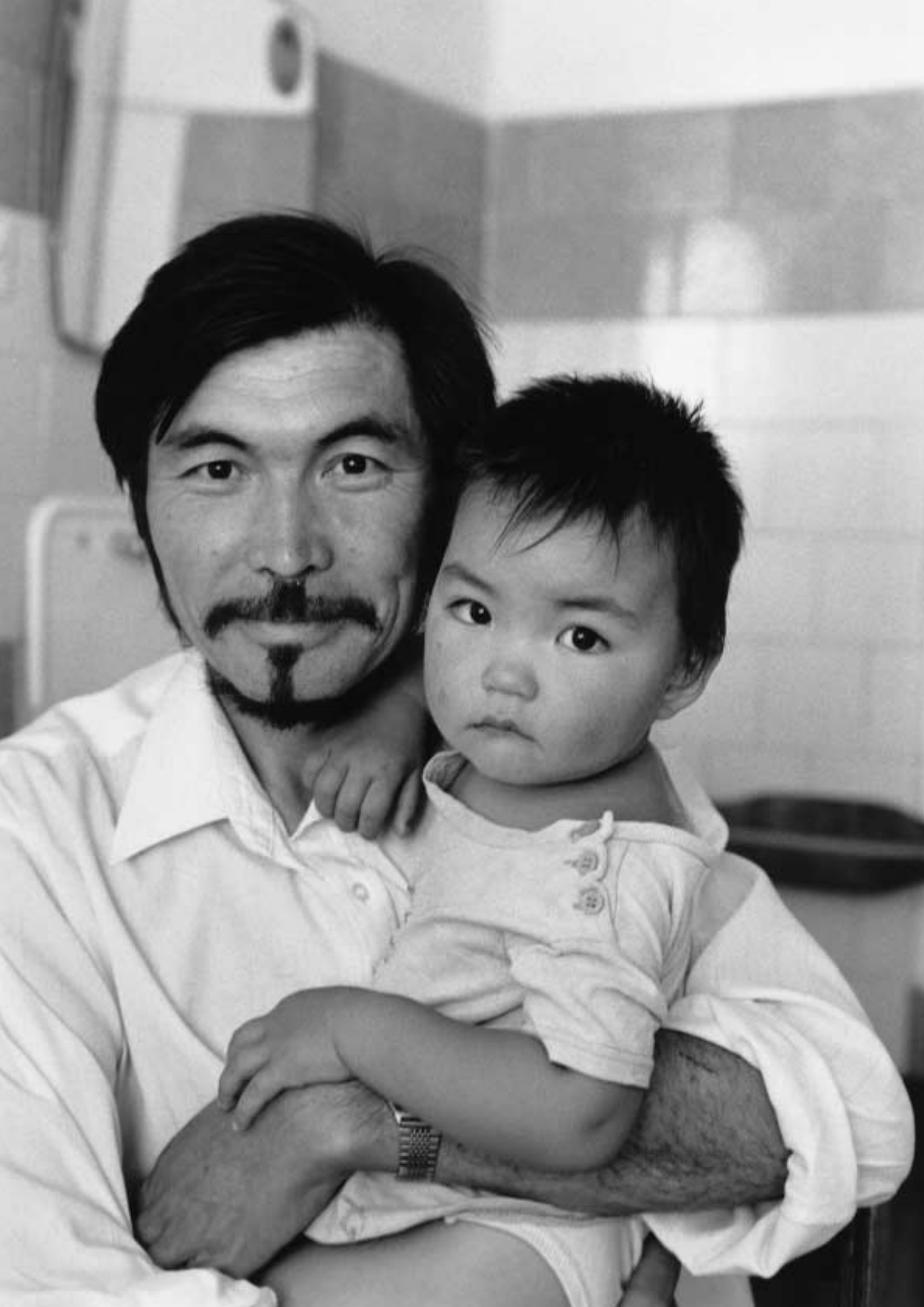
Is the proportion of social expenditure devoted to children adequate

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

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

- ☐ the proportion of overall budgets devoted to children?
- ☐ any disparities between regions, rural/urban, particular groups of children?
- the effects of structural readjustment, economic reforms and changes on
 - ☐ all children?
 - ☐ the most disadvantaged groups of children?
- ☐ the proportion and amount received/given in relation to international cooperation to promote the rights of the child, and allocated to different sectors?
- ☐ Do the arrangements for monitoring ensure a comprehensive, multidisciplinary assessment of the situation of all children in relation to implementation of the Convention?
- ☐ Is sufficient disaggregated data collected to enable evaluation of the implementation of the non-discrimination principle?
- ☐ Are there arrangements to ensure a child impact analysis during policy formulation and decision-making at all levels of government?
- ☐ Is there a regular report to Parliament on implementation of the Convention?
- ☐ Are parliamentary mechanisms established to ensure appropriate scrutiny and debate of matters relating to implementation?
- ☐ Is civil society involved in the process of implementation at all levels, including in particular
 - ☐ appropriate non-governmental organizations (NGOs)?
 - ☐ children themselves?
- ☐ Is there a permanent mechanism for consulting on matters relating to implementation with appropriate NGOs and with children themselves?
- ☐ Has an independent human rights institution been established to promote the rights of children – a children's ombudsman, commissioner or focal point within a human rights commission?
 - ☐ Is its independence from government assured?
 - ☐ Does it have appropriate legislative powers, e.g. of investigation?
 - ☐ Does it comply with the Paris Principles on the status of national human rights institutions?

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



Parental guidance and the child's evolving capacities



Text of Article 5

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

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

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

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the ‘best interests of the child’ and ‘respect for the views of the child’ are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Parental guidance (art. 5);

...”

(CRC/C/5, para. 16)

Guidelines for Periodic Reports

“V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance (art. 5)

Please provide information on family structures within the society and indicate the measures adopted to ensure respect for 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 appropriate direction and guidance to the child, further indicating how such direction and guidance are consistent with the child’s evolving capacities.

Please indicate any family counselling services or parental education programmes available, as well as awareness campaigns for parents and children on the rights of the child within family life, and training activities provided to relevant professional groups (for example, social workers) and indicate if any evaluation has been made of their effectiveness. Please also indicate how knowledge and information about child development and the evolving capacities of the child are conveyed to parents or other persons responsible for the child.

Information should also be provided on the measures adopted to ensure respect for the principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life and survival and development to the maximum extent possible, as well as on the progress achieved in the implementation of article 5, any difficulties encountered and the indicators used.”

(CRC/C/58, paras. 62-64. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 43, 46, 88; for full text of *Guidelines*, see Appendix 3, page 674.)

“States Parties shall respect the responsibilities, rights and duties...”

Article 5 introduces to the Convention the concept of parents’ and others’ “responsibilities” for their children, linking them to parental rights and duties, which are needed to fulfil responsibilities. Article 18 expands on the concept of parental responsibilities (see page 243). In it,

States Parties are required to “use their best endeavours” to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child: “Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” Beyond this, the Convention does not specifically define “parental responsibilities”. But

as is the case with the definition of the best interests of the child, the content of the whole Convention is relevant. Parents have responsibilities, in the terms of article 5, to appropriately support “the exercise by the child of the rights recognized in the present Convention”.

The *Guidelines for Periodic Reports* seeks information on “the consideration given by law to parental responsibility, including the recognition of the common responsibilities of both parents in the upbringing and development of the child and that the best interests of the child will be their basic concern. Also indicate how the principles of non-discrimination, respect for the views of the child and the development of the child to the maximum extent, as provided for by the Convention, are taken into account.” (para. 65)

The implication is that the concept of parental responsibilities should be reflected and defined in the law, using the framework of the Convention.

During discussion of Belgium’s Initial Report, a Committee member pointed out that “article 19 of the Convention encouraged States Parties to adopt appropriate measures to protect children from all forms of violence and abuse. The presentation of evidence against parents and guardians was extremely difficult. Several countries had accordingly begun to define parental responsibility and authority in their civil legislation, including both concepts of dialogue, negotiation and the participation of children in family life with the aim of trying to avert ill-treatment entirely. The Committee believed that the response to abuse should go beyond criminal sanction.” (Belgium SR.224, para. 38)

In response, a representative of Belgium said that article 371 of the Civil Code would very shortly be amended: “The old article stated that a child of any age owed honour and respect to his parents. The new article, however, stipulated that a child and his father and mother owed each other mutual respect, whatever their age. In legal terms, the word ‘mutual’ could imply that certain types of conduct by a parent towards his child were not in conformity with the wording used.” (Belgium SR.224, para. 64)

The Committee noted with approval the relevant legislative developments:

“... The Committee particularly welcomes the adoption of a comprehensive legal framework to ensure full conformity with the Convention and ... the revision of article 371 of the Civil Code, which will now provide for ‘mutual respect between parents and children’...” (Belgium IRCO, Add.38, para. 5)

The Convention thus challenges concepts that parents have absolute rights over their children, which the Committee has noted are traditional in many societies but already changing to some degree in most. The rights and the duties that parents have derive from their responsibilities for the welfare of the child, that is to act in the best interests of the child.

A particular example of the need for State respect for the responsibilities, rights and duties of parents is in relation to children involved with the system of juvenile justice. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”, requires that parents must be notified about the apprehension of a juvenile and that the child has the right to have his or her parent/guardian present (a right qualified in article 40 of the Convention by the “best interests” principle) and, generally, the right to participate in the proceedings (rules 7(1), 10(1) and 15(2)). Rule 18(2) requires that “No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.”

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

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

The *Guidelines for Periodic Reports* asks for information on “family structures within the society” (para. 62).

Article 5 acknowledges the extended family, referring not only to parents and others legally





The extended family in the Marshall Islands and Fiji

“...it is customary for Marshallese to live in extended family groups of three or more generations. In such settings, the mother is the primary caregiver; however, in raising their children the parents are assisted by other family members (particularly females). Often grandparents will ‘adopt’ grandchildren as their own and become the primary caregivers while the natural parents may or may not remain in the household. These ‘customary adoptions’ by family members are very common. Under such ‘adoptions’ contact with the natural parents is not broken. If the ‘adopting’ parents die before the child is an adult, the natural parents often will re-assume the role of parent.” (Marshall Islands IR, para. 62)

“When Fiji people describe their society and cultures, a common theme is the importance of family. All of Fiji’s ethnic communities value caring relationships among their wide networks of kin. Family events, social occasions and religious festivals are commonly celebrated by large gatherings of relatives, close and distant. Kinship virtually defines most rural communities, be they Fijian villages or Indian settlements. For many small children, the world beyond their own homes appears to consist of aunts, uncles, cousins and grandparents.

“People often prefer to believe that the tight social fabric woven by family relationships is a social and economic safety net through which few people can fall into destitution, hard times, or abusive situations. Nevertheless, social conditions are changing and economic pressures are exacerbating the difficulties of some families. Expectations of women are changing quickly. Social problems once thought foreign – such as youth delinquency and drug abuse, sexual and physical abuse of children and women, homeless children and escalating divorce rates – are now well apparent in Fiji. Increasingly, the Government is having to adopt some of the welfare functions of the family.” (Fiji IR, paras. 1 and 2)

responsible but also to the extended family or community where they are recognized by local custom.

The Committee has noted the need to provide children with alternative forms of support to the extended family, where family structures are changing:

“Taking into account the changes occurring in the institution of the ‘extended family’, which provided children with an environment in which to discuss their problems, the Committee suggests that complementary initiatives be encouraged, such as youth peer counselling groups in schools, community-awareness programmes on youth problems such as alcohol and suicide, and parental education programmes.” (Federated States of Micronesia IRCO, Add.86, para. 34)

In the outline for its General Discussion on “The role of the family in the promotion of the rights of the child”, the Committee on the Rights of the Child stated:

“The basic institution in society for the survival, protection and development of the child is the family. When considering the family environment, the Convention reflects different family structures arising from various cultural patterns and emerging familial relationships. In this regard, the Convention refers to the extended family and the

community and applies in situations of nuclear family, separated parents, single-parent family, common-law family and adoptive family. Such situations deserve to be studied in the framework of the rights of the child within the family. Relevant measures and remedies have to be identified to protect the integrity of the family (see, in particular, arts. 5, 18 and 19), and to ensure appropriate assistance in the upbringing and development of children.” (Report on the fifth session, January 1994, CRC/C/24, Annex V, p. 63)

The Committee has emphasized the need for appropriate support for families :

“The Committee expresses its concern at the lack of information on the implementation of the Committee’s recommendation with regard to enhancing the role of the family in the promotion of children’s rights (see Yemen IRCO, Add.47, para. 16). The Committee reiterates its recommendation that the State Party pay special attention to enhancing the role of the family in the promotion of children’s rights, and stresses the importance of the status of women in family and social life. In this regard, the Committee recognizes the importance of developing family counselling services, in both urban and rural areas.” (Yemen 2RCO, Add.102, para. 22)

It has expressed concern at increases in numbers of child-headed and grandparent-

headed households or families and has suggested that polygamy should be discouraged :

“The Committee encourages the State Party to review its legislation, programmes and policies so as to ... discourage the practice of polygamy...” (Djibouti IRCO Add.131, para. 34)

“The Committee is deeply concerned at the breakdown in nuclear family structures, at the emergence of a high proportion of single-parent-headed households, child-headed households and grandparent-headed households, and at the immediate and long-term consequences that these weaknesses in the family structure may have on children... “Noting the efforts already made in this regard, the Committee urges the State party to continue and strengthen support to families, including through assistance with agricultural production and legal and financial assistance in obtaining adequate housing and land and counselling to help resolve problems. The Committee urges the State party to give particular attention to the establishment of psycho-social and parental guidance programmes to strengthen vulnerable family units such as single-parent, child- and grandparent-headed households...” (Burundi IRCO, Add.133, paras. 46 and 47)

A General Recommendation of the Committee on the Elimination of Discrimination against Women in 1994 proposes “prohibition of bigamy and polygamy and the protection of the rights of children” (Committee on the Elimination of Discrimination against Women, General Recommendation 21, 1994, HRI/GEN/1/Rev.5, p. 230. See also article 1, page 10).

The International Covenant on Civil and Political Rights upholds, in article 23, the family as “the natural and fundamental group unit of society... entitled to protection by society and the State” and sets out, in article 24, the child’s right to “such measures of protection as are required by his status as a minor, on the part of his family, society and the State”. In two General Comments in 1989 and 1990, the Human Rights Committee emphasizes the flexible definition of the family, which “is interpreted broadly to include all persons composing it in the society of the State Party concerned” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133).

And in General Comment 19 of the Human Rights Committee: “The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is

therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23. Consequently, States Parties should report on how the concept and the scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, ‘nuclear’ and ‘extended’, exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States Parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice.” (Human Rights Committee, General Comment 19, 1990, HRI/GEN/1/Rev.5, p. 137)



Childhood “not life’s waiting room”

“At the international level it has been repeatedly emphasized that childhood should not be ‘life’s waiting room’ but it should be ‘life itself’. That is why the legal situation, in which the child on the eve of his or her eighteenth birthday is almost ‘rightless’ and the next day with full rights, cannot be accepted any longer. It is therefore necessary to create conditions for differentiated and gradual emancipation of children in all areas of the day-to-day life. If, however, society’s understanding of the status of the child does not change towards viewing the child as the entity of law, the legislative changes might not help...” (Slovakia IR, para. 240)

“... 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”

The wording here emphasizes the child as the subject of the rights recognized in the Convention, referring to the exercise “by the child” of these rights.

When it ratified the Convention on the Rights of the Child, the Holy See made a reservation “... That it interprets the articles of the Convention in a way which safeguards the primary



and inalienable rights of parents, in particular in so far as these rights concern education (arts. 13 and 28), religion (art. 14), association with others (art. 15) and privacy (art. 16)” (CRC/C/2/Rev.8, p. 23).

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

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

The Committee went on to recommend

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

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

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

“The national legislation and practice should take into full consideration, in the light of article 5 of the Convention, the capacity of the child to exercise his or her rights, namely in the field of citizenship.” (Mexico IRCO, Add.13, para. 8)

“... the Committee notes that an understanding of children as a subject of rights does not appear to be fully reflected in legislative and other measures in the State Party...” (Nicaragua IRCO, Add.36, para. 9)

“The Committee wishes to emphasize that the Convention provides for the protection and care of children, and in particular for the recognition of the child as the subject of his or her own rights...” (Iceland IRCO, Add.50, para. 13)

“...It is important that awareness be developed of the child as a subject of rights and not only as a recipient of protection...” (China IRCO, Add.56, para. 33)

The Committee has consistently stressed this view of the child during its examination of States Parties’ reports. And it has strongly emphasized that upholding the rights of the child within the family is not exercised at the expense of others’ rights, in particular those of parents, but, on the contrary, strengthens the rights of the entire family. Thus, a Committee member said during discussions with Burkina Faso: “... it was important, in striving to implement the Convention’s provisions, to promote the true spirit of that instrument to the effect that it was not a question of seeking ‘child power’ but of showing that upholding the rights of the child strengthened the rights of the entire family, and that, with regard to parenthood, the emphasis should not be on authority but on responsibility.” Another member agreed that “it was wrong to interpret the assertion of children’s rights as in conflict with those of parents; the rights of the child and of the family went hand in hand” (Burkina Faso SR.136, paras. 51 and 53).

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

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

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

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

"Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become 'seen' and, furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation, participation have come to the forefront of common action for children.

"The family becomes in turn the ideal framework for the first stage of the democratic experience for each and all of its individual members, including children. Is this only a dream or should it also be envisaged as a precise and challenging task?"

The Committee affirmed that the Convention is *"... the most appropriate framework in which to consider, and to ensure respect for, the fundamental rights of all family members, in their individuality. Children's rights will gain autonomy, but they will be especially meaningful in the context of the rights of parents and other members of the family to be recognized, to be respected, to be promoted. And this will be the only way to promote the status of, and respect for, the family itself."*

(Report on the seventh session, September/October 1994, CRC/C/34, paras. 183 et seq.)

The *Manual on Human Rights Reporting*, 1997, further stresses the point: "The family is also particularly well-placed to be the first democratic reality the child experiences – a reality shaped by the values of tolerance, understanding, mutual respect and solidarity, which strengthens the child's capacity for informed participation in the decision-making process." (*Manual*, p. 446)

Article 5 makes clear that the nature of parental direction and guidance is not unlimited; it must be "appropriate", be consistent with the "evolving capacities of the child" and with the remainder of the Convention. Several States Parties made reservations upholding parental authority (see above, page 89); and others, in their Initial Reports, have referred to the "traditional" authority of parents. Article 5 stresses that parental authority is far from unlimited, and article 18 emphasizes that the child's best interests will be the parents' "basic concern".

In its Initial Report, the United Kingdom suggests that article 19 of the Convention has to be read in conjunction with article 5 and that "appropriate direction and guidance" of the child "include the administration, by the parent, of reasonable and moderate physical chastisement to a child" (United Kingdom IR, para. 335). In discussion with United Kingdom Government representatives, a Committee member stated: "There was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the

exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law..." (United Kingdom SR.205, para. 72)

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

Thus, when reading article 5 in conjunction with article 19, the Committee is clear that parental "guidance" must not take the form of violent or humiliating discipline, as the child must be protected from "all forms of physical or mental violence" while in the care of parents and others. The Committee has consistently upheld the view that corporal punishment is not compatible with the Convention and has recommended its prohibition, including within the family (see article 19, page 265).

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

In its first General Comment, issued in 2001 on article 29(1), the aims of education, the Committee states (see article 29, page 434):

"...Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities." (*Report on the twenty-sixth session, January 2001, CRC/C/103, Annex IX, para. 12*)

The *Manual on Human Rights Reporting*, 1997, links the concept of "evolving capacities" with articles 12 and 13. Parents are expected to provide appropriate direction and guidance to the





child: “But in this endeavour they are required to act in a manner that takes into consideration the evolving capacities of the child, his or her age and maturity. In the light of article 12, a system of shared, positive and responsible dialogue should thus prevail. In fact, parents are particularly well placed to build the capacity of children to intervene in a growing manner in the different stages of decision, to prepare them for responsible life in a free society, informing them, giving the necessary guidance and direction, while assuring children the right to express views freely and to give those views due weight (articles 12 and 13). Children’s opinions will thus be taken into account, although not necessarily endorsed, and children will be given the possibility of understanding the reasons for a different decision being taken. Children will become active partners, with appropriate skills to participate, rather than a passive reflection of parents’ wishes.” (*Manual*, p. 446)

Article 1 defines “child” as every human being below the age of 18 or below the age of majority if achieved earlier (see page 1). At the same time article 5 emphasizes the path to maturity, which must come from increasing exercise of autonomy. Much of the information sought by the Committee in its *Guidelines for Periodic Reports* in relation to article 1 (definition of the child) on any “minimum legal ages” set for various purposes relates to the recognition of the child’s growing autonomy and independent exercise of rights: for example legal and medical counselling without parental consent; medical treatment or surgery without parental consent; sexual consent; giving testimony in court; participating in administrative and judicial proceedings, creating and joining associations and so on (see article 1, page 5, for further discussion).

In many countries, children acquire certain rights of self-determination well before the age of majority; they often gain full adult rights on marriage, which in some States is permitted at the age of 14 or 15 (the Committee strongly criticizes this, see page 10). In a few countries the concept of “evolving capacities” is further reflected by a general provision in legislation that once children acquire sufficient maturity or understanding, they may make decisions for themselves when there is no specific limitation on doing so set down in the law.

The focus of article 5 on “evolving capacities” is not only about children’s growing autonomy in relation to parents. It also relates to the child’s process of maturation (articles 6, 27 and 29) and

parents’ responsibility not to demand or expect from the child anything that is inappropriate to the child’s developmental state.

The Committee has underlined that there must be no discrimination – for example on grounds of gender – in recognition of maturity in States’ legislation:

“... The Committee is also concerned at the use of the biological criterion of puberty to set different ages of maturity for boys and girls. This practice is contrary to the principles and provisions of the Convention and constitutes a form of gender-based discrimination which affects the enjoyment of all rights.” (Ecuador IRCO, Add.93, para. 17)

“The Committee remains concerned that the legal ‘ages of maturity’, which refer to the criterion of puberty, set at 10 years for boys and at 9 years for girls, are too low...” (Yemen ZRCO, Add.102, para. 16)

Preparation for parenthood

As indicated above, the Committee has noted that the traditional view of the child as a “dependent, invisible and passive” member of the family persists in some States. The Committee has highlighted the need to prepare parents for their responsibilities. The *Guidelines for Periodic Reports* seeks information on parenting education programmes and on counselling for parents, and how knowledge about child development and the evolving capacities of the child are conveyed to parents and others responsible for children. In addition, the *Guidelines* requests information on any evaluation of the effectiveness of such educational measures (for further discussion, see article 18, page 243).

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

Implementation Checklist



● General measures of implementation

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

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 5 will be particularly relevant to **departments concerned with family law and family support**)?
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?

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

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

● Specific issues in implementing article 5

- ☐ Does the definition of “family” for the purposes of the realization of the rights of the child correspond with the flexible definition of the Convention?
- ☐ Is there a detailed legal definition of parental responsibilities, duties and rights?
- ☐ Has such a definition been reviewed to ensure compatibility with the principles and provisions of the Convention?
- ☐ Does legislation ensure that direction and guidance provided by parents to their children is in conformity with the principles and provisions of the Convention?

How to use the checklists, see page XVII



- ☐ Are the evolving capacities of the child appropriately respected in the Constitution and in legislation?
- ☐ Is there a general principle that once a child has acquired “sufficient understanding” in relation to a particular decision on an important matter, he or she is entitled to make the decision for him/herself?
- ☐ Are information campaigns/education programmes on child development, the evolving capacities of children, etc. available to parents, other caregivers and children, and to those who support them?
- ☐ Have these campaigns/programmes been evaluated?

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

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

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

Article 1: definition of the child in legislation and practice must take account of the child’s “evolving capacities”

Article 18: parental responsibilities and State support for parenting

Child's right to life and maximum survival and development



Text of Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

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

The concept of “survival and development” to the maximum extent possible is crucial to the

implementation of the whole Convention. The Committee on the Rights of the Child sees development as an holistic concept, and many articles of the Convention specifically refer to the goal of development. Other articles emphasize the key role of parents and the family for child development and the State’s obligation to support them. Protection from violence and exploitation is also vital to maximum survival and development. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674 .

Guidelines for Initial Reports

"General Principles

Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

...

(c) The right to life, survival and development (art. 6);

...

In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines."

"Basic health and welfare

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(a) Survival and development (art. 6, para. 2);..."

(CRC/C/5, paras. 13-14, 19)

Guidelines for Periodic Reports

"III. GENERAL PRINCIPLES

C. The right to life, survival and development (art. 6)

Please describe specific measures taken to guarantee the child's right to life and to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society.

Information should also be provided on the measures taken to ensure the registration of the deaths of children, the causes of death and, where appropriate, investigation and reporting on such deaths, as well as on the measures adopted to prevent children's suicide and monitor its incidence and to ensure the survival of children at all ages, including adolescents, and the prevention of risks to which that group may be particularly exposed (for example, sexually transmitted diseases, street violence). Please provide relevant disaggregated data, including on the number of suicides among children.

VI. BASIC HEALTH AND WELFARE

"B. Health and health services (art. 24)

Please indicate the measures adopted pursuant to articles 6 and 24:

To recognize and ensure the right of the child to the enjoyment of the highest attainable standard of health and to facilities for treatment and rehabilitation;

To ensure that no child is deprived of his or her right of access to such healthcare services;

To ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, and survival and development to the maximum extent possible."

(CRC/C/58, paras. 40-41, 93. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 64, 74, 76, 80, 101, 106, 115, 118, 120, 128, 132, 138, 143, 147, 152, 159, 161, 164, 166; for full text of *Guidelines*, see Appendix 3, page 674.)

General principle to be reflected in legislation

As with the other identified general principles (articles 2, 3, and 12), the Committee on the Rights of the Child has proposed that article 6 should be reflected in domestic legislation.

The inherent right to life of the child

The right to life is upheld as a universal human rights principle in article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of person”. Article 6 of the International Covenant on Civil and Political Rights upholds the same principle: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” (paragraph 1). The other paragraphs of the article in the Covenant place limitations on the use of the death penalty in those countries that have not abolished it (see below, page 99).

The Human Rights Committee, in a General Comment in 1982 on the right to life, upheld in article 6 of the International Covenant on Civil and Political Rights, notes that the right has too often been narrowly interpreted: “The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.” (Human Rights Committee, General Comment 6, 1982, HRI/GEN/1/Rev.5, p. 115)

According to the *Manual on Human Rights Reporting*, 1997, measures taken by States to implement article 6 of the Convention on the Rights of the Child may be “of a positive nature and thus designed to protect life, including by increasing life expectancy, diminishing infant and child mortality, combating diseases and rehabilitating health, providing adequate nutritious foods and clean drinking water. And they

may further aim at preventing deprivation of life, namely by prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance. States Parties should therefore refrain from any action that may intentionally take life away, as well as take steps to safeguard life.” (*Manual*, p. 424)

Article 24 of the Convention on the Rights of the Child expands on the child’s right to health and health services, and specifically requires “appropriate measures ... to diminish infant and child mortality” (article 24(2)(a), see page 352). The Committee has commended States for reducing mortality rates and has expressed concern whenever rates have risen and at situations in which rates vary in a discriminatory way (for Committee’s comments and full discussion, see article 24, page 352).

Definition of the child and the child’s right to life

As noted under article 1 (page 10), the Preamble to the Convention on the Rights of the Child recalls the provision in the United Nations Declaration of the Rights of the Child that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” The Working Group drafting the Convention agreed that a statement should be placed in the *travaux préparatoires* to the effect that “In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties” (E/CN.4/1989/48, pp. 8-15; Detrick, p. 110).

Article 1 deliberately leaves open the starting point of childhood, that is, whether it is conception, birth or sometime in between. Thus, the Convention leaves individual States to decide for themselves the conflicting rights and interests involved in issues such as abortion and family planning, and the Committee on the Rights of the Child has therefore suggested that reservations to preserve State laws on abortion are unnecessary (for details of reservations and discussion, see article 1, page 3).

The Committee has commented adversely on high rates of abortion and on the use of abortion





as a method of family planning, and it has encouraged measures to reduce the incidence of abortion:

"...The Committee also expresses its concern at the frequent recourse to abortion as what appears to be a method of family planning." (Russian Federation IRCO, Add.4, para. 12)

"The Committee considers that greater efforts should be made to provide family education; to develop awareness of the equal responsibilities of parents; to disseminate widely knowledge about modern methods of family planning and, thereby, to reduce the practice of abortion." (Romania IRCO, Add.16, para. 15)

"The Committee expresses its concern at the health status of children and the high number of abortions." (Belarus IRCO, Add.17, para. 9)

The Committee has also expressed concern at "clandestine" abortions and the negative effects of teenage pregnancies, including on the right to life of young mothers, and at selective abortions:

"...The Committee also recommends that the State Party undertake studies to determine the socio-cultural factors which lead to practices such as female infanticide and selective abortions, and to develop strategies to address them..." (India IRCO, Add.115, para. 49)

On the other hand, it has noted the illegality of abortions even in cases of rape or incest:

"... The Committee notes that abortion is illegal except on medical grounds and expresses concern regarding the best interests of child victims of rape and/or incest in this regard..."

"The Committee recommends that the State Party review its legislation concerning abortion, with a view to guaranteeing the best interests of child victims of rape and incest..." (Palau IRCO, Add.149, paras. 46 and 47)

The report on the follow-up to the Fourth World Conference on Women encourages governments to "consider reviewing laws containing punitive measures against women who have undergone illegal abortions" (A/RES/S-23/3, para. 72(o)).

Similarly, the Committee on the Elimination of Discrimination against Women, in a General Recommendation on women and health, states "...When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion." (Committee on the Elimination of Discrimination against Women, General Recommendation 24, 1999, HRI/GEN/1/Rev.5, p. 251)

Contentious ethical issues arise in relation to the right to life, which the Committee has not as yet tackled – for example the responsibility to sustain significantly disabled children at birth and to sustain the life of very premature babies. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities requires that "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society" (rule 2.3). The Rules emphasizes that States have an obligation "to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens", and to eliminate "any discriminatory provisions against persons with disabilities" (rule 15.1 and 15.2).

Relevant to the principle of non-discrimination and the right to life, some States have introduced laws on abortion that permit termination of pregnancy at a later stage, sometimes up to full term when tests have indicated that the foetus has a disabling impairment.

As medical technology advances, these issues of rights may become more complex and pose a greater number of ethical dilemmas and possible conflicts between the rights of the child and his or her mother.

In its recommendations adopted following the 1997 General Discussion on "The rights of children with disabilities", the Committee urges States to

"review and amend laws affecting disabled children which are not compatible with the principles and provisions of the Convention, for example legislation (i) which denies disabled children an equal right to life, survival and development (including – in those States which allow abortion – discriminatory laws on abortion affecting disabled children, and discriminatory access to health services)..." (Report on the sixteenth session, CRC/C/69, pp. 51 et seq. For full recommendations, see article 23, page 319)

Early marriage

An early age of marriage – in particular for girls – not only raises an issue of discrimination under article 2 but also threatens the rights of both the child-mother and the new child to life and to maximum survival and development under article 6 (for full discussion and Committee comments see article 1, page 10 and article 2, page 33).

The Platform for Action of the Fourth World Conference on Women, held in Beijing in 1995,

indicates that: “More than 15 million girls aged 15 to 19 give birth each year. Motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality...” (Platform for Action, A/CONF.177/20/Rev.1, para. 268). The Report on the follow-up to the Fourth World Conference provides detailed proposals for health education and health promotion for adolescents, including on avoiding “unwanted and early pregnancies” (A/RES/S-23/3, para. 79(f)).

The death penalty

Article 37(a) of the Convention on the Rights of the Child prohibits capital punishment “for offences committed by persons below eighteen years of age”. The Convention’s article 6 also asserts this by recognizing every child’s right to life and survival.

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

The Committee on the Rights of the Child has raised the issue with a number of States Parties and emphasized that it is not enough that the death penalty is not applied to children. Its prohibition regarding children must be confirmed in legislation (see article 37, page 547 for Committee’s comments and further discussion).

The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions has reported regularly on restrictions on the use of the death penalty, including its prohibition for juvenile offenders (see article 37, page 547).

Armed conflict

Article 38 of the Convention on the Rights of the Child (see page 563) requires special measures of care and protection for children affected by armed conflict. Armed conflict poses a threat to the right to life of many children and the Committee has frequently referred to this threat:

“The Committee is deeply concerned at the extensive violations of the right to life of children by, inter alia, armed conflict, deliberate killings by armed persons including

members of the armed forces, State regroupment policies, other forms of population displacement, poor health and sanitation facilities, severe malnutrition and related illnesses, and as a result of the prevailing conflict between groups of the population.

“The Committee strongly urges the State Party to make every effort to reinforce protection of the right to life, survival and development of all children within the State Party through policies, programmes and services that target and guarantee protection of this right. The Committee further urges the State Party to seek as much international assistance as possible in this regard.” (Burundi IRCO, Add.133, paras. 30 and 31)

“In the light of article 6 and other related provisions of the Convention, the Committee is deeply concerned at the threat posed by the armed conflict to children’s lives, including instances of extrajudicial killing, disappearance and torture committed by the police and paramilitary groups; at the multiple instances of “social cleansing” of street children; and at the persistent impunity of the perpetrators of such crimes.

“The Committee reiterates its recommendation [see CRC/C/15/Add.31] that the State Party continue taking effective measures to protect children from the negative effects of the armed conflict. The Committee urges the State Party to protect children against ‘social cleansing’ and to ensure that judicial action be taken against the perpetrators of such crimes.” (Colombia 2RCO, Add.137, paras. 34 and 35)

In the same context the Committee has expressed concern at recruitment to armed forces:

“In the light of the provisions and principles of the Convention, especially the principles of the best interests of the child (art. 3) and the right to life, survival and development (art. 6), the Committee is deeply concerned at the early legal minimum age of voluntary enlistment into the armed forces. It recommends that the State Party raise the legal minimum age of voluntary enlistment into the armed forces in the light of international human rights and humanitarian law.” (Iraq IRCO, Add.94, para. 15)

The Human Rights Committee, in a General Comment in 1982, notes that “The right to life enunciated in article 6 of the Covenant ... is the supreme right from which no derogation is permitted even in times of emergency.” The General Comment goes on to emphasize that averting the danger of war and strengthening international peace and security “would constitute the most important condition and guarantee





for the safeguarding of the right to life” (Human Rights Committee, General Comment 6, 1982, HRI/GEN/1/Rev.5, p. 115).

And in another General Comment in 1984 it emphasizes that “the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today ... The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.” (Human Rights Committee, General Comment 14, 1984, HRI/GEN/1/Rev.5, p. 127)

Homicide and other violence to children

The obligation under article 6 of the Convention on the Rights of the Child to preserve the life of children and to promote survival and maximum development is expanded upon in many other articles (article 19, protection from all forms of violence; article 37, protection from torture and cruel, inhuman or degrading treatment or punishment; article 38, protection of children affected by armed conflict, and others). In many countries, very young children are the most at risk of homicide (see infanticide below).

The Committee on the Rights of the Child has asserted the right to life, as well as other provisions, when expressing concern at violence to children by security forces, police and others. For example:

“... the Committee is deeply alarmed that the necessary safeguards against the excessive use of force by law enforcement officials or anyone else acting in this capacity are undermined by the provisions of section 73 of the Criminal Code. This may give rise to the violation of children’s rights, including their right to life, and leads to impunity for the perpetrators of such violations. Therefore, it is the view of the Committee that the above-mentioned provisions of the Nigerian Criminal Code are incompatible with the principles and provisions of the Convention.” (Nigeria IRCO, Add.61, para. 24)

“Disappearance” of children has caused concern in a number of countries. In 1992, 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 of 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 prevention of the abduction of children born during their mother’s enforced disappearance.

The Human Rights Committee, in a General Comment, also notes that States should take “specific and effective measures” to prevent the disappearance of individuals: “States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.” (Human Rights Committee, General Comment 6, 1982, HRI/GEN/1/Rev.5, p. 115)

The right to life of children who live and/or work on the streets may be particularly threatened:

“The Committee further recommends that firm measures be taken to ensure the right of survival of all children in Nepal, including those who live and/or work in the streets...” (Nepal IRCO, Add.57, para. 35. See also Colombia 2RCO, Add. 137, paras. 34 and 35)

Infanticide. In societies in which boys are valued economically and socially above girls, unequal population figures by gender indicate that infanticide may still be widespread. The Platform for Action adopted at the Fourth World Conference on Women states: “...in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into adulthood. In some areas of the world, men outnumber women by five in every 100.” Among the stated reasons for the discrepancy is preference for a son which results in prenatal sex selection and female infanticide. The Platform for Action proposes elimination of “all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices such as prenatal sex selection and female infanticide; this is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses... Enact and enforce legislation protecting girls from all forms of violence, including female infanticide and prenatal sex selection...” (Fourth World Conference on Women, Beijing, China, September 1995, Platform for Action, paras. 259, 277(c) and 283(d)).

The 1986 report of the Working Group on Traditional Practices Affecting the Health of Women

and Children identifies “son preference” as one priority concern, defined as “the preference of parents for male children which often manifests itself in neglect, deprivation or discriminatory treatment of girls to the detriment of their mental and physical health”. The Working Group found the practice prevalent in many parts of the world. The report states that “abnormal sex ratios in infant and young child mortality rates, in nutritional status indicators and even population sex ratios show that discriminatory practices are widespread and have serious repercussions”. When linked to neglect and discrimination towards female children, “it leads to serious health consequences which account for between 500,000 to one million deaths among female children”. The Working Group notes that the availability of amniocentesis and other techniques which enable the sex of the foetus to be determined were leading to selective abortion on grounds of gender in some areas. Its report also notes that “excess female mortality in childhood is an indicator of serious external influences against the normal biological advantages with which nature has endowed the female. Male infants have an inherently greater vulnerability than female infants for many causes of death ... male mortality in childhood is greater than female mortality. The greater the proportion of deaths due to infection and malnutrition, the larger the expected difference becomes.” Thus the report emphasizes the importance of recording and analyzing infant and child mortality rates by sex (E/CN.4/1986/42, paras. 149, 150, 164).

In its discussions with representatives of China, a member of the Committee on the Rights of the Child noted: “China had passed important legislation to address the problem of gender discrimination, but the distorted gender ratio was alarming, and had to be seen against a background of late abortions, the abandonment of infants and possible infanticide...” (China SR.299, para. 18)

The Committee followed up the issue in its Concluding Observations:

“While noting the measures taken to confront the problems of discrimination on the grounds of gender and disability, the Committee remains concerned at the persistence of practices leading to cases of selective infanticide...”

“It is the Committee's view that family planning policy must be designed to avoid any threat to the life of children, particularly girls. The Committee recommends in this regard that clear guidance be given to the population and the personnel involved in the family-planning policy to ensure that the aims it

Reasons for unequal sex ratio in India

Girl children in India, especially in rural areas, remain deprived of adequate access to basic health care, nutrition and education, according to the Initial Report. “Inevitably, more girls than boys suffer from malnutrition and succumb to diseases. There were an estimated 7.8 million fewer girls than boys below the age of 14 in 1991, which yields a female to male ratio of 0.949. The adverse female to male ratio among children is attributable to the systematic deprivation and unequal treatment of girls vis à vis boys in several parts of the country. Female infanticide and selective abortion of the female foetus continue to be reported in various parts of India. However, these do not seem to have an implication for the sex ratio, for which factors like access to health care and nutrition are of greater consequence.”

The Report also noted that Parliament and certain states have come forward with the prohibition of sex determination tests with a view to curbing female foeticide.

(India IR, paras. 84 and 85)

promotes are in accordance with principles and provisions of the Convention, including those of its article 24. The State Party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.” (China IRCO, Add.56, paras. 15 and 36)

The Committee has noted the possible existence of infanticide in a number of countries:

“The Committee is concerned by the reported increase in child abuse, including infanticide, domestic violence and child prostitution ...” (Mauritius IRCO, Add.64, para. 18)

“While the Committee notes the efforts of the State Party, it remains concerned that infanticide continues to be practised, particularly in rural communities and on infants with disabilities. The Committee recommends that the State Party seek to fully implement article 6 of the Convention and take measures, including those of a legal nature, to prevent and discourage infanticide and protect infants and guarantee their right to life, survival and development. In this regard, the Committee further recommends the introduction of education and awareness-





raising programmes to change societal attitudes.” (Benin IRCO, Add.106, para. 16)

It also expressed concern to the Central African Republic concerning the right to life of children born in the breech position:

“The Committee recommends that the State Party review the impact of traditional attitudes which may be harmful for children, such as attitudes with regard to children born in the breech position, and that the right to life be guaranteed...” (Central African Republic IRCO, Add.138, para. 33)

Many legal systems recognize the particular crime of infanticide as a distinctly defined form of homicide with reduced penalties. The ostensible intention is to provide a special defence for mothers suffering psychological trauma as a result of the process of birth. But by denoting a special, and lesser, crime, such laws appear to discriminate against children as victims of homicide.

In addition to girls, disabled children are particularly at risk of infanticide in some countries, as noted by the Committee in recommendations adopted following its General Discussion on “The rights of children with disabilities” in 1997 (see article 23, page 322).

Honour killings. The Committee has expressed serious concern at “honour killings”. For example:

“The Committee is seriously concerned that respect for the inherent right to life of a person under 18 is not guaranteed under the law, particularly in light of article 220 of the Penal Law, which provides that a man who kills his own child or his son’s child is subject only to discretionary punishment and the payment of blood money.

“The Committee recommends that the State Party take all necessary measures to ensure that there is no discriminatory treatment for such crimes and ensure prompt and thorough investigation and prosecutions.” (Islamic Republic of Iran IRCO, Add.123, paras. 27 and 28)

“Noting efforts to support amendments to penal law provisions which discriminate against women, the Committee nevertheless is seriously concerned that respect for the inherent right to life of a person under 18 is not guaranteed under the law, particularly in light of articles 340 and 98 of the Penal Code (No. 16/1960), which condone crimes perpetrated in the name of honour. The Committee is concerned that there is often reluctance on behalf of the police to arrest perpetrators, and that they receive lenient or token punishments.

“In line with Commission on Human Rights resolutions 2000/31 and 2000/45, the

recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3) and those of CEDAW, the Committee recommends that the State party take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour and that they are promptly and thoroughly investigated and prosecuted. In addition, the Committee recommends to the State Party to undertake awareness-raising activities demonstrating that such practices are socially and morally unacceptable, and to take steps that ensure that protective custody is replaced by other types of protection for women.” (Jordan 2RCO, Add.125, paras. 35 and 36)

Suicide. In its examination of Initial Reports by States Parties, the Committee has been concerned to find high, and in some cases increasing, rates of suicide among children in some countries.

In several cases, the Committee has proposed studies on the causes and on the effective methods of prevention:

“The Committee suggests that the State Party continue to give priority to studying the possible causes of youth suicide and the characteristics of those who appear to be most at risk and take steps as soon as practicable to put in place additional support and intervention programmes, be it in the field of mental health, education, employment or another field, which could reduce this tragic phenomenon. In this regard, the State Party may want to call on Governments and experts in other countries which also may have experience in dealing with this problem.” (New Zealand IRCO, Add.71, para. 28)

“...the Committee encourages the State Party to continue its efforts in undertaking comprehensive studies on suicide among youth to enable authorities to improve their understanding of this phenomenon and take appropriate measures to reduce the suicide rate.” (Hungary IRCO, Add.87, paras. 21 and 36. See also Norway IRCO, Add.23, para. 17; Denmark IRCO, Add.33, para. 21; Canada IRCO, Add.37, para. 16; Sri Lanka IRCO, Add.40, para. 37; Finland IRCO, Add.53, para. 16; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 15; Bulgaria IRCO, Add.66, para. 29; Australia IRCO, Add.79, para. 18)

The *Guidelines for Periodic Reports* specifically asks for information on the rates and the prevention of suicide (para. 41). Statistics on suicide from those countries that collect them show wide variations between countries and very much higher suicide rates among young men than among young women (see table in *The Progress of Nations 1996*, UNICEF, 1996, p. 46).

But in India, the Committee expressed particular concern about adolescent suicides, especially among girls (India IRCO, Add.115, para. 50).

The Committee has also noted that suicide rates may vary between different groups within a society in a discriminatory way, which also requires study. For instance, suicide rates among certain of Canada's indigenous peoples are considerably higher than those of the overall population. Between 1986 and 1990, there was an average of 37 suicides for every 100,000 registered Indian youths aged 10-19, five times greater than the figure among non-Indians (Canada IR, para. 1400).

In discussions with the Committee, Canadian representatives indicated that a report by the Royal Commission on Aboriginal Peoples, entitled "Choosing Life", had suggested that reported figures for suicide among indigenous peoples did not necessarily reflect the true incidence. It further suggested that general figures concealed wide variations among individual Aboriginal communities (Canada SR.216, para. 69).

In its Concluding Observations on Canada, the Committee stated:

"... Research should be developed on the problems relating to the growing rate of infant mortality and suicide among children within aboriginal communities." (Canada IRCO, Add.37, para. 26)

Traffic accidents. Another common cause of preventable death, affecting children in particular, is traffic accidents:

"The Committee is concerned at the high incidence of traffic accidents which claim the lives of children.

"The Committee recommends to the State Party to strengthen and continue efforts to raise awareness about and undertake public information campaigns in relation to accident prevention." (Jordan 2RCO, Add.125, paras. 37 and 38)

Investigation and registration of death

In its *Guidelines for Periodic Reports*, the Committee acknowledges the importance of adequate investigation of and reporting on the deaths of all children and the causes of death, as well as the registration of deaths and their causes. Establishing a procedure for investigating all child deaths reduces the possibility of a cover-up of the real causes. In addition, it is acknowledged that because of religious and social attitudes, suicide tends to be underreported in many States. In States that have set up systematic procedures for investigating all child deaths, the experience tends to reveal many more deaths in which some form of violence or neglect is implicated. Ad-

equate investigation also informs preventive strategies, for example support for parents, education and accident prevention. The Committee recommended that the Federated States of Micronesia:

"take all appropriate measures to improve birth registration in the light of article 7, as well as death registration". (Federated States of Micronesia IRCO, Add.86, para. 31)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty emphasizes the importance of an independent inquiry into the cause of death of any juvenile in detention. In some States, there has been disturbing evidence of violence to and between inmates, as well as high suicide rates. The Rules requires that "Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention." (rule 57)

"...ensure to the maximum extent possible the survival and development of the child"

In its second paragraph, article 6 of the Convention on the Rights of the Child goes beyond the fundamental right to life to promote survival and development "to the maximum extent possible". The concept of "development" is not just about the preparation of the child for adulthood. It is about providing optimal conditions for childhood, for the child's life now.

The Committee on the Rights of the Child has emphasized that it sees child development as an holistic concept, embracing the whole Convention. In the *Guidelines for Periodic Reports*, it asks States to describe measures taken "to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society" (para. 40).





The focus of development

“The Convention on the Rights of the Child represents a new paradigm that has to overcome serious constraints if its execution is to be viable. The spirit of the Convention and the Children’s Code is still remote from daily life, but it has given us a reminder that children’s issues should no longer be viewed as matters for public welfare or charity, but as channels of development.” (Ecuador IR, introduction)

“Unless the life of the child in the family and community improves, all development efforts would be meaningless. There is, therefore, a need to raise awareness and create an ethos of respect for the rights of the child in society to meet his/her basic developmental needs. Advocacy and social mobilization are two crucial processes which are being emphasized to achieve this end. Our aim is thus to empower the younger generation to assert their basic rights. With India’s ratification of the Convention on the Rights of the Child, the right approach to child development is gradually gaining importance and will henceforth form the basis of the Government’s strategy towards child development.” (India IR, para. 319)

Many of the obligations of the Convention, including in particular those related to health, adequate standard of living, education, and leisure and play (articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child, and individual articles expand on the concept of “development”. For instance, under article 27, States Parties recognize “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. Among the aims of education set out in article 29 is “...The development of the child’s personality, talents and mental and physical abilities to their fullest potential...” and preparation of the child for “responsible life in a free society”.

The Convention provisions protecting the child from violence and exploitation (in particular articles 19 and 32-39) are as vital to maximum survival and development as those on the provision of services are. Research now testifies to the potentially serious short- and long-term effects on development of all forms of violence, including sexual abuse and exploitation.

The Convention’s Preamble upholds the family as the “natural environment for the growth and well-being of all its members and particularly

children” and recognizes that the child, “for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”. Article 5 requires respect for the “evolving capacities of the child” – a key concept of overall development. Article 18 recognizes that parents or legal guardians have the “primary responsibility” for the upbringing and development of the child and requires the State to provide appropriate assistance and under article 20, special protection for those deprived of a family environment. Article 25 requires periodic review of all children placed for care, protection or treatment – an important safeguard for their maximum development. And in relation to disabled children, article 23 requires assistance to be provided “in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”.

The Committee expects implementation of all other articles to be carried out with a view to achieving the maximum survival and development of the child – a concept clearly integral to the best interests of the child.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 6, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 6 is relevant to **all departments affecting children directly or indirectly**)?
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 6 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 6 likely to include **all those working with or for children and their families, and education for parenting**)?

● Specific issues in implementing article 6

- ☐ Is the general principle reflected in article 6 included in the State's legislation?
- ☐ Have appropriate measures been introduced to reduce rates of infant and child mortality for all sectors of the population?
- ☐ Have the rates of infant and child mortality consistently decreased over recent years, including disaggregated rates?
- ☐ Is the rate of abortion recorded and reported, including by age?
- ☐ Where abortion is permitted, is its use appropriately regulated?
- ☐ Where abortion is permitted, has the State ensured there is no discriminatory variation in the term at which it is permitted, (e.g., dependent on identification of disability)?

How to use the checklists, see page XVII



Is the State satisfied that there is no infanticide, in particular of

- ☐ girls?
- ☐ disabled children?
- ☐ Is the rate of child pregnancies recorded and reported?
- ☐ Have appropriate measures been undertaken to reduce the number of child pregnancies?
- ☐ Has the State ensured there are no circumstances in which the death penalty may be applied to children?
- ☐ Are there appropriate arrangements to ensure the registration of, investigation of and reporting on the deaths of all children and their causes?
- ☐ Are homicide rates analyzed by the age of the victim in order to identify the proportion of children of different age groups who are murdered?
- ☐ If the crime of infanticide exists in the legislation of the State has it been reviewed in the light of the Convention's principles?
- ☐ Are suicides by children recorded and reported and the rates analyzed by age?
- ☐ Have appropriate measures been taken to reduce and prevent suicide by children?
- ☐ Have appropriate measures been taken to reduce and prevent accidents to children, including traffic accidents?

Reminder: The Convention is indivisible and its articles are interdependent. **Article 6 – the child's right to life and to maximum survival and development – has been identified by the Committee as a general principle of relevance to implementation of the whole Convention.**

Particular regard should be paid to: Other 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 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles

Articles whose implementation is related to that of article 6 include:

Article 37(a): prohibition of capital punishment

Articles particularly related to the child's right to maximum development include articles 18, 24, 27, 28, 29 and 31

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



Text of Article 7

1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Article 7 provides for the registration of children and for children's rights to a name and a nationality and to know and be cared for by their parents.

The article reflects the text of article 24(2) and (3) of the International Covenant on Civil and Political Rights: "24(2) Every child shall be registered immediately after birth and shall have a name. (3) Every child has the right to acquire a nationality". The Human Rights Committee General Comment on article 24 of the Covenant notes: "In the Committee's opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality."

(Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133)

As the *Manual on Human Rights Reporting*, 1997, notes, article 7 of the Convention on the Rights of the Child also contains a "new right" – the right of the child to know and be cared for by his or her parents (*Manual*, p. 430). The right is qualified by the words "as far as possible". It may not be possible to identify parents, and even when they are known, it may not be in the child's best interests to be cared for by them.

Article 7 should be read in conjunction with article 8 (preservation of identity, including nationality, name and family relations), article 9 (separation from parents), article 10 (family reunification) and article 20 (continuity in upbringing of children deprived of their family environment). ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674 .

Guidelines for Initial Reports

“Civil rights and freedoms

States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Name and nationality (art. 7);...”

(CRC/C/5, para. 15; see also paras. 20, 22 and 24)

Guidelines for Periodic Reports

“IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality (art. 7)

Please indicate the measures taken or envisaged to ensure that every child is registered immediately after birth. Please also indicate the steps undertaken to prevent the non-registration of children immediately after birth, including in view of possible social or cultural obstacles, inter alia, in rural or remote areas, in relation to nomadic groups, displaced persons, as well as asylum-seeking and refugee children.

Please provide information on the measures taken to sensitize and mobilize public opinion on the need for birth registration of children, and to provide adequate training to registry personnel.

Please also provide information on the elements of the child's identity included in the birth registration and the measures adopted to prevent any kind of stigmatization or discrimination of the child.

Please indicate the measures adopted to ensure the child's right to know and be cared for by his or her parents.

Please provide information on the measures adopted pursuant to article 7, paragraph 2, to ensure the child's right to acquire a nationality, in particular where the child would otherwise be stateless. Reference should also be made to the implementation of this right in relation to children born out of wedlock, and asylum-seeking and refugee children. Please indicate the criteria applied for the acquisition of nationality and whether the child is allowed to acquire the nationality of both parents.”

(CRC/C/58, paras. 49-53. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24 and 83; for full text of *Guidelines*, see Appendix 3, page 674.)

The child's right to be “registered immediately after birth”

The importance of universal registration

The registration of all children is important for a number of reasons identified by the Committee:

First, registration is the State's first official acknowledgement of the child's existence; it

represents a recognition of each child's individual importance to the State and of the child's status under the law. Where children are not registered, they are likely to be less visible, and sometimes less valued, citizens.

The Committee has expressed concern about those countries that fail to ensure universal registration:

“...Such a situation implies the non-recognition of these children as persons before

the law, which will affect the level of enjoyment of their fundamental rights and freedoms.” (Madagascar IRCO, Add.26, para. 10)

“The Committee is concerned at the difficulties in ensuring the registration of children after birth, as well as at the problems faced by children who have not been registered in the enjoyment of their fundamental rights and freedoms.” (Philippines IRCO, Add.29, para. 11)

“... the Committee expresses its concern that birth registration is not compulsory...”

“The Committee recommends that the State Party review its domestic legislation... with a view to making birth registration compulsory for all children, without any type of discrimination... and to ensure that all children who were not registered at birth are registered. In addition the Committee recommends that the State Party conduct awareness-raising campaigns to encourage the registration of all children at birth. The Committee encourages the State Party to consider seeking international cooperation from UNICEF and other international organizations to this end.” (Cambodia IRCO, Add.128, paras. 29 and 30)

In particular, failure to register may discriminate against certain groups, such as those in remote areas:

“The Committee notes that the State party has enacted legislation to guarantee registration at birth ... but is concerned that many children are still not registered, particularly those living in nomadic and hill tribe communities. In the light of article 7 of the Convention, the Committee recommends that the State party increase its efforts to raise awareness among government officers, community leaders and parents to ensure that all children are registered at birth. The Committee also encourages the State party to adopt measures to regularize the situation of hill tribe children and provide them with documentation to guarantee their rights and facilitate their access to basic health, education and other services.” (Thailand IRCO, Add.97, para. 20)

“... the Committee is concerned that many parents in rural areas, particularly internal migrants, fail to register their children owing to a lack of knowledge that it is necessary, lack of access to registration facilities, lack of documentation, and inability to pay registration fees...” (Kyrgyzstan IRCO, Add.127, para. 29. See also Nepal IRCO, Add.57, para. 16; Paraguay IRCO, Add.75, para. 38; Algeria IRCO, Add.76, para. 36; Belize IRCO, Add.99, para. 18; Central African Republic IRCO, Add.138, paras. 36 and 37)

A birth certificate is required for:*

	Immunization	Health care	School enrolment	Marriage
Algeria	No	No	Yes	Yes
Argentina	No	No	Yes	Yes ¹
Bangladesh	No	No	No	No
Brazil	No	No	Yes	Yes
China	No	No	Yes ²	Yes ²
Colombia	Yes	Yes	Yes	Yes
Congo, Dem. Rep.	No	No	Yes	No
Egypt	Yes	No	Yes	No
Ethiopia ³	-	-	-	-
India	No	No	Yes	No
Indonesia	No	No	Yes	Yes
Iran, Islamic Rep. of	No	No	Yes	Yes
Iraq	Yes	No	No	No
Kenya	Yes	No	Yes	No
Mexico	Yes	Yes	Yes	Yes
Morocco	No	No	Yes	Yes
Myanmar	Yes	No	Yes	No
Nepal	No	No	No	No
Nigeria	No	No	Yes	-
Pakistan	No	No	Yes	No
Peru	No	No	Yes	Yes
Philippines	No	No	Yes	Yes
Russian Fed.	Yes	Yes	Yes	No
South Africa	No	Yes	Yes	Yes
Sudan	No	No	Yes	No
Tanzania	No	No	Yes	No
Thailand ⁴	Yes	Yes	Yes	Yes
Turkey	No	No	Yes	Yes
Uganda	No	No	Yes	No
Ukraine	Yes	Yes	Yes	No
Uzbekistan	Yes	Yes	Yes	No
Viet Nam	No	No	Yes	No
TOTAL	10	7	28	14

* Among countries with 75% of the world's under-18 population.

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

² An identification card is required but a residence card may suffice.

³ No registration system.

⁴ A house registration card is needed for most services and a birth certificate is needed to obtain a house registration card. A child may attend school but cannot receive a graduation certificate without a registration card.

Source: *The Progress of Nations* 1998, UNICEF, 1998.



Or the children of refugees and other ethnic minority groups:

“The Committee is concerned that, in spite of relevant legislation and an increasing number of births in hospitals, there are still children in the State Party who are not registered at birth and is further concerned at the fact that a large proportion of unregistered births are of Roma children.

“...the Committee urges the State Party to make every effort to enforce birth registration and to facilitate the registration process with regard to the children of parents, or other responsible persons, who may have particular



difficulties in providing the necessary documentation.” (The Former Yugoslav Republic of Macedonia IRCO, Add.118, paras. 21 and 22)

“The Committee...is concerned in particular about the difficulties experienced in registering the birth of refugee children outside of the refugee camps and about the limited type of birth registration available in the camps.” (Djibouti IRCO, Add.131, para. 31. See also Ethiopia IRCO, Add.67, para. 29; Peru 2RCO, Add.120, para. 19; Burundi IRCO, Add.133, para. 37; Colombia 2RCO, Add.137, para. 37)

Or those born out of wedlock:

“The Committee is concerned about the continuing difficulties encountered in ensuring birth registration, particularly of children born out of wedlock...” (Sri Lanka IRCO, Add.40, para. 14)

“...In the light of articles 7 and 8 of the Convention, the Committee recommends that the State Party undertake legislative reform with a view to ensuring that fathers are also made responsible for the registration of their children and that children born out of wedlock are guaranteed their right to preservation of identity, name and family relations...” (Belize IRCO, Add.99, para. 18)

Second, birth registration is an essential element of national planning for children – providing the demographic base on which effective strategies can be built. Without registration, for example, it is unlikely that countries can have an accurate knowledge even of their child mortality rates, a key indicator for child survival strategies (see also the importance of child death registration, article 6, page 103). While the costs of securing universal registration may be high, particularly in countries with dispersed rural populations, the benefits are substantial, not least in relation to efficient use of resources.

As the Committee has commented, registration is necessary:

“..to facilitate the effective monitoring of the situation of children and thus assist in the development of suitably appropriate and targeted programmes”. (Nicaragua IRCO, Add.36, para. 16)

“The Committee suggests that special efforts be developed to ensure an effective system of birth registration, in the light of article 7, to ensure the enjoyment of the fundamental rights of the Convention by all children without discrimination and as a meaningful tool to assess prevailing difficulties and to promote progress.” (Senegal IRCO, Add.44, para. 22)

“The Committee recommends that special efforts be developed to guarantee an effective system of birth registration, in the

light of article 7 of the Convention, to ensure the full enjoyment of their fundamental rights by all children. Such a system would serve as a tool in the collection of statistical data, in the assessment of prevailing difficulties and in the promotion of progress in the implementation of the Convention...” (Ethiopia IRCO, Add.67, para. 29)

Third, registration is a means of securing children’s other rights – such as their identification following war, abandonment or abduction, enabling children to know their parentage (particularly if born out of wedlock), gaining them access to services and state benefits such as immunization, health care and school enrolment (see box, page 109), and protection through legal age limits (for example in employment, recruitment to the armed services or in the juvenile justice system) and reducing the danger of trafficking in babies or of infanticide. India reported that, in order to increase the rate of birth registration, the production of birth certificates is compulsory for school admission and for ration cards. At its most extreme, non-registration may threaten the physical survival of the child. For example, at the time of Peru’s Initial Report, the Committee expressed concern that:

“...due to the internal violence, several registration centres have been destroyed, adversely affecting the situation of thousands of children who are often left without any identity document, thus running the risk of their being suspected of involvement in terrorist activities.” (Peru IRCO, Add.8, para. 8)

and in Yemen:

“... the Committee wishes to call the attention of the State Party to the serious implications of the absence of a birth certificate, which can result in the sentencing of a child to the death penalty or preclude his or her access to health services.” (Yemen 2RCO, Add.102, para. 20)

The Human Rights Committee General Comment notes: “The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States Parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, pp. 133 and 134)

The committee has reflected this concern:

“Serious concerns remain as to the effectiveness of measures taken to ensure the registration

of all children, through the household registry. As acknowledged by the State Party, absence of registration may be due to parents' lack of knowledge of the relevant law and policy and of the negative effects of non-registration on children's legal status. The migration of people from their traditional place of residence may cause similar difficulties. Deficiencies in the registration system lead to children being deprived of basic safeguards for the promotion and protection of their rights, including in the areas of child trafficking, abduction, sale and maltreatment, abuse or neglect...

"...The Committee, while noting that the State Party has adopted measures to reduce the under-reporting of girl children, recommends that urgent measures be taken to develop more widespread awareness of the importance of registration. In the light of recent developments such as population movements within the country, the Committee also recommends that the State Party consider the possibility of reviewing the effectiveness of the existing system of registration." (China IRCO, Add.56, paras. 16 and 37)

"... the Committee recommends that an adequate system of registration of refugee children be established to ensure their rights are protected." (Ethiopia IRCO, Add.67, para. 29)

When and how children should be registered

According to the Convention, the child should be registered "immediately after birth" which implies a defined period of days rather than months. However, if for any reason children are not registered or if their records have been lost, then the omission should be made good by the State.

Universal registration first requires that domestic law makes registration a compulsory duty both of parents and of the relevant administrative authorities. Universal plainly means all children born within the State, irrespective of their nationality. The Committee was therefore critical of the Dominican Republic:

"...In particular, concern is expressed about the situation of children of Haitian origin or belonging to Haitian migrant families whose right to birth registration has been denied in the State party. As a result of this policy, those children have not been able to enjoy fully their rights, such as to access to health care and education." (Dominican Republic IRCO, Add.150, para. 26)

It may be necessary to impose sanctions. For example Colombia was asked by a member of the Committee what its sanctions were in cases of non-registration or late registration and how registration was secured, particularly in rural

Examples of early and late registration

An office or a representative of the Civil Register is found in every Costa Rican hospital, so that within a few hours of a hospital birth (over 96 per cent of Costa Rican births are in hospital) the mother is visited and the necessary data taken. Since 1988, an official health booklet has been drawn up on each child. It includes, among other information, the child's fingerprints. This process has made it possible to identify several abandoned babies (Costa Rica IR, paras. 106-7).

Colombia has initiated a register for abandoned children and those caught up in the justice system: "Information was provided on their social background, where possible, as well as the details of any administrative or judicial action. There was also a photograph of each child, which was especially useful in identifying and tracing younger children who were often not certain of their origins." The register has been computerized so that the network of around 300 family welfare centres across Colombia has access to it. (Colombia SR.189, para. 25)



areas and for families displaced by violence (Colombia SR.114, para. 19). Other persons may also be placed under legal duties to declare births – for example professionals attending the birth or the owners of a house (or captains of ships) in which a birth takes place.

Second, the commitment of resources is needed.

The Committee has criticized what it has described as "inaccessible, cumbersome and expensive" registration procedures (Lesotho IRCO, Add.147, para. 29) and encourages flexible methods of registration, for example:

"The Committee encourages the State Party to adopt all appropriate measures to ensure the birth registration of all children, including those born in rural areas and on commercial farms, and encourages the efforts designed to establish registration units at schools and clinics." (Zimbabwe IRCO, Add.55, para. 27)

"Children's birth registration should be given priority to ensure that every child is recognized as a person and enjoys his/her full rights. The Committee encourages further steps to ensure the birth registration of children, including the establishment of mobile registration offices and registration units in schools."



(Nepal IRCO, Add.57, para. 31. See also Nicaragua IRCO, Add.36, para. 16; Mongolia IRCO, Add.48, para. 22; India IRCO, Add.115, para. 36; South Africa IRCO, Add.122, para. 20; Suriname IRCO, Add.130, para. 32; Tajikistan IRCO, Add.136, para. 27; Marshall Islands IRCO, Add.139, para. 33; Comoros, Add. 141, para. 28; Ethiopia 2RCO, Add.144, para. 35)

The *Manual on Human Rights Reporting*, 1997, notes: “Birth registration should be ensured by States Parties to every child under their jurisdiction, including to non-nationals, asylum seekers, refugee and stateless children...In some situations, however, practical difficulties may be encountered in the registration of children. States Parties’ reports have shown that this is often the case in relation to children born from nomadic groups, in rural or remote areas where birth registration offices may be lacking and access to them may, in view of their distance, pose additional problems to the children’s families. Similar problems may arise in situations of emergency, including armed conflicts. In such circumstances, States have to adopt solutions which, being designed to ensure the implementation of this right, are also appropriate to the specific particularities of such situations. In this regard, the establishment of mobile registration offices has often shown to be an effective option.” (*Manual*, p. 430)

What details should be registered?

Although the Convention does not specify what must be registered, other rights (to name and nationality, to know parentage, family and identity) imply that registration ought, as a minimum, to include:

- the child’s name at birth,
- the child’s sex,
- the child’s date of birth,
- where the child was born,
- the parents’ names and addresses,
- the parents’ nationality status.

For example, the Committee raised the need for systematic registration with Sierra Leone:

“The Committee is concerned that the absence of systematic birth registration in the State party, thereby preventing an accurate statement of the identity or age of a child, can make it very difficult for the protection afforded to children by domestic legislation or by the Convention to be enforced. The Committee is also concerned at the arbitrary manner, in the absence of birth registration records, in which age and identity are frequently established.

“In the light of article 7 of the Convention, the Committee recommends that the State party establish as quickly as is possible a practice of systematic birth registration for all

children born within the national territory. The Committee further urges the State party to proceed with the registration of those children who have not thus far been registered.” (Sierra Leone IRCO, Add.116, paras. 42 and 43)

Other information – for example the parents’ occupations, the child’s siblings or his or her ethnic status – may also be useful for statistical purposes, although care must be taken that this does not invade privacy or lead to discriminatory practices. Honduras, for example, was encouraged by the Committee to regulate birth registration, and on its Second Report to the Committee described various initiatives to secure full registration (including a ‘grace period’ for the parents of not yet registered children) and its concern that registration should include useful but non-discriminatory information. The question of parents’ marriage status is therefore not included, but the names of the baby’s grandparents and the baby’s size and birth weight are required (Honduras IR, para. 43; Honduras IRCO, Add.24, para.12; Honduras 2R, pp. 80-84).

The registration of the baby’s parents may prove problematic. It is hard to find reasons, so far as the child is concerned, why the baby’s mother should not be registered, although such an omission is permitted in France, to the expressed concern of the Committee (see below, page 117).

The matter of naming the father is more complicated. The State is likely to have an interest in both parents being registered so that they can subsequently be required to maintain the child. For example, the Committee raised the matter with Ireland:

“The Committee is concerned about the disadvantaged situation of children born of unmarried parents due to the lack of appropriate procedures to name the father in the birth registration of the child...

“The Committee recommends that the State Party take appropriate measures to establish, as far as possible, procedures for the inclusion of the name of the father on the birth certificates of children born of unmarried parents...” (Ireland IRCO, Add.85, paras. 17 and 36)

However, given that birth registers tend to be public documents, the child’s right to privacy may be jeopardized, for example in a case where the father has an incestuous relationship with the mother. Belgium reported that it allowed registration of the single filiation from the mother in such circumstances (Belgium IR, para. 124). Under the Convention the child does have a principled right to know this information, but it need not be contained in data found in the public

domain. The *Guidelines for Periodic Reports* asks about “the measures adopted to prevent any kind of stigmatization or discrimination of the child” (para. 51).

The child’s right “from birth to a name”

The article specifically provides that the right to a name should be “from birth”. The Committee noted that there should be no delay:

“The Committee... is concerned that some children are still not registered at birth and are not given a name until their baptism, which could be three or four months after their birth... the Committee recommends that the State Party undertake all necessary measures, including awareness raising among government officers, community and religious leaders, and parents themselves, to ensure that all children are registered and are given a name at birth.” (Grenada IRCO, Add.121, para. 16)

States should therefore ensure that abandoned babies and children are always provided with a name; any temptation to use numbers should be resisted – for example in circumstances of mass movement of refugees which include many unaccompanied children.

The Convention does not suggest that children have a right to any particular sort of name. However, a significant number of countries not only make arrangements for children’s names to be registered but also prescribe what names are used. For example, article 18 of the American Convention on Human Rights (1969) states: “Every person has the right to a given name and to the surname of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.”

The intention of such a provision appears relatively uncontroversial and protective of certain categories of children – as the Human Rights Committee General Comment observes “providing for the right to have a name is of special importance in the case of children born out of wedlock” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133). However in some circumstances prescriptive laws on names may conflict with the non-discrimination rights under article 2 or with the right to peacefully enjoy minority cultural practices under article 30, for example in cases where minority groups have different naming traditions that do not involve using parental surnames.

In this regard the Committee informed Iceland: *“... the Committee welcomes the legal change abolishing the requirement that a person seeking Icelandic citizenship has to add an Icelandic name to his or her original name.” (Iceland IRCO, Add.50, para. 11)*

Moreover, where countries go further and enforce a law that the child must, or in some cases must not, bear the father’s name, article 3 (concerning the best interests of the child) may have a bearing. For example, Belgium maintains an extremely complicated set of laws relating to the naming of children born in and out of wedlock, including children born of adulterous relationships where the father’s name can only be used with the agreement of the woman who was his lawful wife at the time of the conception. Belgium acknowledged the latter rules have been problematic, since they are as much about the “moral interests of the conjugal family” as about the best interests of the child (Belgium IR, para. 123).

The Committee raised the issue with Uruguay: *“In this regard, the Committee is particularly concerned at the persisting discrimination against children born out of wedlock, including in regard to the enjoyment of their civil rights. It notes that the procedure for the determination of their name paves the way for their stigmatization and the impossibility of having access to their origins...” (Uruguay IRCO, Add.62, para. 11)*

It would be dangerous to assume that any international or domestic law asserting children’s right to their parents’ name necessarily represents a provision “more conducive to the realization of the rights of the child” under article 41 of the Convention on the Rights of the Child. Countries should also carefully examine any laws on names for inadvertent breach of articles 2 and 3.

The provisions of article 5 (parental guidance and the child’s evolving capacities), article 12 (respect for the child’s opinion) and article 19 (protection from harm) should also be considered in relation to naming. The right to a name from birth is unavoidably a matter for adult caregivers or the State; babies can play no part in choosing their names. However, provision should be made so that children can apply to the appropriate authorities to change their name at a later date. Children’s names can also be changed following the remarriage of parents or adoption. In such circumstances, children’s rights to identity are also involved (see article 8, page 124).

The Committee took up the point in relation to Yugoslavia:





"The Committee takes note that the principle of respect for the views of the child has been reflected in such situations as the change of name ..." (Federal Republic of Yugoslavia IRCO, Add.49, para. 31)

Although parents are the persons most likely to decide the child's name, consistency with the Convention should not allow this to be an absolute parental right. Domestic laws should have appropriate mechanisms to prevent registration of a name that might make a child an object of ridicule.

The child's right to "acquire a nationality", with particular reference to the State's "obligations under the relevant international instruments, in particular where the child would otherwise be stateless"

Some States confer limited forms of nationality to certain groups of children, for example the children of parents who are not themselves citizens. This appears to be a form of discrimination. The "right to acquire a nationality" implies a right to all the benefits derived from nationality.

This point was taken up by the Committee with a number of countries, for example:

"...It is also seriously concerned by the fact that the Citizenship Act establishes three different categories of citizenship and therefore some categories of children and their parents might be stigmatized and/or denied certain rights.

"In the field of the right to citizenship, the Committee is of the view that the State Party should, in the light of articles 2 (non-discrimination) and 3 (best interests of the child), abolish the categorization of citizens..." (Myanmar IRCO, Add.69, paras. 14 and 34)

"The Committee is concerned at violations of the right to a nationality for children whose birth has not been registered or for children born in the State Party and whose parents are not nationals of the State Party. The Committee joins the State Party in noting that while children can acquire nationality from age 12, parents who are non-nationals have much greater difficulty in acquiring nationality.

"The Committee recommends that the State Party examine concerns relating to the access of children to a nationality and make every effort to improve respect for this right. The Committee also recommends that the State Party give attention to the situation of children whose parents are unable to claim the State Party's nationality." (Central African Republic IRCO, 138, paras. 38 and 39. See also

Cambodia IRCO, Add.128, paras. 31 and 32, and Latvia IRCO, Add.142, paras. 23 and 24)

The issue of children's nationality is particularly difficult, given the sensitivity of all nations about sovereignty and citizenship, differing legal and religious presumptions on how nationality should be acquired and the ever-increasing anxiety of richer nations to exclude, or to deny citizenship to, poor people from other nations. The drafting of this article and articles 9 (separation from parents) and 10 (family reunification) picks a careful way between these anxieties and the recognition that children should have a right to nationality. Article 7(2) thus provides that: "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Nonetheless, a number of reservations or interpretative declarations have been entered to article 7 – by Andorra, Kuwait, Liechtenstein, Malaysia, Monaco, Oman, Singapore, Switzerland, Thailand, Tunisia, United Arab Emirates and the United Kingdom. These countries indicate that their Constitutions or domestic laws relating to nationality may define or restrict the scope of article 7. For example, Kuwait stated: "The State of Kuwait understands the concept of article 7 to signify the right of the child who was born in Kuwait and whose parents are unknown (parentless) to be granted Kuwaiti nationality as stipulated by the Kuwaiti Nationality Laws" (CRC/C/2/Rev.8, p. 27), though in fact stateless children may not necessarily be parentless. The Committee expressed concern about Kuwait's nationality laws:

"The Committee is... concerned that in the light of the State Party's legislation regarding citizenship, nationality may only be obtained by a child from his/her Kuwaiti father. The Committee recommends that domestic legislation be amended to guarantee that the acquisition of Kuwaiti nationality be determined in the light of the provisions and principles of the Convention, especially articles 2,3 and 7." (Kuwait IRCO, Add.96, para. 20)

The wording "right to acquire a nationality" is taken directly from the International Covenant on Civil and Political Rights (article 24(3)). The General Comment by the Human Rights Committee already quoted states: "Special attention should also be paid, in the context of the protection to be granted to the children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and

the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States Parties.” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 134)

The words in article 7(2): “States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless” refer primarily to the Convention on Reduction of Statelessness (1961), which provides that children should acquire the nationality of the State in which they were born if they are not granted nationality by any other State, or if such children fail to make the proper applications to obtain this right, then they should be entitled to the nationality of one of their parents (subject to certain conditions). Originally it was proposed that the first provision be incorporated into the Convention but difficulties with some national laws made this unacceptable (E/CN.4/L.1542, pp. 6-7; Detrick, pp. 125-129). Article 7(2) represents a compromise between the two positions and is a clear pointer to the provisions of article 41: “Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in ... (b) International law in force for that State.”

The Committee on the Rights of the Child has raised concerns about stateless children:

“The Committee is concerned that ... there are still disparities in practice, in particular with regard to...the acquisition of Jordanian nationality. In this last respect, the Committee is concerned that in the light of Jordanian legislation, cases of statelessness might arise...” (Jordan IRCO, Add.21, para. 11)

This concern was revived in the Committee’s concluding observations on Jordan’s Second Report, and also in relation to the Syrian Arab Republic:

“... In light of the Committee’s previous recommendations ... the Committee remains concerned that restrictions on the right of a Jordanian woman to pass on her nationality to her child, particularly where she is married to a refugee, may result in the child becoming stateless.” (Jordan 2RCO, Add.125, para. 29)

“The situation of refugee and Syrian-born Kurdish children is a matter of concern to the Committee in the light of article 7 of the Convention. In this regard, the Committee notes the absence of facilities for the registration of refugee children born in Syria, and that Syrian-born, Kurdish children are considered either as foreigners or as maktoumeen (unregistered) by the Syrian authorities and face great administrative and practical difficulties to acquire Syrian nationality, although they have no other nationality at birth.

“...the Committee underlines that the right to be registered and to acquire a nationality shall be guaranteed to all children within the Syrian Arab Republic’s jurisdiction without discrimination of any kind, irrespective, in particular, of the children’s or his or her parents’ or legal guardians’ race, religion or ethnic origin, in line with article 2 of the Convention...” (Syrian Arab Republic IRCO, Add.70, paras. 15 and 27)

And specific mention has been made by the Committee of the conventions on stateless persons:

“The Committee recommends that the State Party take further measures in accordance with article 7, paragraph 2, of the Convention, including measures to facilitate applications for citizenship, so as to resolve the situation of stateless children, especially those placed in institutions. The Committee also suggests that the State Party consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.” (Czech Republic IRCO, Add.81, para. 33. See also Federal Republic of Yugoslavia IRCO, Add. 49, paras. 14 and 32; Burundi IRCO, Add.133, para. 35; Lithuania IRCO, Add.146, paras. 23 and 24)

Nationality can be acquired either from parents (*jus sanguinis*) or from place of birth (*jus soli*). Islamic law favours nationality taken from parentage; some countries prohibit dual nationality, so a choice between nationalities may have to be made for children, and some countries have systems that accommodate both parentage and place of birth, sometimes with discriminatory effects. Another potentially discriminatory practice is when the child automatically takes the nationality of the father rather than the mother.





The United Kingdom and Lebanon, for example, were among those criticized by the Committee:

"...the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention ... [the Committee] is concerned about the possible adverse effects on children of the restrictions applied to unmarried fathers in transmitting citizenship to their children, in contradiction of the provisions of articles 7 and 8 of the Convention..." (United Kingdom IRCO, Add.34, paras. 7 and 12)

"The Committee is concerned with the apparent discrimination in the granting of nationality to a child of parents of mixed nationality; nationality may only be obtained by a child from her/his Lebanese father but not from the mother and, in the case of unmarried parents, only if the Lebanese father acknowledges the child." (Lebanon IRCO, Add.54, para. 15. See also Iraq IRCO, Add.94, para. 76; Egypt 2RCO, Add.143, paras. 29 and 30)

The words "the right to acquire a nationality" can be interpreted as being the right "from birth", (Principle 3 of the Declaration of the Rights of the Child (1959) states simply "The child shall be entitled from his birth to a name and a nationality"), but in any event must mean that stateless children should have the right to acquire the nationality of the country in which they have lived for a specified period. The latter provision is important given the growing numbers of stateless, often parentless, children who receive adequate protection from the country in which they live throughout their childhood but then discover that they are unlawful residents at the time of their majority.

This matter was raised with Belgium:

"The Committee is...particularly concerned that unaccompanied minors who have had their asylum request rejected, but who can remain in the country until they are 18 years old, may be deprived of an identity and denied the full enjoyment of their rights ..." (Belgium IRCO, Add.38, para. 9)

Decisions about nationality are often made by parents at the time of the child's birth. Older children, however, should be able to apply on their own behalf to change their nationality.

"as far as possible, the right to know... his or her parents"

Meaning of "parent"

A few decades ago the definition of "parent" was fairly straightforward. There were the "biological" parents, sometimes known as the

"natural" or "birth" parents, and there might also be "psychological" or "caring" parents, such as adoptive or foster parents, who acted as the child's primary caregiver throughout his or her infancy.

When article 7 was drafted, it was pointed out that the laws of some countries – for example, the former German Democratic Republic, the United States of America and the former Union of Soviet Socialist Republics – upheld "secret" adoptions whereby adopted children did not have the right to know the identity of their biological parents (E/CN.4/1989, pp. 18-22; Detrick, p. 127). However nowadays the term "biological" parent may have a more complex meaning. For example, where egg donation is concerned, the "parent" could be either the genetic parent (the donor of the egg) or the birth mother.

Countries have entered declarations and reservations in relation to this right: "The United Kingdom interprets the references in the Convention to 'parents' to mean only those persons who, as a matter of national law, are treated as parents. This includes cases where the law regards a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent." (CRC/C/2/Rev.8, p. 42. Also upheld for the Hong Kong Special Administrative Region by the People's Republic of China (CRC/C/2/Rev.8, p. 17).)

"In cases of irrevocable adoptions, which are based on the principle of anonymity of such adoptions, and of artificial fertilization, where the physician charged with the operation is required to ensure that the husband and wife, on the one hand, and the donor, on the other, remain unknown to each other, the non-communication of a natural parent's name or natural parents' names to the child is not in contradiction with this provision." (Czech Republic, CRC/C/2/Rev.8, p. 20)

"The Government of Luxembourg believes that article 7 of the Convention presents no obstacle to the legal process in respect of anonymous births, which is deemed to be in the interest of the child, as provided under article 3 of the Convention." (CRC/C/2/Rev.8, p. 28)

"With respect to article 7 of the Convention, the Republic of Poland stipulates that the right of an adopted child to know its natural parents shall be subject to the limitations imposed by binding legal arrangements that enable adoptive parents to maintain the confidentiality of the child's origin." (CRC/C/2/Rev.8, p. 35)

Notwithstanding these reactions, a reasonable assumption is that, as far as the child's right to know his or her parents is concerned, the definition of "parents" includes genetic parents (for medical reasons alone this knowledge is of increasing importance to the child) and birth parents, that is the mother who gave birth and the father who claimed paternity through partnership with the mother at the time of birth (or whatever the social definition of father is within the culture: the point being that such social definitions are important to children in terms of their identity). Moreover, a third category, the child's psychological parents – those who cared for the child for significant periods during infancy and childhood – should also logically be included since these persons too are intimately bound up in children's identity and thus their rights under article 8 (see page 123). Certainly the Committee has expressed dismay at Luxembourg's concept of an 'anonymous' birth:

"The Committee expresses its concern that the rights enumerated in article 7.1 of the Convention, especially the right of the child to know his or her parents, are denied by the State Party to children born anonymously ('under x'), even if this right is proven to be in their best interests.

"In order to protect fully the rights of children born anonymously ('under x'), the Committee recommends that the State Party take all appropriate measures to ensure that the provisions of article 7, especially the right of the child to know his or her parents, be fully enforced in the light of the principles of 'non-discrimination' (art. 2) and the 'best interests of the child' (art. 3)." (Luxembourg IRCO, Add.92, paras. 11 and 29)

Meaning of "as far as possible"

It is necessary to distinguish among situations: First, when a parent **cannot** be identified (for example, when the mother does not know who the father is or when the child has been abandoned). States Parties can do little about this, although legislation under article 2 must ensure that such children are not discriminated against. Second, when mothers **refuse** to identify fathers (including extreme circumstances, for example in cases of incest or when the father has raped the mother). While mothers could, arguably, be legally required to name the father, it would be difficult to enforce this and conflict could be raised between the mother's rights and the child's rights.

The Committee did however express concern about the situation in France:

"Regarding the right of the child to know his or her origins, including in cases of a mother

requesting that her identity remain secret during the birth and declaration of the birth, adoption and medically-assisted procreation, the Committee is concerned that the legislative measures being taken by the State Party might not fully reflect the provisions of the Convention, particularly its general principles." (France IRCO, Add.20, para. 14)

Third, when the State decides that a parent **should not** be identified. For example:

- where adoption law limits the child's entitlement and access to information to know who his or her genetic parents are;
- where the law requires a falsification of paternity on the birth certificate, for example in relation to a child whose father is not the mother's current husband or, as in the case of Uruguay, where the Committee deplored the fact that as regards children born out of wedlock:
"...when born to a mother or father who is a minor, these children cannot be recognized by that parent." (Uruguay IRCO, Add.62, para. 11)
- with anonymous egg/sperm donation for *in vitro* fertilization, where most countries protect the secrecy of the donor.

The third category includes the most controversial aspects of the interpretation of "as far as possible", appearing to unnecessarily breach children's right to know their genetic parents.

Some States Parties argue that "secret" adoptions (where the child is not entitled to discover his or her genetic parents) are necessary to secure the success of an adoption. However, other countries have pursued policies of open adoptions that have not adversely affected the outcome for the child.

The United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally provides that "The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care unless this is contrary to the child's best interests" (article 9).

Three points should be noted. First, article 7 does not refer to "the best interests of the child," although this was proposed by some delegates in the drafting sessions (E/CN.4/1989/48, pp. 18-22; Detrick, p. 129). The words "as far as possible" appear to provide a much stricter and less subjective qualification than "best interests". The words imply children are entitled to know their parentage if this is possible, even if this is deemed to be against their best interests. But the





holistic nature of the Convention suggests that a child who would definitely be harmed by the discovery of his or her parent's identity could be prevented from having this information. This interpretation is supported by the fact that "as far as possible" also covers the child's right to be cared for by his or her parents – and no one could maintain that "as far as possible" in that context does not include consideration of the child's best interests. But it is clear that children's right to know their parentage could only be refused on the grounds of best interests in the most extreme and unambiguous circumstances.

Second, "best interests" is nowhere defined and there are no easy answers as to whether it is more harmful to children's best interests to give them distressing information about their origins or to refuse them this information on the grounds the information might cause them harm.

Third, the Convention's articles 5 (evolving capacities of the child) and 12 (child's opinion) suggest that the determination of what is or is not in the child's best interests so far as knowledge of origins is concerned may not be made just at one point during the child's life. The best interests of a six-year-old in relation to this issue may be quite different from the best interests of a 16-year-old. This is not to say that adopted children are obliged to contact or even to be told the details of their genetic parents (although it appears to be the accepted practice in most countries that children should know the circumstances of their birth from as early an age as possible. In the Netherlands, for example, "it is standard practice for the child to be informed about its natural parents. The adoption court checks that this has been done" (Netherlands IR, para. 76). Many children choose not to trace their genetic parents, since the significant parents in their lives are likely to be those who have cared for them and raised them. Nonetheless under the terms of article 7, the State should ensure that information about genetic parents is preserved to be made available to children if possible.

A stronger argument mounted by those countries that maintain secrecy is not about the rights of the child (or of the adopting couple) but about protecting the child's mother from extreme forms of social condemnation (such as ostracism, injury or death). In such instances there are competing rights: children's rights to know their origins and mothers' rights to confidentiality and protection. Article 30 of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993) (see article 21, page 300) upholds mothers' rights, empowering the State of origin of the child to

withhold information about the parents' identity. Those countries that maintain adoption secrecy in order to protect the mother should, nonetheless, have provisions to release information to the child, either with the mother's permission or at a time when she will not suffer harm. The Committee has not accepted arguments in favour of actively falsifying the records of adopted children:

"...While the Committee notes the State Party's concerns regarding adoptions and the need to keep the identity of genetic parents confidential, it is deeply concerned that the law on adoption provides that the date and place of birth of an adopted child may be changed at the request of the adoptive parents... "With reference to articles 3 and 7 of the Convention the Committee recommends that the State Party consider amending its legislation to ensure that information about the date and place of birth of adopted children and their genetic parents are preserved and, where possible, made available to these children upon request and when in their best interests." (Georgia IRCO, Add.124, paras. 38 and 39. See also Kyrgyzstan IRCO, Add.127, paras. 37 and 38; Tajikistan IRCO, Add.136, paras. 26 and 27)

Similar arguments prevail over falsifying parentage in cases of adultery. Some countries require that husbands are the lawfully recognized fathers of any children born within that marriage. In many cases this entails the complicity of the mother and is likely to be rather more to the benefit than to the disadvantage of the child. However, there is a difference between individuals lying and States enforcing a lie. In some circumstances both parents will want the true parentage of a child to be declared and may be prevented by the law from doing so.

Regarding the secrecy of egg and sperm donation, two arguments are commonly made. First, that it is not in the best interests of the child to know of his or her artificial conception. This does not seem convincing, however, particularly when advances in medical knowledge reveal how important it is for people to know their genetic parentage. Second, it is argued that unless their anonymity is secured donors will be deterred, fearing future embarrassment or even maintenance suits by their biological children. However, legislation can protect a donor parent from maintenance suits and the experience of Sweden and Austria (see box opposite) suggests that donors are not deterred by the possibility of being identified. In any event, the law on artificial forms of fertilization, as with adoption, should be framed to protect the rights and

well-being of children, not to meet the needs of childless couples. The Committee has commented:

“Concerning the right of the child to know his or her origins, the Committee notes the possible contradiction between this provision of the Convention with the policy of the State Party in relation to artificial insemination, namely in keeping the identity of sperm donors secret.” (Norway IRCO, Add.23, para. 10. See also Denmark IRCO, Add.33, para. 11)

“...as far as possible, the right to ... be cared for by his or her parents”

This right must be read in the context of three other articles – article 5, which acknowledges, alongside the primacy of parents, “the members of the extended family or community as provided for by local custom” (see page 87); article 9, which requires that “a child shall not be separated from his or her parents against their will, except when... such separation is necessary for the best interests of the child” (see page 133) and article 18, which endorses the principle that both parents have joint responsibility for caring for their children, appropriately supported by the State (see page 247). Article 27 (requiring States to assist parents in their material responsibilities in relation to caring for children) is also relevant.

The right to be “cared for” by both parents implies a more active involvement in the child’s life than simply paying the other parent or the State money to support the child (see article 27(4)). It should be noted that unlike article 5, which refers to the (albeit limited) rights of parents and others, this article is framed in terms of the child’s right, not the parents’. (At one stage the drafting of this article included the proposed formulation “The child shall have the right from his birth to know and belong to his parents”, but the words “belong to” were considered inappropriate in a convention on children’s rights (E/CN.4/1989/48, pp. 18-22; Detrick, p. 127).

This focus on the child’s right must cast doubt on the legitimacy of Luxembourg’s official declaration that it would maintain its law which says: “If at the time of conception, the father or mother was bound in marriage to another person, the natural child may be raised in the conjugal home only with the consent of the spouse of his parent.” (CRC/C/2/Rev.8, p. 28)

As with children’s right to know their parents, the right to be cared for by parents is qualified by the words “as far as possible”. The purpose of this proviso is in one sense self-evident. It may not be possible if the parents are dead or have

Swedish and Austrian children’s rights to know parents

Swedish legislation, as outlined in the Initial Report, contains some of the strongest provisions for enabling children to know their parentage:

“Concerning the right of the child to know who its parents are, mention can be made of the following rules:

(a) If the mother’s spouse is not the child’s father and paternity cannot be established through confirmation by any man, special provisions of the Code of Parenthood and Guardianship make it the duty of the municipal social welfare committee to try to ascertain who is the child’s father. In cases of this kind, it is usually necessary for paternity proceedings to be filed with a court of law.

(b) Under the Insemination Act, a child conceived through artificial insemination is entitled to obtain particulars concerning the donor, providing the child is sufficiently mature. The decision to be made on this point, however, is governed by the child’s best interests”. (Sweden IR, para. 61)

Austrian law provides that children from the age of 14 have a right to inspect information about their sperm-donor father from records which must be kept by the hospital. (Austria IR, para. 149)

repudiated the child. It also may not be possible when the State authorities have judged that parental care is not in the child’s best interests because the parents are abusive or neglectful (see article 9, page 133). However, the onus is on the State to prove this; the right upholds a general principle running through the Convention – that in ordinary circumstances, children are best off with their parents.

The point at which this right becomes most problematic is perhaps when children themselves decide that they would rather not be cared for by parents, although parents and State do not support this. Among the many thousands of homeless children in all countries are those who fall into this category – children who have, in effect, voted with their feet. States need flexible, child-centred procedures where runaway children are concerned. Any automatic return of such children to parents without investigation of the reasons why they ran away and without provision of alternative measures of care, for example, is in conflict with the provisions and principles of the Convention.



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 7, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 7 is relevant to the **departments of justice, home affairs, social welfare and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 7 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 7 likely to include the **training of birth registration officers, social workers, adoption agency staff and medical personnel**)?

● Specific issues in implementing article 7

- ☐ Does domestic law require parents to register children immediately after their birth?
- ☐ Is the duty to register well publicized?
- ☐ Is registration free?
- ☐ Is registration made easy for parents, both in terms of access (for example by providing mobile registration units or using schools) and comprehensibility (for example by use of minority languages or by training registration staff)?
- ☐ Are all children born within the jurisdiction registered, including those born of non-citizens?

How to use the checklists, *see page XVII*



- ☐ Where parents fail to register children, is there a duty on the State to secure registration?
- Does registration include necessary information for the child to claim his or her rights to:
 - ☐ a name?
 - ☐ a nationality?
 - ☐ knowledge of parentage?
- ☐ Are arrangements in place to secure the confidentiality of any potentially stigmatizing information on the birth register?
- ☐ Does domestic law provide for the naming of all children from birth?
- ☐ Does this law ensure that no children are discriminated against (for example by laws unrelated to the best interests of children, requiring or prohibiting certain forms of naming)?
- ☐ Are children of appropriate maturity able to apply to change their names?
- ☐ Are the courts empowered to veto a name that is against the best interests of the child (for example one which could render the child an object of fear or ridicule)?
- ☐ Does domestic law ensure that all stateless children living within the jurisdiction have a right to acquire the State's nationality?
- ☐ Has the State ratified The Convention on Reduction of Statelessness (1961)?
- ☐ Has the State ensured that there is no discrimination between forms of nationality?
- ☐ Has the State ensured that there is no discrimination in the acquisition of nationality (for example in relation to children born out of wedlock or to rights to acquire the nationality of either parent)?
- ☐ Are children able to apply to change their nationality?
- ☐ Does domestic law and administrative practice ensure that the identities of children's parents (including genetic parents, birth mother and caring parents) are accurately recorded and preserved?
- ☐ Do children have the right to know from the earliest date possible the truth about the particular circumstances of their parenting (for example by adoption or by an artificial form of conception)?
- ☐ Do all children, including adopted children and children conceived by artificial forms of conception, have the right to know, as far as possible, who their genetic parents are?
- ☐ Is refusal of this right limited only to the grounds that refusal of information is necessary to protect the child from a likelihood of harm or is necessary to protect the child's parent from a likelihood of harm?
- ☐ When children are refused the right to know parentage, are they able to reapply at a later date?

How to use the checklists, *see page XVII*



- ☐ Do domestic laws contain a presumption that children should be cared for by their parents?
 - ☐ Is this law framed as the child's right?
- ☐ Where children do not wish to be cared for by parents, is provision made to investigate the reasons why they do not and to provide alternative measures of care while arrangements for their future are being determined?

Reminder: The Convention is indivisible and its articles are interdependent. Article 7 should not be considered in isolation.

Particular regard should be paid to: The 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 article 7 include:

Article 5: parental guidance and child's evolving capacities

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary for best interests

Article 10: international family reunification

Article 11: protection from illicit transfer and non-return of children abroad

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

Article 18: parents having joint responsibility

Article 20: children deprived of their family environment

Article 21: adoption

Article 22: refugee children

Article 30: children of minorities or indigenous peoples

Article 35: prevention of sale, trafficking and abduction

Preservation of identity



Text of Article 8

- 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
- 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.*

Article 8 of the Convention on the Rights of the Child concerns the children's rights to identity and their rights to have such identity preserved or, where necessary, re-established by the State.

The article was introduced in the Working Group drafting the Convention by the Argentinean delegate on the grounds that it was necessary to secure the speedy intervention of the State when the child's right to preserve his or her identity had been violated. Argentina was at the time tackling the disappearance of children and babies, which had occurred under the regime of the Argentinean junta during the 1970s and 1980s. While many such children were killed, a number had been adopted by childless couples; active steps were needed to trace these children

and establish their true identity (E/CN.4/1986/39, pp. 8-10; Detrick, pp. 292-294). The United Nations General Assembly subsequently adopted a Declaration on the Protection of All Persons from Enforced Disappearance in 1992 (resolution 47/133).

Although article 8 only describes three aspects of identity – nationality, name and family relations – other articles, such as article 2 (non-discrimination), article 16 (protection from arbitrary interference in privacy, family and home) and article 30 (right to enjoy culture, religion and language), should render unlawful most forms of interference in children's identity. Article 20 also provides that children deprived of their family environment should where possible have continuity of upbringing, particularly with regard to their ethnic, cultural and linguistic background. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...(b) Preservation of identity (art. 8).”

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

“IV. CIVIL RIGHTS AND FREEDOMS

B. Preservation of identity (art. 8)

Please indicate the measures adopted to preserve the child's identity and to prevent any unlawful interference. In the case of the illegal deprivation of some or all of the elements of the child's identity, reports should also indicate the measures adopted to provide appropriate assistance and protection to the child and ensure the speedy re-establishment of his or her identity.”

(CRC/C/58, para. 54. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 83, 160 and 165; for full text of *Guidelines*, see Appendix 3, page 674.)

Child's right “to preserve his or her identity including nationality, name and family relations as recognized by law without unlawful interference”

The three elements of identity particularly specified are nationality, name and family relations (as recognized by law):

Nationality

Because of religious doctrine and political interests, the rights of children to nationality are not strong under the Convention. The link between nationality and identity is therefore important. A child's “national identity” may be derived from the nationality of his or her parents, suggesting that legislation that prevents children from inheriting the nationality of their parents might not be compatible with the Convention – for example those States that prohibit dual nationality or those States that do not recognize the right of children to inherit the nationality of their unmarried father. On the other hand, the concept of the child's “national identity” can involve identity

acquired through residence as well as through birth or parentage, which renders equally questionable legislation that does not allow children to acquire full nationality from significant periods of residence, and those States that, by deporting parents, prevent children from enjoying their national identity acquired from place of birth or residence. Once a child has acquired citizenship, removal of this may amount to an assault on his or her ‘identity’:

“The Committee is concerned that in some instances, children can be deprived of their citizenship in situations where one of their parents loses his/her citizenship.

“...The Committee... recommends that no child be deprived of his/her citizenship on any ground, regardless of the status of his/her parent(s).”
(Australia IRCO, Add.79, paras. 14 and 30)

These issues, and the Committee's comments, are discussed under articles 7 (see page 144) and 9 (see page 136).

Name

Some States prohibit children's names being changed by their parents (for example on divorce

and remarriage), although this tends to be more due to respect for fathers' rights than for children's. It should be noted that most adoption law authorizes a change of name (although some States require consent for any name change by older children, such as the Federal Republic of Yugoslavia (Federal Republic of Yugoslavia IR, para. 48)). This issue is also discussed under article 7 (see page 113).

Family relations

The phrase "family relations as recognized by law" is unclear. It emerged from a less than logical series of amendments in the drafting process. The original version from Argentina was "the child has the inalienable right to retain his true and genuine personal, legal and family identity". Some States protested that "family identity" had no meaning in their legal codes, and they proposed a change to "family identity as recognized by law"; others simultaneously proposed changing "family identity" to "family relations". Both changes were accepted, although, in fact, it seems that "as recognized by law" is inappropriate, because Argentina's original point was that identity includes more than just legal forms of identity (E/CN.4/1986/39, pp. 8-10; Detrick, p. 294).

The phrase does however recognize an important principle, which is that a child's identity means more than just knowing who one's parents are (see article 7, page 16). Siblings, grandparents and other relatives can be as, or more, important to the child's sense of identity as his or her parents are. Most domestic legal instruments governing, for example, adoption, fostering or divorce arrangements, fail to recognize this fact – children are given legal rights to discover who their biological parents are, or to make applications for contact with them, but rarely do those rights extend to cover other members of the child's biological family.

The concept of "children's identity" has tended to focus on the child's immediate family, but it is increasingly recognized that children have a remarkable capacity to embrace multiple relationships, speak several languages fluently and enjoy a complex, multicultural world. From the secure foundation of an established family environment, children can enjoy complex and subtle relationships with other adults and with a range of cultures, to a much larger degree than may be recognized. Thus children's best interests and senses of identity may be sustained without having to deny them knowledge of their origins, for example after reception into State care, through "secret" adoptions or anonymous

egg/sperm donations and so forth (see also article 7, page 117).

Children who live in a different country from that of one or both of their parents are not able to preserve their identity, in terms of family relations. Those countries that maintain long waiting lists for immigrant or emigrant children to be granted permission to join their parents should ensure that such cases are dealt with speedily and with a presumption in favour of the child being allowed to join their parents (see articles 9, 10 and 22).

Additional Protocol I to the Geneva Conventions provides for the preservation of the identity of children who have been displaced or evacuated in time of war. The authorities must provide each child with a card to be sent to the Red Cross Central Tracing Committee. The card should include a photograph and details of the child's name, sex, date and place of birth, name of parents and next-of-kin, the child's nationality, native language, religion, home and present addresses, any identifying marks and health details and details of where the child was found and how he or she left the country (Geneva Conventions, Additional Protocol I, article 78(3)).

Name, nationality and family are only some elements of identity. Other aspects of identity include:

- the child's personal history since birth – where he or she lived, who looked after him or her, why crucial decisions were taken, etc.
- the child's race, culture, religion and language. An "unlawful" interference in this aspect of identity could include:
 - the suppression of minority languages in the education system, state information and the media;
 - State persecution or proscription of the practice of a religion;
 - failure to give adopted, fostered or institutionally placed children the opportunity to enjoy their ethnic, cultural, linguistic or religious heritage.

The preservation of these aspects of identity is also upheld in article 20, which provides that when children are without families "due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (see page 288) and article 30, which upholds the right of children of minority and indigenous communities to enjoy and practice their culture, religion and language (see page 407).

- children's physical appearance, abilities and inclinations (including gender and sexual orientation).





"Preserve"

The word implies both the non-interference in identity and the maintenance of records relating to genealogy, birth registration and details relating to early infancy that the child could not be expected to remember. Some of these are beyond the scope of the State, but measures should be taken to enforce detailed record-keeping and preservation of records (or, in the case of abandoned children, preservation of identifying items) where children are refugees, abandoned, fostered, adopted or taken into the care of the State. Equal care must be taken to ensure such records are confidential – see article 16, page 218.

In that regard the Committee raised concerns with Ukraine:

"The Committee is worried by the high rate of abandonment of children, especially new-born babies, and the lack of a comprehensive strategy to assist vulnerable families. This situation can lead to illegal intercountry adoption or other forms of trafficking and sale of children. In this context the Committee is also concerned about the absence of any law prohibiting the sale and trafficking of children, and the fact that the right of the child to have his/her identity preserved is not guaranteed by the law." (Ukraine IRCO, Add.42, para. 11)

And with Peru, at the time of its Initial Report:

"The Committee is concerned that, due to the internal violence, several registration centres have been destroyed, adversely affecting the situation of thousands of children who are often left without any identity document, thus running the risk of their being suspected of involvement in terrorist activities..."
"Special measures should be undertaken to provide undocumented children fleeing zones affected by internal violence with adequate identity documents." (Peru IRCO, Add.8, paras. 8 and 17)

Principle 16 of the United Nations High Commissioner for Human Rights 1998 *Guiding Principles on Internal Displacement* (see page 308) provides that: "All internally displaced persons have the right to know the fate and whereabouts of missing relatives" and "The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform next of kin on the progress of the investigation and notify them of any result." Principle 20(2) states that "... the authorities concerned shall issue to [internally displaced persons] all documents necessary for the enjoyment of their legal rights, such as pass-

ports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents."

A right to preservation of identity suggests that the law should place penalties on those who breach it. This certainly is the recommendation of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance: "The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such." (article 20)

"Without unlawful interference"

This suggests that the child's right to preservation of identity can be lawfully violated – a suggestion questioned by some countries when the Convention was being drafted (E/CN.4/1989/48, pp. 55-56; Detrick, pp. 295-296). Certainly when the State itself is guilty of the violation, the provision could appear to be too weak since the State prescribes the laws. However it should be assumed that the provision includes international law, including the Convention on the Rights of the Child.

The right of a child who has been "illegally deprived of some or all of the elements of his or her identity" to be provided by the State with "appropriate assistance and protection with a view to speedily re-establishing his or her identity"

This right means that the State must recognize the seriousness to children of any deprivation of their identity by dedicating resources to remedy the situation.

"Appropriate assistance"

This could include:

- making available genetic profiling to establish parentage;
- actively tracing relatives or community members of unaccompanied refugee children;

- using the media to advertise missing children and to reunite families;
- ratifying the Hague Convention on the Civil Aspects of International Child Abduction, and generally ensuring that any child-custody cases where an illegal abduction has been alleged (including those relating to international disputes) are expeditiously dealt with at an appropriately senior level in the judiciary, that is, within days or weeks rather than months (see article 11, page 154);
- ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and securing that domestic adoption procedures ensure that proper consents have been obtained and that the child's birth identity is officially recorded before an adoption takes place (see article 21, page 299);
- ensuring that any changes to a child's identity, such as name, nationality, parental rights of custody, etc., are officially recorded;
- enabling children to have access to the professional files maintained on them (see article 16, page 218);
- ensuring that children in State care are encouraged to practice their religion, culture and language of origin;
- amending nationality laws to allow for a "best interests of children" consideration in issues relating to deportation or family reunification, and speeding up nationality and asylum procedures.

The *Manual on Human Rights Reporting*, 1997, advises that appropriate assistance can include "legislative measures, including in the civil and penal areas – for instance to annul any adoption based on an irregular situation, such as the child's abduction, or to penalize such possible offences... the establishment of mechanisms to re-establish the child's identity, such as a national data bank where changes made in the elements of the identity of children (including the name, nationality and family relations) may be kept

and, when appropriate, acceded to." (*Manual*, pp. 432 and 433)

In times of war, speedy efforts to reunite parents and children are particularly important. The Committee observed to Sierra Leone:

"The Committee is deeply concerned at the large numbers of children who have been deprived of a family environment through the death of, or separation from, their parents or other family, and at reports of the difficulties and slow progress in tracing separated families and children ...

"The Committee urges the State Party to make every effort to strengthen family tracing programmes and also to plan for the effective provision of alternative care for separated children, with particular focus on unaccompanied children living in the streets of main towns..." (Sierra Leone IRCO, Add.116, paras. 50 and 51)

"Protection"

This includes securing appropriate temporary placement for children while their identity is re-established. It should also involve explaining to the children what is happening and why – ignorance and uncertainty can unnecessarily add to children's insecurity and lack of well-being.

"Speedily re-establishing his or her identity"

The article emphasizes the importance of speed to the child. The "identity" of children is not just a matter of parentage and culture of origin. As children grow they assume the identity of the family or culture in which they live, to a point at which it would be a second deprivation of identity to remove them, and unacceptable in terms of the child's best interests. This is a particularly bitter fact for parents who have been illegally separated from their children, whether they were separated by the State or through abduction by individuals. (It should be noted that Argentina originally proposed the words "In particular, this obligation of the State includes restoring the child to his blood-relations to be brought up", but this proposal did not find acceptance (E/CN.4/1986/39, pp. 8-10; Detrick, pp. 292-294).)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 8, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 8 is relevant to **the departments of justice, home affairs, foreign affairs, public communication and the media, social welfare and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 8 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising?

● Specific issues in implementing article 8

- ☐ Are children able to acquire the nationality of both parents?
- ☐ Are children able to acquire the nationality of the State in which they have lived for a significant period?
- ☐ Are they able to live with their parents in their State of nationality?
- ☐ Are questions of nationality and right to family reunification dealt with speedily?
- ☐ Are any changes of children's name overseen by a judicial process which gives paramount consideration to the best interests of the child?
- ☐ Are such changes fully recorded and the records accessible to the child?
- ☐ Are children able to know and associate with members of their family of origin, so far as this is compatible with their best interests?
- ☐ Are accurate records kept about the identity, and any changes to the identity, of all children?
- ☐ Can children apply to have access to these records?
- ☐ Where parentage is in doubt, are children able to have it established by genetic testing (free of charge if necessary)?

How to use the checklists, *see page XVII*



- ☐ Are other resources provided to trace missing children or missing family members (for example using tracing agencies or the media)?
- ☐ Has the State ratified the Hague Convention on the Civil Aspects of International Child Abduction and the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption?
- ☐ Are all cases dealt with expeditiously where illegal actions relating to children's identity and family relations are alleged to have occurred?
- ☐ Is unlawful interference with children's rights to preserve their identity an offence, subject to penalties?
- ☐ Do education, welfare and justice systems allow the child to enjoy his or her culture, religion and language of origin?
- ☐ Where children are in the care of the State, are accurate records kept about their family of origin and early childhood?
- ☐ Do such children have access to these records?
- ☐ Do placements of children by the State endeavour, where compatible with the child's best interests, to give continuity to the child's ethnic, religious, cultural and linguistic background?

Reminder: The Convention is indivisible and its articles interdependent. Article 8 should not be considered in isolation.

Particular regard should be paid to: The general principles:

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

Closely related articles

Articles whose implementation is related to that of article 8 include:

Article 7: birth registration, right to name and nationality and to know and be cared for by parents
Article 9: non-separation from parents except when necessary in best interests
Article 10: international family reunification
Article 11: protection from illicit transfer and non-return from abroad
Article 16: protection from arbitrary interference in privacy, family and home
Article 18: parents having joint responsibility
Article 20: children deprived of family environment
Article 21: adoption
Article 22: refugee children
Article 30: children of minorities or indigenous peoples
Article 35: prevention of sale, trafficking and abduction of children



Separation from parents



Text of Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 9 of the Convention on the Rights of the Child enshrines two essential principles of children's rights: first, that children should not be separated from their parents unless it is necessary for their best interests and, second, that all procedures to separate children from

parents on that ground must be fair. It also affirms children's rights to maintain relations and contact with both parents, and places a duty on the State to inform parent and child of the whereabouts of either if the State has caused their separation (for example by deportation or imprisonment).

Summary

The basic principles are enshrined in the 1959 Declaration of the Rights of the Child: “The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents...” (article 6).

The International Covenant on Civil and Political Rights provides “The family is the natural and fundamental group unit of society and is

entitled to protection by society and the State” (article 23(1), which is mirrored by article 10 of the International Covenant on Social, Economic and Cultural Rights) and: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks” (articles 17(1) and (2)). ■



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the “best interests of the child” and “respect for the views of the child” are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...(c) Separation from parents (art. 9);

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 16-18)

Guidelines for Periodic Reports

“V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

C. Separation from parents (art. 9)

Please indicate the measures adopted, including of a legislative and judicial nature, to ensure that the child is not separated from his or her parents except when such separation is necessary for the best interests of the child, as in cases of abuse or neglect of the child or when the parents live separately and a decision must be made as to the child’s place of residence. Please identify the competent authorities intervening in these decisions, the applicable law and procedure and the role of judicial review.

Please provide information on the measures taken pursuant to article 9, paragraph 2 to ensure to all interested parties, including the child, an opportunity to participate in any proceedings and to make their views known.

Please indicate the measure adopted, including of a legislative, judicial and administrative nature, to ensure that the child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, except if it is contrary to the best interests of the child. Please further indicate the extent to which the views of the child are taken into consideration in this regard.

Please indicate the measures adopted pursuant to article 9, paragraph 4 to ensure that in the case of the child's separation from one or both of his or her parents as a result of any action initiated by the State, essential information on the whereabouts of the absent member(s) of the family is provided, upon request, to the child, to the parents or, if appropriate, to another member of the family, unless the provision of the information would be detrimental to the well-being of the child. Also indicate the measures undertaken to ensure that the submission of such a request entails no adverse consequences for the person(s) concerned.

Relevant disaggregated information (for example, by age, gender and national, ethnic and social origin) should be provided inter alia in relation to situations of detention, imprisonment, exile, deportation or death, together with an assessment of progress achieved in the implementation of article 9, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 68-72. Paragraph 24 of the *Guidelines for Periodic Reports* is also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)



The child's right "not to be separated from parents against their will, except when judged ... necessary for the child's best interests"

The words "against their will" refers either to the parents' will or to the parents' and child's will together; the grammar makes clear that it does not mean the child's will alone. And, in one sense, the right of children to parental care is inevitably subject to the "will" of parents. Infants have no power or ability to choose their caregivers. They are dependent on their family, community and the State to make that choice for them. Moreover, even if young children were in a position to "choose" their parents, they could not force them to act as parents against their will. The State can seek to force parents to financially maintain their children, but it cannot compel parents to care for them appropriately.

Although States cannot be responsible for separation from parents which is caused by divorce, the Committee has suggested that research and awareness-campaigns on the effect of divorce on children should be supported, as well as counselling for parents:

"The Committee is concerned at the high rate of divorce – considered among the highest in the world – in the State Party and its possible negative impact on children. The Committee is also concerned at the lack of research and studies on the harmful consequences on children of divorces and early marriages as well as the insufficient measures to create public awareness on the detrimental effects of divorce.

"...The Committee... recommends that the State Party undertake research and studies on the negative impact of family disruption on children as well as to continue with its

awareness-raising on this issue. Furthermore, the Committee recommends to the State Party to improve counselling services for parents."
(Maldives IRCO, Add.91, paras. 17 and 37)

The article gives two examples of when it may be necessary to separate children from one or both parents: first, when the parents have abused or neglected the child and, second, when parents live apart. A third example was suggested by the United States representative during the drafting of the Convention: "where there is a disagreement between parent(s) and child as to the child's place of residence" (E/1982/12/Add.1, C, pp. 49-55; Detrick, p. 168). This suggestion was dropped on the grounds that an exhaustive list of reasons should not be attempted. The two examples are simply illustrations of cases when separation from parents may occur.

However, the third example given by the United States does raise a profound difficulty for some children – when parents agree between themselves where the child should live, or how parental access should be organized, but when the child is unhappy with the arrangement. Few States make provision for the child in such circumstances, arguing that the State should not interfere in the private arrangements of parents. But if the State accepts that it has a role as arbitrator when there are disputes between husband and wife, then it should accept its role as arbitrator when there is dispute between parent and child – at least to the extent of establishing judicial machinery for the child to make a case for arbitration.

Other aspects of "unnecessary" separation from parents include:

State care. Article 20, on alternatives to family, recognizes that some children will have to be temporarily or permanently deprived of their family environment if that is in their best



interests. Some States adopt more prescriptive criteria than others for determining what are the best interests of children. Where laws specify grounds for separation, they must be examined carefully for discriminatory application. For example, homelessness or poverty of the parents should not be grounds in themselves for removal of the child, nor should a parent's failure to send the child to school. If these deficiencies are causing the child's development to be impaired, then the State should put its resources into making good the deficiency while maintaining the child in the family. The Committee expressed its concern to Croatia:

"that children might be removed from their families because of their health status or the difficult economic situation faced by their parents." (Croatia IRCO, Add.52, para. 17)

It commented to the United Kingdom:

"...the Committee is concerned that children of certain ethnic minorities appear to be more likely to be placed in care." (United Kingdom IRCO, Add.34, para. 12)

And to Belgium:

"...that children belonging to the disadvantaged groups of the population appear more likely to be placed in care. In this regard, the Committee recalls the importance of the family in the upbringing of a child and emphasizes its view that the separation of the

child from his or her family must take the child's best interests as a primary consideration." (Belgium IRCO, Add.38, para. 10. See also Peru 2RCO, Add.120, para. 21; Norway 2RCO, Add.126, paras. 34 and 35)

The Committee expressed concern about a perceived vulnerability of boys to alternative placement:

"... It is recommended that the State Party undertake a study to assess the situation of boys within the family environment and their susceptibility to placement in alternative and/or foster care." (Saint Kitts and Nevis IRCO, Add.104, para. 23)

Finland, on the other hand, reported in its Initial Report a concern that the pendulum had swung too far in favour of leaving children with biological parents for too long (Finland IR, paras. 299-302; see article 18, page 250). However, the Committee concluded after Finland's Second Report that:

"The Committee, taking into account recent improvements in the economy of the State Party, strongly recommends that the State Party allocate more funds to families with children and develop effective measures to provide those families with appropriate support in order to avoid, among other things, the placement of children in foster care or institutions..."

"The Committee notes with concern the increasing number of children placed outside their families in recent years."

"The Committee recommends that the State party take all necessary measures to ensure that children are placed outside their family only when it is evidently in the best interests of the children and for the shortest period possible." (Finland 2RCO, Add.132, paras. 34, 35 and 36)

Failure to keep children in contact with their parents when they are in State care may occur (for example in institutions, specialist schools and placements for disabled children, street children projects, foster care, "simple adoption", etc.). This may be done for the primary convenience of the caregiver, particularly when the child's parents appear to be hostile, disruptive or irrelevant to the child's progress. Arguments are raised that the child needs to "settle in" or that seeing parents upsets the child. However evidence strongly suggests that children are less likely to be reunited with their parents if contact is not maintained with them during the early months of State care. Planning of placements should secure that contact can be easily maintained by the parents, who may be unable to travel distances or visit at set times.

Children of parents in prison

The Democratic People's Republic of Korea reports that: "Article 13 of the Criminal Procedures Act states that, in cases where there is solid ground for believing that an offender can be reformed through social education, he or she may be committed to social education instead of being punished. This is applied to a mother, too, when she has committed a crime. When parents, especially the mother of a family, have committed a crime and the children are going to be helpless, compensation, fine or other administrative disciplines and social education are applied instead of punishment for the maintenance of the family, except some specific cases. In case a woman with a baby has committed a crime, she is not detained, but in some unavoidable cases confined in her house or a definite area ... in order to maintain her family." (Democratic People's Republic of Korea IR, paras. 100 and 101)

Abandoned, runaway or unaccompanied children living or working on the streets.

Parents in extreme circumstances of poverty, violence or armed conflict may abandon their children, or children and parents may simply lose contact with each other as a result of the pressure of such events; sometimes children leave home for the streets because of violence or exploitation by their parents. The result is that most large cities in the world contain populations of children living independently of their families. State provision for these children should always give them an opportunity of finding and being reunited with their parents and family. For some this may not be possible, but others will have their rights under article 9 breached by assumptions that they are best provided for away from their original family. The Committee has encouraged State efforts in tracing these families:

"...concern is expressed, inter alia, at reports regarding difficulties and slow progress in tracing separated families and children..."

"The Committee urges the State Party to make every effort to strengthen family tracing programmes..." (Colombia 2RCO, Add.137, paras. 40 and 42. See also Dominican Republic IRCO, Add.150, paras. 30 and 31)

For further discussion of children on the streets, see under article 20 (page 287).

Children in hospitals. Parents may not be allowed to visit and, where appropriate, remain with their children in hospital. Again, this form of separation, more common in industrialized than developing countries, is maintained primarily for the convenience of the staff, although the medical needs of the child patient may be cited. In fact, it is now generally recognized that children's recovery is greatly aided by having parents with them in hospital. Though hospital practice may often be dependent on medical staff and hospital managers, the State has a role in encouraging child-friendly hospitals.

Parents in prisons. The imprisonment of parents, particularly of mothers of dependent young children, is deeply problematic, because the child is being punished along with the parent. While it is argued that the punishment of offenders always has repercussions for innocent relatives, where young children are concerned the effects can be particularly catastrophic to the children and costly to the State (both immediately, in terms of providing for the children's care, and long term, in terms of the social problems arising from early separation). One solution is to accommodate young infants together with their mothers in prison; the other is to find more

constructive sanctions. Where possible, the latter course should be adopted.

Although babies tend to be unconcerned about where they live so long as they are with their mothers, difficulties may arise about when and if to separate mother and child as the child grows older. The Committee has voiced concerns both about accommodating children together with their parents in prison and failing to keep imprisoned parents and children in contact with each other:

"The Committee expresses its concern at the situation of children living in ... penitentiary centres with one of their parents... The Committee recommends that the State Party take the necessary steps to establish alternatives to institutionalizing children (for example foster families), especially for those living with one of their parents in penitentiary centres." (Bolivia 2RCO, Add.95, para. 23)

"The Committee is concerned that the best interests of the child and, in particular, child rights with regard to separation from parents are not fully respected in the context of maintaining contact with parents serving prison sentences..."

"The Committee recommends that the State Party be more flexible in its application of family contact rules for imprisoned persons so as to ensure that a child maintains personal relations and direct contact with an imprisoned parent, where this is in the best interests of the child..." (Norway 2RCO, Add.126, paras. 30 and 31)

Article 2(2) protects children against "all forms of discrimination or punishment on the basis of the status, activities... of the child's parents, legal guardians or family members" (see page 35). Although mothers have been singled out here as being particularly crucial to the development of young children, States should recognize that the imprisonment of fathers can also be very detrimental, depriving children of important role models and often causing the family to become impoverished.

Child offenders. Removal of offending children from their families may be judged as necessary in the best interests of the child where judicial authorities are satisfied that the parents have contributed to their child's criminality. However, care orders removing parental rights should not be an automatic part of a sentencing tariff for juvenile offending. Rule 18(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the "Beijing Rules", states: "No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of his or





her case make this necessary.” As regards the imprisonment of children for offending, and their consequent separation from families, this should only occur as a last resort, is discussed under article 37 (see page 549).

Immigration and deportation. Article 10 deals with the limited rights of children to family reunification when they or their parents are (or wish to be) in different countries. When articles 9 and 10 were being drafted the chairman of the Working Group drafting the Convention made a declaration: “It is the understanding of the Working Group that article 6 [now article 9] of this Convention is intended to apply to separations that arise in domestic situations, whereas article 6 *bis* [now article 10] is intended to apply to separations involving different countries and relating to cases of family reunification. Article 6 *bis* [now 10] is not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations.” The Chairman’s declaration caused some concern. Three State representatives in the Working Group responded by emphasizing that “international obligations” included principles recognized by the international community, particularly human rights and children’s rights principles – including, of course, the principles of article 9. The representative of the Federal Republic of Germany “reserved the right to declare that silence in the face of the chairman’s declaration did not mean agreement with it” (E/CN.4/1989/48, pp. 32-37; Detrick, pp. 181 and 182).

Such a declaration is, in any event, no more than a clarification of drafting intentions: though influential it does not carry legal force. The declaration was cited in the defence of Canada during one of that country’s oral sessions with the Committee. A Committee member commented in relation to the issues of immigration control and deportation: “Under article 9, States Parties should ensure that there would be no separation unless it was in the best interests of the child concerned and determined by competent authorities subject to judicial review. Concern had been expressed at how a child’s best interests were taken into consideration when decisions to deport parents were made. Were family values taken into account by decision-makers? Article 9 also referred to the need for judicial proceedings to give all interested parties the right and opportunity to be heard. It was unclear when and how a child could make his or her views known and with what legal support. Article 12, paragraph 2, established the right of children to be heard in any administrative and judicial proceedings.” (Canada SR.216, para. 28)

The Canadian representative argued that: “International law did not provide an express right to family reunification nor did the Convention recognize family reunification as an express right... One issue of concern discussed in the United Nations Working Group on the draft convention in December 1988 had been whether the provision in article 9 concerning non-separation from parents would require States to amend their immigration laws to avoid the separation of children from their parents. The Working Group had requested that a statement should be included in the report on its deliberations to indicate that article 10 on family reunification was the governing matter on that issue. It had been the Working Group’s understanding that article 10 was not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations.” However, he did concede that international treaties clearly recognized “the vital importance of family reunification”. (Canada SR.216, paras. 47 and 55)

Despite this discussion, the Committee member expressed the view that provisions on family reunification under article 10 should be seen in the light of article 9 (Canada SR.216, para. 84).

Japan made a declaration on this issue, about which the Committee expressed concern: “The Government of Japan declares that paragraph 1 of article 9 of the Convention on the Rights of the Child be interpreted not to apply to a case where a child is separated from his or her parents as a result of deportation in accordance with its immigration law.” (CRC/C/2/Rev.8, p. 26; Japan IRCO, Add. 90, para 6)

Armed conflict. The separation of parents and children also arises during armed conflict (article 38) or when they have become refugees (article 22). The consequences of civil war or economic breakdown can be devastating to the family unit.

Often, the State government can do little about the upheavals of armed conflict, but if the reins of power are in its hands, it has clear obligations towards children, as the Committee informed Myanmar:

“While welcoming the recent peace agreements between the Government and a great majority of rebel armed groups in the country, the Committee strongly recommends the State Party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements which deeply affect families and the rights of children. The Committee also recommends that the State party reinforce its central

tracing agency to favour family reunification.” (Myanmar IRCO, Add.69, para. 40. See also Azerbaijan IRCO, Add.77, para. 42)

Traditions or customs. The separation of children and parents because of custom perhaps most commonly occurs when a child is conceived out of wedlock. In the past, many mothers might abandon such children or would be forced to give them up for adoption. These actions still persist in some parts of the world – for example, the Committee said to Sri Lanka:

“...The Committee also encourages the authorities to give full support to mothers of children born out of wedlock wishing to keep their child.” (Sri Lanka IRCO, Add.40, para. 34)

Under articles 7 and 18 children have the right to be cared for by both parents, who share common responsibility for their upbringing, development and best interests. Choices and judicial decisions may have to be made about where children live and how much contact they have with the non-resident parent following parental separation. Such decisions ought to be determined solely in accordance with the child’s best interests but sometimes are subject to tradition or religious doctrine – for example that adulterous parents forfeit rights of access to children or that children must live with the paternal family upon the death of the father. Such decisions are contrary to the Convention if they are made without reference to the needs and interests of the individual child concerned (see below, and article 18, page 249, for further discussion).

The child’s right to have any decision that separation from his or her parents is in his or her best interests to:

- **be undertaken by competent authorities;**
- **be subject to judicial review;**
- **be in accordance with applicable law and procedures;**
- **give all interested parties the opportunity to participate and make their views known**

“Competent authorities”

The word “competent” relates to an authorized position rather than to ability; nonetheless such authorities must have skills to determine, on the basis of the evidence, what is in the child’s best interests. Such skills could be acquired through formal training (for example, in psychology, social work or children’s legal casework) or an equiv-

alent weight of experience (for example, through being a community or religious arbitrator). The State should be able to demonstrate that these authorities are genuinely able to give paramount consideration to the child’s best interests, which presupposes a degree of flexibility in the decision. Any inflexible dogma defining “best interests”, for example stating that children ought to be with their fathers or mothers, should be regarded as potentially discriminatory and in breach of the Convention. (It is true to say that article 6 of the Declaration of the Rights of the Child, the precursor of the Convention on the Rights of the Child, did make a statement in favour of keeping, save in exceptional circumstances, children of “tender years” with their mothers. However, this bias towards giving mothers custody of babies and infants, though common in many countries and an important protection in very patriarchal societies, does not find expression in the Convention.) The Committee expressed this view to Jordan and Burundi:

“The Committee is concerned that... the general principle of the best interests of the child contained in article 3 of the Convention is not a primary consideration, including in matters relating to family law (e.g. duration of custody under the Personal Status Law is arbitrary as it is determined by the child’s age, and is discriminatory against the mother).” (Jordan 2RCO, Add.125, para. 33)

“...The Committee is ... concerned at the strong bias in favour of fathers in the context of child custody disputes.

“The Committee recommends that the State Party ensure that in granting one parent custody of a child the decision is made in accordance with the best interests of the child, with the child’s participation and with consideration for the emotional needs of the child.” (Burundi IRCO, Add. 133, paras. 46 and 47)

“Subject to judicial review”

The phrase carries with it a body of expectations about natural justice and fair hearings. These include a requirement that the judge or arbitrator should have no personal interest in the case, should be as well informed as possible about all the circumstances of the case and should be able to give reasons for the final ruling that all sides are heard and that all parties should hear the evidence (which means, if necessary, providing interpretation).

While this part of article 9 was being drafted, country representatives repeatedly emphasized the need to expedite the judicial process so that the “separation period should be made as





short as possible under national legislation” (E/1982/12/Add.1, C, pp. 49-55; Detrick, p. 168). Although the need for speed is not explicitly mentioned in the article, it should be assumed to be a necessary component of any judicial review in order to secure compliance with article 8(2) (duty to “speedily” re-establish child’s identity, including family ties).

The article makes no mention of privacy of the proceedings. However article 14(1) of the International Covenant on Civil and Political Rights provides that the public may be excluded from judicial hearings “when the interest of the private lives of the Parties so requires” and that judgments of hearings should generally be made public “except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”. Article 3 of the Convention on the Rights of the Child, relating to the best interests of the child, and article 16 (right to privacy) suggest an assumption that judicial hearings under article 9 should be held in private.

In addition rule 3(2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”, extends the Rules’ scope to care and welfare proceedings: “Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.” The “Beijing Rules” calls for fair hearings with sufficient flexibility to respond to the varying special needs of the children concerned, conducted “in an atmosphere of understanding”. The Rules stresses the need for privacy, speed, the child’s rights to representation and to the presence of parents, appeal procedures, powers to discontinue proceedings, good record keeping and research-based policy.

Some countries entered reservations to article 9 on the grounds that their social work authorities had powers to take children into care without a court hearing or judicial review. This is not compatible with the rights of the child. For example, the inclusion of care and welfare proceedings in the “Beijing Rules” stresses the point that removing children from their parents is as serious a step as depriving them of their liberty, and merits a fair hearing conducted under the rules of natural justice.

The Committee has systematically encouraged the withdrawal of all such reservations. Slovenia and Iceland have indicated that they will review their procedures with a view to withdrawing the reservation and Croatia has already done

so (Slovenia SR.337, para. 8; Iceland IRCO, Add.50, para. 4; CRC/C/2/Rev.8, p. 44). The Republic of Bosnia and Herzegovina has still to report on its reservation, and the Committee has recommended the reservations of the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia be withdrawn (The Former Yugoslav Republic of Macedonia IRCO, Add.118, paras. 29 and 30; CRC/C/2/Rev.8, p. 46, and Federal Republic of Yugoslavia IRCO, Add.49, para. 23).

“In accordance with applicable law and procedures”

These words again stress the need for legislation governing any procedure where the child is separated from parents against their will, whether it is the State intervening to remove the child or one of the parents seeking custody of the child.

If, however, laws leave criteria for separation open to judicial discretion so that it is entirely up to the judge to decide what is in the best interests of the child, then the State must be satisfied that judges exercise this discretion objectively.

“.. all interested parties shall be given an opportunity to participate in the proceedings and make their views known”

This aspect of a proper judicial review – the need to hear from all relevant parties – is given special emphasis within the Convention for good reasons. It reminds States that both parents must be heard, even when one parent has not had primary care of the child (for example in a case of child neglect by the child’s mother, even a non-resident father of the child should be given an opportunity to show he is able and willing to look after the child) or when one parent is out of the country. It also enables other “interested parties” to participate in the proceedings – for example members of the child’s extended family, or professionals with a specialist knowledge of the child. “Interested parties” is undefined within the Convention, so that interpretation is left to domestic law or the judge of the case; however, it should be assumed that the widest possible interpretation is needed, since a sound decision on best interests of the child is dependent on having the fullest possible information.

The child, in particular, should not be forgotten. He or she is clearly the most “interested party” involved in the case. Article 12(2) provides that children specifically be given opportunities to be heard directly or through a representative “in any judicial and administrative proceedings affecting the child”. Proceedings under article 9 are clearly judicial proceedings affecting the child.

Article 12(2) does not specify when the child should be heard directly and when through a representative, but given the general right under 12(1) for children to “express those views freely in all matters affecting the child”, it should be assumed that wherever children wish to speak directly to the adjudicators, this should be arranged, but that, in addition, where children are not able to represent their views adequately (through incapacity or because they need an advocate in an adversarial system), appropriate arrangements should be made. However States must recognize that appointing a person to represent the child’s best interests is **not** the same as children being given “an opportunity to ... make their views known” (article 9(2)) or “to be heard” (article 12(2)). Professional opinion as to the child’s best interests may sometimes conflict with the child’s own view of what is best. In such circumstances, States are obliged under the Convention to ensure that the child’s views are also heard.

States sometimes specify an age at which children themselves can determine decisions about custody and access (that is, residence and contact), usually with a caveat that the child’s decision can be overridden in exceptional circumstances if the child’s welfare might actively be harmed by his or her choice. The age appears to range from 7 to 16. Such provisions are not contrary to the Convention. However, provisions that specify an age at which the child’s views should be taken into account are questionable,

since the expressed views of children of all ages should be considered under article 12 (see page 165).

The child’s right “to maintain personal relations and direct contact with both parents on a regular basis” unless contrary to best interests

This right reflects the principle of article 18 that “both parents have common responsibilities for the upbringing and development of the child” (see page 247). States vary as to the care they take in protecting this right of children. The Republic of Korea entered a reservation to the paragraph, without explanation, but told the Committee that it was considering withdrawing the reservation (CRC/C/2/Rev.8, p. 36; Republic of Korea SR.276, para. 14). The Committee nonetheless informed the Republic of Korea that this reservation raised questions about its

“...compatibility with the principles and provisions of the Convention, including the principles of the best interests of the child and respect for the views of the child.”
(Republic of Korea IRCO, Add.51, para. 8)

Too often, children lose the chance to maintain contact with the non-residential parent because of the needs of the residential parent (for example to live at a distance from the other parent) or because of the parents’ acrimonious



Children’s rights in care, custody and contact

Finnish law requires that a decision on custody and right of access shall not be enforced against the will of a child who has attained the age of 12. Even the will of a child under 12 years of age shall be taken into account when the child is mature enough to express his or her opinion. There is no age limit in legislation for the hearing of the child. A court may even hear very young children when necessary. (Finland 2R, para. 54)

Iraqi law guarantees the right of a child separated from his or her parents to maintain ongoing personal relations with both parents on a regular basis and to see, from time to time, the father or mother from whom the child has been separated. An appropriate location must be provided to fulfil the child’s desire to meet either parent and all the psychological and material requirements must be met, wherever possible, in order to enable that meeting to take place. (Iraq IR, para. 31)

In Peru, the opinion of the child must be sought at all stages of protective care: “when the protection investigation is instituted and submitted to the court; when the protective measure is decided; when a change in the measure is considered necessary; when it is assumed that an unlawful act has been committed which injures the child or adolescent; when parents or relatives who had disappeared are located; when evaluation or therapy has been ordered by the court; when inappropriate behaviour or rebelliousness are found to be present; when a request is made by a teenage mother who is to be separated from her minor child; when adoption is being recommended, if the child is old enough to express an opinion; and when street children do not want to return to their homes or go into an institution.” (Peru 2R, para. 226)

Employment laws against family separation

The Venezuelan Organic Labour Act does not allow the employer to change the place of work if that involves a change of residence for the worker. This provision is based in part on the need to ensure that the family unit lives together in the same place and to prevent any displacement of the parents that could involve separation from their children. (Venezuela IR, para. 117)

relationship. On the other hand this right of the child can too easily be translated into the right of parents. The Committee raised its concerns in this respect with Ireland:

“The Committee is... concerned about the lack of guarantees for the child to maintain contact with both parents after divorce.”
(Ireland IRCO, Add.85, para. 17)

Courts may understandably be reluctant to enforce access if this is likely to have adverse consequences for the child. But while legislation often decrees that the child’s best interests shall be paramount in such decisions, the law does not always make clear that these best interests are generally interpreted as meaning regular contact with both parents. Moreover, States could often put more resources into providing practical assistance to children whose parents are in conflict, for example by providing neutral meeting places or the supervision of access.

The right of family members, and specifically parents and children, to be given on request the essential information concerning the whereabouts of a parent or child who has been separated because of an action initiated by the State (for example, detention, imprisonment, exile or death from any cause in custody), unless the provision of information would be detrimental to the well-being of the child

A failure to ensure that parents are told where their children have been detained, or that children are told of the whereabouts of their parents, seems to be an obvious abuse of human rights and reflects international rules regarding the treatment of prisoners (see article 40, page 589). Circumstances in which provision of information would be detrimental to the child are likely to be rare and exceptional. The presumption should be that children will be more damaged by ignorance of their parents’ whereabouts (and

equally, that imprisoned children will be more damaged by their parents not being told where they are) than by the discovery of the absent family member’s fate, however shocking. Oman has entered a reservation to this paragraph stating that “or to public safety” should be added to the words “unless the provision of information would be detrimental to the well-being of the child” (CRC/C/2/Rev.8, p. 34). But even when States are troubled by extreme forms of terrorism, it is difficult to perceive how telling a child what has happened to his or her parent, or vice versa, could jeopardize public safety.

The wording refers only to “essential information concerning the whereabouts”, which might be insufficient information in some cases – certainly in the case of death. States should also ensure that family members are given essential information as to cause – why the person has been imprisoned, deported, died in custody and so forth – and other relevant details (for example when they can see the family member or what their legal rights are). The qualification that the information need only be provided “upon request” was specifically sought by some of the State representatives in the drafting group, although it is hard to see how the qualification enhances children’s rights (E/CN.4/1983/62, pp. 4-8; Detrick, p. 175). Children and parents should clearly be informed about each other’s whereabouts (unless such information is detrimental to the child’s well-being) whether or not they have made a request for the information.

The right for requests for such information not to entail “adverse consequences for the person(s) concerned”

This requirement must protect both the person seeking the information and the person to whom the information refers. Again, these are matters of human rights, only needing to be confirmed because of documented cases of abuse. One example where requests for information by the State might unwittingly entail adverse consequences is when inquiries are made about refugee children’s relatives, causing unintended repercussions for those relatives.



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 9, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 9 is relevant to the **departments of justice (criminal and civil), social welfare, health and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 9 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 9 likely to include the training of the **judiciary, lawyers, social workers, hospital staff and those working in the juvenile justice and immigration systems**)?

● Specific issues in implementing article 9

- ☐ Does the State ensure that parents and children are separated against their will by State authorities only when it is necessary to protect the best interests of the child?
- ☐ Does domestic law enable judicial intervention on behalf of the child when there is disagreement between the parents, or between the parents and the child as to the child's place of residence or as to access to the child by a parent?
- ☐ Does the State ensure that contact between parents and children in institutions (such as children's homes or boarding schools) or placements (such as fostercare or respite care for disabled children) is maintained to the maximum extent compatible with the child's best interests?
- ☐ Do programmes for those children living or working on the streets respect the child's right not to be separated from his or her parents unless it is necessary for his or her best interests?

How to use the checklists, *see page XVII*



- ☐ Are hospitals required or encouraged to make arrangements for parents to be with their children in hospital whenever practicable?
- ☐ Does the criminal justice system have regard for the need for mothers not to be separated from their babies?
- ☐ Does the criminal justice system have regard for the need for parents not to be separated from their children?
- ☐ Does the criminal justice system ensure that juvenile offenders are not separated from their parents except where competent authorities have determined it is necessary for the best interests of the offender, or as a last resort for the shortest appropriate period?
- ☐ Do laws and procedures governing the deporting of parents under immigration law pay regard to the child's right not to be separated from his or her parents unless necessary for his or her best interests?
- ☐ Do provisions for the family reunification of immigrants and refugees pay regard to the child's rights not to be separated from parents unless necessary for his or her best interests?
- ☐ In times of armed conflict, are forced relocations of civilian populations avoided and all measures adopted for tracing and reuniting children and parents separated by these events?
- ☐ Are measures taken by the State (for example through public education campaigns) to combat traditional customs that separate parents and children unnecessarily?
- ☐ Does the State provide practical or psychological assistance to families in order to prevent unnecessary separation of parents and children?
- ☐ Are all laws specifying the grounds justifying the State in separating children from parents free from discrimination (for example, in relation to families living in poverty or ethnic minority families)?
- ☐ Are all laws specifying the grounds justifying separation from parents free from dogma as to children's best interests (for example, that children are better off with their fathers than their mothers or vice versa)?
- ☐ Are all decisions that hold separation from parents necessary for the child's best interests made by authorities competent to determine what these best interests are?
- ☐ Do these authorities have access to all relevant information in this determination?
- ☐ Are these decisions subject to judicial review?
- ☐ Are these cases dealt with speedily?
- ☐ Are children's rights to privacy safeguarded in such cases?
- ☐ Are all relevant people, including the child, able to participate and be heard by those determining these cases?
- ☐ Are there no age limits on the right of the child to participate or be heard?
- ☐ Are the child's views heard if he or she disagrees with the professionals reporting to the court on his or her best interests?

How to use the checklists, *see page XVII*



- ☐ Are the proceedings impartial and fair?
- ☐ Does the law enshrine the principle that children should, wherever possible, have regular contact with both their parents?
- ☐ Is practical assistance given to ensure contact is maintained in cases where parents are in conflict?
- ☐ Does the State provide practical assistance in discovering the whereabouts of parents and children who, for whatever reason, have become separated?
- ☐ Unless detrimental to children's well-being, are children and parents (and other family members, if appropriate) always informed of the whereabouts of the other in circumstances where they have become separated because of an action of the State (for example, detention, imprisonment, exile or death)?
- ☐ Are those requesting such information protected from adverse consequences?

Reminder: The Convention is indivisible and its articles are interdependent. Article 9 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 9 include:

Article 7: right to know and be cared for by parents

Article 8: right to preservation of identity, including family relations

Article 10: international family reunification

Article 11: protection from illicit transfer and non-return

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

Article 18: parents having joint responsibility

Article 20: children deprived of their family environment

Article 21: adoption

Article 22: refugee children

Article 24: health services

Article 25: periodic review of treatment when placed by the State away from families

Article 35: prevention of sale, trafficking and abduction of children

Article 37: deprivation of liberty

Article 40: administration of juvenile justice



Entering or leaving countries for family reunification



Text of Article 10

- 1. In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by the States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.*
- 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.*

Article 10 of the Convention on the Rights of the Child is concerned with rights to “family reunification” of children who are, or whose parents are, involved in entering or leaving a country. The article requires States to deal with family reunification “in a positive, humane and expeditious manner” and to allow parents and children to visit each other if they live in different States. The families primarily affected by article 10 are so-called “economic migrants” and refugees, although it should be noted that the children of refugee parents, or the parents of

child refugees, may seek entry for the purposes of family reunification rather than asylum.

While family unity is a fundamental principle of the Convention, the wording of article 10 is notably weaker than that of article 9 in so far as the right to family reunification is not expressly guaranteed (even though article 10 makes an express reference to article 9(1)). The tentative wording of article 10 reflects concerns about immigration control – a cause of great anxiety to richer nations, which are haunted by the spectre of mass migrations of the world’s poor.

Summary

The article does not directly address the right of children or their parents to “remain” for the purposes of family reunification, taking in the whole question of the deportation of parents. However, by implication, since a deported parent would at once be in a position to wish to re-enter the country, these cases can be assumed to be covered by this article (as well as by article 9, see page 131).

Along with encouraging States to ratify treaties relating to refugees (see article 22, page 305), the Committee recommends that countries ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see Spain IRCO, Add.28, para.

23, and Belgium IRCO, Add. 38, para. 20). The Convention was adopted in 1990 and is not yet in force, at January 2002. Its article 44 provides that contracting States should take measures “which they consider appropriate and which are within their powers to facilitate the reunion of migrant workers with their spouses, or with any persons having a relationship with them, which in accordance with the law is the equivalent of marriage, as well as their dependent or single children.” Article 22 protects migrant workers from mass expulsion; article 14 protects them from “arbitrary or unlawful interference with his or her privacy, family, home...” ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the ‘best interests of the child’ and ‘respect for the views of the child’ are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:...

(d) Family reunification (art. 10).

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 16-18)

Guidelines for Periodic Reports

“V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

D. Family reunification (art. 10)

Please provide information on the measures adopted to ensure that applications by a child or his or her parents to enter or leave a country for the purpose of family reunification are dealt with by the State in a positive, humane and expeditious manner and that the submission of such a request entails no adverse consequences for the applicants and the members of their family.

Please also indicate how such applications are considered in the light of the Convention and in particular of its general principles of non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible, including in the case of unaccompanied and asylum seeking children. Disaggregated information should also be provided, including by gender, age, and national and ethnic origin.

Please indicate the measures undertaken to ensure the right of a child whose parents reside in different States to maintain on a regular basis personal relations and direct contacts with both parents. Please also indicate any exceptions and their compatibility with the provisions and principles of the Convention.

Information should be provided on the steps taken to ensure respect for the right of the child and his or her parents to leave any country, including their own, and to enter their own country. They should indicate any restrictions imposed on the right to leave the country, how they are prescribed by law, necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and the extent to which they are consistent with the other rights recognized in the Convention, including the principles of non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

Reports should also provide information on the progress achieved in the implementation of article 10, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 73-77. Paragraphs 35 and 53 of the *Guidelines for Periodic Reports* are also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)



Right of child or parent to have any applications "to enter or leave a State Party for the purpose of family reunification" dealt with "in a positive, humane and expeditious manner" by the States Parties

"Positive"

When drafting this article some State representatives were concerned about the interpretation of the word "positive". Two alternatives were proposed – "objective" and "favourable" – and were rejected. "Favourable" was thought to contain too much of an element of prejudice, whereas "positive", though stronger than "objective", did not assume that the State must agree to the application (E/CN.4/1989/48, pp. 37-40; Detrick, p. 206). Nonetheless, Japan took pains to enter a declaration that: "The Government of Japan declares further that the obligation to deal with applications to enter or leave a State Party for the purpose of family reunification 'in a positive, humane and expeditious manner' provided for in paragraph 1 of article 10 of the Convention on the Rights of the Child be interpreted not to affect the outcome of such applications." (CRC/C/2/Rev.8, p. 26)

Because many richer nations have increasingly in recent decades closed their borders to labour migration, family reunion has become the main legal entitlement for the settlement of immigrants. This, in turn, has led to increasingly restrictive conditions being placed on the right to family reunification. Some countries require nationality status before such rights can be secured. Most countries now require applicants to

prove that there are sufficient resources to support the immigrant's family members without recourse to public funds. Yet other countries have stricter conditions for foreigners who themselves entered the country for family reunion when they were children. Not all states recognize 16- 18-year-olds as children and some countries require children to be "dependent", or the exclusive responsibility of one parent if the parents are separated.

The United Kingdom entered a blanket reservation to enable it to apply immigration legislation as it deems necessary (CRC/C/2/Rev.8). The Committee expressed concern about this reservation, commenting that:

"... the reservation relating to the application of the Nationality and Immigration Act does not appear to be compatible with the principles and provisions of the Convention, including those of its articles 2,3,9 and 10".

The Committee suggested that the United Kingdom review its nationality and immigration laws and procedures to ensure their conformity with the principles and provisions of the Convention (United Kingdom IRCO, Add.34, paras. 7 and 29).

Liechtenstein "reserves the right to apply the Liechtenstein legislation according to which family reunification for certain categories of foreigners is not guaranteed" (CRC/C/2/Rev.8, p. 28), and Singapore reserved the right to apply its legislation relating to entry and stay in Singapore "as it may deem necessary from time to time" (CRC/C/2/Rev.8, p. 37). Singapore's report is yet, as of January 2002, to be considered by the Committee. The Committee raised its concern with Liechtenstein:

"The Committee is concerned about the reservation made by the State Party to article



10 (2) of the Convention as well as the State's policy regarding family reunification. These suggest that the State Party has serious difficulties in dealing with applications for the purpose of family reunification in a positive, humane and expeditious manner and without adverse consequences for the applicants." (Liechtenstein IRCO, Add.143, para. 8)

Italy, on the other hand, reported to the Committee that its law required that before deportation, enforcement officials should assess the impact on the foreigner's family unit and on his or her obligations and his or her rights in respect of support, instruction and education (Italy IR, para. 71).

The Committee expressed concern at the situation in United Kingdom dependent territory: Hong Kong

"...with respect to the question of families split between Hong Kong and China, the Committee is concerned that the increase in permits arranged for these children and their families, from 105 to 150, is manifestly insufficient to meet the needs of the estimated 60,000 children currently in China who may have the right of abode in Hong Kong after 1 July 1997."

The Committee recommended that:

"...action should be taken on an urgent basis to reduce the waiting period for family reunification, to raise the quota of permits and to consider other measures to deal with the problems that will arise in the future." (United Kingdom dependent territory: Hong Kong IRCO, Add.63, paras. 14 and 26)

While the Committee commended Norway's 'positive' efforts when responding to its Second Report, it was concerned that the best interests of children were not always taken into account when deportation decisions were made:

"The Committee is ... concerned that despite the State Party's positive efforts, when decisions to deport foreigners convicted of a criminal offence are taken, professional opinions on the impact of such decisions upon the children of the deported persons are not systematically referred to and taken into consideration."

"The Committee... recommends that the State Party review the process through which deportation decisions are made to ensure that where deportation will mean the separation of a child from his or her parent, the best interests of the child are taken into consideration." (Norway 2RCO, Add.126, paras. 30 and 31)

"Humane"

The word "humane" qualifies and strengthens the word "positive". For example, in cases where parents are illegal immigrants but their children

have acquired the right to the host country's nationality, it is more humane to allow the family to remain in the country than to deport the parents – even though in both cases the family remains together.

An example of the Committee proposing a humane solution arose in relation to Sri Lanka, when the Committee expressed concern about:

"...the situation of children whose mothers are working abroad, especially in Gulf countries, leaving their children behind. Those children (between 200,000 and 300,000) often live in difficult circumstances and may be subjected to different types of abuse or exploitation."

The proposed solution was not, as might have been expected, to recommend improvements to Sri Lankan services for these motherless children, but, in keeping with article 9

"To avoid the abandonment of children by mothers working abroad, the Committee suggests that the State Party engage in dialogue with receiving countries to ensure an international agreement that permits migrant workers to take their children abroad. Ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families should be considered." (Sri Lanka IRCO, Add.40, paras. 16 and 33)

Along with the decision being humane, the procedure for making the decision must also be humane. It is essential that immigration processes respect the dignity of the applicants, including the child's dignity. Treatment in detention centres can often be inhumane, as can the investigations by the authorities to authenticate the applications. The Committee has stressed the link between article 10 and article 37 (deprivation of liberty), pointing out that even where applicant children are housed in comfortable surroundings, such as hotels, their liberty is still deprived and their particular needs are not necessarily taken into account (see page 549). Children should not be subjected to investigations that could harm their health (such as bone X-rays to identify their age) or psychological well-being (such as traumatizing interrogations), nor should they be subjected to medical tests without their, or as appropriate, their parents' consent.

"Expeditious"

All judicial and administrative processes concerning children need to be pursued as quickly as possible. Delay and uncertainty can be extremely prejudicial to children's healthy development. There is a sense in which any period of time is significantly 'longer' in the life of a child than in that of an adult. In immigration cases

delays can literally ruin children's chances – for example the long waiting lists of children in the Indian subcontinent seeking the right to join their parents can mean that some pass the key age of 18 while still waiting for their application to be heard.

In its Concluding Observations on Canada, the Committee expressed concern about the position of refugee and immigrant children:

"The Committee recognizes the efforts made by Canada for many years in accepting a large number of refugees and immigrants. Nevertheless, the Committee regrets that the principles of non-discrimination, of the best interests of the child and of the respect for the views of the child have not always been given adequate weight by administrative bodies dealing with the situation of refugee or immigrant children. It is particularly worried ...by the insufficient measures aimed at family reunification with a view to ensuring that it is dealt with in a positive, humane and expeditious manner. The Committee specifically regrets the delays in dealing with reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada as well as cases where refugee or immigrant children born in Canada may be separated from their parents facing a deportation order."

The Committee recommended:

"...that the State Party pay particular attention to...the general principles of the Convention, in particular the best interests of the child and respect for his or her views, in all matters relating to the protection of refugee and immigrant children, including in deportation proceedings. The Committee suggests that every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada. Solutions should also be sought to avoid expulsions causing the separation of families, in the spirit of article 9 of the Convention..."
(Canada IRCO, Add.37, paras. 13 and 24)

The Committee also expressed concern over Germany's procedures and treatment of foreign children in need of family reunification:

"The Committee remains concerned about the extent to which account is taken of the special needs and rights of children in asylum-seeking and refugee situations. Procedures governing asylum-seeking children, particularly those relating to family reunification, expulsion of children to safe third countries and the 'airport regulation' give cause for concern. In this respect the Committee notes that the

guarantees provided for in the Convention, in particular in its articles 2, 3, 12, 22 and 37(d) do not appear to be complied with, while insufficient attention seems to have been ensured to the implementation of articles 9 and 10 of the Convention...

"The Committee is of the opinion that the issue of asylum-seeking and refugee children deserves further study with a view to its reform in the light of the Convention and of the concerns expressed during the discussion with the Committee ..."

And the Committee also encouraged the involvement of children in these proceedings (Germany IRCO, Add.43, paras. 19, 33 and 29). ("Airport regulation" relates to provisions that penalize companies for allowing passengers to travel without proper visas or entry authorizations.)

Belgium was encouraged by the Committee to *"...ensure that applications for the purpose of family reunification in the case of refugees and migrant workers are dealt with in a positive, humane and expeditious manner."* (Belgium IRCO, Add.38, para. 19. See also Spain IRCO, Add.28, para. 22)

The Committee also expressed concern that in Norway:

"...the police may not be instructed to delay the expulsion of some members of the family in order to ensure that the whole family remains together and that undue strain on the children is avoided ... it is suggested that solutions should also be sought to avoid expulsions causing separation of families."
(Norway IRCO, Add.23, paras. 11 and 24)

In the Committee's examination of Norway's Second Report, it emphasized the need for systematic procedures which avoid delay:

"While supporting the State Party's very positive approach to family reunification of non-Norwegian children, the Committee is concerned that the significant domestic measures providing for family reunification are not applied to their full extent. In particular, the Committee is concerned that children are not always able to take advantage of these provisions either because they have not been informed of the possibilities for family reunification because of procedural delays, or because procedures are not systematic. The Committee urges the State Party to establish a standard procedure through which children and other concerned persons such as their parents or legal guardians, are informed of the possibilities and procedures for family reunification and for these procedures to be implemented in accordance with set guidelines."
(Norway 2RCO, Add.126, paras. 32 and 33)





Right for such applications to entail “no adverse consequences” for any member of the family

This right relates to those countries where applications to enter or leave have resulted in the applicant or the applicant’s family being persecuted or discriminated against. Such treatment is obviously a breach of human rights in all circumstances. The act of making an application should never put an applicant in jeopardy, even though the application may be turned down.

However, where asylum-seeking occurs, the receiving State may unwittingly entail adverse consequences for the child or the child’s family by making incautious enquiries; therefore care must be taken not to breach confidentiality in a hazardous manner (see article 22, page 312).

Right of child (save in exceptional circumstances) to maintain, on a regular basis, personal relations and direct contacts with both parents where the parents reside in different States

The Hague Convention on the Civil Aspects of International Child Abduction (1980) assists with realizing this right because it allows parents to enforce court orders for access (contact) in the Hague Convention States (see article 11, page 154). But not all parents with access problems in foreign countries have court orders, and around a third of the world’s countries have ratified or acceded to the Hague Convention. In such circumstances this right of the child should ensure that States give favourable consideration both to applications for access and applications for entry and exit in order to exercise access.

It is important not to assume that children with refugee status will never be able to return to their State of origin for family visits. Organizing a safe temporary visit may be possible. Evidence of children returning home for the purpose of

temporary family reunification should not prejudice their refugee status.

Right of child and parents to leave any country (including their own), subject only to legal restrictions “which are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of other and are consistent with the rights of this Convention”

This provision reflects the wording of article 12(2) of the International Covenant on Civil and Political Rights which provides: “Everyone shall be free to leave any country including his own.” It was drafted at a time when a number of countries, including many of those in the sphere of the USSR, unreasonably refused to allow citizens to leave the country. This is still the case in certain countries.

The French term *ordre public* is used in a number of international treaties; it is said to be more precise than “public order” (E/CN.4/1986/39, pp. 5-8; Detrick, p. 200) but it seems that there are now variety of interpretations of *ordre public* across the world, some of which are more related to economic considerations than to the social ones normally understood by the phrase “public order”.

Right of child and parents “to enter their own country”

This right is unqualified by any restrictions. An earlier draft of article 10 proposed that the child be given the right to “return” to his or her country, but this was changed to “enter” to accommodate those circumstances where children were born outside their State of nationality (E/CN.4/1986/39, pp. 5-8; Detrick, p. 201). Article 12(4) of the International Covenant on Civil and Political Rights is the source: “No one shall be arbitrarily deprived of the right to enter his own country.”

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 10, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 10 is relevant to the **departments of home affairs, foreign affairs, justice and social welfare**)?
 - ☐ identification of relevant non-governmental organizations/civil society partners?
 - ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation
- ☐ which includes where necessary the identification of goals and indicators of progress?
 - ☐ which does not affect any provisions which are more conducive to the rights of the child?
 - ☐ which recognizes other relevant international standards?
 - ☐ which involves where necessary international cooperation?

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 10 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 10 likely to include **the judiciary, immigration officers and social workers**)?

● Specific issues in implementing article 10

Are all applications by parents or children for entry to or exit from the country for the purposes of family reunification dealt with in a

- ☐ positive manner?
 - ☐ humane manner?
-
- ☐ Are all such applications dealt with as quickly as possible?
 - ☐ Are children and families involved in these applications treated with respect?
 - ☐ Are requests by parents or children not to be deported dealt with in a positive and humane manner?
 - ☐ Does the State recognize the right to family reunification of children who are resident in the country but do not have nationality status or official leave to remain?

How to use the checklists, see page XVII



- ☐ Are the views of children taken into account when decisions relating to family reunification are made?
- ☐ Are applicants and their family members protected from any adverse consequences from making a request to enter or leave the country for family reunification purposes?
- ☐ Are children permitted entry to the country and/or permission to leave the country in order to visit a parent?
- ☐ Are parents permitted entry to the country and/or permission to leave the country in order to visit a child?
- ☐ Subject to the limitations listed in article 10(2), are parents and children entitled to leave the country?
- ☐ Are parents and children always entitled to enter their own country?
- ☐ Has the State ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families?

Reminder: The Convention is indivisible and its articles are interdependent.
Article 10 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 10 include:

Article 5: parental duties and rights and the child's evolving capacities

Article 7: right to know and be cared for by parents

Article 8: preservation of identity, including family relations

Article 9: non-separation from parents except when necessary for best interests

Article 11: protection from illicit transfer and non-return from abroad

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

Article 18: parents having joint responsibility

Article 22: refugee children

Article 35: prevention of sale, trafficking and abduction of children

Illicit transfer and non-return of children abroad



Text of Article 11

1. *States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*
2. *To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.*

Ratifying States have responsibilities under article 11 to prevent children from being wrongfully taken or from being retained outside their jurisdiction, to secure that these children are recovered and to undertake that abducted children brought into their jurisdiction are returned.

The article is primarily concerned with parental abductions or retentions. Though the article includes non-parents in its scope, it should be noted that article 35 covers the sale, trafficking and abduction of children, as does the new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography. The difference between the two articles is not entirely clear, given that “illicit transfer and non-return of children abroad” is the same thing as “abduction”. Broadly speaking, the distinction is one of money – article 11 applies to children taken for personal rather than financial gain, whereas “sale” and “trafficking” has a commercial or sexual motive. Those who abduct children for purely personal motives are usually, though not invariably, parents or other relatives.

The *Manual on Human Rights Reporting*, 1997, observes that “children may be abducted by one of the parents and are usually not permitted to return home, even when a previous judicial authority had already decided on the custody and place of residence of the child, as well as on the visiting rights of the parent with whom the child should no longer live. The situation often tends to permanently prevent the child from having access to the parent with whom the child used to live or with whom the child had direct and regular contacts and personal relations (see article 9, paragraph 3 and article 10, paragraph 2). It also shows how important it is to be guided by the best interests of the child and in ensuring, as a general rule, that both parents continue to assume their responsibilities for the upbringing and development of the child, even when separation or divorce has intervened”. (*Manual*, p. 451)

The article encourages States to conclude or become parties to multilateral agreements. Principal among these is the Hague Convention on the Civil Aspects of International Child Abduction. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particular how the principles of the "best interests of the child" and "respect for the views of the child" are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:...

(h) Illicit transfer and non-return (art. 11)...

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 16 and 18)

Guidelines for Periodic Reports

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

E. Illicit transfer and non-return (art. 11)

Please provide information on:

The steps taken to prevent and combat the illicit transfer and non-return of children abroad, including legislative, administrative or judicial measures, as well as mechanisms established to monitor such situations;

Any bilateral or multilateral agreement on this subject concluded by the State Party or to which it may have acceded and the impact they have had;

Progress achieved and the difficulties met with in countering such situations, together with relevant data on the children concerned, including by gender, age, national origin, place of residence, family status and relationship with the perpetrator of the illicit transfer."

(CRC/C/58, para. 78. Paragraphs 160-162 of the *Guidelines for Periodic Reports* are also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)

Measures to combat illicit transfer and non-return of children abroad

As article 11 acknowledges, a most effective means of implementing its provisions is to sign and implement the relevant international treaties, such as the Hague Convention on the Civil Aspects of International Child Abduction (1980).

The Hague Convention is a global instrument. At the time of writing, a substantial number of countries have ratified the Convention (see box), although there is a significant absence of Middle Eastern and Far Eastern countries. Its provisions, in brief, protect children under the age of 16 who

have been wrongfully (that is, in breach of someone's rights of custody) removed or retained abroad, if the Hague Convention is in force between the two countries involved. In these circumstances the court will normally order such children to be returned promptly to the place where they have habitual residence, when a final decision as to their future can be made. The courts may refuse to order this if the child objects or is at grave risk of harm or has been over a year in the new environment and is settled there – but the court's business is not to investigate the merits of the dispute itself. Each State Party to the Hague Convention has an administrative body called the Central Authority, whose function is to receive and transmit applications under the Convention.

States in which the Hague Convention on the Civil Aspects of International Child Abduction applies, as a result of ratification, acceptance or approval (at December 2001)

Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Canada, China - Hong Kong Special Administrative Region only, China - Macau Special Administrative Region only, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Slovakia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States of America, Venezuela, Yugoslavia.

The following States have acceded to the Convention in relation to some, but not all, other countries:

Bahamas, Belarus, Belize, Brazil, Burkina Faso, Chile, Colombia, Costa Rica, Cyprus, Ecuador, El Salvador, Estonia, Fiji, Georgia, Honduras, Hungary, Iceland, Latvia, Malta, Mauritius, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Peru, Poland, Republic of Moldova, Romania, Saint Kitts and Nevis, Slovenia, South Africa, Sri Lanka, Trinidad and Tobago, Turkmenistan, Uruguay, Uzbekistan, Zimbabwe.



In addition to the Hague Convention, there are regional treaties such as the Inter-American Convention on the International Return of Children, and the European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children. These can be helpful in augmenting the principles of the Hague Convention, for example by enforcing the details of existing court orders. Some countries have fully acceded to the Convention, others have entered into its provisions in relation to specific other countries. Even where States have not ratified, bilateral agreements can be concluded, as the Committee encouraged Austria:

“Regarding article 11, the Committee notes with satisfaction that Austria is a party to the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Committee encourages the State Party to promote the conclusion of bilateral agreements to the same effect with States that are not parties to

the two above-mentioned conventions. The Committee also recommends that maximum assistance be provided through diplomatic and consular channels, in order to solve cases of illicit transfer and non-return of children arising in such States, in the best interests of the children involved.” (Austria IRCO, Add.98, para. 19)

In addition, a recent Hague Convention has been opened for ratification: the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (1996). This Convention does not deal directly with parental abductions, but it does settle related matters such as who has parental responsibility and custody rights of children who have moved between countries, and which country has jurisdiction to act on behalf of these children (for example as between the country of the child’s habitual residence and the child’s country of nationality). The Committee has encouraged States to ratify the Convention, for example:

Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children

The following States have ratified the Convention (as at December 2001): Monaco, Czech Republic, Slovakia.

The following States have signed, but not yet ratified: Morocco, Netherlands, Poland.

The Convention entered into force on 1 January 2002.



"... The Committee encourages the State Party ... to review existing legislation on the recognition of foreign decisions on custody and to consider ratification of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 1996." (Sweden 2RCO, Add.101, para. 15)

Beyond ratifying international treaties, a State should also take other measures to implement article 11. In particular it should secure that

- machinery is in place to speedily put checks on borders and to obtain appropriate court orders when it is suspected that a child is going to be abducted;

- parents are provided with legal aid and financial assistance when it is necessary to pay for the costs of the child's return;
- the judiciary overseeing the law are fully acquainted with the principles of the Hague Convention;
- information is provided from government agencies and State databases to identify the whereabouts of abducted or wrongfully retained children.

The Committee has been relatively silent on the failure of countries to become parties to the Hague Conventions and other regional treaties on abduction, though failure to do so could result in a breach of article 11.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 11, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 11 is relevant to **departments of home affairs, foreign affairs, justice, social welfare and social security**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 11 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 11 likely to include the **judiciary, social workers, border officials and the police**)?

● Specific issues in implementing article 11

- ☐ Has the State ratified the Hague Convention on the Civil Aspects of International Child Abduction?
- ☐ Has the State ratified the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children?
- ☐ Has the State ratified or acceded to any regional or bilateral agreements relating to child abduction?
- ☐ Is the judiciary fully acquainted with the Hague Conventions' provisions?
- ☐ Are effective methods in place to prevent a child from being abducted (e.g., border checks, court orders, confiscation of passports)?

Implementation Checklist



- ☐ Are parents and children given financial assistance where necessary to exercise their rights under this article and any multilateral agreements?
- ☐ Are State institutions empowered to release information that will help to trace the whereabouts of abducted children?

Reminder: The Convention is indivisible and its articles are interdependent. Article 11 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 11 include:

Article 7: right to be cared for by parents

Article 8: right to preservation of nationality, including nationality and family relations

Article 9: non-separation from parents except in child's best interests; right to have contact with both parents on a regular basis

Article 10: right to family reunification

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

Article 18: both parents having joint responsibility

Article 35: prevention of sale, trafficking and abduction of children

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

Respect for the views of the child



Text of Article 12

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The Committee on the Rights of the Child asserted early on the status of article 12 as a general principle of fundamental importance relevant to all aspects of implementation of the Convention on the Rights of the Child and to the interpretation of all other articles.

Paragraph 1 requires States to assure

- that any child capable of forming a view has the right to express views freely in all matters affecting him or her;
- that the child's views are given due weight in accordance with
 - age and
 - maturity.

Paragraph 2 specifically provides the child with the right to be heard in any judicial and administrative proceedings affecting him or her. This covers a very wide range of court hearings and also

formal decision-making affecting the child in, for example, education, health, planning, the environment and so on (see page 165).

The Committee has consistently emphasized that the child must be regarded as an active subject of rights and that a key purpose of the Convention is to emphasize that human rights extend to children. Article 12, together with the child's right to freedom of expression (article 13), and other civil rights to freedom of thought, conscience and religion (article 14), and freedom of association (article 15) underline children's status as individuals with fundamental human rights, and views and feelings of their own. The Committee has rejected what it termed "the charity mentality and paternalistic approaches" to children's issues. It invariably raises implementation of article 12 with States Parties and identifies traditional practices, culture and attitudes as obstacles.

Summary



The rights of the child set out in the two paragraphs of article 12 do not provide a right to self-determination but concern involvement in decision-making. The references to the “evolving capacities” of the child, in articles 5 and 14 (pages 85 and 193) do emphasize the need to respect the child’s developing capacity for decision-making.

Certain other articles include references to children’s participation. Article 9(2) refers to the child’s right to be heard in relation to proceedings involving separation from his or her parent(s), during which “all interested parties shall be given an opportunity to participate in the proceedings and make their views known” (article 9, page 138). In relation to adoption proceedings, article 21(a) refers to “the informed consent” of the persons concerned (page 298). Every child deprived of his or her liberty has the right under article 37 to challenge the legality of the deprivation before a court or other authority, suggesting a right to initiate court action rather than just to be heard

(page 555). And article 40, in relation to children “alleged as, accused of, or recognized as having infringed the penal law,” emphasizes the juvenile’s right to an active role in the proceedings, but that he or she must not “be compelled to give testimony or to confess guilt” (article 40(2)(b)(iv), page 600).

The Universal Declaration of Human Rights states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (article 19). And the International Covenant on Civil and Political Rights states: “Everyone shall have the right to hold opinions without interference” (article 19(1)). The significance of article 12 of the Convention on the Rights of the Child is that it not only requires that children should be assured the right to express their views freely, but also that they should be heard and that their views be given “due weight”.

Extracts from Committee on the Rights of the Child Guidelines for reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“General principles

Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

....

(d) Respect for the views of the child (art. 12).

In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines.”
(CRC/C/5, paras. 13 and 14)

Guidelines for Periodic Reports

“III. GENERAL PRINCIPLES

D. Respect for the views of the child (art. 12)

Reports should indicate how the right of the child to express views freely on all matters affecting him or her, and provision for those views to be given due weight have been incorporated in legislation.

Please provide information on legislative and other measures taken to ensure the right of the child to express views in a manner consistent with his or her evolving capacities, including in:

family life

school life

the administration of juvenile justice

*placement and life in institutional and other forms of care
asylum-seeking procedures.*

Please indicate the opportunities provided for the child to be heard in judicial and administrative proceedings affecting him or her, as well as the situations in which the child can intervene directly or through a representative or an appropriate body...

Please provide information on any bodies or instances where the child has a right to participate in decision-making, such as schools or local councils.

Please indicate what measures have been taken to raise the awareness of families and the public in general of the need to encourage children to exercise their right to express their views, and to train professionals working with children to encourage children to do so, and to give their views due weight. An indication should be given of the number of hours of child development courses provided for the following staff:

*Judges in general;
Family court judges;
Juvenile court judges;
Probation officers;
Police officers;
Prison officers;
Teachers;
Health workers;
Other professionals.*

An indication should also be provided of the number of courses about the Convention included in the curriculum of:

*Law schools;
Teacher training schools;
Medical schools and institutions;
Nursing schools;
Social work schools;
Psychology departments;
Sociology departments.*

Please indicate how the views of the child obtained through public opinion, consultations and assessment of complaints are taken into consideration in the legal provisions, and in policy or judicial decisions."

(CRC/C/58, paras. 42-47. The following paragraphs of the Guidelines for Periodic Reports are also relevant to reporting under this article: 24, 64, 65, 69, 70, 74, 76, 80, 83, 87, 88, 93, 101, 106, 109, 113, 115, 118, 120, 128, 132, 133, 138, 143, 152, 153, 159, 161, 164, 166; for full text of Guidelines, see Appendix 3, page 674.)



The child as a subject of rights and an active participant

In 1999, the Committee, together with the Office of the High Commissioner for Human Rights, held a two-day workshop: "Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges", on 30 September and 1 October 1999. The Committee endorsed detailed recommendations arising from the workshop, stating:

"Child rights must be viewed as the human rights of children. The experience of general human rights activities over recent decades

should be analyzed and used to promote respect for the rights of the child, and to avoid the perseverance of the charity mentality and paternalistic approaches to children's issues."

The recommendations include:

"The Committee will consider adopting, as a priority, a comprehensive general comment on child participation as envisaged in the Convention (and more particularly in articles 12 through 17) bearing in mind that participation includes, but is not limited to, consultation and proactive initiatives by children themselves. The Committee reminds



States Parties of the need to give adequate consideration to the requirements of these provisions. Such attention should include:

- *taking appropriate measures to support the right of children to express their views;*
- *ensuring that schools, as well as other bodies providing services for children, establish permanent ways of consulting with children in all decisions concerning their functioning, the content of the curriculum or other activities;*
- *increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organizations, NGOs, and the media;*
- *encouraging and facilitating the creation of structures and organizations run by and for children and youth...*

"The Committee encourages States Parties, non-governmental organizations, and others preparing reports, to include the views of children, in particular on the status of children's rights and the impact of the Convention on their lives, in monitoring and reporting on the implementation of the Convention.

"The Committee will give careful consideration to the need to ensure the most appropriate approach to the participation of children in its own work." (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (a), (w), (x) and (y). For all recommendations, see article 4, page 58.)

The *Manual on Human Rights Reporting*, 1997, comments: "This article sets one of the fundamental values of the Convention and probably also one of its basic challenges. In essence it affirms that the child is a fully-fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight. Thus the child has the right to participate in the decision making process affecting his or her life, as well as to influence decisions taken in his or her regard...

"At the first sight it might be considered that article 12 is basically addressing the same reality as article 13 on freedom of expression and information. It is true that they are closely connected. But the fact they were both incorporated in the Convention and coexist in an autonomous man-

ner, has to be interpreted as to mean that, while article 13 recognizes in a general way freedom of expression, article 12 should prevail in all those cases where the matters at stake affect the child, while stressing the right of the child to be heard and for the child's views to be taken into account." (*Manual*, p. 426)

The Committee has frequently expressed concern where countries do not appear to have fully accepted the concept of the child as an active subject of rights. For example:

"Further efforts are required to ensure the active participation of children and their involvement in all decisions affecting them in the family, at school and in social life, in the light of articles 12, 13 and 15 of the Convention." (Panama IRCO, Add.68, para. 29. For other comments, see article 5, page 90.)

In examining States Parties' reports the Committee recommends further action to ensure that children enjoy their civil rights, including the right to participation in decision-making. For example:

"In the light of article 12, the Committee notes that the views of the child are accorded insufficient importance, especially within the family, the school, care institutions, the courts and the juvenile justice system.

"The Committee encourages the State Party to promote and facilitate within the family, the school, care institutions, the courts and the juvenile justice system respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention. In this regard, the Committee recommends that the State Party develop skills-training programmes in community settings for teachers, social workers and local officials in assisting children to make and express their informed decisions and to have their views taken into consideration." (India IRCO, Add.115, paras. 34 and 35)

"The Committee recommends that further efforts be made to ensure the implementation of the principles of 'best interests of the child' and 'respect for the views of the child', especially his or her rights to participate in the family, at school, within other institutions and in society in general in order to empower children to their fullest development and dignity. These principles should also be reflected in all policies and programmes relating to children. Awareness raising among the public at large, including community leaders, as well as educational programmes on the implementation of these principles should be reinforced in order to change traditional perceptions of children as objects rather than subjects of rights." (Dominican Republic IRCO, Add.150, para. 25. See also Nicaragua IRCO,

Add.36, para. 33; Republic of Korea IRCO, Add.51, para. 26; Finland IRCO, Add.53, para. 13; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 25; Lao People's Democratic Republic IRCO, Add.78, para. 16; Ireland IRCO, Add.85, para. 35; Guinea IRCO, Add.100, para. 18; Sierra Leone IRCO, Add.116, paras. 38 and 39; The Former Yugoslav Republic of Macedonia IRCO, Add.118, paras. 19 and 20; Grenada IRCO, Add.121, para. 15; South Africa IRCO, Add.122, para. 19; Georgia IRCO, Add. 124, paras. 28 and 29; Kyrgyzstan IRCO, Add.127, paras. 27 and 28; Cambodia IRCO, Add.128, paras. 33 and 34; Malta IRCO, Add.129, paras. 27 and 28; Suriname IRCO, Add.130, paras. 29 and 30; Djibouti IRCO, Add.131, paras. 29 and 30; Burundi IRCO, Add.133, paras. 32 and 33; United Kingdom - Overseas Territories IRCO, Add.135, paras. 27 and 28; Tajikistan IRCO, Add.136, paras. 24 and 25; Comoros IRCO, Add.141, paras. 25 and 26; Saudi Arabia IRCO, Add.148, paras. 29 and 30; Palau IRCO, Add.149, paras. 36 and 37)

In examining Second Reports, the Committee continues to express concern that in practice the general principles contained in articles 3 and 12 are not respected. For example:

"While the Committee notes that the principles of the 'best interests of the child' (art.3) and 'respect for the views of the child' (art.12) have been incorporated in domestic legislation, it remains concerned that in practice, as it is recognized in the report, these principles are not respected owing to the fact that children are not yet perceived as persons entitled to rights and that the rights of the child are undermined by adults' interests. The Committee recommends that further efforts be made to ensure the implementation of the principles of the 'best interests of the child' and 'respect for the views of the child', especially his or her rights to participate in the family, at school, within other institutions and in society in general. These principles should also be reflected in all policies and programmes relating to children. Awareness-raising among the public at large, including traditional communities and religious leaders, as well as educational programmes on the implementation of these principles should be reinforced." (Bolivia 2RCO, Add.95, para. 18)

"In light of articles 12 to 17 of the Convention, the Committee recommends that further measures be undertaken to promote the participation of children in the family, at school and in other social institutions, as well as to guarantee the effective enjoyment of their fundamental freedoms, including those of opinion, expression and association." (Peru 2RCO, Add.120, para. 20. See also Jordan 2RCO, Add.125, paras. 39 and 40; Egypt 2RCO, Add.145, paras. 35 and 36)

Many countries have implied in their Initial Reports that implementing children's civil rights is the most challenging aspect of the Convention, a challenge that applies equally to resource-rich countries.

The Committee and States Parties have identified traditional practices, culture and attitudes as obstacles to the full implementation of article 12 and other civil rights of children:

"The Committee joins the State Party in expressing its concern for the limited respect given to the views of children, including as a result of customary and traditional practices, in schools and in the family and particularly within rural communities."

"In light of article 12 of the Convention, the Committee recommends that the State party promote the right of children to express their views through the adoption and implementation of appropriate legislation, through the sensitization of key professional groups and the family, through use of the media and through other activities targeting the public in general and parents and schools in particular." (Central African Republic IRCO, Add.138, paras. 34 and 35)

The Committee has referred to attitudes

"which promote the philosophy that 'children should be seen and not heard' and that 'children are the property of their parents'." (Grenada IRCO, Add.121, para. 15)

"which consider children who express their views and opinions as 'impudent' and 'impertinent'." (Suriname IRCO, Add.130, para. 29)

To one State it expressed serious concern

"at the way in which the principle of respect for the views of the child (art. 12) is interpreted in the State Party, especially since, according to the report, a child needs to be 'trained' to become a human being..." (Comoros IRCO, Add.141, para. 25)

The Committee has noted that where adults' human rights are not adequately respected, children are affected:

"...While noting substantial improvements over the past decade, the Committee remains concerned that a broad range of the human rights of adults are not thoroughly respected and that this situation may create an environment in which the civil rights and freedoms of children are also not fully respected. The Committee recommends that the State Party strengthen its efforts to ensure that children's right to be heard is respected... The Committee recommends, further, that the State Party make additional efforts to guarantee general respect for the human rights of adults..." (Ethiopia 2RCO, Add.144, paras. 36 and 37)





Reservations

The Committee on the Rights of the Child has indicated concern about declarations and reservations that appear to challenge full recognition of the child as a subject of rights. For example, in ratifying the Convention, Poland made a declaration: “The Republic of Poland considers that a child’s rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family.” (CRC/C/2/Rev.8, p. 36)

The Committee welcomed Poland’s intention to review its declarations and reservations with a view to considering withdrawal. It went on to say:

“The Committee is concerned that traditional attitudes still prevailing in the country may not be conducive to the realization of the general principles of the Convention, including, in particular, article 2 (principle of non-discrimination), article 3 (principle of the best interests of the child) and article 12 (respect for the views of the child).” (Poland IRCO, Add.31, para. 12)

(For the Committee’s comments on similar reservations and declarations, see article 5, page 89.)

The child who is “capable of forming his or her own views”: article 12(1)

Article 12 does not set any lower age limit on children’s right to express views freely. It is clear that children can and do form views from a very early age, and the Convention on the Rights of the Child provides no support to those who would impose a lower age limit on the ascertainment or consideration of children’s views. And it is important to note, for example, that ascertaining the views of some disabled children may require special consideration.

The *Manual on Human Rights Reporting*, 1997, states: “Pursuant to the provisions of this article, States Parties have a clear and precise obligation to assure to the child the right to have a say in situations that may affect him or her. The child should therefore not be envisaged as a passive human being or allowed to be deprived of such right of intervention, unless he or she would clearly be incapable of forming his or her views. This right should therefore be ensured and respected even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration ‘in accord-

ance with the age and maturity of the child’...” (*Manual*, p. 426)

Some countries reported that they had set a minimum age on the right of the child to be heard, for example in custody proceedings following separation or divorce of parents, but the Convention provides no support for this, and States cannot quote the best interests principle to avoid fulfilling their obligations under article 12.

The Committee commented, for example, to Finland:

“The Committee expresses its concern that the views of children, in particular those below 12 years of age, are not always taken into full consideration, especially in child custody cases and access disputes taken to court.

“The Committee recommends that the State Party make sure that the views of children under 12 years of age who are affected by a judicial proceeding are always heard, if they are considered to be mature enough, and that this takes place in a child-friendly environment. It also recommends that the State Party undertake a regular review of the extent to which children’s views are taken into consideration and of their impact on policy-making and court decisions, programme implementation and on children themselves.” (Finland 2RCO, Add.132, paras. 29 and 30)

The “right to express those views freely”

There are no boundaries on the obligation of States Parties to assure the child the right to express views freely. In particular, this emphasizes that there is no area of traditional parental or adult authority – the home or school for example – in which children’s views have no place. In article 13 (see page 185) the right is re-stated and developed to include the right to “seek, receive and impart information and ideas of all kinds”.

It should be emphasized that article 12 implies no obligation on the child to express views. “Freely” implies without either coercion or constraint: “The child has the right to express views **freely**. He or she should therefore not suffer any pressure, constraint or influence that might prevent such expression or indeed even require it.” (*Manual on Human Rights Reporting*, 1997, p. 426)

“In all matters affecting the child”

There are few areas of family, community, regional, national or international decision-making that do not affect children. When the proposal to include the child’s right to express views was first discussed in the Working Group drafting the Convention on the Rights of the Child, the

text referred to the right of the child to “express his opinion in matters concerning his own person, and in particular marriage, choice of occupation, medical treatment, education and recreation”. But most delegations felt that the matters on which States Parties should enable children to express opinions “should not be subject to the limits of a list, and therefore the list ought to be deleted” (E/CN.4/1349*, p. 3 and E/CN.4/L.1575, pp. 13-14; Detrick, pp. 224 and 225).

The reference to “all matters” shows that the participatory rights are not limited to matters specifically dealt with under the Convention. As the *Manual on Human Rights Reporting*, 1997, comments: “The right recognized in article 12 is to be assured in relation to **all matters** affecting the child. It should apply in all questions, even those that might not be specifically covered by the Convention, whenever those same questions have a particular interest for the child or may affect his or her life...

“The right of the child to express views therefore applies in relation to family matters, for instance in case of adoption, in school life, for instance when a decision of expulsion of the child is under consideration, or in relation to relevant events taking place at the community level, such as when a decision is taken on the location of playgrounds for children or the prevention of traffic accidents is being considered. The intention is therefore to ensure that the views of the child are a relevant factor in all decisions affecting him or her and to stress that no implementation system may be carried out and be effective without the intervention of children in the decisions affecting their lives.” (*Manual*, pp. 426 and 427)

“... the views of the child being given due weight in accordance with the age and maturity of the child”

These words provide an active obligation to listen to children’s views and to take them seriously. Again, they are in accordance with the concept of the evolving capacities of the child, introduced in article 5. In deciding how much weight to give to a child’s views in a particular matter, the twin criteria of age and maturity must be considered. Age on its own is not the criterion; the Convention on the Rights of the Child rejects specific age barriers to the significant participation of children in decision-making.

“For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child”: article 12(2)

When originally introduced during the drafting of the Convention on the Rights of the Child, the proposal that children should have a right to be heard in judicial and administrative proceedings was linked to the best interests principle, as the second paragraph of article 3, but it was then moved to take a more logical place with the overall participation principle in what was to become article 12 (E/CN.4/1989/48, pp. 42-45; Detrick, pp. 226 and 227).

The link between the paragraphs indicates that the second paragraph of article 12 applies to children “capable of forming views”, again emphasizing that very young children should have the



Child veto over custody and access

In Sweden, “Cases concerning the enforcement of rights of access and custody have as a rule been preceded by proceedings in a common court and can therefore be termed a continuation of that process. No express permission has therefore been judged necessary to the effect that the child’s wishes are also to be investigated in enforcement proceedings. In cases of this kind, however, the court is expected to particularly bear in mind that the length of time between the decisions may be such that the child’s attitude can have changed. It is especially important for enforcement proceedings that, where slightly older children are concerned, the court is expressly obliged to take the child’s wishes into account. A child aged 12 or over can veto the enforcement of a court ruling on the subject of custody and access. Enforcement may take place against the child’s wishes only if the court finds it necessary out of consideration for the child’s best interests. The same applies concerning children who are under the age of 12 but who have attained such a degree of maturity that their wishes should be similarly taken into account. Just as in custody and access proceedings, the child can be called to testify in court if there are special reasons for doing so and it is obvious that the child will not suffer harm as a result.” (Sweden 2R, para. 196)



formal right to be heard. The Convention provides no support for a set minimum age. The Committee's *Guidelines for Periodic Reports* asks for information on any minimum ages defined in legislation (see page 2), presumably in order to ascertain whether any children are excluded from this right on the grounds of age. For the child to be "provided the opportunity" suggests an active obligation on the State to offer the child the opportunity to be heard, although, again, it is important to emphasize that there is no requirement that the child express views.

"Any judicial ... proceedings affecting the child" covers a very wide range of court hearings, including all civil proceedings such as divorce, custody, care and adoption proceedings, name-changing, judicial applications relating to place of residence, religion, education, disposal of money and so forth, judicial decision-making on nationality, immigration and refugee status, and criminal proceedings; it also covers States' involvement in international courts. Arguably, it covers criminal prosecutions of parents, the outcome of which can affect children dramatically.

The reference to "administrative proceedings" broadens the scope still further and certainly includes, for example, formal decision-making in education, health, planning and environmental decisions, social security, child protection, employment and administration of juvenile justice.

The *Manual on Human Rights Reporting*, 1997, emphasizes that the child's right to intervene in judicial or administrative proceedings affecting him or her "should be interpreted in a broad manner so as to include all those situations where the proceedings may affect the child, both when he or she initiates them, for instance by introducing a complaint as a victim of ill treatment, and when the child intervenes as a party to the proceedings, for instance when a decision must be taken on the child's place of residence in view of the separation of the child's parents, or in the case of the change of the child's name." (*Manual*, p. 428)

There is an increasingly recognized need to adapt courts and other formal decision making bodies to enable children to participate. For court hearings this could include innovations such as more informality in the physical design of the court and the clothing of the judges and lawyers, the video-taping of evidence, sight screens, separate waiting rooms and the special preparation of child witnesses (see also article 19, page 274).

"either directly, or through a representative or an appropriate body, in a

manner consistent with the procedural rules of national law"

States are left with discretion as to how the child's views should be heard; but where procedural rules suggest that this be done through a representative or an appropriate body, the obligation is to transmit the views of the child. This principle should not be confused with the obligation in article 3 to ensure that the best interests of the child are a primary consideration in all actions concerning children.

The *Manual on Human Rights Reporting*, 1997, comments: "The child may be heard in various ways according to this paragraph: directly, through a representative or through an appropriate body. All these forms are possible alternatives, each and every one of them being designed to provide the child the best possible way of expressing his or her views in a free and informed manner." (*Manual*, p. 429)

During discussions in the Working Group drafting the Convention on the Rights of the Child, the explanation of the inclusion of the final qualification – "in a manner consistent with the procedural rules of national law" – was "that in case the hearing of the child's opinion required some international legal assistance, the requesting State's procedure should also be taken into account" (E/CN.4/1989/48, pp. 42-45; Detrick, p. 227).

The *Manual on Human Rights Reporting*, 1997, emphasizes: "The reference to 'procedural rules of national law' is intended to stress the need for the national law to include specific procedures to allow for the implementation of the right as recognized by article 12, and naturally not to be interpreted as a means of allowing possible inadequate solutions contained in the procedural law to prevent the full enjoyment of this fundamental right. In fact, such an interpretation would again be contrary to article 4 of the Convention." (*Manual*, p. 429)

Strategies for implementing participation rights

Right to information – a prerequisite for participation

As the *Manual on Human Rights Reporting*, 1997, makes clear "...the child should be provided with the necessary information about the possible existing options and the consequences arising therefrom. In fact, a decision can only be free once it is also an informed decision." (*Manual*, p. 426)

Article 13 asserts the child's freedom to "seek, receive and impart information and ideas of all kinds..." (see page 185). And, in addition, article 17 asserts the child's general right to information (see page 227). But in relation to the various decision-making arenas in which the child's views could be expressed – the family, school, community, court and so on – there is an implied obligation to ensure that the child is appropriately informed about the circumstances and the options.

Monitoring implementation

The Committee has proposed that States should review the extent of implementation of article 12, which implies asking children themselves about their experiences, and the degree to which their views are heard and respected:

"..The Committee recommends, further, that the State Party undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has on policy, programme implementation and on children themselves." (Norway 2RCO, Add.126, para. 25)

Participation rights without discrimination

In conjunction with the anti-discrimination principle in article 2 (page 19), article 12 emphasizes the equal right of all children to express views freely and have them taken seriously. Thus, for example, the child's language or disability must not impede respect for the article's obligations. The State must, for example, secure interpreters where necessary for asylum-seeking children.

Disabled children's participation without discrimination may require the production of materials in special media and the provision of special technology, interpreters (for example signing for deaf and partially hearing children) and special training, including of other children, parents and other family members, teachers and other adults. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities emphasizes throughout the importance of involving disabled persons and organizations of disabled persons "in all decision-making relating to plans and programmes concerning persons with disabilities or affecting their economic and social status" (rule 14(2)). Rule 18 expands on the role of organizations of persons with disabilities – for example "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" (rule 18(3)) (see article 23, page 335).

Recommendations adopted following the Committee on the Rights of the Child General Discussion on "The rights of children with disabilities" (1997) included an emphasis on participation. The Committee encouraged States Parties to consult disabled children, involve them in decision-making and give them greater control over their lives (for full text, see article 23, page 322).

The Platform for Action of the Fourth World Conference on Women states that: "Girls are less encouraged than boys to participate in and learn about the social, economic and political functioning of society, with the result that they are not offered the same opportunities as boys to take part in decision making processes" (Fourth World Conference on Women, Beijing, 1995, Platform for Action, para. 265). This demands educational and other strategies to ensure girls have equal rights to participation and to respect for their views.

The Committee has noted the need for special consideration of girls' participation rights:

*"The Committee is concerned that some traditional practices and attitudes can limit implementation of the right of children, especially girls, to express their views and to participate in decision-making processes...
"The Committee recommends that the State Party take effective measures to encourage respect for the views of the child, particularly girls, within schools, families, and the care and judicial systems (including the magistrature), and to promote the participatory rights of children."* (Lesotho IRCO, Add.147, paras. 27 and 28)

In 1997, the Committee on the Elimination of Discrimination against Women adopted a General Recommendation on political and public life. This emphasizes the importance of States taking all appropriate measures to eliminate discrimination against women in political and public life and provides detailed proposals (but surprisingly does not highlight the importance of promoting girls' participation rights, including in education) (Committee on the Elimination of Discrimination against Women, General Recommendation 23, 1997, HRI/GEN/1/Rev.5, p. 233).

Implementation not dependent on resources

The Committee on the Rights of the Child has emphasized that implementation of the general principles of the Convention, including article 12,

"cannot be dependent upon budgetary resources." (Bolivia IRCO, Add.1, para. 14. See also Indonesia IRCO, Add.25, para. 11, etc.)





Participation rights to be reflected in domestic legislation

The Committee has underlined that article 12, together with the other articles identified as general principles, should be incorporated into national laws and procedures. To reflect both paragraphs of article 12 in domestic law requires provisions that uphold the right to participation in the informal arena of family life, in alternative care for children deprived of their family environment, in children's school and community life, and specifically in all formal judicial and administrative proceedings affecting the child. The *Manual on Human Rights Reporting*, 1997, comments: "States have to adopt measures to ensure and respect this right. On the one hand, they are naturally required to reflect it in the national legislation, ensuring that there are effective opportunities for children to have a say, to be heard, and thus influence decisions. Law can in fact play an important role both in safeguarding this fundamental right, and in influencing attitudes of the population at large..." (*Manual*, p. 427)

One reason why children's participation is important

"In recent decades the outlines of yet another dimension of socialization have emerged. In certain fields, the adult community receives so much important input from children and young people that the traditional learning process has been reversed. There are several reasons for this. Young people in Norway today spend a longer time on their education, and are older than earlier generations before settling with a job and a family. This freedom from responsibility makes them less bound by convention, more open to alternatives and quick to pick up emerging ideas. Young people serve as antennas picking up signals too faint for adults to notice. This applies to a number of areas, including gender equality, opposition to violence and racism, involvement in the environment, new trends in fashion and music, and especially in relation to the new media.

"Given this dimension, it is perhaps more important than ever to secure and facilitate participation in society by children and young people. Children and young people today represent new resources and they are agents of change. How this potential is to be utilized is largely up to the adults." (Norway 2R, paras. 8 and 9)

Thus the Committee has frequently recommended that legal reform should reflect article 12. For example:

"In the light of article 12 of the Convention, the Committee is concerned that this general principle is not adequately reflected in the 1996 Rights of the Child Act. Moreover, the Committee is concerned that respect for the views of the child remains limited owing to traditional societal attitudes towards children in schools, care institutions, the courts and, especially, within the family..." (Armenia IRCO, Add.119, para. 26)

The Committee has also emphasized that legal reform alone is not enough:

"The Committee notes with appreciation that the State Party's domestic legislation has integrated provisions guaranteeing the participatory rights of children. However, it remains concerned that, in practice, these rights are not sufficiently implemented at the various levels of Costa Rican society. In the light of articles 12 to 17 and other related articles of the Convention, the Committee recommends that further efforts be made to ensure the implementation of the participatory rights of children, especially their rights to participate in the family, at school, within other institutions and in society in general. Awareness raising among the public at large, as well as educational programmes on the implementation of these principles, should be reinforced in order to change traditional perceptions of children as objects and not as subjects of rights." (Costa Rica 2RCO, Add.117, para. 16)

Initial Reports show that many countries have incorporated the principle of article 12 into domestic law, at least in relation to certain areas of children's lives and into certain court hearings. In some countries, the Convention has been incorporated into domestic law, or it can be invoked before the courts.

Education, training and other strategies to promote the child's participation

The Committee recognizes that legal frameworks alone will not achieve the necessary changes in attitudes and practice within families, schools or communities. So it has encouraged a variety of other strategies for implementation of article 12, including, in particular, education (proposing as a key strategy the incorporation of the Convention within the school curriculum) and information programmes, and systematic training of all those working with and for children. The *Guidelines for Periodic Reports* seeks information on the awareness-raising of families and the public about the need to encourage children to exercise

their right to express their views, and on the training of professionals working with children to do so and to give the views due weight. The *Guidelines* asks specifically about training courses for a wide variety of those working with or for children (para. 46).

One Committee member commented, during discussions with China, that "... the Convention's advocacy of the right of children to participate in all aspects of society and express their views demanded not just that children should be trained to act in such a way, but that adults and professionals working with children should be trained to develop participatory attitudes in children." (China SR.299, para. 33)

Within the overall obligation under the Convention's article 42 to make the principles and provisions widely known by appropriate and active means to adults and children alike, the Committee on the Rights of the Child has stressed participatory rights and the importance of actively involving children themselves in strategies to fulfil article 42.

It underlined this in recommendations adopted after its 1999 two-day commemorative workshop (see page 161 and article 42, page 611).

Implementation in different settings

Within government, and in overall policy-making

The participation of children at all levels of policy-making has been encouraged by the Committee on the Rights of the Child including government-level arrangements for the implementation of the Convention itself.

Following its 1999 two-day workshop, the Committee (as noted above) reminded States Parties that they should give

"increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organizations, NGOs, and the media..." (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (w))

It has followed this up in recommendations to States Parties. For example:

Children's Parliament in the Comoros...

"Every year, in observance of the Day of the African Child, an event takes place which turns the Comorian social order upside down. Whereas in the normal course of events the pre-eminence of adults over children is never open to question, on this day the deputies of the Federal Assembly yield their places and their roles to children who, on this occasion, are allowed to challenge ministers in the manner of parliamentarians. The resulting exchanges are certainly not without relevance, and it is perfectly possible to imagine a less informal and ephemeral structure enabling children to become the vigilant guardians of their rights. In other words, the possible prerequisites for the establishment of a children's parliament should be studied as a matter of urgency. In 1997, children were granted an audience with the President of the Republic, who was very sympathetic to their grievances. In his opinion, these grievances are based on a genuine grasp of facts." (Comoros IR, para. 35)

...and Peru

"Children's parliaments are developed in stages : first in the classrooms, then at the provincial and regional levels and finally at a national parliament. These parliaments have been organized since 1992 with the participation of children and adolescents.

"The children's parliaments provide a useful outlet for children and adolescents to express their feelings. They have led to the establishment of children's committees in several places, whose aim is to promote the rights of children and adolescents and to encourage civil society to support their activities..." (Peru 2R, paras. 211 and 212)

"The Committee recommends that the State Party consider a systematic approach to involving civil society, especially children's associations and advocacy groups, throughout all stages of the implementation of the Convention, including policy-making. The Committee recommends that greater efforts be made to involve relevant State actors in the dialogue with civil society, such as local government officials and the police, and further encourages the State Party to support initiatives aimed at strengthening the role of civil society." (Saudi Arabia IRCO, Add.148, para. 14. See also Marshall Islands IRCO, Add.139, para. 31)



Child participation in implementation in Nepal

During preparation of Nepal's Initial Report, a five day Children's National Seminar on the Convention was organized by UNICEF and non-governmental organizations: "During the seminar a group of 30 children, representing different ethnic, religious, geographical and socio-economic backgrounds had a chance to discuss and learn about their rights. The children included child labourers, refugees, disabled children and orphans as well as children from privileged families. One of the main objectives of this seminar was to come up with ways to implement the rights of the child. After the seminar, the children went to their respective villages and cities to interview other children and to observe the state of children there. The children were asked to document ... information about the rights of the child ... in photographs and writing. To ensure even wider participation, announcements were made on TV, radio and in the newspapers, encouraging children throughout the country to send in their impressions on the rights of the child in the form of articles, paintings, poems and songs.

"In April the 30 children returned to the capital for another meeting of the Children's National Seminar on the Convention, this time with another child whom each had chosen during the course of the exercise. The Seminar, whose inaugural function was chaired by a street child and attended by the Speaker of the House of Representatives and other high-ranking government officials, was virtually conducted by the children themselves. They had intensive discussions on the information which they had collected and on the contributions made by other children. They organized a press conference and a discussion session with members of Parliament and the National Planning Commission. The children formed a children's national networking group to promote the rights of the child, and decided to publish a quarterly newspaper to exchange ideas and share experiences. The seminar participants also made comments on the country report". To finalize the report, a working committee of the National Planning Commission was formed, including seven members of the Law Reform Commission, different ministries, NGOs and child representatives.

When Nepalese Government representatives met the Committee in May 1996 to discuss the Initial Report, they were accompanied by a representative of the Bal Chetana Samuha – Child Awareness Group, "a coalition of children, for children and by children for the implementation of the Convention". (Nepal IR, paras. 51-53; Nepal SR.301, paras. 1 and 4)

The Committee has welcomed the establishment of children's parliaments as one participation strategy:

"The Committee welcomes the election of the Youth Parliament of Georgia (April 2000) which is mandated to consider relevant youth issues and prepare recommendations in this regard to the National Parliament of Georgia. The Committee notes that 50 per cent of the Youth Parliament's 166 members are between the ages of 14 and 18 years." (Georgia IRCO, Add.124, para. 8)

"...The Committee welcomes the positive reaction of the delegation to the proposal to consider the establishment of a children's parliament and encourages the State Party to review the process undertaken by other States in establishing such a parliament or encouraging other framework for the participation of children in society." (Palau IRCO, Add.149, para. 37. See also Slovenia IRCO, Add.65, para. 7 and New Zealand IRCO, Add.71, para. 7)

The Committee has encouraged the involvement of children in all reporting on children's rights and implementation of the Convention:

"The Committee encourages States Parties, non-governmental organizations, and others preparing reports, to include the views of children, in particular on the status of children's rights and the impact of the Convention on their lives, in monitoring and reporting on the implementation of the Convention." (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291(x))

In its *Guidelines for Periodic Reports*, the Committee asks for information on how children's views obtained through public opinion, consultations and assessment of children's complaints (see below) are taken into consideration in legal provisions and in policy or judicial decisions (para. 47).

The Committee has emphasized that children should participate in the implementation of article 12 in planning strategies for children's participation:

"With respect to the implementation of articles 12, 13, and 15 of the Convention, the Committee recommends that consideration be given to extending and broadening the involvement of children in the initiatives being undertaken within the State Party to facilitate children's participation in decisions affecting them." (Nicaragua IRCO, Add.36, para. 33)

Voting rights

The Committee has not as yet explored the relevance of article 12 to the voting age, set in most States at or above the age of majority. A General Comment by the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service (article 25 of the International Covenant on Civil and Political Rights) does not directly consider the issue of voting age, merely stating that voting should be available to "every adult citizen". It states that: "Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen." (General Comment 25, Human Rights Committee, 1996, HRI/GEN/1/Rev.5, p. 157)

Complaints procedures

The Committee on the Rights of the Child sees the provision of effective complaints procedures for children as part of the implementation of article 12. Children need access to complaints procedures in all aspects of their lives – in the family, in alternative care, in all institutions, and in services and facilities relevant to them. The Committee frequently has expressed concern at the lack of complaints procedures for children.

The Committee has encouraged States to develop "child-friendly" complaints procedures:

"The Committee also expresses concern at the absence of an independent mechanism to register and address complaints from children concerning violations of their rights under the Convention. The Committee suggests that an independent child-friendly mechanism be made accessible to children to deal with complaints of violations of their rights and to provide remedies for such violations. The Committee further suggests that the State Party introduce an awareness-raising campaign to facilitate the effective use by children of such a mechanism." (Saint Kitts and Nevis IRCO, Add.104, para. 13)

In promoting the development of independent human rights institutions for children – children's ombudspersons, commissioners and focal

points on children's rights in human rights commissions – the Committee has encouraged appropriate complaints procedures (see article 4, page 76):

"...The Committee recommends that the State Party establish clear child-friendly procedures to register and address complaints from children regarding violations of their rights and to guarantee adequate remedies for such violations. The Committee further suggests that the State Party introduce an awareness-raising campaign to facilitate the effective use by children of such a procedure." (South Africa IRCO, Add.122, para. 13. See also, for example, Nepal IRCO, Add.57, para. 29; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 20; Mauritius IRCO, Add.64, para. 25; New Zealand IRCO, Add.71, para. 24; Malta IRCO, Add.129, para. 12)

There should be complaints procedures in schools...

"...While noting that students may, through their parents, discuss with the school principal any concerns regarding violations of their rights, the Committee is concerned that insufficient effort has been made to establish a formal complaints procedure for students whose rights have been violated."

"The Committee ... encourages the Isle of Man to establish a complaints procedure within the school system for students, at all levels, whose rights have been violated." (United Kingdom – Isle of Man IRCO, Add.134, paras. 34 and 35)

And in alternative care institutions:

"The Committee recommends that the State Party provide additional training, including in children's rights, for social and welfare workers, ensure the periodic review of placements in institutions and establish an independent complaints mechanism for children in alternative care institutions." (Grenada IRCO, Add.121, para. 18)

In the context of article 19, the Committee has recommended there should be complaints procedures for children suffering violence in and outside the family. For example:

"...serious concern remains in relation to a child's opportunity to report abuse and other violations of his/her rights in the family, schools or other institutions and to have a complaint taken seriously and responded to effectively." (Cuba IRCO, Add.72, para. 19)

And the Committee has noted that children need to be able to complain independently of their parents:

"The Committee is concerned that, since children are able to lodge complaints only





through their parents or legal guardians, the right to adequate recourse and complaint procedures for children victim of abuse, including sexual abuse, neglect or ill-treatment within their families does not seem to be secured. The Committee is also concerned that the enjoyment by children of their right to participate actively in the promotion of their own rights does not seem to be guaranteed... "...the Committee recommends that a system of complaints aimed at children victim of any form of violence, abuse, including sexual abuse, neglect, maltreatment or exploitation, even while in the care of their parents, be established, as a means to ensure protection of and respect for their rights." (Ethiopia IRCO, Add.67, paras. 16 and 31)

The *Guidelines for Periodic Reports* asks for information under article 1 (definition of the child) on "the minimum legal age defined by national legislation" for "lodging complaints and seeking redress before a court or other relevant authority without parental consent" (para. 24). The Convention does not support the setting of a minimum age for such purposes; the Committee on the Rights of the Child seeks information on whether any children are excluded from such a right.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee has promoted as providing relevant standards for implementation, has various provisions relating to complaints mechanisms (see article 37, page 555). These should clearly be applied to all institutional placements for children.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities proposes in rule 15.4: "States may consider establishing formal statutory complaints mechanisms in order to protect the interests of persons with disabilities."

In child protection

Article 19 of the Convention on the Rights of the Child sets out various measures for ensuring the protection of the child from all forms of violence and abuse. In each case – and in the planning, implementation and monitoring of child protection systems – respect for the views of the child is important (see article 19, page 257).

Access to an effective complaints procedure is an essential element of child protection, and because of the extent of parental violence and abuse of children, children require access which is independent of their parents (see above).

The Agenda for Action adopted at the First World Congress against Commercial Sexual

Exploitation of Children (Stockholm, Sweden, 1996) includes a section encouraging participation, to

"(a) promote the participation of children, including child victims, young people, their families, peers and others who are potential helpers of children so that they are able to express their views and to take action to prevent and protect children from commercial sexual exploitation and to assist child victims to be reintegrated into society; and

(b) identify or establish and support networks of children and young people as advocates of child rights, and include children, according to their evolving capacity, in developing and implementing government and other programmes concerning them" (World Congress Plan of Action, A/51/385, para. 6. See also Yokohama Global Commitment 2001, page 576).

Within the family environment

The Committee on the Rights of the Child has consistently encouraged children's participation in decision-making within the family, proposing that definitions of parents' and other caregivers' responsibilities should include an "article 12 obligation" to hear and take seriously the child's views. In the *Guidelines for Initial Reports*, under the heading of "Family environment and alternative care", the Committee requests States Parties in particular to provide relevant information on how the principles of the "best interests of the child" and "respect for the views of the child" are reflected in legislative, judicial, administrative and other measures in force. (para. 16)

The rights of the child to a name and nationality, and to preservation of identity (articles 7 and 8) require respect for the views of the child.

In October 1994, the Committee held a General Discussion on "The role of the family in the promotion of the rights of the child". One of two main issues addressed was the civil rights and freedoms of the child within the family. In its preliminary conclusions of the Discussion, the Committee stated:

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

challenging task?” (Report on the seventh session, September/October 1994, CRC/C/34, paras. 192 and 193)

The slogan adopted for the International Year of the Family (1994) was “Building the smallest democracy at the heart of society”. And the United Nations body responsible for the Year proposed that families “must become the medium for promoting new values and behaviour consistent with the rights of individual family members, as established by various United Nations instruments” (*Building the smallest democracy at the heart of society*, United Nations Centre for Social Development and Humanitarian Affairs, Vienna, 1991).

As the *Manual on Human Rights Reporting*, 1997, describes, parents are expected to provide appropriate direction and guidance to the child: “but in this endeavour they are required to act in a manner that takes into consideration the evolving capacities of the child, his or her age and maturity. In the light of article 12, a system of shared, positive and responsible dialogue should thus prevail. In fact, parents are particularly well placed to build the capacity of children to intervene in a growing manner in the different stages of decision, to prepare them for responsible life in a free society, informing them, giving the necessary guidance and direction, while assuring children the right to express views freely and to give those views due weight (articles 12 and 13). Children’s opinions will thus be taken into account, although not necessarily endorsed, and children will be given the possibility of understanding the reasons for a different decision being taken. Children will become active partners, with appropriate skills to participate, rather than a passive reflection of parents’ wishes.” (*Manual*, p. 446)

In adoption

Relating to adoption, article 12(2) requires that the child is heard in any judicial or administrative proceedings, and article 21(a) refers to the “informed consent” of persons concerned (see also article 21, page 298).

In alternative care

Article 20 sets out States’ obligation to provide alternative care for children deprived temporarily or permanently of their family environment. The child’s participative rights must be protected in all such settings – foster care, *kafalah* of Islamic law, and all kinds of institutions. The Committee’s emphasis on the need for legislation and other strategies applies equally to alternative care. In addition to the overall right to express views and have them taken seriously (article 12(1)), article 12(2) requires that the child is

Participation in child protection

The United Kingdom’s Initial Report notes that in relation to child protection, whenever the children concerned are considered to have sufficient understanding and are able to express their wishes and feelings and to participate in the process of investigation, assessment, planning and review they should be encouraged to attend “child protection conferences”. These are held to decide whether the child is at risk of abuse, and whether or not his or her name should be placed on a local “Child Protection Register”. Encouragement of children’s participation is included in government guidance on inter-agency cooperation for the protection of children from abuse (United Kingdom IR, para. 133).



heard in any judicial or administrative proceedings relating to alternative care. Under article 9(2), in any proceedings to determine that it is necessary to separate a child from his or her parents, “all interested parties” must be given an opportunity to participate (see article 9, page 138).

Under article 25, children placed by the State for care, protection or treatment must have a periodic review; under article 12, children should be permitted to participate in these reviews (see article 25, page 373).

In schools

In its first General Comment, issued in 2001, on the aims of education (see page 434), the Committee emphasizes that “children do not lose their human rights by virtue of passing through the school gates” and highlights the importance of schools respecting children’s participation rights:

“... the article attaches importance to the process by which the right to education is to be promoted. Thus efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her

Children's changing place in the family in the Netherlands

"Since the 1960s the situation within families has gradually changed. The old authoritarian regime has given way to a more relaxed arrangement of negotiation. The child is increasingly regarded as a member of the family who has a specific contribution to make to the day-to-day affairs of the household. In most families it is now considered normal for children to express their views on subjects that concern them and for their views to be taken into account. Needless to say, this does not mean that children should always get their way. Although the parents continue to have ultimate responsibility for the child, they have a duty to explain to their children why they have taken a particular position and why certain things are possible and others not. In this way children can learn that their involvement and contribution are appreciated. This is reflected in articles 1:247 and 1:249 Civil Code, which have been in force in their current form since 2 November 1995." (Netherlands IR, para. 54)

views freely in accordance with article 12(1) and to participate in school life... Compliance with the values recognized in article 29(1) clearly requires that schools be child-friendly in the fullest sense of that term and that they be consistent in all respects with the dignity of the child. Participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights." (Report on the twenty-sixth session, January 2001, CRC/C/103, Annex IX, para. 8)

Both paragraphs of article 12 are relevant: the general right of the child to express views freely "in all matters affecting the child", which covers all aspects of school life and decision-making about schooling; and the right to be heard in any "judicial and administrative proceedings affecting the child". For example, "administrative" proceedings might concern choice of school, exclusion from school, formal assessments and so on. There is a need for a legislative framework and procedures that provide for consultation with school students as a group, and also for ascertaining and paying due attention to the views of

individual children concerning individual decisions on education (for examples, see box on page 175). The Committee has commended positive developments. For example:

"The Committee notes with satisfaction the functioning of a comprehensive pattern of student representation in the school system." (Austria IRCO, Add.98, para. 5)

"The Committee appreciates the State Party's initiatives within the school environment. In this regard, it welcomes the coordination of an election for school children to choose the provisions of the Convention most significant to them..." (Belize IRCO, Add.99, para. 4)

"...The Committee also notes with appreciation that the membership of school disciplinary councils includes children." (Mali IRCO, Add.113, para. 5)

The Committee has encouraged promotion of participation in primary schools:

"While acknowledging the participation of students at the upper secondary level, the Committee is concerned that not enough attention is paid to the participation of children in, inter alia, education at the primary and lower secondary level."

"Noting the activities of the Government related to the participatory rights of children in education at those levels, the Committee encourages the State Party to take effective measures to enhance children's participation in, inter alia, educational activities concerning them." (Finland 2RCO, Add.132, paras. 31 and 32. See also, for example, Netherlands IRCO, Add.114, para. 14)

It has highlighted particular decisions about curriculum and disciplinary matters which children should be involved in :

"In relation to the implementation of article 12, the Committee is concerned that insufficient attention has been given to the right of the child to express his/her opinion, including in cases where parents in England and Wales have the possibility of withdrawing their children from parts of the sex education programmes in schools. In this as in other decisions, including exclusion from school, the child is not systematically invited to express his/her opinion and those opinions may not be given due weight, as required under article 12 of the Convention..."

"With regard to matters relating to education, the Committee suggests that children's right to appeal against expulsion from school be effectively ensured. It is also suggested that procedures be introduced to ensure that children are provided with the opportunity to express their views on the running of the schools in matters of concern to them..." (United Kingdom IRCO, Add.34, paras. 14 and 32.

Pupils' participation rights in the Netherlands

“Minors under the age of 16 are required by law to attend school. Apart from their family, school is the most important institution in the life of children. This is why it is important that schools too should respect the right of children to have their own views. The existing instruments for this purpose are:

(a) The student charter. Secondary schools are obliged by law to have a student charter defining the rules applicable at school and the legal status of pupils (section 24 (g) Secondary Education Act). The charter covers such matters as the right to object to the way in which assessments and tests are carried out, the way in which pupils can express a preference for a particular study or package of studies, the way in which reports are discussed and the way in which the freedom of expression of opinion is regulated for the pupils, for example in the editorial charter of the school magazine. The student charter may be adopted or altered only with the consent of the participation council;

(b) The participation council. The position of parents/carers as statutory representatives of pupils is regulated in the Participation (Education) Act 1992. This lays down that each school must have a participation council in which parents and secondary school pupils (from the age of 13) take part. The school management is obliged to obtain the consent of the participation council in some matters (e.g. the student charter). In addition, the participation council has the power to volunteer advice;

(c) The student council. The pupils have the opportunity to influence events at and connected with school. A student council represents the views of the pupils at a school. The council may also concern itself with improving the atmosphere at school and the quality of the education...;

(d) School work plan. Secondary schools are required to draw up a school work plan recording the organization and content of the education given at the school. The school work plan must be submitted to the participation council for approval. Pupils must be able to evaluate the school work plan annually;

(e) Codes of conduct. Some schools have introduced codes of conduct for teaching staff and pupils governing such subjects as bullying, racism and dealing with child abuse;

(f) Counselling for pupils. Many schools arrange individual counselling for pupils through teachers who are designated as school counsellor, tutor or careers officer;

(g) Official confidant. A confidant who can be consulted by pupils who have problems at home or at school has been appointed at some schools. In addition, social workers are active at many schools;

(h) The disputes committee. Each school must have an external disputes committee which can give rulings – often of a binding nature – on decisions which differ from the recommendation of the participation council;

(i) Other instruments. Additional instruments which can help to ensure that the views of pupils are taken seriously include the school magazine, special notice boards and the complaints line of the National Pupils Action Committee, an institution funded by the Netherlands Government which represents the interests of pupils.” (Netherlands IR, para. 55)



See also Denmark IRCO, Add.33, para. 24; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 32)

A particular issue, relevant to articles 12 and 13, is the right of children to organize and contribute to school newspapers and magazines (see article 13, page 189).

In child employment

In addition to protective legislation and procedures to prevent exploitation of children in employment (article 32, see page 475),

under article 12, respect is required for the views of the child, and in any judicial or administrative proceedings relating to employment of children, the child has a right to be heard. Children must also have access to complaints procedures relating to employment. Other forms of child labour – forced labour and bonded labour, for example – are breaches of article 12 as well as of other articles of the Convention. However, one of the challenges of ending exploitation of child labour is to ensure that children's often sincere view that they should earn money and

Responding to pupils' views of schooling

"Students in upper secondary school are entitled, through the 'school conference', to decide questions of great importance to them and of great consequence for the interchange of information, consultations and joint discussions between head teacher, staff and students.

"Despite these regulations, various studies have shown that pupils do not exert any real influence on teaching. Several studies have shown that many pupils feel unconcerned with what goes on in the classroom, do not feel that they are seen and heard, do not derive any enjoyment from teaching and do not feel that they are doing anything worthwhile. Many find teaching monotonous and predictable. They cannot influence the organization and content of teaching to any great extent, they do not have a hand in choosing teaching materials and they cannot influence tests and homework. There are great differences between individual schools, but the overall results are disheartening.

"Through the new curricula and the time schedules, the pupils have been given wider opportunities for influencing their education. The time schedule for compulsory school indicates a certain number of hours for the pupil's choices and those of the school respectively. The purpose of the pupil's choice is to enable pupils, for part of their time at school, to devote themselves to studies which they themselves have chosen and wanted. In this way their interests, initiative and involvement can be stimulated, which ought to enhance their educational motivation. The purpose of school choice is to give the school an opportunity to present its specialties. Music is a common specialty, but culture, sport, science and languages also occur.

"The Government's aim is to strengthen the influence exerted by pupils and parents in school. Pupil influence is a prerequisite of the work which goes on in school. Pupils must be allowed influence, because the education of democratic citizens is one of the tasks of school. This in turn requires the pupils to have an opportunity to practice democracy in school. Pupil influence is also a precondition for participation and learning.

"To provide pupils with greater opportunities to influence, the Riksdag resolved in May 1997 on a four-year experimental period, during which the municipalities may transfer certain responsibilities and decision-making functions to a local governing body, with a student majority, in upper secondary school and municipal adult education. In compulsory schools and compulsory school for the mentally retarded, a five-year experimental scheme of local governing bodies with a parental majority has been operating since 1996. So far upwards of 30 schools have reported setting up local governing bodies with parents in the majority. These governing bodies can become natural forums for discussions, e.g. concerning the working environment, where violence and victimization are important topics." (Sweden 2R, paras. 252-256)

help to support the family is also heard and responded to.

The ILO Recommendation (No.190), supplementing the Worst Forms of Child Labour Convention, 1999 (No.182), emphasizes the importance of taking account of the views of children directly affected by the worst forms of child labour (see article 32, page 479).

In local services, including planning, housing, the environment

The *Manual on Human Rights Reporting*, 1997, uses, as examples of implementation of article 12 at the community level, the involvement of children when decisions are being made about the location of playgrounds or the prevention of

traffic accidents, and specifically refers to children's involvement in local councils. (*Manual*, p. 427)

The report of the Second United Nations Conference on Human Settlements (Habitat II) states that "Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighbourhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment." (United Nations Conference on Human Settlements (Habitat II), A/CONF.165/14, p. 15)

The Committee has recommended, for example to Norway:

Participation in school discipline codes

The South African Schools Act (1996) provides that the governing bodies of public schools may adopt a disciplinary code of conduct after consultation with the learners, parents and educators of the school and after taking into consideration guidelines provided by the Minister of Education. The Act further provides for the representation of learners on learner representative councils in all public schools than enrol learners in the eighth grade and higher. It also provides for learners to be represented on the governing bodies of public schools, where they may participate in decisions on matters which affect them. (South Africa IR, para. 160)

"The Committee commends the State Party for its efforts to respect the rights of children to have their views heard including, notably, through the appointment of child representatives at a municipal level. The Committee joins the State Party in expressing concern, however, that in practice children's views are insufficiently heard and taken into consideration. The Committee is concerned that many children are not aware of their rights in this domain under the Convention and national laws, or of the opportunities which have been created for their views to be expressed.

"Taking note of the State Party's recent commitments, the Committee recommends that the State Party continue its efforts to inform children and others, including parents and legal professionals, of children's right to express their views and of the mechanisms and other opportunities which exist for this purpose. The Committee recommends,

further, that the State Party undertake a regular review of the extent to which children's views are taken into consideration and of the impact this has on policy, programme implementation and on children themselves." (Norway 2RCO, Add.126, paras. 24 and 25)

In environmental protection and sustainable development

Article 29 requires that children's education be directed to "the development of respect for the natural environment"; article 24 requires that children are informed (see page 356) about environmental sanitation and it refers to the danger and risks of environmental pollution (see page 355).

Several States Parties have reported, to the Committee, developments in environmental education and the active involvement of children in



Participation in employment in Austria and Peru

"The Arbeitsverfassungsgesetz (Employment (Principles) Act) provides that, in companies with at least five adolescent employees, special representative bodies are to be formed for adolescents. The Youth Assembly chooses from among its members:

- The Youth Representative: every adolescent employee, irrespective of his age, has the right to vote and to stand for election, i.e. he may choose a candidate, and may also propose himself as a candidate for the function of youth representative. Even an adolescent employee under the age of 19 may run as a candidate without the approval of his legal guardian, and may exercise the rights and assume the responsibilities deriving from the function of youth representative.
- The Assembly of Youth Representatives, which comprises all the youth representatives of a company, chooses from its members:
- The Central Youth Representative: the youth representatives or central youth representatives of a company may combine to form a Joint Committee.

The Youth Representative has the task of looking after the economic, social, health and cultural interests of the adolescent employees in the company." (Austria IR, para. 130)

The National Movement of Organized Child and Adolescent Workers in Peru was formed with the assistance of NGOs. "It is working to promote the development of all children and to fight for the rights and social responsibilities of children and adolescents who work. The Movement promotes policies and solutions to deal with problems of childhood, in particular problems in the area of health, labour, social security, education, organization, etc." (Peru 2R, para. 271)



promoting environmental protection. The direct participation of children was highlighted by the 1992 Earth Summit. The United Nations Conference on Environment and Development produced the Rio Declaration on Environment and Development, in which Principle 21 states: “The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.” The section of Agenda 21 on “Children and youth in sustainable development” emphasizes that children and youth should participate actively in all relevant decision making processes, because these processes affect their lives today and have implications for their futures. The objectives include that “Each country should, in consultation with its youth communities, establish a process to promote dialogue between the youth community and Government at all levels, and to establish mechanisms that permit youth access to information and provide them with the opportunity to present their perspectives on government decisions, including the implementation of Agenda 21... Each country and the United Nations should support the promotion and creation of mechanisms to involve youth representation in all United Nations processes in order to influence those processes.

“Children not only will inherit the responsibility of looking after the Earth, but in many developing countries they comprise nearly half the population. Furthermore, children in both developing and industrialized countries are highly vulnerable to the effects of environmental degradation. They are also highly aware supporters of environmental thinking. The specific interests of children need to be taken fully into account in the participatory process on environment and development in order to safeguard the future sustainability of any actions taken to improve the environment...”

Among activities, Governments should take active steps to “Establish procedures to incorporate children’s concerns into all relevant policies and strategies for environment and development at the local, regional and national levels, including those concerning allocation of and entitlement to natural resources, housing and recreation needs, and control of pollution and toxicity in both rural and urban areas” (Agenda 21, chapter 25, Objectives).

The United Nations Environment Programme (UNEP) has actively promoted children’s participation in environmental issues, conducting a global survey of children’s views and supporting international children’s conferences (see box).

Children’s views in planning and neighbourhood administration

In France, children’s and young people’s councils exist in neighbourhoods as well as communes, departments and regions. The first children’s council was set up in 1979. Only recently have they become widespread – increasing from 300 in 1990 to 650 in 1992. A detailed study of the operation and achievements of children’s councils was completed in 1993. At that time, inclusion of a module on children’s councils in the training course for youth leaders was being discussed (France IR, paras. 82-83).

In 1989 the Norwegian Government adopted National Policy Guidelines to Safeguard the Interests of Children and Adolescents in Planning: “According to the guidelines municipalities shall organize their planning process in such a way that the views of children as affected parties are expressed and so that various groups of children and adolescents are given the opportunity to participate. According to the National Policy Guidelines, the municipalities shall appoint a body to follow up these guidelines.” (Norway IR, para. 120)

According to Sweden’s Second Report, “It is a fundamental principle of Swedish society that decisions affecting children must be made by persons as near as possible to the child. This is why, subject to the national objectives, the planning of activities for children and young persons in Sweden is a municipal responsibility.

“Local decision-making makes it possible to meet the stipulation of the Convention that the best interests of the child should be a primary consideration in all actions concerning children. Local decision making also improves the prospects of enabling children and young persons to exert real influence on matters affecting their situation in life.” (Sweden 2R, paras. 16 and 17)

In individual health decisions and the planning and provision of health services

The Convention upholds children's rights to participate in decisions about their health and health care, and also in the planning and provision of health services relevant to them (see also article 1, page 8 and article 24, page 352). One aspect of this is children's evolving capacity to determine their own health care. The *Guidelines for Initial Reports* asks for information on the minimum age at which a child can receive medical counselling without parental consent (para. 12). The *Guidelines for Periodic Reports*, in addition, asks for information about the minimum age for medical treatment or surgery without parental consent (para. 24).

Some countries have set an age from which children are deemed to be able to consent to medical treatment for themselves; in other countries, more in line with the concept of evolving capacities of the child, no age is set but a principle exists that the child acquires the right to make decisions for himself or herself once judged to have "sufficient understanding". In some instances it is linked to a presumption in law that a child of a certain age does have sufficient maturity (see article 1, page 8).

In the media

In the outline for its General Discussion on "The child and the media", the Committee on the Rights of the Child emphasized the importance of the media in offering children the opportunity to express themselves:

"One of the principles of the Convention is that the views of children be heard and given due respect (art. 12). This is also reflected in articles about freedom of expression, thought, conscience and religion (arts. 13–14). It is in the spirit of these provisions that children should not only be able to consume information material but also to participate themselves in the media. This requires that there exist media which communicate with children. The Committee on the Rights of the Child has noted that there have been experiments in several countries to develop child-oriented media; some daily newspapers have special pages for children and radio and television programmes also devote special segments for the young audience. Further efforts are, however, needed..." (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, p. 81)

Following plenary and working group discussion at the Committee's General Discussion various recommendations were proposed for debate, including some relating to children's participation (Report on the thirteenth session, Septem-

UNEP: developing child participation

The United Nations Environment Programme (UNEP) works to ensure that children and youth are involved in major UN and UNEP environment-related events. It places an emphasis on enhancing the environmental awareness of children. Together with UNDP and UNICEF it supports the NGO Peace Child International, which developed Rescue Mission Planet Earth – A Children's Edition of Agenda 21. Between 1994 and 1995 UNEP conducted a global survey on children's views on environmental issues; over 26,000 children aged 8 to 16 from 72 countries took part. UNEP has also convened a series of international children's conferences and developed a UNEP children's environment network (www.unep.org/children_youth).



ber/October 1996, General Discussion on "The child and the media", CRC/C/57, pp. 42 et seq. See also article 17, page 230).

In asylum-seeking and other immigration procedures

The principles of article 12(1) and (2) should be applied in all immigration procedures including asylum-seeking, in relation to articles 10 and 22.

The 1994 *Refugee children – Guidelines on Protection and Care*, published by the United Nations High Commissioner for Refugees (UNHCR) emphasizes the importance of the Convention's general principles: non-discrimination, best interests of the child and respect for the views of the child (articles 2, 3 and 12). The *Guidelines* underlines the importance of seeking and taking seriously children's views and feelings, and enabling children to take part in decisions related to asylum-seeking and as refugees (*Refugee children – Guidelines on Protection and Care*, UNHCR, Geneva, pp. 23 et seq.). The UNHCR Policy on Refugee Children states: "... Although vulnerable, children are also a resource with much to offer. The potential contributions of children must not be overlooked. They are people in their own right, with suggestions, opinions and abilities to participate in decisions and activities that affect their lives. Efforts on behalf of refugee children fall short if they are perceived only as individuals to be fed, immunized or sheltered, rather than treated as participating members of their community." (UNHCR Executive Committee Document EC/SCP/82, see *Guidelines*, p. 171)



Voices of children in India

The "Voices of the Children" campaign has been initiated in India with support from the Government and UNICEF with the objective to start the process for children's participation in all matters which concern their lives and to facilitate a manual for interested parties working with children. The different categories of children participating in the "Voices of the Children" campaign include street children, child labourers, tribal children, girl children, slum children, children on tea plantations, refugee children, children of commercial sex workers, children displaced for development projects, high school children and children of municipal primary schools. As part of the campaign, facilitators' workshops have been organized to give orientation on the rights of the child, objectives and the need and importance of the campaign. The facilitators are being trained to help children to express issues and concerns through different media, such as dance, theatre, story telling, the print media and structured or informal discussions. (India IR, para. 62)

The Committee has commented:

"The Committee is concerned that the provisions and principles of the Convention are not entirely respected with regard to asylum-seeking children. Specifically, the Committee is concerned that child applicants for asylum are provided with insufficient opportunities to participate in their application process and that their views are insufficiently taken into consideration. The Committee considers that positive mechanisms, such as the appointment of individual guardians for each unaccompanied asylum-seeking child, are not implemented to their full extent..."

"Recognizing the State Party's ongoing plans to improve child participation in these procedures, the Committee encourages the State Party to pursue these efforts and recommends that the State Party review its procedures for considering applications for asylum from children, whether accompanied or unaccompanied, to ensure that children are provided with sufficient opportunities to participate in the proceedings and to express their concerns..." (Norway 2RCO, Add.126, paras. 48 and 49)

In the juvenile justice system

In addition to the general principles found in article 12(1) and (2), articles 37 and 40 require legislation and other measures to ensure the child's participation in relation to his or her restriction of liberty and to his or her involvement in the juvenile justice system. Under article 37(d), any child deprived of liberty has the right to prompt access to legal and other assistance as well as the right to challenge the legality of the deprivation of liberty before a court or other competent body (see article 37, page 555). Similarly, under article 40(2)(b), the child alleged as or accused of infringing the penal law has similar rights to legal and other assistance and to participate in a fair hearing, if necessary with the assistance of an interpreter (see article 40, page 598).

The United Nations Guidelines for the Prevention of Juvenile Delinquency, 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). The Guidelines goes on to propose active participation in delinquency prevention policies and processes, and strengthened youth organizations given full participatory status in the management of community affairs (for details, see article 40, page 595).

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 12, including:

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

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 12 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 12 should include training for **all those working with or for children, and parenting education**)?

● Specific issues in implementing article 12

Is the obligation reflected in article 12(1) respected

- ☐ in arrangements for the overall implementation of the Convention?
- ☐ in arrangements for preparing the State's Initial and Periodic Reports under the Convention?

in arrangements for the development of legislation, policy and practice which may affect children

- ☐ in central government?
- ☐ in regional/provincial government?
- ☐ in local government?

How to use the checklists, *see page XVII*



Is an obligation to respect article 12(1) included in legislation applying to

- ☐ the child in the family environment?
 - ☐ the process of adoption and adopted children?
 - ☐ placement in alternative care and to the child in alternative care, whether provided by the State or by others?
 - ☐ all schools and other educational institutions and all educational services affecting children?
 - ☐ child protection?
 - ☐ health services and institutions?
 - ☐ local communities, planning and environmental decision-making affecting children, including in response to the proposals of Agenda 21?
 - ☐ child employment and vocational training or guidance?
 - ☐ all immigration procedures, including those affecting asylum-seeking children?
 - ☐ the child in the juvenile justice system?
- ☐ Where age limits apply to the laws providing children with an opportunity to express their views and requiring that their views are given due weight, are the limits in accordance with article 12 and other articles ?
- ☐ Are the rights reflected in article 12 available to all children concerned, including disabled children, without discrimination, where necessary through the provision of interpreters, translations, special materials and technology?
- ☐ Have special arrangements been developed for child witnesses in both civil and criminal proceedings?
- ☐ Has there been adaptation to enable children's participation, for example by not using intimidatory and confusing language, and by providing appropriate settings and procedures to enable children to be heard?

Are there no situations in which a child is compelled to

- ☐ express views?
 - ☐ give evidence in court or other proceedings?
- ☐ Does the child in each case have access to adequate information to enable him or her to express informed views and/or to play an informed role in decision-making?

Has the State ensured that there are no matters affecting the child on which the child is, through legislation or otherwise, excluded from

- ☐ expressing views?
- ☐ having those views given due weight?

How to use the checklists, *see page XVII*



In relation to paragraph 2 of article 12, are children provided with a right to be heard in all judicial or administrative proceedings affecting them, such as

- ☐ criminal proceedings?
 - ☐ civil proceedings?
 - ☐ education?
 - ☐ health?
 - ☐ child protection?
 - ☐ placement in alternative care?
 - ☐ adoption proceedings?
 - ☐ reviews under article 25?
 - ☐ immigration and asylum-seeking?
 - ☐ planning, housing and environment?
 - ☐ social security?
 - ☐ employment?
 - ☐ any other?
- ☐ Has the implementation and use of legislative provisions relating to children's participation been monitored?
- ☐ Do children have appropriate remedies for breaches of their rights guaranteed by article 12?

Do children have appropriate access to effective complaints procedures in relation to

- ☐ family life, including ill-treatment?
 - ☐ alternative care of all kinds?
 - ☐ schools and education services?
 - ☐ health services and institutions?
 - ☐ employment?
 - ☐ all forms of detention?
 - ☐ all aspects of the juvenile justice system?
 - ☐ environmental, planning, housing and transport issues?
 - ☐ other services affecting children?
- ☐ In each case, do children have access to appropriate advice and advocacy?

Do children have appropriate access to the media and opportunities to participate in the media, particularly

- ☐ radio?
- ☐ print media?
- ☐ television?

How to use the checklists, see page XVII



- ☐ Do children have opportunities for training in media skills enabling them to relate to and use the media in a participatory manner?
- ☐ Are the participatory rights of children within the family promoted through parenting education and preparation for parenthood?

Is training to promote the participatory rights of children provided for

- ☐ judges, including family court and juvenile court judges?
- ☐ probation officers?
- ☐ police officers?
- ☐ prison officers?
- ☐ immigration officers?
- ☐ teachers?
- ☐ health workers?
- ☐ social workers?
- ☐ other professionals?

Reminder: The Convention is indivisible and its articles are interdependent. Article 12 has been identified by the Committee on the Rights of the Child as a general principle of relevance to implementation of the whole Convention.

Particular regard should be paid to: Other 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

All other articles require consideration of the child's right to be heard, and to have his or her views taken seriously. Specifically, the child has a right to be heard in relation to any judicial or administrative proceedings affecting the child, relevant to, for example, articles 9, 10, 21, 25, 37, 40. Also linked to the child's participation rights are articles 13 (freedom of expression), article 14 (freedom of thought, conscience and religion) and article 15 (freedom of association).

Child's right to freedom of expression



Text of Article 13

1. *The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*
2. *The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others; or*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

This is one of a series of articles in the Convention on the Rights of the Child which confirm that civil rights guaranteed for “everyone” in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights do apply to children. The first paragraph sets out the right to freedom of expression – to “seek, receive and impart” information and ideas of all kinds, and the second paragraph limits the restrictions that may be applied to the child’s exercise of this right.

The right to freedom of expression is closely linked to the child’s right to express views and

have them taken seriously under article 12, and to the following two articles: on freedom of thought, conscience and religion and on freedom of association. In addition, article 17 covers the child’s access to appropriate information and material. In its examination of reports, the Committee on the Rights of the Child has emphasized that the child is the subject of rights, the possessor of rights, and that the civil rights of children should be recognized explicitly in the law. Article 30 asserts the linked cultural, religious and linguistic rights of the children of minorities and indigenous communities, and article 31, the right of the child to engage in play and recreation and in cultural life and the arts. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(c) Freedom of expression (art. 13);

...”.

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

“IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37(a))

Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13-17 and 37(a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

...

C. Freedom of expression (art. 13)

Please provide information on the measures adopted to ensure the child's right to freedom of expression, including to seek, receive and impart information and ideas regardless of frontiers. Reports should also indicate the restrictions to which the exercise of this right may be subject in conformity with article 13, paragraph 2.”

(CRC/C/58, paras. 48 and 55. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 42-47, 60; for full text of *Guidelines*, see Appendix 3, page 674.)

The child's right to freedom of expression

The Universal Declaration of Human Rights, in its article 19, guarantees: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 19 of the International Covenant on Civil and Political Rights contains similar wording.

In a 1989 General Comment, the Human Rights Committee emphasizes that children should

benefit from civil rights. The Committee pointed out that the rights, providing special protection, set out for children in article 24 of the Covenant, “are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant...” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 130)

But as the *Manual on Human Rights Reporting*, 1997, comments on children's civil rights: “The prevailing reality was however, and to a certain extent still is, that children, in view of their evolving maturity, are in practice not recognized

as having the necessary capacity or competence to exercise them. By their clear incorporation in the Convention, an undeniable statement is made as to their entitlement and ability to fully enjoy such fundamental freedoms.” (*Manual*, pp. 433 and 434)

The *Manual* makes note of the fact that articles 13 to 17 constitute an important chapter of the Convention on the Rights of the Child, indicating the need to envisage the child as an active subject of rights. “States are required to recognize them in the law and to determine therein how their exercise may be ensured. It is therefore not sufficient for the Constitution simply to include them as fundamental rights. In fact, constitutional and/or legal provisions should further indicate how these rights specifically apply to children, which mechanisms have been established to protect them in an effective manner and which remedies are provided in case of their violation.” (*Manual*, p. 433)

The Committee on the Rights of the Child has emphasized that, in the case of children, it is not enough that these principles should be reflected in constitutions as applying to “everyone”. In its *Guidelines for Periodic Reports*, the Committee requests information on measures taken to ensure that the civil rights, including article 13, “are recognized by law specifically in relation to children”, and on how they are implemented in practice. The Committee expects to see the child’s right to freedom of expression expressly guaranteed in legislation (and the article requires that any restrictions on the right are set out in legislation – see below). For example, the Committee commented:

“In the light of articles 13, 14 and 15, the Committee is concerned that the State Party has not taken all legal and other appropriate measures to promote and implement those rights ...

“The Committee recommends that the State Party take all appropriate measures, including legal means, to fully implement articles 13, 14 and 15 of the Convention ...” (Myanmar IRCO, Add.69, paras. 16 and 37)

The Committee has frequently noted that the implementation of articles 13 and linked civil rights needs further development. For example:

“The Committee is generally concerned that inadequate attention has been given to the promotion of civil rights and freedoms of the child, as provided for in articles 13, 14, 15, 16, and 17 of the Convention. Information before the Committee indicates that traditional social attitudes regarding the role of children appear to make it difficult to accept children fully as the subjects of rights. The Committee

urges the State Party to redouble its efforts to educate and sensitize parliamentarians and government officials, professional groups, parents and children on the importance of accepting fully the concept of child rights, and recommends that legislative measures be envisaged to guarantee the enjoyment of civil rights and freedoms for every child.” (Barbados IRCO, Add.103, para. 18)

The Committee has continued to draw attention to attitudes which hinder enjoyment by the child of the right to freedom of expression. For example:

“With regard to the right of the child to express his/her views (art. 12) and his/her right to freedom of expression (art. 13), the Committee is concerned at the prevailing attitudes in the family, in school, in other institutions and in society that hinder the enjoyment of those rights...

“In the light of articles 12 and 13 of the Convention, the Committee recommends that the State Party take all appropriate measures to promote and guarantee the right of the child to freedom of expression at home, in school, in other institutions and in society.” (Togo IRCO, Add.83, paras. 19 and 42. See also, for example, Germany IRCO, Add.43, paras. 17 and 29; Ireland IRCO, Add.85, para. 35; Hungary IRCO, Add.87, para. 15)

The Committee has proposed monitoring and research to determine to what extent children’s civil rights are respected, within and outside the family.

The Committee has also encouraged States to look at the implementation of the child’s right to freedom of expression in various settings, including within the family. Traditional attitudes towards children and the role they should play in the family, school and society have been identified by the Committee as an impediment to implementation of children’s participation in many States (see article 12, page 163 for Committee’s comments).

In its outline for the General Discussion on “The role of the family in the promotion of the rights of the child”, the Committee commented:

“The civil rights of the child begin within the family ... The family is an essential agent for creating awareness and preservation of human rights, and respect for human values, cultural identity and heritage, and other civilizations. There is a need to consider appropriate ways of ensuring balance between parental authority and the realization of the rights of the child, including the right to freedom of expression. Corresponding measures to prevent abrogation of these rights of the child within



the family should be discussed.” (Report on the fifth session, January 1994, CRC/C/24, Annex V, p. 63)

The Committee has also stressed the important role of the media in “offering children the possibility of expressing themselves”. Article 17 (see page 227) concerns the role of the mass media and ensuring that the child has access to a wide variety of information and material. In the report of its General Discussion on “The child and the media” the Committee promoted children’s participatory rights in relation to the media (see article 12, page 179 and article 17, page 230). The Internet and modern information technology provide children with new opportunities to seek and impart information regardless of frontiers.



Children’s TV channel

In Venezuela, “Children have their own channels of expression. The country has a regional television network run by children and a radio station also run by children. Commercial television has created programmes designed to listen to and disseminate children’s views. Special mention must be made of the programme ‘Hay que oír a los niños’ (Children must be heard), which was successfully broadcast on a weekly basis for a number of years and was awarded an international prize in Belgium in 1996.” (Venezuela IR, para. 93)

Of particular importance to children’s freedom of expression is the right to engage in play and recreational activity and to participate freely in cultural life and the arts (see article 31, page 465). Article 30 asserts the particular rights of freedom of expression of children belonging to minorities or indigenous communities to enjoy their own culture, practice and profess their own religion, and use their own language (see article 30, page 453).

Ensuring the freedom of expression rights of disabled children may require special attention. Many provisions in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities are relevant to this, in particular on access to information and communication issues (rule 5), and on cultural activities, recreation and religions (rules 10-12).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee has promoted as providing relevant standards for implementation, states in rule 13: “Juveniles deprived of their liberty shall not for any reason related to their status be denied the

civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.” Thus aspects of freedom of expression not incompatible with deprivation of liberty must be preserved in all forms of the restriction of liberty.

Restrictions on child’s right: article 13(2)

Restrictions on the child’s right to freedom of expression are strictly limited by the provisions of paragraph 2 of the article. The restrictions are the same as those applied to “everyone’s” freedom of expression in article 19 of the International Covenant on Civil and Political Rights. Any restrictions must be set out in legislation and must be “necessary” for one of the two purposes set out in subparagraphs (a) and (b).

The Committee on the Rights of the Child, in its *Guidelines for Periodic Reports*, requests information on any restrictions applied under article 13. In its examination of States Parties’ reports, it has also emphasized the limits on any restrictions on the child’s right:

“The Committee is concerned that although the freedoms of expression and assembly are formally recognized in the Constitution, the exercise of these rights by children are restricted by vaguely worded limitation clauses (i.e. ‘in accordance with Islamic criteria’), which potentially exceed the permitted restrictions set out in paragraph 2 of articles 13 and 15 of the Convention. The Committee is concerned at reports of incidents of threats and violence by vigilante groups, such as Ansari-Hezbollah, directed at persons seeking to exercise or to promote the exercise of these rights.

“The Committee recommends that the State Party establish clear criteria to assess whether a given action or expression is in accordance with interpretations of Islamic texts, and consider appropriate and proportionate means to protect public morals while safeguarding the right of every child to freedom of expression and assembly.” (Islamic Republic of Iran IRCO, Add.123, paras. 33 and 34. See also, for example, Indonesia IRCO, Add.25, para. 13; Republic of Korea IRCO, Add.51, para. 26)

In its first General Comment on the aims of education, the Committee on the Rights of the Child notes the links of article 29(1) with the child’s civil rights, and comments:

"...the article attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life..." (Report on the twenty-sixth session, January 2001, CRC/C/103, Annex IX, para. 8)

Article 17(e) of the Convention on the Mass Media and Other Information Sources, requires States to: "Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18." Thus any guidelines must be consistent with the right to freedom of expression and with the restrictions allowed under article 13(2).

One particular issue raised during the drafting of the Convention on the Rights of the Child (and more recently in reservations and declarations made by some States upon ratifying the Convention) concerns the role of parents in relation to children's civil rights, including the right to freedom of expression. During the drafting process, a general proposal that the Convention should confirm explicitly that the civil and political rights accorded to "everyone" in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights do apply to children met with some opposition at first. The need to acknowledge the parents' role was emphasized. An early draft of what was to become article 13 stated: "Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child." But discussion proceeded to agree that while children might need direction and guidance from parents or guardians in the exercise of these rights, this does not affect the content of the rights themselves, and also that the evolving capacities of the child must be respected (E/CN.4/1986/39, p. 17; E/CN.4/1987/25, pp. 26-27; E/CN.4/1988/28, pp. 9-13; Detrick, pp. 230 et seq.).

School magazines

In relation to implementation of articles 12 and 13, Denmark reported that the Ministry of Education had issued a circular providing guidelines on the publication of school magazines, but later abandoned it because "it might give rise to doubts if this circular was in accordance with the Convention" (Denmark IR, paras. 13 and 82).

France's Initial Report describes the encouragement of freedom of expression in schools. The aim of a Decree dated 18 February 1991, relating to the rights and obligations of pupils in public secondary education, and four implementing circulars, was to encourage young high school students to express themselves. The right of publication set out in the law gives high school publications additional support by allowing expression without prior censorship (France IR, para. 80).



These formulas find general expression in article 5 of the Convention, requiring States to respect the "responsibilities, rights and duties" of parents and others "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention" (see article 5, page 85). This role for parents is repeated in article 14 (the child's right to freedom of thought, conscience and religion, see page 193) but not in article 13.

On the role of the parents, the *Manual on Human Rights Reporting*, 1997, states: "... as stressed by article 5 of the Convention, parents or others responsible for the child, should provide 'direction and guidance' which is appropriate to the child and consistent with the evolving capacities of the child, and with a view to ensuring 'the exercise by the child of the rights recognized by the Convention'." (*Manual*, p. 434)

Various States have issued declarations or reservations concerning the relationship between parents and their children's civil rights, which include article 13. When examining Initial Reports, the Committee has consistently asked for a review and withdrawal of reservations; in particular the Committee has expressed concern at reservations that suggest lack of the full recognition of the child as a subject of rights (for further discussion and Committee comments, see article 5, page 90, and article 12, page 162).

Other declarations and reservations relate to potential restrictions on freedom of expression



and other civil rights. A reservation made by Austria states: “Article 13 and article 15 of the Convention will be applied provided that they will not affect legal restrictions in accordance with article 10 and article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.” Belgium made a similar reservation (CRC/C/2/Rev.8, p. 18). The European Convention has a wider definition of permitted restrictions: article 10(2) – freedom of expression: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Human Rights Committee, in its General Comment on the equivalent article 19 in the

International Covenant on Civil and Political Rights, emphasizes that it is the interplay between the principle of freedom of expression and any imposed limitations and restrictions that determines the actual scope of the individual’s right. Paragraph 3 of article 19 states that the exercise of the right to freedom of expression “carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

The General Comment states: “Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State Party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be ‘provided by law’; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being ‘necessary’ for that State Party for one of those purposes.”

The Human Rights Committee notes that not all countries have provided information in their reports under the Covenant on “all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.

“Many States reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right....” (Human Rights Committee, General Comment 10, 1983, HRI/GEN/1/Rev.5, p. 120)

School student journalists

An important means of expression for children and adolescents is the school correspondents’ programme sponsored by the newspaper El Comercio. “This programme allows schoolchildren to write in and express their ideas and opinions about what is happening in their schools in the society in which they live. The newspaper devotes one page to topics relating to children and adolescents, where schoolchildren are their own spokespersons about events of interest and concern to them. The correspondents edit the page and are responsible for sending articles and participating in activities which interest them and for which they have time. They have a pass enabling them to enter the newspaper offices to leave their notes, use the file of press clippings or obtain advice for their articles.

“Each year a national correspondents’ convention is attended by more than 600 schoolchildren from all over the country, who enjoy a full day of journalism, fun and learning. This conference includes a lecture, press conference, lunch, videos and a wall newspaper competition...” (Peru 2R, paras. 261 and 262)

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 13, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 13 is relevant to **departments of family affairs, welfare, education, media and communication**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 13 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 13 likely to include the training of **all those working with or for children and their families, and parenting education**)?

● Specific issues in implementing article 13

- ☐ Is the child's right to freedom of expression as guaranteed in article 13 explicitly recognized in legislation?
- ☐ Does policy and practice actively encourage the child's freedom of expression?

Does law, policy and practice support the child's right to freedom of expression, as set out in article 13, in relation to

- ☐ the family?
- ☐ alternative care?
- ☐ schools?

How to use the checklists, see page XVII



- ☐ juvenile justice institutions?
- ☐ the community?
- ☐ the media?
- ☐ Are the only permitted restrictions on the right to freedom of expression consistent with those set out in paragraph 2 of article 13 and are they defined in legislation?
- ☐ In particular, are any restrictions on the child's right to contribute to and to publish school and other publications consistent with those set out in paragraph 2?
- ☐ Are special measures taken to ensure the freedom of expression of disabled children?
- ☐ Has the State taken any specific measures to encourage and facilitate children's access to the media?
- ☐ Is there any provision for consideration and resolution of complaints from children regarding breaches of their right to freedom of expression?

Reminder: The Convention is indivisible and its articles are interdependent. Article 13 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 13 include:

Article 5: parental responsibilities and child's evolving capacities

Article 15: freedom of association

Article 17: access to appropriate information; role of the mass media

Article 29: aims of education

Article 30: cultural, religious and language rights of children of minorities and indigenous communities

Article 31: child's rights to play, to recreation and to participation in cultural life and the arts

Child's right to freedom of thought, conscience and religion



Text of Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 14 of the Convention on the Rights of the Child confirms for the child the fundamental civil right to freedom of thought, conscience and religion, which is upheld for “everyone” in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The second paragraph, echoing article 5 of the Convention, requires respect for the role of parents in providing direction to the child “in a manner consistent with the evolving capacities of the child”. The International Covenant requires respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, but the emphasis in the Convention on the Rights of the Child is on the freedom of religion of the child, with parental direction consistent with the child’s evolving capacities. Paragraph 3

sets out the very limited restrictions allowed on the child’s freedom to manifest his or her religion or belief.

The Initial Reports of many States simply record that this right is reflected in their Constitutions and applies equally to children. But the *Guidelines for Periodic Reports* requires information on how it is “recognized by law specifically in relation to children”. The Committee has as yet made little comment on the effective implementation of article 14. It is apparent from a range of declarations and reservations that in some States the right of the child to freedom of religion conflicts with tradition and, in some cases, with legislation. Few States appear to have reflected the **child’s** right in domestic legislation, and in many, it is parents who determine the child’s religion. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(e) Freedom of thought, conscience and religion (art. 14);

...".

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

"IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37(a))

Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37(a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

...

D. Freedom of thought, conscience and religion (art. 14)

Please provide information on the exercise of the right to freedom of thought, conscience and religion by children, and the extent to which the child's evolving capacities are taken into consideration.

Please indicate the measures adopted to ensure the child's freedom to manifest his or her religion or beliefs, including with regard to minorities or indigenous groups. Information should also be provided on measures to ensure respect for the child's rights in relation to any religious teaching in public schools or institutions, as well as on any limitations to which this freedom may be subject in conformity with article 14, paragraph 3."

(CRC/C/58, paras. 48, 56-57. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 81, 165, 166; for full text of *Guidelines*, see Appendix 3, page 674.)

Respect for children's civil rights

The Committee frequently expresses general concern at the lack of attention paid to implementation of children's civil rights and freedoms, including those provided by articles 13, 14, 15, 16 and 17. For example:

"The Committee is generally concerned that inadequate attention has been given to the promotion of civil rights and freedoms of the child, as provided for in articles 13, 14, 15, 16, and 17 of the Convention. Information before

the Committee indicates that traditional social attitudes regarding the role of children appear to make it difficult to accept children fully as the subjects of rights. The Committee urges the State Party to redouble its efforts to educate and sensitize parliamentarians and government officials, professional groups, parents and children on the importance of accepting fully the concept of child rights, and recommends that legislative measures be envisaged to guarantee the enjoyment of civil rights and freedoms for every child." (Barbados IRCO, Add.103, para. 18)

Children's decision-making on religion in Sweden

"In its report 'Supervised Transition', the Age Limits Commission recommends that the present 15-year-age limit for consent (for entry into or withdrawal from the Church of Sweden) under the Ecclesiastical Act be reduced to 12 years. A government commission appointed to review the question of Church and State has in its report proposed the same kind of legislative change as the Age Limits Commission. In its report it recommends, among other things, that the following amendments be enacted with effect from 1 January 2000:

- (a) That children aged 12 or over be given a veto concerning entry into and withdrawal from a religious denomination;
- (b) That children aged 12 or over be able on their own initiative to join or withdraw from a religious denomination if the custodian consents;
- (c) That the same rules be made to apply to all religious denominations.

"The new curricula lay down that teaching in schools shall be non-confessional. Teaching is to be objective and comprehensive. It is emphasized that all parents must be able with equal confidence to send their children to school, in the assurance that the children will not be influenced in favour of one or another set of beliefs.

"The purpose of religious education as a teaching subject is to increase pupils' knowledge of religions and beliefs and to enable them to process their own reflections and questions on existential and ethical problems.

"The teaching shall promote an open discussion of questions concerning belief and attitudes to life, and shall help to ensure that encounters with people from different traditions and cultures are attended by a respect for each other's individuality. Knowledge of Christian belief and of the ethics administered by the Christian tradition is included in teaching, so that the pupils will be able to assimilate and understand much of the content and expression of Swedish and Western art, music, literature, history and social development.

"Through an amendment to the Education Act, effective from the 1997/98 school year, pupils can no longer be granted exemption from religious education lessons. In the government bill (Prop. 1995/96: 200) on which the amendment was based, the Government argued that it was an essential task of schools to develop pupils' understanding for other cultures, traditions and values. Schools would be deprived of important tools in the task of promoting tolerance and understanding in the multicultural society reflected by schools today if pupils with a different religious background from the majority were not to take part in religious education lessons. It was therefore proposed that all pupils should take part in the teaching of religious education. A special opinion entertained by the pupil or in the pupil's domestic environment shall not be grounds for exemption from teaching based on the common values underlying the curriculum. The Government's proposals were passed by the Riksdag." (Sweden 2R, paras. 308 – 312)



Freedom of thought

Children's right to freedom of thought provokes little controversy or comment in Initial and Second Reports or from the Committee. The concept of freedom of thought is linked to the right to form and express views, in article 12. The practical implementation of freedom of thought is related to the freedom to seek, receive and impart information and ideas of all kinds, under article 13; to the child's access to appropriate information, under article 17; and to the child's education, under articles 28 and 29. The child's right to privacy, in article 16, implies that children cannot be forced to reveal their thoughts.

There are no restrictions on the right to freedom of thought. Paragraph 2 requires respect for the rights and duties of parents and others to provide direction to the child in the exercise of the right, consistent with the child's evolving capacities.

Freedom of conscience

Again, the Convention on the Rights of the Child provides no restrictions to the child's right to freedom of conscience, but paragraph 2 of article 14 allows for parents' direction. Issues of conscience might arise, for example, concerning diet, such as vegetarianism, or environmental issues. One issue of conscience on which there

Respecting evolving capacities

In Iceland, no one is obliged to belong to a religious denomination. After reaching the age of 16, an individual child can decide whether he or she belongs to a religious denomination and, if so, which one. The opinion of a child aged 12 or over must be considered regarding his or her registration in a religious denomination (Iceland IR, para. 158).

In Denmark, children between 15 and 18 years old may be admitted to or withdrawn from the established church by their custodians, provided they have themselves consented (Denmark IR, para. 96).

In the United Kingdom, "...Where a child is sufficiently mature to make his own determination, the provision that a person with parental responsibility may choose a child's religion must be read in conjunction with the 'Gillick' decision, which established the principle that parental rights yield to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on a matter." (United Kingdom IR, para. 172)

In the Republic of Korea, "the Civil Code provides that a person with parental authority has rights and duties to protect and educate his/her child, and guarantees that a parent or legal guardian has freedom to educate his/her child with religious and moral education. It is not deemed natural, however, in the Republic of Korea that the belief of a parent shall be succeeded to by his/her child. Even if students attend schools established by religious organizations, they may have their own respective religion. Any adult or child chooses his/her religion according to his/her own discretion and free intention. However under the current system of deciding schools, from elementary to high school, except private elementary schools, in which students are allocated to the schools located nearest to the student's residence without any consideration on the student's orientation in terms of religion, students' right to enjoy freedom of religion is encroached substantially by receiving religious education they do not want and not receiving what they do want." (Republic of Korea IR, para. 63)

In Austria, "on reaching the age of 14, the child is free to choose the religious faith he or she wishes to adopt. On reaching the age of 12, he or she may not be instructed against his or her will in a faith other than the previous one. The provisions of the Federal Act on the Religious Education of Children also apply to the instruction of children in a non-religious philosophy of life." (Austria IR, para. 173)

are various human rights recommendations, but no explicit mention in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights or in the Convention, is that of conscientious objection to military service. The Convention, in article 38, prohibits recruitment into the armed forces of anyone under the age of 15 and the new Optional Protocol on the involvement of children in armed conflict requires States to ensure no compulsory recruitment of children under 18 years (see page 563). Conscientious objection remains a real issue for 15- to 18-year-olds in some countries. In addition, some countries contain militaristic youth organizations and include some form of military training within the education system; if compulsory, these could conflict with article 14.

The first edition of the *Manual on Human Rights Reporting*, 1991, in a commentary on the right to freedom of thought, conscience and religion in article 18 of the International Covenant on Civil

and Political Rights, suggests that "the status and position of conscientious objectors should be discussed under this article, and statistical information should be provided regarding the number of persons that applied for the status of, and the number of those that were actually recognized as, conscientious objectors; the reasons given to justify conscientious objection and the rights and duties of conscientious objectors as compared with those persons who serve in the regular military service" (*Manual on Human Rights Reporting*, 1991, p. 108).

The Human Rights Commission has adopted a resolution on respect for conscientious objection to military service (resolution 1987/46, Human Rights Commission, E/CN.4/1987/60).

Freedom of religion

Article 14 protects the child's right to have a religion, which is an absolute right, and to manifest his or her religion, which may be

Respecting the child's religious convictions

One State Party acknowledged the dangers of respecting parents' freedom of religion at the expense of children: "The Government of Canada recognizes that care must be taken to ensure that freedom of religion of the parents is not accepted as justification for subjecting children to practices that disregard their religious preferences, involve discrimination on the basis of sex or are harmful to their health or involve abuse or violence." The Initial Report describes a case in which a court declined to make a declaration that a 12-year-old child with leukaemia was in need of protection when she and her parents (who were Jehovah's Witnesses) objected to the administration of blood transfusions on religious grounds. The court also held that an earlier blood transfusion administered against her wishes constituted discrimination on the basis of religion, contrary to section 15 of the Canadian Charter of Rights and Freedoms, and an infringement to her right to security of the person, under section 7 of the Charter. (Canada IR, paras. 114 and 115)

In Belarus, articles in the Rights of the Child Act state that "While having proclaimed the secular nature of education, the State may not, except when inducement to perform religious acts directly threatens the child's life or health or infringes his or her legal rights, interfere with the upbringing of a child on the basis of the particular religious views of the parents or persons acting *in loco parentis* and connected with the observance, outside educational institutions and ... with the child's participation, of religious ceremonies, holidays or traditions." (Belarus IR, para. 44)



subject to the very limited restrictions outlined in paragraph 3.

In addition, article 30 of the Convention (see page 453) upholds the right of a child who belongs to an ethnic, religious or linguistic minority or who is indigenous "to profess and practise his or her own religion ..." And in arranging alternative care, under article 20, States must pay due regard to the child's religious background (see below, page 199).

What freedom of religion means

Article 18(1) of the International Covenant on Civil and Political Rights expands on the right to freedom of religion: "...This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." The second paragraph states "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The Human Rights Committee issued a lengthy General Comment on article 18 in 1993. It emphasizes that the terms "religion" and "belief" are to be broadly construed, protecting theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. The article "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice". No one can be compelled to reveal his adherence to a religion or belief: this is assured by article 18 and by the right to pri-

vacy set out in article 17 of the Covenant (Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, p. 144). The child's right to privacy is echoed in article 16 of the Convention on the Rights of the Child.

The Committee on the Rights of the Child has expressed concern at restrictions on children's freedom of religion and quoted other international instruments and the recommendations of other Treaty Bodies. For example:

"The Committee emphasizes that the human rights of children cannot be realized independently from the human rights of their parents, or in isolation from society at large. In light of article 14 of the Convention, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55), Commission on Human Rights resolution 2000/33, the Human Rights Committee's General Comment 22, and concurring with the findings of the Human Rights Committee (CCPR/C/79/Add.25) and the Committee on Economic, Social and Cultural Rights (E/C.12/1993/7), the Committee is concerned at the restrictions on the freedom of religion, and that restrictions on the freedom to manifest one's religion do not comply with the requirements outlined in article 14, paragraph 3. The Committee is especially concerned at the situation of members of non-recognized religions, including the Baha'is, who experience discrimination in areas of, inter alia, education, employment, travel, housing and the enjoyment of cultural activities. The Committee recommends that the State



Party take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. The Committee recommends that the State Party make every effort to enact or rescind, where necessary, legislation to prohibit any such discrimination, and take all appropriate measures, including public education campaigns, to combat intolerance on the grounds of religion or other belief. The Committee endorses the recommendations made by the Special Rapporteur on the question of religious intolerance following his visit to the State Party (E/CN.4/1996/95/Add.2) and recommends that the State Party implement them fully.” (Islamic Republic of Iran IRCO, Add.123, paras. 35 and 36. See also, for example, Saudi Arabia IRCO, Add.148, paras. 31 and 32)

The Committee on the Rights of the Child has found that issues affecting the child’s privacy may arise in relation to religion in schools. In considering arrangements in Norway to allow opting out of religious education, the Committee raised the need to respect the privacy of the child in relation to his or her religious faith:

“The Committee notes that although an opting-out system exists for children wishing to abstain from compulsory religious education, this requires their parents to submit a formal request exposing the faith of the children involved and as such may be felt to be an infringement of their right to privacy.” (Norway IRCO, Add.23, para. 9)

It raised another issue concerning exemptions from religious education when it examined Norway’s Second Report (see below, page 202).

The child’s right and parental direction: article 14(2)

The Convention on the Rights of the Child differs from previous instruments in its treatment of the child’s right to freedom of religion *vis-à-vis* his or her parents. For example, in the International Covenant on Civil and Political Rights, paragraph 4 of article 18 refers to the parent-child relationship and requires respect for “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions” (see discussion of religious education in schools, below, page 201).

Yet, article 14 of the Convention on the Rights of the Child refers unambiguously to the right of the child to freedom of religion. The second paragraph refers to the “rights and duties” of par-

ents rather than to their “liberty”. Similar to the general statement given in article 5, article 14 requires States to “respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child”. But it is the child who exercises the right. Parents can provide direction, but the direction must be consistent with the child’s evolving capacities and must be applied in conformity with the whole of the Convention. “Direction” cannot involve, for instance, any form of physical or mental violence (article 19). And the child’s views must be taken seriously: article 12 preserves the right of all children who can form views to express their views freely “in all matters affecting the child”, which includes matters of religion and choice of religion. And article 13 upholds the child’s freedom of expression.

The wording of article 14 and the Convention’s general principles certainly do not support the concept of children automatically following their parent’s religion until the age of 18, although article 8 (preservation of identity), article 20 (preservation of religion when deprived of family environment), and article 30 (right to practice religion in community with members of the child’s group) support children’s right to acquire their parents’ religion. The Committee’s *Guidelines for Periodic Reports* asks about “the child’s freedom to manifest his or her religion or beliefs”. Under the Convention’s article 1 (definition of the child) the *Guidelines* asks for information on any legal minimum age defined in legislation for choosing a religion or attending religious school teaching (see below).

More States Parties have made reservations and declarations concerning article 14 of the Convention than any other article (18 States). Some are wide-ranging reservations or declarations upholding parental rights and authority in relation to the civil rights of children, in particular articles 13, 14 and 15.

For example, Algeria made an interpretative declaration: “The provisions of paragraphs 1 and 2 of article 14 shall be interpreted by the Algerian Government in compliance with the basic foundations of the Algerian legal system, in particular:

- With the Constitution, which stipulates in its article 2 that Islam is the State religion and in its article 35 that there shall be no infringement of the inviolability of the freedom of conviction and the inviolability of the freedom of opinion;

- With Law No. 84-11 of 9 June 1984, comprising the Family Code, which stipulates that a child's education is to take place in accordance with the religion of its father." (CRC/C/2/Rev.8, p. 11)

In contrast, a declaration from the Netherlands states its understanding that article 14 "is in accordance with the provisions of article 18 of the International Covenant on Civil and Political Rights... and that this article shall include the freedom of a child to have or adopt a religion or belief of his or her choice as soon as the child is capable of making such choice in view of his or her age or maturity". (CRC/C/2/Rev.8, p. 32)

Other States, where Islam is the state religion, made reservations focusing specifically on the child's right to freedom of religion. For example: "[Iraq] ha[s] seen fit to accept it [the Convention]... subject to a reservation in respect of article 14, paragraph 1, concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the Islamic Shariah."; "The Government of the Republic of Maldives expresses its reservation to paragraph 1 of article 14..., since the Constitution and the laws of the Republic of Maldives stipulate that all Maldives should be Muslims"; "The Kingdom of Morocco, whose Constitution guarantees to all the freedom to pursue his religious affairs, makes a reservation to the provisions of article 14, which accords children freedom of religion, in view of the fact that Islam is the State religion"; "The Sultanate [of Oman] does not consider itself to be bound by those provisions of article 14 of the Convention that accord a child the right to choose his or her religion or those of its article 30 that allow a child belonging to a religious minority to profess his or her own religion." (CRC/C/2/Rev.8, pp. 26, 29, 30, 35)

Article 51 of the Convention on the Rights of the Child states: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." Ten States Parties have recorded objections to certain of these reservations to article 14 (see CRC/C/2/Rev.8, pp. 48 et seq.).

The Committee has expressed concern at reservations that suggest lack of the full recognition of the child as a subject of rights and, consistent with its general policy, the Committee has urged States to review and withdraw all reservations (for details, see article 5, page 90 and article 12, page 164).

In some States courts have powers to overrule parents who have refused certain types of med-

ical treatment for their children on the grounds of religious conviction. Under the Convention on the Rights of the Child, it is clear that the State should have such powers of intervention.

Under article 3(2), "States undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." Under article 12, the child's views should be appropriately respected in any proceedings. Respect for children's refusal of treatment on grounds of their own religious convictions is dependent on their evolving capacities and on consideration of the Convention's general principles.

When parents disagree over the child's religion

The Convention on the Rights of the Child requires States to recognize the principle that "both parents have common responsibilities for the upbringing and development of the child" (article 18). This must apply to the qualified parental direction that article 14 authorizes in the exercise by the child of his or her right to freedom of religion. Neither parent should have "authority" over such matters. Where there is disagreement and the matter goes to court, the matter should be decided on the basis of the child's right under article 14, with the child's views taken seriously according to his or her age and maturity.

The child's right to freedom of religion in alternative care

When children are separated from their families and are in alternative care provided by the State or otherwise, article 14 of the Convention requires that their right to freedom of religion must be maintained. In many countries, religious organizations are prominent in providing alternative care for children. Article 20(3) states that when considering alternative care for a child, "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (see article 20, page 288). But inflexible laws requiring that the child should automatically be brought up in the religion of his or her parent(s) are not consistent with article 14.

Religious communities

Under article 14, the ability of children to decide to join or leave a religious community should be subject to parental direction, exercised in accordance with their evolving capacities, and to



Religion in schools

France's Initial Report indicates that as France is a secular society, there must be complete neutrality in the expression of opinions in the public schools, and any religious or political proselytism is prohibited (France IR, para. 224).

In Denmark, exemption from religious instruction at school for a child aged 15 and above can only occur with the child's consent (Denmark IR, para. 97).

Italian law used to make the teaching of the Catholic religion compulsory in public schools (with the opportunity of exceptions made for non-Catholics). Now, it has been amended to be "more in keeping with the constitutional principles of the secular nature of the State. The new system provides for the possibility that parents and secondary school students may or may not choose religious instruction. However, this possibility, which is being allowed in a school system as rigid as the Italian one, has given rise to heated debate that has also involved the Constitutional Court...

"In its judgements No.203 of 12 April 1989 and No.13 of 11 June 1991, the Constitutional Court stated that students who choose not to have Catholic religious instruction are not required to participate in other school activities. Nevertheless, the Constitutional Court decision does not solve the problem of organizing either religious instruction schedules or the 'replacement' subjects, i.e. the arrangements the school should make for students who choose not to have religious instruction." (Italy IR, paras. 83-86)

In several cases, Canadian courts have held that section 2(a) of the Canadian Charter of Rights and Freedoms which guarantees everyone the right to freedom of conscience and religion is violated by a requirement that public schools conduct religious exercises or give religious instruction, with a preference shown for the Christian religion. Even where there are legal provisions enabling children to opt out of religion in schools, the provisions may not amount to adequate "freedom". In one case, an exemption was available for objecting students, but the Ontario Court of Appeal stated that "the peer pressure and the classroom norms to which children are acutely sensitive, in our opinion, are real and pervasive and operate to compel members of religious minorities to conform with majority religious practices." (Canada IR, para. 112)

Some States' Initial Reports have debated the issue of the extent of parental authority in relation to religious education. For example, the Initial Report of Belgium states: "Exercise of parental authority entails the power to regulate the lives of children. By virtue of this educational power, parents are able to determine the religion in which their children will be brought up. They can choose the type of education to be received by their offspring and can decide whether or not to give them a religious education. This does not mean, however, that parents can impose 'their' convictions on 'their' children. Education is not the same as coercion. Parents can bring up their children according to their convictions, without however indoctrinating them. The difficulty that may arise consists in reconciling the child's right to make philosophical or religious choices with the power of the parents. In the eyes of the legislature, the family is required to play an essential role. A balance of rights and duties in the family cell is vital in order to ensure the stability that is essential for the harmonious development of the young person. However, what is to be done by a school principal who is told by a child that he wants to attend the course in Catholic religion while his parents say that he is to follow the course of non-denominational ethics? There are nowadays signs of a willingness, in some isolated decisions, to authorize minors to act of their own accord when their request relates to a personal right and they are sufficiently old to be assumed capable of judgement." (Belgium IR, para. 140)

In Croatia, in primary schools, parents decide if a child should take religious education. In secondary schools, both the parents and pupil make a statement (Croatia IR, para. 151).

In Germany, at the age of 10, a child must be heard prior to a change in religious denomination; the same applies to the withdrawal of the child from religious instruction in the event that the parents themselves are in disagreement. At the age of 12, a child can no longer be forced to take religious instruction in another denomination against his or her will. At the age of 14, a child has the right to freely choose his or her religious denomination (except that in Bavaria a child may not withdraw from religious instruction in school until he or she attains the age of 18) (Germany IR, para. 13).

the particular restrictions in paragraph 3. Some States have legislated on these issues.

Schooling and freedom of religion

Freedom of religion in the context of compulsory education can be an important issue for children.

In its first General Comment, issued in 2001, on the aims of education (see page 434), the Committee emphasizes that “children do not lose their human rights by virtue of passing through the school gates” and highlights the importance of schools respecting children’s participation rights (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, pp. 256 and 257).

The *Guidelines for Periodic Reports* notes: “Information should also be provided on measures to ensure respect for the child’s rights in relation to any religious teaching in public schools or institutions, as well as any limitations to which this freedom may be subject in conformity with article 14, paragraph 3” (para. 57).

As noted previously, the International Covenant on Civil and Political Rights requires States (in article 18(4)) to respect “the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”. In its General Comment on this provision, the Human Rights Committee states: “The Committee is of the view that article 18(4) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure their children receive a religious and moral education in conformity with their own convictions, set forth in article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1). The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18(4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.” (Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, p. 145)

But the Convention on the Rights of the Child requires that arrangements for moral and religious education be reviewed to ensure respect for the **child’s** right to freedom of religion, with parental direction provided in a manner consistent with the child’s “evolving capacities”.

Some States do not allow religious teaching in state-supported education. In others, there may

be religious education and worship or observance in one or more religions. Some States have set an age at which any control of the child’s manifestation of religion transfers from parents to the child, although the concept of “evolving capacities” in article 5 and article 14 appears to demand more flexibility.

Another form of discrimination associated with school religion may arise when States provide funding for schooling in certain religions but not others.

Limitations on manifestation of religion: article 14(3)

The limitations allowed by paragraph 3 on the freedom “to manifest one’s religion or beliefs” are identical to those in article 18 of the International Covenant on Civil and Political Rights. In its General Comment referred to above, the Human Rights Committee emphasizes that restrictions are permitted “only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others... In interpreting the scope of permissible limitation clauses, States Parties should proceed from the need to protect the rights guaranteed under the Covenant... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner...” (Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, p. 145)

The Committee on the Rights of the Child has also stressed that the limitations set out in article 14(3) of the Convention on the Rights of the Child are the only ones that may be applied:

“The Committee remains concerned about the actual implementation of the civil rights and freedoms of children. The Committee wishes to emphasize that the implementation of the child’s right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention and that limitations on the exercise of this right can only be placed in





conformity with paragraph 3 of article 14 of the Convention.” (China IRCO, Add.56, para. 17)

Commenting on Norway’s Second Report, the Committee suggested that a new system for providing exemptions from parts of the religious knowledge curriculum might be discriminatory:

“The Committee is concerned that the approach taken by the State Party’s Act No. 61 of 17 July 1998 relating to primary, lower secondary and upper secondary education, which introduces a new common curriculum on ‘Religions, Knowledge and Ethical Education’, may be discriminatory. The Committee is concerned notably by the process of providing for exemptions to those children and parents who do not wish to participate in parts of the teaching.

“The Committee recommends that the State Party review the implementation of the new curriculum and consider an alternative exemption process.” (Norway 2RCO, Add.126, paras. 26 and 27)

Discrimination on grounds of religion

Article 2 requires States to respect and ensure the rights in the Convention on the Rights of the Child to each child in their jurisdiction without discrimination of any kind, irrespective of “the child’s or his or her parent’s or legal guardian’s ... religion...” Thus, under article 2 and article 14, the child must not suffer discrimination because of the child’s right to have a religion, or to have no religion, nor over the child’s right to manifest his or her religion.

In addition, there must be no discrimination affecting the child’s enjoyment of any other rights under the Convention on the grounds of the child’s, or his or her parent’s, religion. And article 2(2) requires States to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians or family members.

The Human Rights Committee, in its General Comment on article 18 of the International Covenant on Civil and Political Rights quoted above, also emphasizes: “The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant... nor in any discrimination against adherents to other religions or non-believers.” (Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, p. 145)

Article 24(3) requires States to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”. And article 19 requires States to ensure protection from “all forms of physical or mental violence”. Practices that stem from or are linked to manifestations and observance of religions must not involve breaches of these or any other articles of the Convention.

Disabled children and freedom of religion.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities includes a section on encouraging measures for equal participation in the religious life of their communities by persons with disabilities (rule 12). It proposes that “States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programmes”.

Religion and children deprived of their liberty.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee on the Rights of the Child has commended to States Parties, requires: “...The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected” (rule 4). And in detail it states: “Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.” (rule 48)

In its General Comment, quoted above, the Human Rights Committee also emphasized that “Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint.” (Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, pp. 145-146)

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 14, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 14 is particularly relevant to **departments of social welfare and education and to agencies responsible for the State's relations with recognized religions**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 14 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 14 likely to include the training of **religious groups and all those working with or for children and their families, and parenting education**)?

● Specific issues in implementing article 14

- ☐ Is the child's right to freedom of thought, conscience and religion, as guaranteed in article 14, explicitly recognized in legislation?
- ☐ Are there legislative and other arrangements to respect the child's conscientious objection to military service?
- ☐ Are the only restrictions on the child's right to manifest religion or beliefs consistent with those set out in paragraph 3 of article 14, and are they defined in legislation?

Does law, policy and practice promote the child's right to freedom of thought, conscience and religion, as set out in article 14, in relation to

- ☐ the child/parent relationship?
- ☐ all forms of alternative care?
- ☐ school?

Implementation Checklist



- ☐ Does law, policy and practice respect the rights and duties of parents to provide appropriate direction in the exercise by the child of his right as set out in article 14?
- ☐ If the State has one or more religions recognized in law, does legislation respect the right of the child to have and/or practice another religion or no religion?
- ☐ Do any restrictions on the right of the child to enter or leave religious communities respect the child's evolving capacities?

Does legislation permit withdrawal from religious education and/or worship in schools at the request of

- ☐ the child?
- ☐ the child's parents?
- ☐ In such cases, is education and/or arrangements for worship in the religion of the child made available?
- ☐ Where the State supports the provision of education in different religions, is this done without discrimination?
- ☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 14?
- ☐ Have special measures been adopted to ensure the freedom of religion of disabled children?
- ☐ In relation to children whose liberty is restricted, is rule 48 of the United Nations Rules for the Protection of Children Deprived of their Liberty fulfilled?

Reminder: The Convention is indivisible and its articles are interdependent.

Article 14 should not be considered in isolation.

Particular regard should be paid to: The general principles

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground
Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

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

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

Closely related articles

Articles whose implementation is related to that of article 14 include:

- Article 5: parental responsibilities and child's evolving capacities
- Article 8: preservation of identity
- Articles 13 and 15: freedom of expression and freedom of association
- Article 17: access to appropriate information
- Article 20: alternative care – continuity of religion and culture
- Articles 28 and 29: right to education and aims of education
- Article 30: rights of children of minorities and indigenous communities
- Article 37: restriction of liberty and religious freedom
- Article 38: armed conflict and conscientious objection

Child's right to freedom of association and peaceful assembly



Text of Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Together with articles 12 and 13, the rights to freedom of association and freedom of peaceful assembly promote the child as an active, participating member of society. Article 12 sets out the right of individual children to express their views freely; article 15 adds rights of collective participation.

Previous human rights instruments have promoted these rights for “everyone”, and many Initial Reports record that their country’s Constitution upholds these rights for “everyone”. As with other civil rights, the Committee on the Rights of the Child has encouraged their incorporation into

States’ own legislation, and the *Guidelines for Periodic Reports* asks for information on the measures adopted to ensure that the rights are “recognized by law specifically in relation to children”. Also, under article 1, the *Guidelines* asks whether any minimum age has been defined in legislation concerning the child’s right to create or form associations. The Committee has urged States to encourage the development of associations of children.

The Committee has emphasized that the only restrictions that may be applied are those set out in paragraph 2 of article 15. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(f) Freedom of association and of peaceful assembly (art. 15).

...."

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

"IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37(a))

Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37(a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

...

E. Freedom of association and peaceful assembly (art.15)

Please indicate the measures adopted to ensure the child's right to freedom of association and peaceful assembly, including any specific legislation enacted to establish the conditions under which children are allowed to create or join associations. Please also indicate any restriction that may be placed on the exercise of these rights, in conformity with article 15, paragraph 2. Information should also be provided on existing children's associations and the role they play in the promotion of children's rights."

(CRC/C/58, paras. 48 and 58. Paragraph 24 of the *Guidelines for Periodic Reports* is also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)

The child's right to freedom of association

Article 20 of the Universal Declaration of Human Rights states: "1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association." The International Covenant on Civil and Political Rights reasserts these rights in its articles 21 and 22, noting the specific right to form and join trade unions, and applying the limited restrictions as set out in paragraph 2 of article 15 of the Convention on the Rights of the Child. While in many States constitutional principles echoing the international instruments

confer a right of association on "everyone", the implications of recognizing this right for children have seldom been explored. The Committee on the Rights of the Child has recommended that the rights for children guaranteed by article 15 should be reflected in legislation. For example:

"The Committee recommends that the State Party systematically promote and facilitate children's participation and respect for their views in decisions and policies affecting them, especially through dialogue in the family, at school and in society, in light of articles 12, 13 and 15 of the Convention." (Ireland IRCO, Add.85, para. 35)

Children's involvement in associations

In France, according to its Initial Report, minors may be active members of an association and can vote in the general assembly and be elected to the board of directors, but they may not hold the offices of president or treasurer, since their legal incapacity precludes them from representing the association in legal proceedings (France IR, paras. 227 and 228).

When Chile prepared its Initial Report in 1993, a bill on community organizations that permitted the formal association of young people from the age of 15 was under consideration. At that stage, the right of children to freely form associations was restricted, as Chilean law did not recognize their legal capacity to perform such civil acts. As a result, children could only join a political party or community youth organization from 18 onwards. In 1990, the Ministry of Education introduced regulations to authorize secondary school students to associate freely in student centres and other student organizations (Chile IR, paras. 24 and 76).

Paraguay's Initial Report describes how "In the political sphere as well as in the spheres of student life and religion, young people are organizing themselves to develop projects to achieve greater participation in areas hitherto restricted to adults. The Federation of Secondary Students has submitted to the Parliamentary Constitutional Affairs Committee the 'student ticket' project, whose aim is to reduce the cost of travel by public transport.

"However students, and in particular secondary school students, encounter problems in forming associations and setting up student centres within the educational centres...." (Paraguay IR, paras. 88-90)

In the Russian Federation, the USSR Associations Act of 1990 was the first legal instrument to specify that children had a right to form associations. According to the Initial Report "In the field of children's organizations, uniformity has given way to variety and pluralism. New types of organization have appeared, voluntary and based on a community of interests – ecological, charitable, cultural etc. ... At the Federal level alone, more than 30 children's organizations are at present registered in Russia... There is a new quality to children's organizations that makes them once again an important factor in the social development of children as free, active citizens of a democratic society and a rapidly changing world..." An Association of Researchers into Children's Trends has been established in the Russian Federation, numbering more than 200 academics and professionals experienced in working with children. Together with the Federation of Children's Organizations, the Association has proposed an outline federal law on children's organizations, movements and associations (Russian Federation IR, paras. 82-85).



"The Committee is generally concerned that inadequate attention has been given to the promotion of civil rights and freedoms of the child, as provided for in articles 13, 14, 15, 16, and 17 of the Convention. Information before the Committee indicates that traditional social attitudes regarding the role of children appear to make it difficult to accept children fully as the subjects of rights. The Committee urges the State Party to redouble its efforts to educate and sensitize parliamentarians and government officials, professional groups, parents and children on the importance of accepting fully the concept of child rights, and recommends that legislative measures be envisaged to guarantee the enjoyment of civil rights and freedoms for every child." (Barbados IRCO, Add.103, para. 18)

Freedom of association implies the right to form associations as well as to join and to leave associations. In the recommendations adopted

following the Committee's two-day workshop on implementation of the Convention in 1999 (see page 58), it proposes that States should be *"encouraging and facilitating the creation of structures and organisations run by and for children and youth"*. (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291(w))

The Committee suggested to Jordan:

"...The active participation of children should be encouraged. Similarly, efforts should be undertaken to develop new channels, including membership of associations, through which children may make their views known and have them taken into account." (Jordan IRCO, Add.21, para. 24)

The Committee noted to Hungary:

"...The Committee is also concerned about the restriction to the right to freedom of association (article 15 of the Convention),



since there is no registry of associations managed by children.” (Hungary IRCO, Add.87, para. 15)

The *Guidelines for Periodic Reports* asks for information on any existing children’s organizations, and on the role they play in promoting children’s rights (para. 58).

The Committee has specifically mentioned student organizations in schools and children’s organizations in local municipalities. Various Initial Reports have described legislation providing for schools councils and the structures enabling children to have a say in decision-making within their local community (see also article 12, pages 175-176).

In its first General Comment, issued in 2001, on the aims of education (see page 434), the Committee emphasizes that

“Children do not lose their human rights by virtue of passing through the school gates...” (Report on the twenty-sixth session, January 2001, CRC/C/103, Annex IX, para. 8)

and highlights the importance of schools respecting children’s participation rights. The Committee commented on Honduras’ Second Report:

“Although the Committee notes with appreciation the enactment of the Education Reform Law, which encourages and increases

the participation of children in schools, it is still concerned that participatory rights of children have not been sufficiently developed in the State Party. In addition, concern is also expressed at the existing legal prohibition of students’ organizations in secondary schools, which is contrary to the child’s rights to freedom of association and peaceful assembly. In light of articles 15 and 16 and other related articles of the Convention, the Committee recommends that further measures, including legislative reform, be undertaken to promote the participation of children in the family, school and social life, as well as the effective enjoyment of their fundamental freedoms, including the freedoms of opinion, expression, and association.” (Honduras 2RCO, Add.105, para. 22)

It should be noted that, in general, the law concerning contracts and administration of organizations may pose obstacles for children below the age of majority or the age of legal capacity acting as directors or trustees of public associations. It seems that few countries have as yet explored this from the perspective of the full implementation of article 15.

During discussions with the representatives of Belarus, the issue of children engaging in political activities was raised. The Belarus Rights of the Child Act in its article 23 covers “the right to join social organizations”: “Children have the right to join independent children’s organizations provided that the activities of such organizations do not contravene the Constitution and other laws of the Republic of Belarus, violate public order or State security, harm public health or morals or infringe the rights and freedoms of others. Children’s organizations shall not engage in political activities.” Other articles define youth organizations and state that “young citizens may neither be compelled directly or indirectly to join youth associations nor barred from participating in their activities” (Belarus IR, paras. 45-47). During discussions with the Committee, a Belarus representative explained that citizens were only entitled to express their political views and to exercise the other rights enshrined in the Constitution and national legislation upon reaching the age of majority (18): “It was not a matter of obstructing the expression of political views but rather banning the activities of children’s organizations set up for political purposes.” In later discussion one Committee member stated he was unconvinced that youth organizations should be prevented from engaging in political activities: “In that connection, article 15 of the Convention, under which States Parties recognized the rights of the child to freedom of association, placed no restriction on the political

Freedom of association in the Marshall Islands

“Under article II, section 1, of the Constitution, every person – including a child – has the right to freedom of peaceful assembly and association. These rights are subject to reasonable restrictions to preserve public peace and order. The only restriction placed on children in Majuro and Ebeye is a 10.00 p.m. curfew during school days.

“In addition to their participation in school and sporting activities, many children (particularly the older ones) congregate in the cool evening hours to *bwebwenato* (i.e. talk story). Some youth groups also meet during the weekday evenings to study the Bible and hold meetings on issues of concern. During the Christmas season, many children form dancing and singing groups called *japetas* that perform in the various churches. These children spend hours on end together practising their dances or ‘beats’ as they call them.” (Marshall Islands IR, paras. 57 and 58)

activities in which such associations might engage.” (Belarus SR.125, para. 13; SR.126, para. 31)

The Committee commented to Georgia:

“The Committee notes with concern that the law prohibits youth from becoming members of political parties and that this prohibition limits the opportunity for youth to learn about the political process, delays their preparation for political leadership, and denies their full right to freedom of association. “In light of article 15 of the Convention, the Committee recommends that the State Party amend its legislation to ensure that youth are allowed to join political parties and that they fully enjoy their right to freedom of association.” (Georgia IRCO, Add.124, paras. 30 and 31)

Unlike the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child does not uphold the specific right of children to “form and join trade unions for the protection of his interests” (article 22(1) of the Covenant). But the right is implied in the right to freedom of association, and the limitations in article 15(2) would not justify preventing children from forming or joining unions. Article 32 sets out States’ duties to prevent economic and other exploitation in labour (see page 475).

The child’s right to freedom of peaceful assembly

The importance of article 15 is its emphasis on children as holders of fundamental civil rights, including the right to engage in peaceful activities as a group.

The only restrictions on this right must be defined in legislation and come within the restrictions allowed under paragraph 2 of the article (see below).

Restrictions on the child’s rights: article 15(2)

The Committee on the Rights of the Child has stressed that the rights in article 15 may only be restricted in accordance with paragraph 2 of article 15; restrictions must be defined in legislation and be necessary for one of the specific reasons set out in the article:

“The Committee is concerned that although the freedoms of expression and assembly are formally recognized in the Constitution, the exercise of these rights by children are restricted by vaguely worded limitation clauses (i.e. ‘in accordance with Islamic

criteria’), which potentially exceed the permitted restrictions set out in paragraph 2 of articles 13 and 15 of the Convention. The Committee is concerned at reports of incidents of threats and violence by vigilante groups, such as Ansari-Hezbollah, directed at persons seeking to exercise or to promote the exercise of these rights.

“The Committee recommends that the State Party establish clear criteria to assess whether a given action or expression is in accordance with interpretations of Islamic texts, and consider appropriate and proportionate means to protect public morals while safeguarding the right of every child to freedom of expression and assembly.” (Islamic Republic of Iran IRCO, Add.123, paras. 33 and 34)

“The Committee is concerned that persons under 18 are restricted in their freedom of association.

“The Committee recommends that the State Party ensure that any restrictions that are imposed comply strictly with limitations that are in accordance with article 15, paragraph 2, of the Convention and are ‘imposed in conformity with the law and ... are necessary in a democratic society in the interests of



Freedom of association law

“The Citizens’ Public Associations Act, adopted by the national parliament in June 1997, contributes towards the implementation of the freedom of association and peaceful assembly. In particular, it provides that the organizers of assemblies, demonstrations, etc. must notify the event to the authorities five days in advance if it is to be held in a place where there is vehicle traffic or movement of persons (art. 8). An interesting feature is that the right to halt or disperse a demonstration is granted to a specific official appointed by the mayor’s office if, in that official’s view, the event has an unlawful character (art. 10). At the same time, the organizers have a right to challenge this official’s decision through the courts, and if their action is successful the court must impose certain sanctions upon the official.

“One of the objects of the Act is to instil in the population a taste for civilized, constructive forms of mass expression of public opinion which, on the one hand, will not permit anarchic behaviour by participants in the event and, on the other hand, will restrain the zeal that usually grips the authorities on such occasions.” (Georgia IR, paras. 121 and 122)



national security or public safety, public order, the protection of health or morals or the protection of the rights and freedoms of others’.” (Kyrgyzstan IRCO, Add.127, paras. 31 and 32)

In some countries, there are laws limiting children’s rights to association and peaceful assembly during certain hours – curfews, often imposed to prevent unaccompanied children from being out of their homes after a certain time in the evening and often related to the age of the child. Such blanket restrictions on the child’s right do not appear to fall within the very limited restrictions allowed in paragraph 2 of article 15.

Unlike article 14, article 15 makes no reference to respecting the rights of parents to provide direction to the child in the exercise of the child’s right in a manner consistent with the evolving capacities of the child, but this principle is upheld generally in article 5 (see page 85). Some States indicated in their Initial Reports that there is an age below which children are not permitted to join associations or to do so without the agreement of their parents. The Convention provides no support for arbitrary limitations on the child’s right to freedom of association.

Disabled children. A particular emphasis of the World Programme of Action Concerning Disabled Persons has been the promotion of the establishment and development of associations of disabled people. The inclusion in the Convention on the Rights of the Child of a specific article on disabled children (article 23), as well as the explicit inclusion of “disability” as one of the grounds of discrimination barred by article 2, emphasizes the equal right of disabled children to all civil rights, including the right

to freedom of association and peaceful assembly. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities contains target areas for equal participation by disabled people, including children; the target areas are relevant to the realization of the rights to freedom of association and freedom of peaceful assembly, in particular rule 5 relating to accessibility both to the physical environment and to information and communication.

Children deprived of their liberty. The rights under article 15 for children deprived of their liberty are emphasized in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which the Committee has promoted as providing appropriate standards for implementation of the Convention. In general, the Rules requires that “Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the restriction of liberty” (rule 13).

More specifically, the Rules requires that “Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons...” (rule 59).

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 15, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 15 is relevant to **departments of justice, social welfare, education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 15 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 15 likely to include the training of **all those working with or for children and their families, and parenting education**)?

● Specific issues in implementing article 15

- ☐ Are the rights of the child to freedom of association and peaceful assembly, as guaranteed in article 15, explicitly recognized in legislation?
- ☐ Have measures been taken to promote opportunities for children to exercise their rights to freedom of association and peaceful assembly?
- ☐ Are the only permitted restrictions on these rights consistent with those set out in paragraph 2 of article 15?
- ☐ Are the only permitted restrictions on these rights defined in legislation?

How to use the checklists, see page XVII



- ☐ In relation to children in employment, does the State ensure there are no limits on the right of children to form and to join and to leave trades unions?
- ☐ Have special measures been taken to promote the freedom of association and peaceful assembly of disabled children?
- ☐ In relation to children whose liberty is restricted, are rules 13 and 59 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty fulfilled?
- ☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 15?

Reminder: The Convention is indivisible and its articles are interdependent. Article 15 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 15 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 29: aims of education

Article 31: child's rights to play, recreation and to participation in cultural life and the arts

Article 32: right of child to join a trade union

Article 37: restriction of liberty and freedom of association

Child's right to privacy



Text of Article 16

- 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- 2. The child has the right to the protection of the law against such interference or attacks.*

Article 16 provides for the right of every child to be protected by the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation.

Like the previous three articles, article 16 applies specifically to the child a fundamental civil right already established for everyone in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 12 of the Universal Declaration of Human Rights uses similar wording (but without the qualifying “unlawful” before the words “interference” and “attacks”). The wording in article 17 of the International Covenant on Civil and Political Rights, ensuring that “no one” is subject to such interference, is otherwise identical to the Convention on the Rights of the Child.

Article 16 must apply to all children without discrimination. The child’s privacy is to be protected in all situations, including within the family,

alternative care, and all institutions, facilities and services. In addition, the article protects the child’s family and home from arbitrary or unlawful interference. The article raises issues concerning the physical environment in which the child lives, the privacy of his or her relationships and communications with others, including rights to confidential advice and counselling, control of access to information stored about the child in records or files, and so on. Inevitably, children’s rights to privacy within the family vary according to family structures, living conditions and economic and other factors determining the private space available to the child.

In addition to article 16, article 40(2)(b)(vii) requires that a child alleged as or accused of having infringed the penal law should “... have his or her privacy fully respected at all stages of the proceedings”; the Committee on the Rights of the Child has suggested this respect should also apply to children in family proceedings and when children are victims of abuse. And the Committee has emphasized the importance of the media respecting children’s privacy. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(g) Protection of privacy (art. 16);

...”.

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

“IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13 - 17 and 37(a))

Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37(a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

...

F. Protection of privacy (art. 16)

Please indicate the measures adopted to prevent any arbitrary or unlawful interference with the child's privacy, family, home or correspondence, as well as any attack on his or her honour and reputation. Please provide information on the protection provided by the law against such interference or attacks, and the remedies made available to the child. Information should also be provided on specific measures adopted for children placed in institutions for treatment, care or protection, including in judicial or administrative proceedings.”

(CRC/C/58, paras. 48 and 59. Paragraph 133 of the *Guidelines for Periodic Reports* is also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)

“No child shall be subjected to arbitrary or unlawful interference with his or her privacy ...”

Some concern arose in the Working Group during the drafting of article 16 in regard to the role of parents, but it was ultimately resolved by the inclusion in the Convention of article 5, which requires respect for parents and legal guardians to provide direction and guidance to the child in the exercise by the child of his or her rights, in a manner consistent with the evolving capacities

of the child (for example, see E/CN.4/1987/25, pp. 26 and 27; Detrick, p. 258).

Various States have issued declarations or reservations concerning the relationship between parents and their children's civil rights, mentioning article 16. When examining Initial Reports, the Committee has consistently asked for a review and withdrawal of declarations and reservations; in particular, it has expressed concern at reservations that suggest lack of the full recognition of the child as a subject of rights (for further discussion and Committee comments see article 5, page 85, and article 12, page 159).

The Committee has not provided any detailed comment on the implications of article 16, although it has expressed concern at the lack of the article's reflection in national legislation, along with other civil rights of the child:

"The Committee is concerned at the insufficient measures taken by the State Party to guarantee the child's right to privacy, especially in the family, schools and other institutions..."

"The Committee recommends that the State Party introduce additional measures, including legislative ones, to guarantee the child's right to privacy, especially in the family, in schools, and in child-care and other institutions."

(Japan IRCO, Add.90, paras. 15 and 36)

The Committee has welcomed appropriate legislation but noted that additional measures are needed to guarantee the right to privacy in practice:

"In light of its recommendation (see Nicaragua IRCO, Add.36, para. 34), the Committee welcomes the fact that domestic legislation (Code on Children and Adolescents)... guarantees access to appropriate information (art.17) and protection of the child's right to privacy (art.16). However, the Committee remains concerned about the lack of secondary legislation regulating the practical implementation of these rights. The Committee encourages the State Party to continue with its process of legal reform and allocation of appropriate resources in order to establish practical procedures and regulations to protect children from harmful information and to guarantee their access to appropriate information and their right to privacy..."
(Nicaragua 2RCO, Add.108, para. 28)

The *Guidelines for Periodic Reports* requests information on how the right guaranteed by article 16 is "recognized by law specifically in relation to children". The Committee on the Rights of the Child has identified certain specific situations in Initial Reports that raise issues under article 16. One example is the provision in one States Party which requires the recording of the child's or his or her parent's religion in relation to religious education in school and in other States Parties on children's identity cards or passports (on which ethnic origin is also recorded):

"The Committee notes that although an opting-out system exists for children wishing to abstain from compulsory religious education, this requires their parents to submit a formal request exposing the faith of the children involved and as such may be felt to be an infringement of their right to privacy..."

"The Committee suggests that the State Party reconsider its policy on religious education for children in the light of the general principle of non-discrimination and the right to privacy." (Norway IRCO, Add.23, paras. 9 and 23)

"In the field of the right to citizenship, the Committee is of the view that the State Party should, in the light of articles 2 (non-discrimination) and 3 (best interests of the child), abolish the categorization of citizens, as well as mention on the national identity card of the religion and of the ethnic origin of citizens, including children. In the view of the Committee, all possibility of stigmatization and denial of rights recognized by the Convention should be avoided." (Myanmar IRCO, Add.69, para. 34)

"The Committee ... further takes note with concern of the requirement to record ethnic origin in passports."

"...It further reiterates the recommendation of the Committee on the Elimination of Racial Discrimination to reconsider the requirement to record ethnic origin in passports (A/54/18, para. 407)." (Latvia IRCO, Add.142, paras. 23 and 24)

Confidential advice for children

The *Guidelines for Periodic Reports*, under article 1 (definition of the child), seeks information on any minimum age defined in legislation for the child to have the right to receive "legal and medical counselling without parental consent", and "medical treatment or surgery without parental consent". These involve privacy issues: the right of the child to seek confidential advice on legal and medical matters, and the further right to confidential treatment, including, for example, contraception, and abortion where permitted. The Convention does not support the setting of any arbitrary age below which the child does not have such rights. But article 5 enables parents to provide direction and guidance in a manner consistent with the evolving capacities of the child.

Medical and other professionals often have ethical codes requiring them to respect patient/client confidentiality. When a child is the patient or client, the principles and provisions of the Convention provide a framework for clarifying the child's rights, in particular in relation to his or her parents (see article 1, page 8).

On occasions, the Committee has focused on confidentiality in health services from the child's perspective. For example:

"The Committee remains concerned that the right of access to medical advice and treatment without parental consent, such as testing for HIV/AIDS, may be compromised in instances where the bill for such services is sent





to the parents, violating the confidentiality of the doctor-child relationship. The Committee recommends that the State Party take adequate measures to ensure that medical advice and treatment remain confidential for children of appropriate age and maturity, in accordance with articles 12 and 16 of the Convention.”

(Netherlands IRCO, Add.114, para. 19)

The Report on the International Conference on Population and Development (Cairo, 1994) addresses adolescent sexual and reproductive health issues and, in proposals for action, follows the principles and provisions of the Convention. The Report states: “Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents to provide, in a manner consistent with the evolving capacities of the adolescent, appropriate direction and guidance in sexual and reproductive matters, countries must ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. In doing so, and in order to, *inter alia*, address sexual abuse, these services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent, respecting cultural values and religious beliefs. In this context, countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents. ... Adolescents must be fully involved in the planning, implementation and evaluation of such information and services with proper regard for parental guidance and responsibilities.” (A/CONF.171/13, paras. 7.41-7.48; also 6.15)

Protection from interference

The Committee raised privacy concerns over the practice of virginity testing in South Africa:

“...The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls... The Committee also recommends that the State Party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness-raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of virginity testing in light of articles 16 and 24 (3) of the Convention.” (South Africa IRCO, Add.122, para. 33)

The public advertising of children for fostering or adoption may raise issues of privacy where it

involves using photographs and intimate details of children without their informed consent.

In 1988, the Human Rights Committee issued a detailed General Comment on article 17 of the International Covenant on Civil and Political Rights, which concerns the right to privacy. It provides relevant definitions and explanation, in particular that:

- the individual must be protected from interference not only by state authorities but also by others;
- the State must provide legislative and other measures to prohibit such interference;
- interference can only take place in ways defined in law, which must not be arbitrary, must comply with the provisions, aims and objectives of the Covenant, and be reasonable in the particular circumstances;
- the State should enable individuals to complain when they believe their right has been violated and the State should provide appropriate remedies.

The Human Rights Committee emphasizes that States Parties are under a duty themselves not to engage in interference incompatible with article 17 and to provide the legislative framework prohibiting such acts by natural or legal persons. Also, States Parties pay too little attention to the fact that article 17 deals with protection against both unlawful and arbitrary interference: “That means that it is precisely in State legislation above all that provision must be made for the protection of the right set forth in that article... The term ‘unlawful’ means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant.

“The expression ‘arbitrary interference’ is also relevant to the protection of the right provided for in article 17. In the Committee’s view, the expression ‘arbitrary interference’ can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.”

The Human Rights Committee suggests reports should include information on the authorities and organs set up within the legal system of the State that are “competent to authorize interference allowed by the law”: “It is also indispensable to have information on the authorities which

are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States should in their reports make clear the extent to which actual practice conforms to the law. State Party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference, and the number of any findings in that regard, as well as the remedies provided in such cases.”

The Human Rights Committee notes that “As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual’s private life the knowledge of which is essential in the interests of society as understood under the Covenant.” (Human Rights Committee, General Comment 16, 1988, HRI/GEN/1/Rev.5, p. 131)

Privacy in institutions

The privacy of children in institutions, in particular in residential institutions and custodial institutions, can be particularly threatened by the physical environment and design, by overcrowding, lack of appropriate supervision and so on. (Indeed, Costa Rica’s Initial Report identified the closure of large institutions and orphanages as an “essential step” for the protection of children’s privacy (Costa Rica IR, paras. 122-4)). Also, the use of video surveillance in institutions can breach children’s privacy rights.

Article 16 requires that the child’s right to privacy is protected by law. Hence, in institutions there should be minimum requirements on space, including private space, design of toilets and bathrooms, and so on. These issues are covered in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (see below) and are equally relevant to all institutional placements. Article 3(3) of the Convention on the Rights of the Child requires that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities (see page 47). Standards must reflect the provisions of the Convention, including the child’s right to privacy, without discrimination.

Privacy for those whose liberty is restricted.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty has various relevant provisions. First, there is the general principle in rule 13 which states that juveniles deprived of their liberty must not be denied any

entitlement under national or international law to civil or other rights that are compatible with the deprivation of liberty; in addition, there are specific provisions relating to files (see page 218), design and physical environment, personal effects, visits, correspondence (see page 220) and the conduct of personnel.

The design of detention facilities for juveniles and the physical environment should pay due regard to the juvenile’s need for privacy (rule 32); sanitary installations should be so located and of a sufficient standard to enable every juvenile “to comply, as required, with their physical needs in privacy and in a clean and decent manner” (rule 34). Rule 35 states that “The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juveniles. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected...” Circumstances for visits to the juvenile should “respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel” (rule 60). Personnel involved with juveniles deprived of their liberty “should respect the right of the juvenile to privacy and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity” (rule 87(e)).

Privacy in juvenile justice, child protection and other proceedings

In addition to article 16, article 40 requires that in the case of children alleged as or accused of having infringed the penal law “to have his or her privacy fully respected at all stages of the proceedings”.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”, expands on the provision in article 40 of the Convention. Rule 8.1 states: “The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. 2. In principle, no information that may lead to the identification of a juvenile offender shall be published.”

The official Commentary to the Rules explains: “Rule 8 stresses the importance of the protection of the juvenile’s right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent



No reporting of children's crimes

Uruguay's Initial Report records that article 19 of the Children's Code prohibits the reporting in the news media of crimes committed by children under the age of 18: "The reporting or graphic depiction of crimes committed by children under the age of 18 is absolutely prohibited". Public employees who pass information to the press and the media are liable to fines, which are credited to the Children's Council (since replaced by the National Minors' Institute). (Uruguay IR, para. 143)

identification of young persons as 'delinquent' or 'criminal'. Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle."

Particular protection of the privacy of juveniles is also provided for in article 14 of the International Covenant on Civil and Political Rights, which requires that "any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children" (article 14(1)).

In the Report of its General Discussion on "Administration of juvenile justice", the Committee on the Rights of the Child stated:

"The privacy of the child should be fully respected in all stages of the proceedings, including in relation to criminal records and possible reporting by the media." (Report on the tenth session, October/November 1995, CRC/C/46, para. 227)

In the outline prepared for its General Discussion on "The child and the media", the Committee noted the importance of the child's right to privacy in media reporting not only of juvenile justice cases but also of child abuse and family problems (see also article 17, page 237):

"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." (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, p. 80)

Among the recommendations that arose during the General Discussion was one that stated specific guidelines should be prepared for reporting on child abuse,

"on how to report and at the same time protect the dignity of the children involved. Special emphasis should be placed on the issue of not exposing the identity of the child." (Report on the thirteenth session, September/October 1996, CRC/C/57, para. 256)

Files on children

Most children have some records or reports written about them and stored – in health, education, social services, and juvenile justice systems (see also article 8 – preservation of the child's identity, page 123). Rights to privacy require that legislation should ensure that the child

- knows of the existence of information stored about him or her;
- knows why such information is stored and by whom it is controlled;
- has access to such records, whether stored manually or by electronic means;
- is able to challenge and, if necessary, correct their content, if necessary through recourse to an independent body.

Legislation should limit who else has access to the information stored; such access must not be arbitrary and must be in line with the whole Convention. The child should know who else has access.

The Human Rights Committee, in its General Comment on the similar article on privacy rights in the International Covenant, states: "The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed

contrary to the provisions of the law, every individual should have the right to request rectification or elimination.” (Human Rights Committee, General Comment 16, 1988, HRI/GEN/1/Rev.5, p. 131)

In relation to files used in juvenile justice systems, the “Beijing Rules” (which the Committee has commended as providing appropriate minimum standards) requires in rule 21(1): “Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand and other duly authorized persons.” Rule 21(2): “Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.” The official commentary states: “The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender (see also rule 8). ‘Other duly authorized persons’ would generally include, among others, researchers.”

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides more detail: “All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged” (rule 19).

“family”

The term “family” has a broad interpretation under the Convention on the Rights of the Child, including parents “or, where applicable, the members of the extended family or community as provided for by local custom” (article 5), and the Committee has emphasized this interpretation in its examination of States Parties’ reports (see article 5, page 87).

In its General Comment on privacy, quoted above, the Human Rights Committee states: “Regarding the term ‘family’, the objectives of

the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State Party concerned...” (Human Rights Committee, General Comment 16, 1988, HRI/GEN/1/Rev.5, p. 130)

Any arrangements permitting interference with a child’s family must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention, and must be reasonable in the particular circumstances. Article 9 is especially relevant, setting out the conditions for any separation of the child from his or her parents. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

Article 37(c) of the Convention specifically requires that the child deprived of his or her liberty “shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

“home”

The Human Rights Committee interprets “home” as follows: “The term ‘home’ in English



Parental monitoring

Belgium’s Initial Report states: “Regarding privacy and freedom of correspondence, the same principle holds true for everyone: no one has the right to read or intercept correspondence not addressed to him or her. However, some parents and some judges consider that parental authority, entailing the right to bring up and supervise their children, justifies ‘censorship’ of a minor’s correspondence. Some parents take this right as a basis for allowing them to monitor the correspondence and personal relations of their child. They are, however, obliged to use licit means for this purpose. Furthermore, parental authority may and sometimes must yield to the child’s right not to be subjected to such interference when the child is capable of due discernment.” (Belgium IR, para. 150)

In France, the Postal Services Code specifies that ordinary mail, registered mail or mail of a declared value addressed *poste restante* to non-emancipated minors under 18 years of age may only be delivered to them on presentation of written authorization by their father or mother or guardian (France IR, para. 242).



... is to be understood to indicate the place where a person resides or carries out his usual occupation". The Human Rights Committee also notes that "Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment." (Human Rights Committee, General Comment 16, 1988, HRI/GEN/1/Rev.5, pp. 130 and 131)

Thus "home" will include, for some children, places of alternative care, including various categories of residential institutions, boarding schools, places of detention, long-stay hospitals and so forth.

Any arrangements permitting interference with a child's home, such as searching it, must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention, and must be reasonable in the particular circumstances. Eviction of a family from its home would have to meet these tests. For children living in alternative care, moves from one "home" to another must not breach the child's right. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

Private correspondence in Austria

One important aspect of the protection of the private sphere of children is respect for the secrecy of correspondence. According to an investigation by the Fessel Institute in Austria in 1991, 5 per cent of children between 6 and 13 reported at least one occasion on which the secrecy of their correspondence was not maintained. Among 14- to 17-year-olds, one sixth reported frequent conflicts with their parents because they "open and read letters addressed to me, or my diary, without my permission".

Thirty-six per cent of 6- to 13-year-olds knew they had a right to maintain secrecy of correspondence, diaries and so on, as did 69 per cent of 14-year-olds and 79 per cent of 16-year-olds. But only every other adult (over 18) claimed to have knowledge of the right of the child to maintain secrecy of correspondence and inviolability of their diary or other written exchanges. A third of the Austrian population regard these rights as "rather unimportant". However, three quarters of those asked rejected the idea that parents should have the right to read letters addressed to their children or diaries written by them. (Austria IR, paras. 182 and 183)

"or correspondence"

All children have the right not to have their correspondence – letters and other forms of communication, including telephone calls – interfered with arbitrarily or unlawfully, in their family or wherever else they may be.

Any arrangements permitting interference with a child's correspondence, such as opening, reading, or limiting it and so forth, must be set out in the law and must not be arbitrary, must be compatible with the other principles and provisions of the Convention and must be reasonable in the particular circumstances. The child must have access to a complaints procedure and appropriate remedies in cases of violation of the right.

The Human Rights Committee commented on the privacy article in the Covenant: "Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited..." (Human Rights Committee, General Comment 16, HRI/GEN/1/Rev.5, p. 131)

As noted above, under article 37 of the Convention on the Rights of the Child, every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: "Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence" (rule 61).

"nor to unlawful attacks on his or her honour or reputation"

Most, if not all, countries have laws to protect adults from attacks on their honour or reputation – both verbal attacks (slander) and attacks in writing and/or through the media (libel). This provision requires that the child should be protected equally under the law. The law must set out the protection, and the child must have

an effective remedy in law against those responsible.

The Human Rights Committee comments on the identically worded provision in the International Covenant on Civil and Political Rights: “Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible.” (Human Rights Committee, General Comment 16, HRI/GEN/1/Rev.5, p. 131)

As noted above (page 218), in the report of its 1996 General Discussion on “The child and the media”, the Committee on the Rights of the Child expressed concern at images of children – both individual and collective images – portrayed by the media (see also article 17, page 227):

“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...” (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80 and 81)

The Committee commented on media attacks on children in Nicaragua:

“The Committee shares the concern expressed by the State Party about the fact that children are often abused in the media to the detriment of their personality and status as minors...”

“The Committee recommends that, on an urgent basis, measures be taken to ensure the protection of the child from information and material injurious to his or her well-being and to protect the child's right to privacy, in light of the provisions of articles 16 and 17 of the Convention.” (Nicaragua IRCO, Add.36, paras. 17 and 34)

The child's right to the protection of the law against such interference or attacks: article 16(2)

As noted above, in its General Comment, the Human Rights Committee states that interference with the right to privacy can only take place in ways defined in law, which must not be arbitrary, must comply with the provisions, aims and objectives of the Covenant (similarly, in relation to article 16 of the Convention on the Rights of the Child, interference must comply with the principles and provisions of the Convention) and be reasonable in the particular circumstances. In addition the State should enable individuals to complain when they believe their rights have been violated and to have appropriate remedies. (Human Rights Committee, General Comment 16, 1988, HRI/GEN/1/Rev.5, p. 130)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 16, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 16 is relevant to **departments of social welfare, justice, education, media and communications**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 16 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 16 likely to include the training of **all those working with or for children and their families, and parenting education**)?

● Specific issues in implementing article 16

Does legislation specifically recognize the right of the child to protection from arbitrary or unlawful interference with his or her

- ☐ privacy?
- ☐ family?
- ☐ home?
- ☐ correspondence?

How to use the checklists, *see page XVII*



- ☐ Does the legislation conform to all the other principles and provisions of the Convention?

Does legislation prevent such interference

- ☐ by State agencies?
- ☐ by others, including private bodies?

- ☐ Is the only permitted interference with the child's privacy, family, home and correspondence set out in legislation?

Does the legislation in each case ensure that such interference

- ☐ is not arbitrary?
- ☐ conforms with all other principles and provisions of the Convention?
- ☐ is reasonable in the particular circumstances?

- ☐ Are these legislative protections available to all children without discrimination?

Does the right to protection from arbitrary or unlawful interference with privacy apply to the child

- ☐ in the home?
- ☐ in all forms of alternative care?
- ☐ in schools?
- ☐ in other institutions of all kinds, both state-run and other?

In relation to the child in a residential and/or custodial institution, are there special safeguards of the child's right to privacy in relation to

- ☐ physical environment and design?
- ☐ visits and communication?
- ☐ personal effects?
- ☐ conduct and training of staff?

Does the child have a right to receive confidential counselling without the consent of his/her parents

on legal matters

- ☐ at any age?
- ☐ from a specific age?
- ☐ under criteria related to the child's maturity and capacities?

How to use the checklists, *see page XVII*



on medical matters

- ☐ at any age?
- ☐ from a specific age?
- ☐ under criteria related to the child's maturity and capacities?
- ☐ Does legislation protect children from arbitrary and unlawful interference with their family, including members of their extended family?
- ☐ Does legislation protect children from arbitrary and unlawful interference with their home, including placements in alternative care outside the family home?

Do any limits on the right to protection from arbitrary or unlawful interference with the child's correspondence, including by mail, telephone and all other means, conform with the Convention's principles

- ☐ in the child's home?
- ☐ in alternative care?
- ☐ in institutional care?
- ☐ in places of detention?

Does the child have the following rights in relation to any information kept about him or her in files or records stored either manually or through electronic means:

- ☐ to know of the existence of the information?
- ☐ to know of the purpose of collecting and storing it, and who controls it?
- ☐ to have access to it?
- ☐ to be able to challenge and, if necessary, correct anything contained in it?
- ☐ to know in each case who controls access to the information?
- ☐ to know who else has access to the information and for what purpose(s)?
- ☐ to be able to control who else has access to the information?
- ☐ in the event of any dispute over realization of this right, to appeal to an independent body?
- ☐ In the event of possible violation of any of these rights, does the child have access to an appropriate complaints procedure?
- ☐ In cases of violation, does the child have appropriate remedies, including compensation?
- ☐ Are any limitations on any of these rights of the child based only on age and/or lack of maturity and understanding?

How to use the checklists, see page XVII



Does legislation guarantee the child's right to privacy, in particular to ensure that nothing which may lead to the child's identification is published in any way, in the case of

- ☐ children alleged as, accused of, or recognized as having infringed the penal law?
- ☐ children involved in child protection investigations and proceedings?
- ☐ children involved in family proceedings?
- ☐ Is there provision for the consideration and resolution of complaints from children regarding breaches of their rights under article 16?
- ☐ Does legislation protect the child from unlawful attacks on his or her honour and reputation?
- ☐ Have appropriate measures been taken to encourage the media to respect children's rights under this article?

Reminder: The Convention is indivisible and its articles are interdependent. Article 16 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 16 include:

Article 8: preservation of identity

Article 9: privacy in family proceedings

Article 17: role of the media

Article 19: privacy for victims of violence

Article 20: privacy in alternative care

Article 40: not identifying children involved in juvenile justice system



Child's access to appropriate information



Text of Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 17 is particularly focused on the role of the mass media in relation to children's rights but includes a general obligation on States Parties to ensure that the child has access to information and material from diverse sources – especially those aimed at promoting well-being and physical and mental health. This is closely linked to the child's right to freedom of expression (article 13), and to maximum development (article 6). The media must be encour-

aged to disseminate positive material of benefit to the child and in line with the detailed aims for education set out in article 29. The media should also be accessible to the child, promoting and respecting the participatory rights to respect for the views of children (article 12, see page 179).

The Committee on the Rights of the Child has noted the key role that the media can play in making the principles and provisions of the Convention on the Rights of the Child widely

Summary

known to children and adults, in fulfilment of the Convention's article 42 (see page 561). The media can also be crucial in exposing and reporting on breaches of the rights of the child.

During the drafting of the Convention, article 17 started out as a measure simply to protect the child "against any harmful influence that mass media, and in particular the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his men-

tal and moral development". But early in its discussion, one member of the Working Group suggested that the media did more good than harm and that the article should be phrased in a positive way (E/CN.4/L.1575, pp. 19 and 20, Detrick, p. 279). The final version of the article proposes five actions for States Parties to fulfil in order to achieve the article's overall aim; only the last concerns protecting the child from harmful material. These actions are discussed below. ■



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Civil rights and freedoms

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(d) Access to appropriate information (art. 17);

...".

(CRC/C/5, para. 15)

Guidelines for Periodic Reports

"IV. CIVIL RIGHTS AND FREEDOMS

G. Access to appropriate information (art. 17)

Please provide information on the measures adopted to ensure that children have access from a diversity of national and international sources to information and material aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health. Please also indicate the measures adopted to encourage:

The production and dissemination of children's books, and the dissemination by the mass media of information and material of social and cultural benefit to the child, with particular regard to the linguistic needs of children belonging to a minority group or who are indigenous;

International cooperation in the production, exchange and dissemination of such information and material of social and cultural benefit for the child, in accordance with the spirit of article 29 of the Convention on the aims of education, including any international agreements concluded for that purpose;

The development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, as well as from harmful exposure in the mass media, bearing in mind the provisions of articles 13 and 18."

(CRC/C/58, para. 60. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 22, 23, 55, 133, 159, 161, 164; for full text of *Guidelines*, see Appendix 3, page 674.)

Key roles of the media

The Committee on the Rights of the Child requested one of its members, Thomas Hammarberg, an ex-journalist, to prepare a paper for the General Discussion on “Children, the UN Convention and the Media”.

The paper stated: “The Convention is formally addressed to Governments and does not interfere with independence of the media. Still, it brings an indirect message to media institutions which goes deeper than suggesting that its existence and impact be mentioned. As with human rights in general, the press and other media have essential functions in promoting and protecting rights of the individual, including through monitoring violations and other actions by governments. The rights of the **child** bring particular challenges for the media...”. The paper goes on to review the implications of various relevant articles, in particular 12, 13 and 17, emphasizing “two major tendencies in these articles. One is about freedom of expression and the access to the media, the other one is treating the media as an educational tool. Though clearly distinct, the two aspects interrelate.” The paper notes that Initial Reports had shown a mixed picture of implementation – several not even mentioning the issues (Thomas Hammarberg, *Children, the UN Convention and the Media*, paper for General Discussion, 7 October 1996).



The “important function performed by the mass media”

In the report of its General Discussion on “The child and the media”, the Committee on the Rights of the Child stressed various media roles in relation to full implementation of the Convention on the Rights of the Child, including, but going beyond, the scope of article 17:

“The Committee on the Rights of the Child believes that the media – both written and audiovisual – are highly important in the efforts to make reality [of] the principles and standards of the Convention. The media in many countries have already contributed greatly in creating an awareness of the Convention and its content. The media could also play a pivotal role in monitoring the actual implementation of the rights of the child...”

The Committee also highlighted the importance of children having access to the media:

“Finally, the media is important for offering children the possibility of expressing themselves. One of the principles of the Convention is that the views of children be heard and given due respect (art. 12). This is also reflected in articles about freedom of expression, thought, conscience and religion (art. 13-14). It is in the spirit of these provisions that children should not only be able to consume information material but also to participate themselves in the media. This requires that there exist media which communicate with children. The Committee on the Rights of the Child has noted that there have been experiments in several countries to develop child-oriented media; some daily newspapers have special pages for children and radio and television programmes also devote special segments for the young audience. Further efforts are,

however, needed.” (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80-81. For the Committee’s comments on the potentially harmful influence of the media, see below, page 236.)

Following the General Discussion to ensure follow-up, the Committee convened a Working Group, which met at UNESCO headquarters in April 1997 and agreed to put together a “first stage action plan” for the 12 recommendations (see box on page 230). Once this was under way, a second stage action could be discussed and planned. The Working Group reported to the Committee in May 1997 (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. A full report of the first session of the Working Group convened to follow up the General Discussion and the 12 main recommendations which emerged from it is included as Annex IV to the report on the fifteenth session, May/June 1997, CRC/C/66).

In 1999, a workshop on “The child and the media” was held in Oslo, Norway, and produced a document, “The Oslo Challenge”, which identifies challenges for governments, organizations, individuals and the private sector in seeking to improve implementation of the right of the child to access appropriate information. (Report on the twenty-third session, January 2000, CRC/C/94, para. 481)

Following the two-day workshop held to commemorate the tenth anniversary of the Convention on the Rights of the Child (30 September and 1 October 1999), the Committee adopted conclusions, including



General Discussion – “The child and the media”

The following recommendations arose during the plenary and working group sessions of the General Discussion:

1. Child media: A dossier should be compiled on positive, practical experiences of active child participation in the media.
2. Child forum within Internet: The UNICEF-initiated “Voices of Youth” on the World Wide Web should be promoted and advertised as a positive facility for international discussion on important issues among young people.
3. Active child libraries: The experience of dynamic child libraries, or child departments within public libraries, should be documented and disseminated.
4. Media education: Knowledge about the media, their impact and their functioning should be imparted in schools at all levels. Students should be enabled to relate to and use the media in a participatory manner, as well as to learn how to decode media messages, including in advertising. Good experiences in some countries should be made available to others.
5. State support to media for children: There is a need for budgetary support to ensure the production and dissemination of children’s books, magazines and papers, music, theatre and other artistic expressions for children, as well as child-oriented films and videos. Assistance through international cooperation should also support media and art for children.
6. Constructive agreements with media companies to protect children against harmful influences: Facts should be gathered about various attempts at voluntary agreements with media companies on positive measures, such as not broadcasting violent programmes during certain hours, clear presentations before programmes about their content and the development of technical devices such as ‘V-chips’, to help consumers to block out certain types of programmes. Likewise, experiences with respect to the introduction of voluntary ethical standards and mechanisms to encourage respect for them should be assembled and evaluated; this should include an analysis of the effectiveness of existing codes of conduct, professional guidelines, press councils, broadcasting councils, press ombudsmen and similar bodies.
7. Comprehensive national plans to empower parents in the media market: Governments should initiate a national discussion on means to promote positive alternatives to the negative tendencies of the media market, to encourage media knowledge and to support parents in their role as guides to their children in relation to electronic and other media. An international workshop should be organized to promote a discussion on this approach.
8. Advice on implementation of article 17 of the Convention on the Rights of the Child: A study should be conducted with the purpose of developing advice to Governments on how they could encourage the development of “guidelines for the protection of the child from information and material injurious to his or her well-being.” Such a study should also serve the purpose of assisting the Committee on the Rights of the Child in drafting a General Comment on article 17.
9. Specific guidelines for reporting on child abuse: To encourage further discussion in newsrooms and within the media community as a whole, guidelines should be drafted by appropriate journalism bodies on how to report on abuse of children and at the same time protect the dignity of the children involved. Special emphasis should be placed on the issue of not exposing the identity of the child.
10. Material for journalism education on child rights: Material should be produced to assist journalism and media schools on child rights standards; established procedures for child rights monitoring; existing international, regional and national institutions working with children; as well as basic aspects of child development. The manual planned by the Centre for Human Rights of the United Nations as a tool for journalists’ education on human rights should be widely disseminated when it is produced.
11. Network for media watchgroups: The positive work of media watchgroups in various countries should be encouraged and good ideas transferred between countries. The purpose is to give media consumers a voice in the discussion on media ethics and children. A focal point for exchanges should be established.
12. Service to “child rights correspondents”: Interested journalists should be invited to sign up on a list of “child rights correspondents”. They should be provided regularly with information about important child issues and with interesting reports by others, and be seen as media advisers to the international child rights community.

(Report on the thirteenth session, September/October 1996, CRC/C/57, paras. 242 et seq.)

some on promotion of child participation (see page 58). It proposed that States should give

"...increased consideration to the creation of space, channels, structures and/or mechanisms to facilitate the expression by children of their views, in particular with regard to the formulation of public policies from local up to national level, with appropriate support from adults, including in particular support regarding training. This requires investment to institutionalize effective spaces and opportunities for children to express their views and to engage with adults, especially through schools, community organizations, NGOs, and the media..."

(Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291(w))

The Committee has encouraged individual States to promote participatory rights of children through the media:

"...The Committee recommends that the State Party develop further a systematic approach to increasing, including through the media, public awareness of the participatory rights of children in order to make these rights and their implications fully understood by the population at large." (Guinea IRCO, Add.100, para. 18)

"In light of article 12 of the Convention, the Committee recommends that the State Party promote the right of children to express their views through the adoption and implementation of appropriate legislation, through the sensitization of key professional groups and the family, through use of the media and through other activities targeting the public in general and parents and schools in particular." (Central African Republic IRCO, Add.138, para. 35)

Ensuring the child "has access to information ... from a diversity of national and international sources" – especially those aimed at promoting well-being and physical and mental health

The Committee regards article 17 as expressing civil rights of children and frequently notes general concern at the lack of attention paid to implementation of children's civil rights and freedoms, including those provided by articles 13, 14, 15, 16 and 17. For example:

"The Committee is generally concerned that inadequate attention has been given to the promotion of civil rights and freedoms of the child, as provided for in articles 13, 14, 15, 16,

and 17 of the Convention. Information before the Committee indicates that traditional social attitudes regarding the role of children appear to make it difficult to accept children fully as the subjects of rights. The Committee urges the State Party to redouble its efforts to educate and sensitize parliamentarians and government officials, professional groups, parents and children on the importance of accepting fully the concept of child rights, and recommends that legislative measures be envisaged to guarantee the enjoyment of civil rights and freedoms for every child."

(Barbados IRCO, Add.103, para. 18)

This section of article 17 provides the overall aim for the five particular strategies outlined in paragraphs (a) to (e). They are related to the child's freedom of expression under article 13(1), which "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" (see page 185). They relate to the role of the media in promoting the child's maximum development under article 6, and also to the aims of education (article 29), and the need for health education (article 24). In addition, article 31 states the right of the child to participate freely and fully in cultural and artistic life, and the State's obligation to encourage the provision of appropriate and equal opportunities; here, too, the media can play an important role (see page 465).

The Committee on the Rights of the Child has noted some gaps in children's access to appropriate information, sometimes in particular regions or types of region, for example rural areas, and has proposed some specific solutions:

"The Committee is concerned that children have poor access to information.

"The Committee recommends that the State Party improve children's access to information, inter alia by providing greater access to newspapers and libraries, including materials in the Sango language, and to radio..."

(Central African Republic IRCO, Add.138, paras. 42 and 43)

"The Committee notes with concern that children living in the outer islands do not have adequate access to information and material from a diversity of national and international sources aimed at promoting the child's development and physical and mental health..."

"The Committee recommends that the State Party reinforce measures for the production of programmes and books for children and disseminate them within the country, in particular the outer islands, and in this regard envisage taking steps for the introduction of



Production and distribution of children's books in Norway

There is a special purchasing programme for contemporary Norwegian children's books. Every year around 100 fiction titles and 20 non-fiction titles are purchased and distributed to 1,550 libraries (1,000 public libraries and 550 school libraries).

Children and adolescents use libraries more frequently than any other age group. Books are borrowed free of charge. State funds are available for the production of illustrated children's books. Three Norwegian and one Sami children's magazines receive grants from the State. Funds are also granted for various projects focusing on books for children and adolescents, presenting Norwegian authors and contemporary literature and stimulating the use of libraries. The Directorate for Public and School Libraries arranges campaigns and competitions to promote the reading of books. (Norway 2R, paras. 332 and 333)

the use of computers in schools...

(Marshall Islands IRCO, Add.139, paras. 34 and 35)

"...while noting that there is State support, including through tax reduction, for the publication and sale of books, [the Committee] nevertheless notes with concern that not enough programmes and books for children are being produced and disseminated in the country..."

"It further recommends that the State Party reinforce measures to encourage the production of programmes and books for children and disseminate them throughout the country, in particular in rural areas..."

(Lithuania IRCO, Add.146, paras. 27 and 28. See also Burundi IRCO, Add.133, paras. 44 and 45)

Ensuring that disabled children have equal access to information through the media may require special and additional arrangements (see article 23, page 332).

Children whose liberty is restricted. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty highlights access to the media: "Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures ..." (rule 62). Special consideration may need to be given to children's access to the media in any institutional placement and in other special circumstances.

Market forces and the media

"The attainment of independence has led to changes in the sphere of the mass media. The distinguishing features of this sphere today are pluralism of information, a rapidly growing newspaper industry, and growing competition. The one-sidedness and careful dosage of the Soviet period are things of the past; we now have a situation of over-saturation with information... Regrettably, the subject matter of children's newspapers and journals has come to reflect the younger generation's interest in entertainment, violence, etc.

"The commercialization of the press and of book publishing has made such negative aspects of western mass culture as violence, eroticism and horror accessible to children. The dissemination of such publications, for the most part imported from abroad, is almost uncontrolled. Despite existing prohibitions, the law enforcement organs are essentially inactive vis-à-vis such practices. The publication of books for children is an acute problem, again as a result of the commercialization of publishing activities...

"A difficult situation in terms of the right of the child to satisfy his/her cultural needs has arisen on the film and video market. A tidal wave of films and videos of the lowest kind promoting mindlessness and violence or focused exclusively on entertainment has engulfed the young spectator. The same can be said of the book market, which is being replenished chiefly with foreign publications of a very specific kind - thrillers, fantasy fiction, erotica and sometimes pornography. Unfortunately, the commercialization of film and video distribution and the book trade leaves too little room for the genuine spiritual values in which young people ought to be educated." (Georgia IR, paras. 103-106, 267)

“Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29”: article 17(a)

Article 29(1) sets out the aims for the education of the child. Article 17 suggests that the content of information and material disseminated by the media should be in accordance with these aims, which are directed to:

- development of the child’s personality, talents and mental and physical abilities to their fullest potential;
- development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- development of respect for
 - the child’s parents;
 - the child’s cultural identity, language and values;
 - the national values of:
 - ◆ the country in which the child is living;
 - ◆ the country from which he or she may originate;
 - civilizations different from his or her own;
- preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic national and religious groups and persons of indigenous origin;
- development of respect for the natural environment.

(see article 29, page 431).

In its first General Comment, on the aims of education, the Committee notes:

“The media, broadly defined, also have a central role to play both in promoting the values and aims reflected in article 29(1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17(a), to take all appropriate steps to ‘encourage the mass media to disseminate information and material of social and cultural benefit to the child’.” (Report on the twenty-sixth session, January 2001, CRC/C/103, Annex IX, para. 21. See also article 29, page 434.)

Promoting understanding, peace and tolerance

The Committee on the Rights of the Child has noted with concern certain instances where the

Fictionalized Violence Council in Sweden

“The Council on Fictionalized Violence has the task of coordinating measures by national authorities to combat harmful fictionalized violence. The Council also cooperates with various organizations and with the enterprise sector. It observes research in Sweden and other countries, as well as itself commissioning research. The Council encourages and supports associations and others concerning themselves with aspects of fictionalized violence. The Council also works for the improvement of media knowledge in schools. Its secretariat is open to questions and information requests from the general public.” (Sweden 2R, para. 99)



media may be promoting negative attitudes and even hatred of certain groups:

“The Committee is concerned at the information brought to its attention concerning the hostile sentiments apparently broadcast by certain mass media. The Committee is worried about tendencies in the media which may lead to the incitement of hatred against certain ethnic and religious groups.

“The Committee is deeply concerned about the absence of pluralism in the activities of the major organs of mass media, limiting the freedom of the child to receive information and the freedom of thought and conscience, as provided for in articles 13 and 14 of the Convention.” (Federal Republic of Yugoslavia IRCO, Add.49, paras. 11 and 12)

The Committee has emphasized the responsibility of the media to contribute to fostering “understanding, peace, tolerance...” and so on, as set out in article 29(1)(d):

“... The Committee observes that the State-controlled mass media, in the interests of healing and building trust within the country, have a role and a responsibility to contribute to the efforts to foster tolerance and understanding between different groups and that the broadcasting of programmes that run counter to this objective should end. The Committee recommends that the securing and dissemination of broader and more diverse sources of information designed for children, including by broadcasting them on the mass media, would assist in ensuring further implementation of the principles and provisions of the Convention, including those of its article 17. It is also suggested that measures should be taken to improve the activities of

Advertising which targets children

“The business terms and conditions for advertising in Austrian Broadcasting Corporation (ORF) programmes represent a code of ethics for public broadcasting according to which, for example, it is not permitted to use children in advertising messages that aim at making children exert psychological pressure on parents or legal guardians to purchase certain products. Advertising spots in which (i) invitations to consume are sent directly to children, or (ii) invitations to consume are - by using children - sent to adults by children, or (iii) invitations to buy are - by using children - sent to children by children as the target group either directly or indirectly, or (iv) child imitations take place, shall not be accepted by those responsible for programming.” (Austria IR, para. 168)



the mass media in imparting information for children in their own language, including Albanian.” (Federal Republic of Yugoslavia IRCO, Add.49, para. 28)

“The Committee also recommends, in the interests of healing and trust-building within the country and in the spirit of article 17 of the Convention, that the State-controlled mass media should play an active role in the efforts to secure tolerance and understanding between different ethnic groups, and that the broadcasting of programmes which would run counter to this objective come to an end.” (Croatia IRCO, Add.52, para. 20)

In 1978, the General Conference of UNESCO proclaimed the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration expresses deep concern “about the use of new information technologies, such as the Internet, for purposes contrary to respect for human values, equality, non-discrimination, respect for others and tolerance, including to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, and that, in particular, children and youth having access to this material could be negatively influenced by it.” (A/CONF.189/12, Declaration, para. 91. For full details see box, page 30)

Promoting equality of the sexes

Another of the aims set out in article 29 is promoting equality of the sexes. The report of the Committee’s General Discussion on “The girl child” refers to

“the importance of eradicating degrading and exploitative images of girls and women in

the media and advertising. The values and models of behaviour that were portrayed contributed to the perpetuation of inequality and inferiority.” (Report on the eighth session, January 1995, CRC/C/38, para. 291)

The Platform for Action arising from the 1995 Fourth World Conference on Women has a section on “Women and the media”, which both emphasizes the potential of the media for making a far greater contribution to the advancement of women and that “The continued projection of negative and degrading images of women in media communications – electronic, print, visual and audio – must be changed” (The Beijing Declaration and Platform for Action, 1996, A/CONF.177/20/Rev.1, paras. 234 and 236).

Promoting awareness of disability

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, in rule 1 on “Awareness-raising”, proposes: “States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter.” In addition, rule 9 suggests that the media should be encouraged to play an important part in removing negative attitudes “towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society.”

Prevention of juvenile delinquency

Further advice on the role of the media in the positive socialization of children is given in the United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines, which the Committee on the Rights of the Child has consistently commended as providing appropriate standards for implementation of the Convention on the Rights of the Child. Within the section on “Socialization processes”, a subsection on the mass media reads:

“40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavoured, 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.”

Health promotion

In the Convention on the Rights of the Child, another particular reference to children’s need for information appears under article 24, in which States Parties are required to take appropriate measures to ensure that parents and children are informed about child health and various specific health issues (article 24(2)(e), see page 356). Here, too, the media can play an important role. For instance:

“... the Committee wishes to encourage the State Party to consider greater use of the media in relation to awareness-raising and education on the dangers of sexual exploitation and abuse and the issues of HIV/AIDS and other sexually transmitted diseases.” (Federal Republic of Yugoslavia IRCO, Add.49, para. 41)

“Encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources”: article 17(b)

This provision reflects a focus on international cooperation to achieve full implementation,

found throughout the Convention on the Rights of the Child. It also emphasizes the diversity of material that should be available to the child. Modern technology is dramatically affecting the instant dissemination of information, increasing the potential of the media for education and development, while also raising concerns about the aims and content of some information being made available to children.

“Encourage the production and dissemination of children’s books”: article 17(c)

Late in the drafting process of article 17, a non-governmental organization proposed that there should be a specific provision to promote children’s reading. The International Board on Books for Young People proposed a new subparagraph: “Encourage, at all levels, literacy and the reading habit through children’s book production and dissemination, as well as the habit of story-telling” (E/CN.4/1987/25, p. 7; Detrick, p. 287). The provision in subparagraph (c) developed from this proposal.

UNESCO has for many years promoted publication of children’s literature, together with the major professional bodies and NGOs.

“Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous”: article 17(d)

Article 30 (see page 453) requires that the child who belongs to a religious or linguistic minority, or who is indigenous, should not be denied the right to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language. The aims of education in article 29 also require respect for varying national values, cultures and languages. Article 17 indicates the important role the mass media should be encouraged to play, for instance through producing material and programmes in minority languages.

In commenting on the need to make the principles and provisions of the Convention on the Rights of the Child well known to adults and children (under article 42, see page 611), the Committee has often emphasized the importance of ensuring translation into minority and indigenous languages, and the particular importance of the media’s participation in this task.





"Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18": article 17(e)

Increasing concern exists in many countries about the potential negative effects on children's development, including physical and mental health, of the projection of violence through the mass media. In the report of its General Discussion on "The child and the media", the Committee on the Rights of the Child highlighted this point and other negative aspects of the media (including its portrayal of children and childhood as quoted in relation to article 16, the child's right to privacy, see page 213):

"...Concern has also been expressed about the influence on children of negative aspects of the media, primarily programmes containing brutal violence and pornography. There is discussion in a number of countries about how to protect children from violence on television, in video films and in other modern media. Again, voluntary agreements have been attempted, with varied impact. This particular problem is raised in article 17 of the Convention which recommends that appropriate guidelines be developed 'for the protection of the child from information and material injurious to his or her well-being'. 'Such guidelines have indeed been developed in some countries, with varied results. The United Nations Educational, Scientific and Cultural Organization has recently renewed discussion on this topic.'" (Report on the eleventh session, January 1996, CRC/C/50, Annex IX, pp. 80 and 81)

The Convention on the Rights of the Child proposes guidelines, suggesting voluntary rather than legislative controls. In developing guidelines, States Parties must bear in mind the provisions in two other articles:

- the child's right to freedom of expression, which can only be subject to certain limited restrictions, set out in paragraph 2 of article 13 (see page 188);
- parents' primary responsibility for the upbringing and development of the child, with the child's best interests as their basic concern, and the State's obligation to provide appropriate assistance (article 18, see page 243).

Article 5, requiring respect for parents' rights to provide appropriate direction and guidance

consistent with the evolving capacities of the child, is also relevant. Ultimately, it is parents and other caregivers who will have primary responsibility for supervising their child's use of the media. The State should assist parents, for example, by ensuring that they have adequate information about the content of television programmes, videos, computer games and so on.

Article 34(b) requires measures to prevent "the exploitative use of children in pornographic performances and materials" (see page 505). The new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see Appendix 2, page 670) defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes" (article 2). Its Preamble notes "the growing availability of child pornography on the Internet and other evolving technologies" and recalls the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and "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" (see article 34, page 505 for further discussion).

The recommendations which arose from the Committee's General Discussion on "The child and the media" include developing constructive agreements with media companies to protect children against harmful influences, comprehensive plans to empower parents in the media market, training of journalists, and specific guidelines for reporting on child abuse (see box, page 230).

The Committee has noted the absence of adequate protection from potentially injurious material in its examination of various States Parties' reports and it has proposed legislation and guidelines as well as parent education:

"In light of article 17 of the Convention, the Committee recommends that the State Party enact special legislation to protect children from harmful information, in particular from television programmes and films containing brutal violence and pornography, and to guarantee their access to appropriate information. The Committee further recommends that the State Party take into consideration the Committee's recommendations during its day of general

discussion (1996) on the child and the media (CRC/C/57).” (Cambodia IRCO, Add.128, para. 36)

“The Committee... is also concerned that children are not adequately protected from violence and pornography on television, in video films and in other media.

“...In light of articles 13, 17 and 18 of the Convention, it further encourages the State Party to develop appropriate guidelines and legislation for the protection of the child from information and material injurious to his or her development, in particular violence and pornography, and also to develop programmes to educate parents.” (Marshall Islands IRCO, Add.139, paras. 34 and 35)

“The Committee is concerned that children are not adequately protected from the violence and pornography increasingly being shown on television, in video films and in other media...”

“In light of article 17 of the Convention, the Committee encourages the State Party to further enforce appropriate guidelines and legislation for the protection of the child from information and material injurious to his or her development, in particular violence and pornography, such as the Law on the Provision of Information to the Public of 1996...” (Lithuania IRCO, Add.146, paras. 27 and 28)

Where legislative protection exists, the Committee has noted the need for other measures:

“In light of its recommendation (see Nicaragua IRCO, Add.36, para. 34) the Committee welcomes the fact that domestic legislation (Code on Children and Adolescents) has introduced protection of the child from information and material injurious to his/her well-being and guarantees access to appropriate information (art.17) and protection of the child’s right to privacy (art.16). However, the Committee remains concerned about the lack of secondary legislation regulating the practical implementation of these rights. The Committee encourages the State Party to continue with its process of legal reform and allocation of appropriate resources in order to establish practical procedures and regulations to protect children from harmful information and to guarantee their access to appropriate information and their right to privacy. The Committee further recommends that it take into consideration the Committee’s recommendations emanating from its day of general discussion (1996) on ‘The child and the media’ (CRC/C/57).” (Nicaragua 2RCO, Add.108, para. 28)

On occasions, it has proposed a study:

“The Committee recommends that the State Party undertake a study with a view to

adopting all measures, including legal ones, to protect children from harmful effects of the print, electronic and audiovisual media, in particular violence and pornography.”

(Federated States of Micronesia IRCO, Add.86, para. 33)

The Committee’s concern covers harmful information disseminated through new media technologies including the Internet:

“The Committee recommends that the State Party take all appropriate measures, including legal ones, to protect children from harmful information, including in the audio-visual media as well as in media using new technologies.” (Ghana IRCO, Add.73, para. 37)

“In the light of article 17 of the Convention, the Committee recommends that the State Party take all appropriate legal and other measures to protect children from being exposed to violence and pornography through video movies and other modern technologies, including the Internet. The Committee also recommends that the State Party pursue its efforts to adopt legislation effectively prohibiting the possession of pornographic material involving children. Bilateral cooperation with neighbouring countries should be engaged to this effect.” (Luxembourg IRCO, Add.92, para. 30)

“The Committee is concerned about the potentially harmful effects of programmes available through cable television which is the preferred viewing option of the population. The Committee recommends that the State Party take measures, including parental education, to protect children from exposure to harmful information, including violence and pornography.” (Saint Kitts and Nevis IRCO, Add.104, para. 19)

“The Committee notes with concern that insufficient efforts have been made to protect children from harmful information shown in private cinemas, homes and community settings. In the light of article 17 of the Convention, the Committee recommends that the State Party reinforce existing and/or establish new appropriate measures to protect children from harmful information.” (Mali IRCO, Add.113, para. 20)

Privacy of the child and the media

One potential threat to the well-being of the child posed by the media relates to the child’s right to privacy (see article 16, page 217). In addition, article 40(2)(b)(vii) requires respect in media coverage for the privacy of children involved in the juvenile justice system, and the Committee has raised similar concerns about the privacy of child victims of abuse and of family problems. The Agenda for Action of the First World





Congress against Commercial Sexual Exploitation of Children (Stockholm, 1996) calls on 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 of children”. It also proposes “voluntary ethical codes of conduct” (A/51/385, p.5, paras. 3(k) and 4(g)).

The media, armed conflict and children

The Graça Machel study on the *Impact of Armed Conflict on Children* indicates that the media is capable of effectively galvanizing international public support for humanitarian action, and that

the threat of adverse international publicity may also be positive, holding the potential for keeping some gross violations of human rights in check. “Ultimately, however, while reports of starving children or overcrowded camps for displaced persons may be dramatic, they do little to support efforts for long-term reconstruction and reconciliation.” The study also suggests that the media can play an important role by helping readers and viewers to enjoy diversity, “and by promoting the understanding that is needed for peaceful coexistence and the respect that is required for the enjoyment of human rights...” (A/51/306, paras. 28 and 257)

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 17, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 17 is relevant to **departments of media and communications, social welfare and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 17 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 17 likely to include the training of **journalists and all those involved in the mass media, and media education**, and developing appropriate **parenting education**)?

● Specific issues in implementing article 17

- ☐ Has the State taken measures to ensure that all children in the jurisdiction have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health?

Is such access assured to all children without discrimination, in particular

- ☐ children of minorities and children who are indigenous?
- ☐ disabled children?

How to use the checklists, *see page XVII*



- ☐ children in all categories of institutions, including custodial institutions?

Has the State encouraged the mass media to disseminate information and material of social and cultural benefit to the child, and to promote aims set out in article 29 including:

- ☐ development of the child's full potential?
- ☐ development of respect for human rights and fundamental freedoms?

development of respect for

- ☐ the child's parents?
- ☐ the child's cultural identity, language and values?

the national values of

- ☐ the country in which the child is living?
- ☐ the country from which he or she may originate?

- ☐ civilizations different from his or her own?

- ☐ preparation of the child for responsible life in a free society?
- ☐ development of respect for the natural environment?

In particular, has the mass media been encouraged to promote

- ☐ understanding and friendship among all peoples, including minorities and indigenous people?
- ☐ equality between the sexes, in line with the proposals of the Platform for Action of the Fourth World Conference on Women?
- ☐ positive portrayal of people with disabilities, in accordance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities?
- ☐ positive socialization of children, in accordance with the provisions of the UN Guidelines on the Prevention of Juvenile Delinquency?
- ☐ Does the State encourage international cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources?
- ☐ Has the State taken measures to encourage the production and dissemination of children's books?
- ☐ Has the mass media been encouraged to have particular regard for the linguistic needs of children who belong to minorities or are indigenous?
- ☐ Has the mass media been encouraged to help with health promotion and education?
- ☐ Has the mass media been encouraged to help disseminate information on the Convention to adults and children?



Reminder: The Convention is indivisible and its articles are interdependent. Article 17 should not be considered in isolation.

**Particular regard should be paid to:
The general principles**

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 17 include:

Article 5: parental responsibilities and child's evolving capacities

Article 9: reporting on family proceedings – the child's privacy

Article 13: right to freedom of expression

Article 16: the child's right to privacy

Article 18: primary responsibility of parents

Article 19: reporting on violence and abuse – privacy for child victims

Article 24: health education and promotion

Article 29: aims of education

Article 30: rights of children of minorities and of indigenous communities to enjoy their own culture, religion and language

Article 31: promoting child's right to play, recreation and participation in culture and the arts

Article 34: role of the media in challenging sexual exploitation, including child pornography

Article 36: other forms of exploitation by the media

Article 40: reporting on juvenile justice – privacy for child

Article 42: making the Convention widely known to children and adults

- ☐ Has the State encouraged the development of guidelines and training programmes to promote the participation of children in relation to radio, print media, film and video, the Internet, and other media?

Has the State encouraged the development of guidelines and monitoring procedures for the protection of the child from information and material injurious to his or her well-being in relation to

- ☐ television?
- ☐ radio?
- ☐ film and video?

How to use the checklists, *see page XVII*



- ☐ the Internet?
- ☐ other media?

If so, are such guidelines consistent with

- ☐ the child's right to freedom of expression under article 13 and the restrictions allowed on that right set out in paragraph 2?
- ☐ the responsibilities of parents and others and of the State set out in article 18?
- ☐ Has the State ensured that parents and other carers are provided with sufficient information on the content of media programmes, videos, computer games and so on to enable them to fulfil their responsibilities for the welfare of the child?
- ☐ Has the State promoted the development of appropriate media education for children?
- ☐ Has the State encouraged the development of parenting education relating to protection of the child from injurious information and material?
- ☐ Are there guidelines and other safeguards, including training, to promote respect by the media for the child's right to privacy, and for responsible reporting of abuse, family problems and juvenile justice?

Parents' joint responsibilities assisted by the State

Article

18

Text of Article 18

- 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*
- 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*
- 3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.*

Article 18 concerns the balance of responsibilities between the child's parents and the State, and particularly addresses support for parents in the performance of their responsibilities. The article must be read in conjunction with article 5 (parental and family duties and rights, the child's evolving capacities) and articles 3(2) and 27 (the State's responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living). These four articles of the Convention, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their "basic concern", but that this responsibility is circumscribed by the child's rights under the

Convention and may be shared with others such as members of the wider family. The State must take appropriate steps to assist parents in fulfilling their responsibilities. If parents cannot, the State must step in to ensure that the child's rights and needs are met.

Article 10 of the International Covenant on Economic, Social and Cultural Rights provides that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children" and "Special measures of protection and assistance should be taken on

Summary



behalf of all children and young persons without any discrimination". Articles 23 and 24 of the International Covenant on Civil and Political Rights repeat these principles and, in addition, provide: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" (article 17). The Committee on Economic, Social and Cultural Rights states in a General Comment "In this and other contexts, the term 'family' should be interpreted broadly and in accordance with appropriate local usage" (General Comment 4, 1994, HRI/GEN/1/Rev.5, p. 34).

The requirements of the Human Rights Committee are more detailed: "Responsibility for guaranteeing children the necessary protection lies with the family, society and the State.

Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State Party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States Parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child." (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, p. 133) ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the "best interests of the child" and "respect for the views of the child" are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(b) Parental responsibilities (art. 18, paras. 1-2)...

...

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.

Basic health and welfare

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

...

(d)...child-care services and facilities (arts. 26 and 18, para. 3)."

(CRC/C/5, paras. 16-19)

Guidelines for Periodic Reports

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

B. Parental responsibilities (art. 18, paras. 1-2)

Please provide information on the consideration given by law to parental responsibility, including the recognition of the common responsibilities of both parents in the upbringing and development of the child and, that the best interests of the child will be their basic concern. Also indicate how the principles of non-discrimination, respect for the views of the child and the development of the child to the maximum extent, as provided for by the Convention, are taken into account.

Please provide information on the measures adopted to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, as well as on the institutions, facilities and services developed for the care of children. Information should also be provided on specific measures adopted for children from single-parent families and belonging to the most disadvantaged groups, including those living in extreme poverty.

Relevant disaggregated information (for example, by gender, age, region, rural/urban areas and social and ethnic origin) should be given on children having benefited from any of these measures and resources allocated to them (at the national, regional and local levels, and where appropriate at the federal and provincial levels). Information should also be provided on progress achieved and difficulties encountered in the implementation of article 18, as well as on the targets set for the future...

VI. BASIC HEALTH AND WELFARE

C. Social security and child-care services and facilities (arts. 26 and 18, para. 3)...

Please indicate the measures adopted pursuant to article 18, paragraph 3, and taking into account the provisions of articles 3, 6 and 12 of the Convention, to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible. In this regard, reports should inter alia provide information on the legislation adopted to recognize this right and ensure its realization, as well as on the coverage with regard to services and facilities, by region and by urban and rural areas, as well as on their financial implications and on the children benefiting from such measures, including by age, gender and national, social and ethnic origin.

Reports should also provide information on the progress achieved in the implementation of these rights, the difficulties encountered and any targets identified for the future."

(CRC/C/58, paras. 65-67 and 101-2. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 22, 37, 88 and 105; for full text of *Guidelines*, see Appendix 3, page 674.)



"Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child"

Article 18 makes a clear statement supporting the primacy of parents; although elsewhere (articles 5 and 30), the Convention recognizes that family structures vary and that children's wider family, tribe, community or culture can play an important role in the child's upbringing. However, the Committee expressed concern to the Democratic Republic of the Congo about social structures in which the parents' role is diminished to the detriment of children:

"The Committee is concerned... at the increasing practice of 'bi-linear' families under which a community leader assumes parental responsibilities for children and that this practice is replacing parents and has a negative impact on children." (Democratic Republic of the Congo IRCO, Add.143, para. 36)

In this sense, article 18 is an assertion of parents' rights rather than children's rights. However the assertion is made in relation to the State's powers, not the child's, and the rights themselves are termed responsibilities. Responsibility for the child's "development" suggests a relatively objective measure for assessing parents' exercise of their responsibilities. Development is an extremely wide concept (see articles 6 page 103, 27 page 392, and 29 page 438). If children's



physical, psychological or intellectual development are being impaired by the avoidable actions of the parents, then the parents can be found to be failing in their responsibilities.

“The best interests of the child will be their basic concern”

When article 18 was being drafted, the delegate from the United States of America commented that it was rather strange to set down responsibilities for private individuals, since the Convention could only be binding on ratifying governments (E/CN.4/1989/48, pp. 50-52; Detrick, p. 270).

The imperative tense used here does at first sight seem odd. How can the State secure that the child’s best interests “will be” the parents’ basic concern? But the principle does have direct bearing on the actions of States, because it should underpin all legislation on parents’ rights. Most nations of the world have a history of laws and customs that assumes parental “ownership” of children – an assumption that parental rights over children could be exercised for the benefit of the parents alone. These laws and customs are now being rethought in many parts of the world. The Convention requires that current legal principles of parental rights be translated into principles of parental responsibilities – the responsibility of parents to act in the best interests of their children. Georgia, for example, reported to the Committee that its Civil Code expressly provided that the rights of parents cannot be used against the interests of the child (Georgia IR, para. 125).

As has been discussed in relation to article 3 (page 42), “the best interests of the child” are not written on tablets of stone. They will vary from child to child. Parents may have quite different views on what are a particular child’s best interests; professionals, too, may not agree with each other about what is best. The child’s rights under the Convention are therefore helpful in making the concept less subjective. Any breach of these rights (including failure to respect children’s evolving capacities) is likely to be contrary to the child’s best interests.

Parent education

The State also has a duty to advise and educate parents about their responsibilities. Investment in parent education, on a non-compulsory basis, is increasingly recognized as being cost-effective, for example in terms of lowering children’s delinquency rates. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: “Measures should be taken and programmes developed to provide families with the opportunity to learn

about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.” (para. 16)

The *Guidelines for Periodic Reports* asks (in relation to article 5) for information about parent education (para. 63) and the Committee has stressed to many countries the need for parental education measures:

“...Greater efforts should be made to provide family life education and develop awareness of the responsibility of the parents. The Committee encourages non-governmental organizations and children and youth groups to pay attention to the need to change attitudes as part of their advocacy action.” (Philippines IRCO, Add.29, para. 22)

“The Committee is of the opinion that there appears to be a need for more pre-marriage counselling and family-life education programmes, including as a means to prevent family breakdown.” (Federal Republic of Yugoslavia IRCO, Add.49, para. 33. See also Namibia IRCO, Add.14, para. 22; Romania IRCO, Add.16, para. 15; Honduras IRCO, Add.24, para. 27; United Kingdom IRCO, Add.34, para. 30; Bulgaria IRCO, Add.66, para. 28; Panama IRCO, Add.68, para. 30; Thailand IRCO, Add.97, para. 22; South Africa IRCO, Add.122, para. 22; Burundi IRCO, Add.133, para.47; Turkey IRCO, Add.152, para. 42)

The Committee sees support for parent education as an effective tool for tackling serious social ills, such as the social dislocation following economic transition or armed conflict:

“The Committee considers the serious problems of family life in the Russian Federation to be an area of priority concern. The Committee notes with particular concern the tendency towards the breakdown of family culture as regards abandoned children, abortion, the divorce rate, the number of adoptions, the number of children born out of wedlock and recovery of maintenance obligations.

“... greater efforts should be made to provide family life education, to organize discussions on the role of the family in society and to develop awareness of the equal responsibilities of parents.” (Russian Federation IRCO, Add.4, paras. 10 and 18)

“The Committee is concerned that parents and families, particularly given the specific nature of the recent conflict, are in need of support and guidance with regard to their responsibilities for children under their care. The Committee is concerned, further, at

reports indicating that some children, such as those who were forced to participate in hostilities, are not always accepted back into their families and communities.” (Sierra Leone IRCO, Add.116, para. 48)

This is not an issue, however, that can be neglected even by countries with highly developed welfare systems. For example, the Committee observed to Sweden:

“While noting that some municipalities offer family counselling free of charge, and that the fee being charged in other municipalities may not seem too high, the Committee is concerned that a significant number of families find such fees a disincentive to seeking needed help and assistance. The Committee recommends that the State Party review its policies in this regard so as to facilitate access to family counselling services, in particular for the more vulnerable groups” (Sweden 2RCO, Add.101, para. 16)

The State shall use its “best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child”

The importance of both parents having common responsibilities for children should be emphasized. Most societies have only recently recognized that fathers, as well as mothers, can and should undertake the day-to-day care of their children, and that mothers, as well as fathers, have financial responsibilities and legal rights in relation to children. The Convention is one of the first treaties to see this as a human right of children, reflecting the provision in the Convention on the Elimination of All Forms of Discrimination against Women (1979), which requires the recognition by State Parties of “... the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases” (article 5).

The Committee congratulated Germany on the measures it has taken to promote common responsibility:

“Appreciation is expressed of the State Party’s acknowledgement of using the Convention on the Rights of the Child as an instrument to sharpen awareness of the responsibilities of persons taking care of children and the need to equalize the responsibilities between parents in bringing up their children...” (Germany IRCO, Add.43, para. 30)

Parent education in Sweden

In Sweden most parents are offered parental education in connection with pregnancy and childbirth. The aim of parental education is to provide increased knowledge, create an opportunity for contact and social experience and to create an opportunity for influencing social conditions. When parental education was introduced, just over 15 years ago, psychologists were engaged, mainly as instructors. They reinforce the psychological competence of child health care services and provide links with child psychiatry. Personnel from other sectors of society can also take part in parental education, e.g. dentists, lawyers and case workers from the social services. In this training, questions concerning the care and upbringing of children are discussed, but also aspects of parenthood and couple relations... Certain children also need extra support, e.g. in the form of additional instruction for their parents. This applies, for example, to children with functional impairment and immigrant children. Special efforts are being made in Sweden to increase the involvement of fathers in parent education. (Sweden 2R, paras. 336, 340 and 341)



Countries are encouraged to highlight this principle in their parent education measures:

“The Committee recommends that further measures be undertaken to educate parents about their responsibilities towards their children, including through the provision of family education which should emphasize the equal responsibilities of both parents...” (United Kingdom IRCO, Add.34, para. 30)

“The Committee is concerned at the large number of children who are not acknowledged by their fathers and the inadequate measures taken to force fathers to be responsible for the welfare of their children. “...the Committee recommends that the State Party promote parent education and family counselling and take measures to ensure adherence to the principle that both parents have common responsibilities for the upbringing of children” (Paraguay IRCO, Add.75, paras.19 and 39)

Single-parent families

Article 27 calls for appropriate measures to ensure that maintenance is recovered from the parents responsible (in practice, generally from fathers), but “common responsibility” under this



article goes beyond financial responsibility. The aim should be that both parents play an active part in their child's upbringing, including the fathers of children born out of wedlock:

"The Committee recommends that continuing attention be given to the risks of early parenthood and single parenthood, to the promotion of higher levels of involvement of fathers in the upbringing and development of the child, and to the need to provide necessary support to children in these cases." (Barbados IRCO, Add.103, para. 20)

Initial and Second Reports from countries across the world document the growing numbers of children living in one-parent families – usually with the mother. The Committee has often expressed concern about the phenomenon, a concern that does not relate to the state of marriage but to the need of children to have both parents actively involved in their upbringing and to the greater likelihood of poverty for children in one-parent families. Marriage relates to childless couples as well as to parents, and a marriage certificate is not needed to ensure the joint partnership of parenthood.

Countries that do not enable fathers of children born outside marriage to assume parental responsibilities under the law risk being in breach of the Convention (bearing in mind that article 9 allows for parents and children to be separated when necessary for the child's best interests).

Growing up in a single-parent family can have a direct impact on the development of children, as

Namibia analyzed in its Initial Report (see box). Children from such families are likely to be found in the bottom income groups of all countries, rich and poor.

The Committee suggested that various countries study the situation of single parents. For example:

"The Committee recommends that further steps should be taken to strengthen awareness of the equal responsibilities of parents in child-rearing, in particular in the light of article 18 of the Convention. It is also suggested that the situation of single parents be further studied and that relevant programmes be established to meet their particular needs." (Denmark IRCO, Add.33, para. 26. See also Norway IRCO, Add.23, para. 18; Germany IRCO, Add.43, para. 31; New Zealand IRCO, Add.71, para. 27; South Africa IRCO, Add.122, para. 22; Palau IRCO, Add.149, para. 39)

The State should undertake legal reform to end any discrimination against children who are born out of wedlock:

"The Committee further recommends that the State Party take all necessary measures, including those of a legal nature, to ensure that the rights of children born of 'visiting' and common law relationships are protected. It is suggested that the State Party seek technical assistance from, inter alia, UNICEF and WHO." (Saint Kitts and Nevis IRCO, Add.104, para. 21. See also, for example, Grenada IRCO, Add.121, para. 17; United Kingdom – Overseas Territories IRCO, Add.135, paras. 29 and 30)

Absent fathers: repercussions for children

Namibia's Initial Report describes the difficulties faced by female-headed families:

"Female-headed households confront special problems in the area of child-rearing. Women generally have unequal access to the limited opportunities for formal employment in Namibia, partly because of continuing patterns of gender discrimination and partly because wage employment is concentrated in the urban areas. Furthermore, women who are employed are still concentrated in low wage sectors of the economy. Thus, households which depend on a woman's income as a primary source of cash income are typically disadvantaged. The consequences for children are illustrated by the 1990 UNICEF survey, which found that children in households headed by women were more likely to be stunted in growth in all locations surveyed...

"Also, in female-headed households, primary responsibility for the care of young children often falls upon older siblings or grandparents. This contributes to the school drop-out rate for young girls, putting them at an educational disadvantage which tends to help perpetuate women's unequal access to formal employment". A 1990 survey showed that in Namibia female-headed households had particular problems breastfeeding – they often had to introduce solids at an early age, or give up breastfeeding altogether, because of the need to work. For example childhood malnutrition peaks between November and February and May and June, despite the fact that in the latter period food is being harvested, because these are the times women work the hardest planting and harvesting and so have little time to feed their children. (Namibia IR, paras. 140-141, 232-234)

The State can also adopt employment, tax and welfare measures to encourage both parents' active involvement in child rearing. The Committee suggested to Iceland:

"...appropriate measures be taken to counter the inequalities between men and women with regard to remuneration, since it may be detrimental to the child, in particular in homes headed by a single woman." (Iceland IRCO, Add.50, para. 25)

Social inequalities between men and women may undermine the family as a source of support for children's rights. The Committee encouraged Yemen

"...to pay special attention to enhancing the role of the family in the promotion of children's rights, and in this regard stresses the importance of the status of women in family and social life..." (Yemen IRCO, Add.47, para. 16)

The Committee spells out particular concerns relating to teenage mothers. As well as often resulting in lone parenting, teenage pregnancies can blight the health and social expectations of the young mother, who is, of course, a child too under the Convention (see article 24, page 363). The Committee has expressed concern that

"...The high incidence of teenage pregnancies and female-headed households make children particularly vulnerable to sexual abuse, domestic violence, neglect and abandonment, sometimes leading to children becoming involved in activities conflicting with the law." (Jamaica IRCO, Add.32, para. 13)

"...While recognizing that the Government views the problem of teenage pregnancies as a serious one, the Committee suggests that additional efforts, in the form of prevention-oriented programmes which could be part of an educational campaign, are required to reduce the number of teenage pregnancies." (United Kingdom IRCO, Add.34, para. 30)

When parents separate

The inequality of parental responsibility in many countries is often highlighted when parents separate. A number of countries' Initial and Second Reports revealed legal and social traditions that inflexibly allocate responsibility for child-rearing to either the mother or the father when they separate. Often the formula is that mothers are given initial responsibility for babies, infants and young children but that fathers have subsequent responsibility, and dominant powers generally, to determine the shape of the child's life. Such measures usually represent progress away from a totally patriarchal system – a recognition of the strong bond between mothers and young children which it would be harmful to sever. None-

theless translating this recognition into an inflexible law can result in a breach of children's rights. The Convention on the Elimination of All Forms of Discrimination against Women endorses this point, article 5 of which provides that: "States Parties shall take all appropriate measures... to ensure ... the recognition of the common responsibility of men and women in the upbringing and development of the children, it being understood that the interest of the children is the primordial consideration in all cases." Article 16 goes on to say: "States Parties... shall ensure, on a basis of equality of men and women.... The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount."

The Committee observed to Burundi:

"...The Committee is also concerned at the strong bias in favour of fathers in the context of child custody disputes.

"The Committee recommends ... that the State Party ensure that in granting one parent custody of a child the decision is made in accordance with the best interests of the child, with the child's participation and with consideration for the emotional needs of the child." (Burundi IRCO, Add.133, paras. 46 and 47)

Under the terms of article 18, the law must recognize the principle that **both** parents have **common** responsibility. As is recognized in article 18(2), Government measures should be directed at supporting and promoting the viability of joint parenting. If parents separate, or if they have never lived together, it may be necessary for courts to allocate rights to one or the other parent. (Finland noted: "The common practice of courts to order joint custody, even where the parents are totally unable to agree on anything regarding the child, has come under heavy criticism. At worst, this has left the child in a situation where no solution, even for the most important matters, has been achieved. It may have taken years, for example, for the child to be able to change schools or obtain a passport." (Finland IR, para. 259)) As discussed in relation to article 9 (see page 137) in such circumstances the law should not make inflexible presumptions about which parent takes priority – the grounds for making the decision should focus on the child's best interests.

Article 23(4) of the International Covenant on Civil and Political Rights provides that States Parties "shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and on its dissolution". The Human Rights Committee states in a General Comment: "During marriage, the spouses





Government support for parenting

Finland told the Committee on the Rights of the Child: “Part of the cost of the care and maintenance of children is evened out by benefits paid by the State. The underlying idea is that children should not be a considerable financial burden to the family. The State therefore contributes to the general maintenance costs of children, those incurred by the care of small children, disability and illness of a child, as well as to the housing costs of low-income families.” Finland has accepted that the State’s responsibility for the care of small children should not be limited to day-care provision for working parents: “A new standard was reached in 1990 when parents with small children were given an absolute, statutory right, according to their choice, either to municipal day care for their child or to home care allowance... Under the current legislation, in 1995 a similar right will be extended to all children under the age of four...” (Finland IR, paras. 423 and 411)

In its Second Report Finland said that austerity measures to stabilize the national economy had led to cuts or targeting in public expenditure in its support for parents. Municipal day care had fees determined by the size and income of the family, leaving families with low incomes entitled to free day care. The home care allowance had been extended in 1996 to allow the family to choose, as an alternative to municipal day care, either a home care allowance or a private care allowance. (Finland 2R, paras. 175, 180 and 181)

should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship ... Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage ... Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody ... visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interests of the children in this connection.” (Human Rights Committee, General Comment 19, 1990, HRI/GEN/1/Rev.5, p. 138)

Germany entered a declaration in relation to article 18(1), which states that this provision does not apply when parents are unmarried or separating “...automatically and without taking

into account the best interests of the respective child ... Such an interpretation would be incompatible with article 3(1) of the Convention” (CRC/C/2/Rev.8, p. 22). This is undoubtedly the case, as is made clear by article 9 (see page 133). It should, however, be noted how article 9(3) is phrased: “...the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” This, together with article 7 (child’s right to know and be cared for by parents) and article 18, implies that the law should presume that, unless it is proved to the contrary, the continued involvement of both parents in the child’s life is in his or her best interests.

“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...”

Paragraph 2 of article 18 emphasizes the State’s responsibility to provide appropriate assistance to parents. It reflects the provisions of article 3(2): “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;” and of article 27(3), as regards the child’s right to an adequate standard of living: “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right.” (See pages 40 and 395)

State assistance is obviously appropriate when parents are unable to undertake their child-rearing responsibilities, whether or not this is their fault. As the Committee said:

“Comprehensive measures should be provided for responsible parenthood and for support to needy families, in order to assist them in their child-rearing responsibilities in the light of articles 18 and 27, thus limiting family disruption, reducing the numbers of institutionalized children and limiting the recourse to institutionalization to a measure of last resort.” (Italy IRCO, Add.41, para. 17)

Therefore, this implies that the State should assist families identified as at risk of breaking

State assistance for working parents: United Nations International Conference on Population and Development (Cairo, 1994)

“... The process of rapid demographic and socio-economic change throughout the world has influenced patterns of family formation and family life, generating considerable change in family composition and structure. Traditional notions of gender-based division of parental and domestic functions and participation in the paid labour force do not reflect current realities and aspirations, as more and more women in all parts of the world take up paid employment outside the home. At the same time, widespread migration, forced shifts in population caused by violent conflicts and wars, urbanization, poverty, natural disasters and other causes of displacement have placed greater strains on the family, since assistance from extended family support networks is often no longer available. Parents are often more dependent on assistance from third parties than they used to be in order to reconcile work and family responsibilities. This is particularly the case when policies and programmes that affect the family ignore the existing diversity of family forms, or are insufficiently sensitive to the needs and rights of women and children...

“Governments, in cooperation with employers, should provide and promote means to facilitate compatibility between labour force participation and parental responsibilities, especially for single-parent households with young children. Such means could include health insurance and social security, day-care centres and facilities for breastfeeding mothers within the work premises, kindergartens, part-time jobs, paid parental leave, paid maternity leave, flexible work schedules and reproductive and child health services.” (A/CONF.171/13, p. 32)



down with practical measures, such as financial benefits, housing, day care, home helps, equipment and so forth, and psychological support.

Thus the Committee recommended:

“...the Committee urges the State Party to continue to strengthen support to families including through assistance with agricultural production and legal and financial assistance in obtaining adequate housing and land and counselling to help resolve problems.”
(Burundi IRCO, Add.133, para. 47)

“The Committee recommends that the State Party provide additional support to families in combating the effects of poverty and in compensating for the loss of earnings and other support caused by illness or death from HIV/AIDS among parents.” (Central African Republic IRCO, Add.138, para. 47. See also Ethiopia 2RCO, Add.144, para. 41)

“... the Committee encourages the State Party to further strengthen comprehensive measures to support parents... for instance by increasing various forms of social assistance to families, including counselling services, or by securing day-care services and facilities.”
(Lithuania IRCO, Add.147, para. 30)

But beyond targeting support to families “in need”, the article enjoins States to recognize their responsibility to assist all parents. Universal services and non-means-tested financial benefits are, as Finland points out (see box opposite), a recognition by the State of its responsibility

towards, and interest in, children; such services and benefits are an investment in the country’s future. In addition, universal provision is often the most effective form of prevention, in that families at risk are not deterred from receiving the provision because of the stigma attached, or because of ignorance, or because of complications in claiming it.

“For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall ... ensure the development of institutions, facilities and services for the care of children”

Relatively few services fall solely within the scope of this right, since article 20 addresses the responsibility of the State to provide for children who cannot live with their families, including provision of suitable institutions; paragraph (3) of article 18 addresses States’ duty to secure child services where parents are working (such as day care for infants and after school facilities for older children), and articles 24, 28 and 23 cover health and education services and services for disabled children.

The sorts of services envisaged in article 18(2) include, presumably, community-based

State support for working parents

Iran reported to the Committee that: “To safeguard the interests of children with working mothers, the Government has made it mandatory for all government agencies to establish nurseries and day-care centres that provide hot meals and other amenities...many such centres have been established and staffed with qualified instructors. Factories and plants shall also establish such centres if they have more than five women employees. To reduce the educational, cultural and health gap between rural and urban children, the Welfare Organization has established rural child-care centres. The responsibility for caring, feeding and educating children between three and five rests with Rural Welfare Complexes”. (Islamic Republic of Iran IR, para. 9)

initiatives such as centres for mothers with babies and young children, play groups, toy libraries or youth clubs. Additionally, these may contribute to parent education, often on a non-authoritarian basis, and can therefore be of double value to children. Multidisciplinary services such as child guidance or school-based medical staff and advice centres also make an important contribution towards children’s care.

Governments often invest in expensive public institutions at the expense of small, locally developed services, although the latter can often be both more economical and more effective in meeting the needs of parents and children. States should be prepared to trust the users of services with capital to develop what they need. It should also be noted that the duty on States under this article is to “ensure the **development** of institutions, facilities and services” which means that the State can never be complacent or inflexible about its delivery of services to children. Constant evaluation of effectiveness and constant resetting of targets are required.

“The State shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”

Day-care services for working parents

The importance of meeting the needs of children of working parents cannot be overestimated. The

provisions of article 3(3) (securing the quality of standards of all facilities for children) were originally drafted specifically in reference to child-care services. This reflects widespread concern about child care for very young children whose developmental needs are for security, consistent individual relationships and one-to-one stimulation. High-quality day-care places are seen as the responsibility of the State:

“In the light of article 18.3, the Committee recommends that the State Party take all appropriate measures to increase the number of places in kindergarten and pre-school facilities, such as day care.” (Austria IRCO, Add.98, para. 23)

“... The State Party should promote the importance of early childhood care and development programmes, especially among low-income households, and encourage informal community schemes in this regard.” (Jordan 2RCO, Add.125, para. 54)

“The Committee joins the State Party in expressing concern at the continuing need for additional day care places and that the available cash benefit scheme does not compensate for this need.

“The Committee joins the State Party in recommending an evaluation of the cash benefit scheme and recommends further that the State Party pursue its original aim of ensuring that day care places are available for all children.” (Norway 2RCO, Add.126, paras. 42 and 43. See also, for example, Kyrgyzstan IRCO, Add.127, para. 52)

The needs of older children of working parents are also a matter of concern:

“The Committee expresses its concern at the many children in urban areas who are left unattended at home while their parents are at work or pursue leisure activities and notes that, owing to recent and rapid urbanization, assistance from extended family support networks is not always available...”

“The Committee ... urges the State party to consider developing comprehensive measures to encourage responsible parenthood and to assist needy families with their child-rearing responsibilities, for instance by offering social assistance to families or by securing childcare services and facilities for working parents.” (Marshall Islands IRCO, Add.139, paras. 38-39)

Anxieties about placing young infants in day care must be set against the realities of modern life – the economic demands on families that often require one or both parents to work, the new opportunities for women to work outside the narrow domestic sphere and the breakup of extended families (removing a traditional source of child care – the grandparent).

In this context, high-quality, low-cost or free day care and after-school care are essential to protect the needs of children. The Committee has encouraged countries to support further measures to provide child-care services that promote early childhood development and that meet the needs of working mothers, for example to Jamaica:

“The Committee encourages the State Party to support further measures to promote early childhood development and the provision of child-care services and centres for working mothers.” (Jamaica IRCO, Add.32, para. 24. See also Honduras IRCO, Add.24, para. 27)

Interestingly, the Committee recommended to Sri Lanka that:

“... the Ministry of Education should take under its responsibility the establishment and management of preschool facilities.” (Sri Lanka IRCO, Add.40, para. 39)

Although the needs of preschool children may not be strictly educational as we commonly think of it, this recommendation underlines the importance of preschool facilities that are more than just containment – the development of infants must be actively encouraged by preschool staff. The World Summit for Children Plan of Action goals include: “Expansion of early childhood development activities, including appropriate low-cost family- and community-based interventions” (World Summit for Children, Declaration and Plan of Action, Appendix, II, E(i)). Although article 28 of the Convention on the Rights of the Child, on the right to education, does not specifically address preschool education it should be noted that the *Guidelines for Periodic Reports* does ask for information on: “Any system or extensive initiatives by the State to provide early development and education services for young children, especially for young children from disadvantaged social groups” (para. 106).

A failure to provide child-care services may lead to a decrease in enrolment in preschool provision:

“...The Committee also notes with concern that the current economic conditions in the State Party and the increasing cost of childcare services have led to a significant decline in the enrolment of children in preschool.” (Georgia IRCO, Add.124, para. 52)

Employment benefits

Generous maternity and paternity leave and pay and “family-sensitive” working conditions clearly meet the needs of both children and working parents. The International Labour Organization (ILO) has a long-standing commitment to these principles, providing policy support. The ILO Recommendation supplementing the Maternity Protection Convention, 2000 (No. 191), expressly supports the principles of article 18. It encourages States to provide parental leave, available to either parent, during a period following the expiry of maternity leave. It recommends that adoptive mothers and fathers have rights to the working benefits to which birth parents are eligible, and that employed fathers are granted leave to care for children in the event of their mothers’ sickness or death before the expiration of maternity leave.

The Committee commented on this issue to Australia:

*“The Committee is concerned that women working in the private sector are not systematically entitled to maternity leave, which could result in different treatment between children of State employees and those working in other sectors...
“The Committee encourages the State Party to review its legislation and make paid maternity leave mandatory for employers in all sectors, in the light of the principle of the best interests of the child...” (Australia IRCO, Add.79, paras. 17 and 31)*



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 18, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 18 is relevant to the **departments of tax and finance, social security, social welfare, employment and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 18 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 18 likely to include the training of **social workers, child guidance staff, community workers, social security officers and those engaged in parent education**)?

● Specific issues in implementing article 18

- ☐ Does legislation support parents' primacy of responsibility for children's upbringing and development?
- ☐ Is parental responsibility defined in legislation?
- ☐ Does legislation make clear that the exercise of parental responsibility has the best interests of the child as its basic concern?
- ☐ Are parents provided with education programmes on the exercise of their responsibilities?
- ☐ Are laws, administrative systems, tax and welfare measures and public education aimed at supporting both parents' common responsibilities for, and active participation in, their child's upbringing?
- ☐ Does the law enable fathers of children born outside marriage to assume parental rights and responsibilities (compatible with the child's best interests)?
- ☐ Is there a presumption in law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents?
- ☐ When parents separate, does legislation ensure that the grounds for allocating parental responsibility are based on the individual child's best interests?

How to use the checklists, see page XVII



Are all parents provided with the following assistance where necessary:

- ☐ financial support?
- ☐ housing?
- ☐ appropriate child-care equipment?
- ☐ day care and respite care?
- ☐ advice and counselling?

- ☐ Is good quality day care available for all working parents?
- ☐ Are parents of disabled children provided with appropriate additional forms of assistance?
- ☐ Are disabled parents provided with appropriate additional forms of assistance?
- ☐ Are mothers entitled to maternity leave?
- ☐ Are fathers entitled to paternity leave?
- ☐ Are fathers entitled to leave if the mother is sick or dies before the expiration of her maternity leave?
- ☐ Are adoptive parents entitled to parental leave at the outset of the adoption?
- ☐ Are parents entitled to take leave if their child is sick?
- ☐ Does the State pay for parental leave where necessary?
- ☐ Does the State encourage employment conditions which assist working parents in the exercise of their parental responsibilities?

Reminder: The Convention is indivisible and its articles are interdependent. Article 18 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 18 include:

Article 3(2): State support for children

Article 5: parental responsibilities and child's evolving capacities

Article 7: child's right to know and be cared for by parents

Article 9: non-separation from parents except in child's best interests

Article 10: family reunification

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

Article 27: duty of parents and State to secure an adequate standard of living for the child



Child's right to protection from all forms of violence



Text of Article 19

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

Article 19 goes beyond children's rights to protection from what is arbitrarily defined as "abuse" in different societies, and beyond the protection, guaranteed under article 37, from torture and cruel, inhuman or degrading treatment or punishment; article 19 requires children's protection from "all forms of physical or mental violence" while in the care of parents or others. Thus, article 19 asserts children's equal human right to respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6 (see page 95).

Article 19 requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protect-

ive measures, acknowledging that social and educational measures, and in particular the provision of appropriate support to children and families, are relevant to the protection of the child from violence, abuse and exploitation.

Growing awareness exists in all countries of the extent of violence against children in their homes, in institutions and in the community. Only in the last few decades has the prevalence of deliberate violence to children by parents and other caregivers been widely acknowledged. More recently "discovered" is the widespread sexual abuse of children in the family and in institutions, and also organized sexual abuse, including "sex tourism" and other forms of sexual exploitation (the obligation to protect children from sexual exploitation is further expanded in article 34, see page 505, and in the new Optional Protocol on the sale of children,

Summary



child prostitution and child pornography, see page 670). Along with growing knowledge of the prevalence of violence to children has come growing awareness through research of its dangers and of the links between childhood experience of violence and violent and other anti-social behaviour in childhood and later life.

In some States the Committee has noted with concern violence to children by agents of the State – police, military personnel and staff in detention centres and prisons. Under the Convention the State is responsible for the prevention of all violence to children, whether perpetrated by State officials or by parents, teachers or other carers. The State is responsible for ensuring that legislation and other measures effectively prevent all forms of violence to children.

The Committee decided to devote two days of General Discussion to violence against children, in September 2000 and September 2001. In 2000, the General Discussion focused on “State violence against children”, and in 2001 on “Violence against children, within the family and in schools”. Following each General Discussion, the Committee adopted detailed recommendations (see box on page 261). One key recommendation proposed that the Secretary-General of

the United Nations should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The proposal was adopted by the General Assembly in November 2001, and the study is due to go ahead in 2002.

In its examination of States Parties’ reports, the Committee has frequently expressed concern at the prevalence of violence and abuse including sexual abuse, in some cases apparently increasing, and made linked recommendations for a variety of measures. In some cases the Committee has expressed concern at instances of extreme violence (also raising issues under article 6, see page 95, and article 37, page 539, and often linked to armed conflict, see article 38, page 563).

Many articles need to be considered in the light of article 19. Thus, for example, parents’ responsibility to provide “appropriate direction and guidance” to children in exercising their rights under article 5 (see page 89), and the requirement of article 28(2) that school discipline is administered in accordance with the child’s human dignity and in conformity with the Convention (see page 424), must both respect the obligation to protect children from “all forms of physical or mental violence”. ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the ‘best interests of the child’ and ‘respect for the views of the child’ are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(i) Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39);

...

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster

care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 16-18)

Guidelines for Periodic Reports

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

...

J. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

*Please indicate all appropriate legislative, administrative, social and educational measures taken **pursuant to article 19** 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. Reports should indicate in particular:*

Whether legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, including corporal punishment, deliberate humiliation, injury, abuse, neglect or exploitation, inter alia within the family, in foster and other forms of care, and in public or private institutions, such as penal institutions and schools;

Other existing legal safeguards relevant to the protection of the child as required by article 19;

Whether complaint procedures have been foreseen and the child can lodge complaints, either directly or through a representative, as well as remedies available (for example, compensation);

The procedures developed for intervention by the authorities in cases where the child requires protection from any form of violence, abuse or negligence, as required by article 19;

The educational and other measures adopted to promote positive and non-violent forms of discipline, care and treatment of the child;

Any information and awareness-raising campaigns to prevent situations of violence, abuse or negligence and to strengthen the system for the child's protection;

Any mechanisms established to monitor the extent of the forms of violence, injury or abuse, neglect, maltreatment or exploitation considered by article 19, including within the family, in institutional or other care, of a welfare, educational or penal nature, and the social and other factors contributing thereto, as well as any evaluation made of the effectiveness of the measures adopted; in this regard disaggregated data should be provided on the children concerned, including by age, gender, family situation, rural/urban, social and ethnic origin.

*With respect to **article 19, paragraph 2**, reports should also provide information inter alia on:*

Effective procedures developed for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, including rehabilitation mechanisms;

Any other forms of prevention;

Effective measures adopted for the identification, reporting, referral, investigation, treatment and follow-up of instances of maltreatment covered by article 19, as well as for judicial involvement;

The existence of any system of mandatory reporting for professional groups working with and for children (for example teachers, medical doctors);



The existence of confidential help lines, advice or counselling for child victims of violence, abuse or neglect or any other form considered by article 19;

The special training provided for relevant professionals.

Please also indicate the measures adopted pursuant to article 39 to ensure the physical and psychological recovery and social reintegration of the child victim of any form of neglect, exploitation or abuse referred to in article 19, in an environment which fosters the health, self-respect and dignity of the child. Information should also be provided on the progress achieved, any difficulties encountered and on the targets set for the future.

Reports should also provide information on the progress achieved in the implementation of these articles, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 88-91. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 60, 61, 109, 158, 159; for full text of *Guidelines*, see Appendix 3, page 674.)

Appropriate legislative, administrative, social and educational measures to protect the child from "all forms of physical or mental violence..."

In its examination of States Parties' reports the Committee on the Rights of the Child has commented on many different forms of violence. In relation in particular to legislation, the Committee has criticized provisions that permit corporal punishment of children, however light (see below, page 265). "Mental violence" includes humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm. Research provides growing evidence of the effects on children's mental health not only of direct violence but also of witnessing violence – both family violence within the home and violence in the community, including armed conflict. The Committee has acknowledged that violence against women in the family affects children:

"The Committee is concerned that violence against women in the context of the family remains widespread and continues to have a negative impact on children. The Committee is concerned, in particular, that domestic violence against women may lead to child abuse in the family.

"The Committee recommends that the State Party make further efforts to address and condemn violence against women, including in the context of the family. The Committee recommends that the State Party take steps to monitor and address any incidence of violence and sexual or other abuse, against children." (Ethiopia 2RCO, Add.144, paras. 46 and 47)

The Committee frequently expresses concern at a lack of information about violence and abuse, and recommends research. For example:

"In light of article 19, the Committee recommends that the State Party undertake studies on domestic violence, ill-treatment and abuse, including sexual abuse, in order to understand the scope and nature of these practices, adopt adequate measures and policies, and contribute to changing attitudes..." (Marshall Islands IRCO, Add.139, para. 43. See also, for example, Lesotho IRCO, Add.147, para. 42)

The Committee has expressed concern at the level of violence to children, inside and outside the home, and recommended a variety of measures to prevent it. For example:

"While the Committee takes note of the State Party's efforts to prevent and combat cases of abuse and ill-treatment of children, it is of the opinion that these measures need to be reinforced. Concern is also expressed at the insufficient awareness regarding the harmful consequences of neglect and abuse, including sexual abuse, both within and outside the family. Concern is also expressed at the insufficient resources, both financial and human, as well as at the lack of adequately trained personnel, to prevent and combat such abuse. The insufficiency of rehabilitation measures and facilities for victims, and their limited access to justice are also matters of concern. In the light of, inter alia, articles 19 and 39 of the Convention, the Committee recommends that the State Party take effective measures, including reinforcing current multidisciplinary programmes and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large. It suggests, inter alia, that law

enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be reinforced, in order to provide children with prompt access to justice and to avoid the impunity of offenders. Furthermore, educational programmes should be established to combat traditional attitudes within society regarding this issue. The Committee encourages the State Party to consider seeking international cooperation to this effect from, inter alia, UNICEF and international non-governmental organizations.” (Costa Rica 2RCO, Add.117, para. 20)

“... the Committee remains gravely concerned about the high incidence of domestic violence, ill-treatment and abuse of children, including sexual abuse within the family. In light of article 19, the Committee recommends that the State Party undertake studies on domestic violence, ill-treatment and abuse to understand the scope and nature of these practices. The Committee also recommends that the State Party reinforce its efforts to formalize a comprehensive strategy to prevent and combat domestic violence, ill-

treatment and abuse and further adopt adequate measures and policies to contribute to changing attitudes. The Committee also recommends that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-friendly judicial procedure and sanctions applied to perpetrators, with due regard given to protecting the right to privacy of the child. Measures should also be taken to ensure the provision of support services to children in legal proceedings; the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention; and the prevention of criminalization and stigmatization of victims. The Committee recommends that the State Party seek technical assistance from, inter alia, UNICEF.” (South Africa IRCO, Add.122, para. 27. See also, for example, Sri Lanka IRCO, Add.40, paras. 15 and 32; Mongolia IRCO, Add.48, paras. 16 and 28; Morocco IRCO, Add.60, paras. 15 and 27; Slovenia IRCO, Add.65, para. 16; Grenada IRCO, Add. 121, para. 20; Georgia IRCO, Add.124, para. 41)



Recommendations following General Discussion days on violence against children

State violence against children

Following its first day of General Discussion in September 2000, on “State violence against children”, the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

“REVIEW OF LEGISLATION

6. The Committee urges States Parties to repeal, as a matter of urgency, any legislation that allows the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18, contrary to the provisions of the Article 37 (a) of the Convention.

7. The Committee recommends that States Parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40). It also recommends that States Parties consider incorporating into all relevant domestic laws and regulations (including, where appropriate, those dealing with children in care) the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’, adopted by General Assembly resolution 40/33 of 29 November 1985), of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990), of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990), and of the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In particular, the Committee recommends that penal legislation applicable to juveniles be reviewed so as to ensure that courts are not restricted to custodial sentences disproportionate to the offence.

8. The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims.

9. The Committee recommends that States Parties review all relevant legislation to ensure that children under 18, who are in need of protection are not considered as offenders (including legislation dealing with abandonment, vagrancy, prostitution, migrant status, ‘truancy’, runaways, etc.) but are dealt with under child protection mechanisms.

10. The Committee recommends that States Parties review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets).

11. The Committee recommends, in particular, that States Parties give urgent consideration to the need to provide appropriate safeguards to guarantee the security, protection and rehabilitation of children held in custody, including through measures such as the imposition of strict limits on pre-trial detention, that would reduce the number of children held in detention.

12. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that placement decisions are subject to periodic judicial review, including at the request of children themselves. Such legislation should also be reviewed so as to ensure that relevant rules and regulations set out detailed standards of care for all institutions (public and private) caring for children, including the prohibition of the use of violence.

13. The Committee recommends that the effective implementation of all such legislation be carefully monitored, including for the provision of necessary resources.

AWARENESS-RAISING, SENSITIZATION AND TRAINING

14. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to raising awareness about the problem of violence against children:

- (a) The Committee urges the launching of public information campaigns to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero tolerance' of violence;
- (b) The media should be encouraged to play an active role in educating the public and raising awareness. Negative reporting (blaming categories of children for individual incidents) should be avoided and positive reporting (calling attention to the violations) encouraged;
- (c) In raising awareness, children's views and experiences of violence should be publicized and heard;
- (d) Accurate, up-to-date and disaggregated data should be collected on the numbers and condition of children living in institutions or in the care of the State, held in pre-trial detention or in police stations, serving custodial sentences or subject to diversionary or alternative measures, etc.;
- (e) States Parties should translate appropriate information on violence against children into its national and local languages, and ensure that it is disseminated to all relevant professional groups, to children and to the general public.

15. The Committee recommends that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.

16. The Committee recommends that States Parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline, promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those from minority groups, children with disabilities, etc.)."

Other sections cover international actions, including the proposals for a United Nations study on violence against children and a workshop on strengthening relevant United Nations human rights mechanisms; prevention, including alternatives to institutionalization; monitoring and complaint mechanisms; resources; and the role of non-governmental organizations. (Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688 et seq.)

Violence against children, within the family and in schools

Following its second day of General Discussion in September 2001, on "Violence against children, within the family and in schools", the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

"GUIDING PRINCIPLES

701. The Committee urges that references to 'family' and 'school' not be understood as narrowly defined. The references to 'family' (or to 'parents') must be understood within the local context and may mean not only the 'nuclear' family, but also the extended family or even broader communal definitions including grandparents, siblings, other relatives, guardians or care providers, neighbours, etc. Similarly, all references to 'school' (or to 'teachers') should be understood to include schools, teaching institutions, and other formal and non-formal learning environments.

702. The Committee recommends that an alternative vision of the school and the family that respects the rights and dignity of all, including children, parents and teachers should guide all actions on the issue of violence against children. The main strategy should be to galvanize actions around this vision rather than using punitive measures. In this vision relations between and among

children and parents or teachers (as well as other family members or students) are mutually respectful and the safety and security of all is promoted.

703. The Committee considers that violence against children is unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child...

704. In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore, children and young people must be meaningfully involved in promoting and strategizing action on violence against children.

705. The Committee recommends that efforts be made to strengthen the link between communities and families and between communities and schools. Community members, including parents, children and teachers, need to be well informed about their rights and fully involved in the life of the school, including in school governance.

706. The Committee recognizes that different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school reinforce one another. Action against violence therefore must take a holistic approach and emphasize non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another.

REVIEW OF DOMESTIC LEGISLATION

...715. The Committee urges States Parties, as a matter of urgency, to enact or repeal their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37(a) and taking into account articles 2, 3, 6 and 12 as well as 4, 5, 9, 18, 24, 27, 29 and 39.

716. The Committee recommends that such legislation incorporate provisions for appropriate sanctions for violations and compensation for victims.

717. The Committee urges States Parties to review all relevant child protection legislation to ensure that while effective protection is guaranteed, intervention is adequately tailored to individual contexts and circumstances, favours the least intrusive method, and adopts a positive approach that seeks to protect the child from additional harm. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that all placement decisions are subject to periodic judicial review, including at the request of children themselves, and with family reunification as the preferred outcome, within the requirements of articles 3, 9, 19 and 39 of the Convention.

718. The Committee recommends careful monitoring of the effective implementation of such legislation, including through *inter alia* the provision of education, training and resources.

PREVENTION: AWARENESS-RAISING, SENSITIZATION AND TRAINING

719. The Committee recommends that States Parties adopt clear national policy statements on violence against children within the family and in schools, to be used as an advocacy tool and disseminated throughout the country.

720. The Committee recommends that every State Party undertake a comprehensive study on the extent, nature, causes and consequences of violence against children. This study should be widely disseminated and used to formulate policy and programmes.

721. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to promoting a more positive approach to acknowledging children as bearers of human rights and to raising awareness about and bringing about change in cultural attitudes towards protecting children from violence and the availability of more constructive and effective methods of discipline. Such an approach should include the following:

(a) Public information campaigns should be launched, involving religious, traditional and community leaders, to raise awareness and sensitize the public about the severity of human rights violations and the harm to children in this domain, and to address cultural acceptance of violence against children promoting instead the unacceptability of all forms of violence against children.

(b) Children and parents should be meaningfully involved in all aspects of the design and implementation of awareness-raising campaigns, including through peer education efforts.

(c) The media should be encouraged to play an active role in educating the public and raising awareness. Reporting should call attention to the violations and reflect children's views and experiences of violence, while avoiding sensationalism and ensuring respect for the right to privacy of child victims. The media and entertainment industry should also avoid disseminating positive images of any form of violence.

(d) States Parties should translate appropriate information on protection of children from violence into its national and local languages, and ensure that it is disseminated, through all appropriate channels and involving grass roots groups, to all relevant professional and other reporting groups, children, parents, and the general public...."

Other sections cover international actions – including further detail on the Committee's proposal for an international study; other prevention and protection strategies; monitoring and complaint mechanisms; coordination and resources; and role of civil society. (Report on the twenty-eighth session, September/October 2001, CRC/C/111, paras. 701 et seq.)





The Fourth World Conference on Women (Beijing, 1995) and the follow-up special session of the United Nations General Assembly (2000) were concerned with violence to girls and women. The report on the follow-up to the Fourth World Conference on Women states under “Achievements” that it is now widely accepted that violence against women and girls, whether occurring in public or private life, is a human rights issue. “There is increased awareness of and commitment to preventing and combating violence against women and girls, including domestic violence, which violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms, through, *inter alia*, improved legislation, policies and programmes...”. Proposals for action include asking Governments as a matter of priority to “Treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.” (A/RES/S-23/3, paras. 13 and 69(c))

“injury or abuse, neglect or negligent treatment”

Many societies have their own legal and/or administrative definitions of child abuse – physical, emotional and sexual. Adult violence to children causes death and injury on a massive scale which has only begun to become visible in the last few decades.

Neglect may be deliberate or it may be caused by the inability of the parent/family/community/State to provide appropriately for the child. Child neglect exists in various forms and to varying degrees in all societies. For example, some countries with highly developed economies and social systems in which employment of women has reached almost the same level as employment of men are now preoccupied with the neglect of very young children by their working parents and with the self-reported “loneliness” of many children. The State’s overall obligation to ensure to the maximum extent possible the survival and development of the child (article 6), and its specific obligations to provide appropriate assistance to parents (article 18) together with rights to health care (article 24), to benefit from social security (article 26), to an adequate standard of living (article 27) and to education (article 28) are all particularly relevant to the prevention of neglect.

Reference to “negligent treatment” raises the issue of accidents to children (also raised in article 24(2)(e), see page 357). The developmental state and physical vulnerability of children makes them particularly prone to accidents. While the primary responsibility may be that of

parents, state actions are also required to prevent many types of accident. Article 3(2) gives States an over-arching obligation to provide care and protection necessary for the well-being of the child.

“maltreatment or exploitation, including sexual abuse”

The inclusion of these words and of additional articles expanding on sexual and other forms of exploitation (in particular article 32, economic exploitation, page 475; article 34, sexual exploitation, page 505; the new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, page 670; and article 36, other forms of exploitation, page 533) emphasizes the intention of the drafters of the Convention to make the protection implied by article 19 comprehensive. Maltreatment or exploitation covers any other adverse treatment not necessarily involving physical or mental violence or defined as abuse. In most countries, sexual abuse is defined to include not only violent sexual assaults but also other sexual activity, consensual or not, with children regarded as immature or below a certain defined age of sexual consent. The Committee’s *Guidelines* for both Initial and Periodic Reports asks for information under article 1, definition of the child, on any minimum ages for sexual consent defined in legislation (see page 9).

Article 34 emphasizes the international nature of certain kinds of sexual exploitation of children, requiring States to 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” (see page 505).

The Optional Protocol on the sale of children, child prostitution and child pornography builds on these definitions and commits States which ratify it to further measures (page 670).

In many cases, the Committee has stressed the need for particular action to combat sexual abuse, including within the family (see Committee’s comments above, page 260).

“while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”

The scope of article 19 includes what happens within the family home (bearing in mind the Convention’s wide definition of family; see

page 87), and within other “caring” situations – foster care and day care, schools, all institutional settings and so forth. The requirement in article 3(3) for consistent standards and supervision for all institutions, services and facilities is relevant to the prevention of violence to children.

Other articles in the Convention cover in more detail the child’s right to protection from forms of violence and exploitation that may take place in these settings or to protection in the wider society, for example from the effects of armed conflict:

- protection of children from traditional practices prejudicial to health (article 24(3), see also page 365);
- sexual exploitation and sexual abuse including “organized” abuse and involvement of children in prostitution and pornography (article 34, see also page 505 and Optional Protocol, page 670);
- protection of children from sale, trafficking and abduction (article 35, see also page 521);
- other forms of exploitation (article 36, see also page 533);
- protection from torture and other cruel, inhuman or degrading treatment or punishment (article 37, see page 539);
- effects of armed conflict on children (article 38, see also page 563).

The Committee has also noted that violence and abuse, including within the family, often drives children from their homes and onto streets:

“The Committee is seriously alarmed by the existence of child abuse (including sexual abuse) and neglect within the family, which often lead to children being abandoned or running away, thus facing the additional risks of violations of their human rights.”

(Philippines IRCO, Add.29, para. 13)

The child’s right to protection from corporal punishment

The Committee on the Rights of the Child has indicated that the Convention on the Rights of the Child requires a review of legislation to ensure that no level of violence to children is condoned. In particular, the Committee has emphasized that corporal punishment, however light, in the family, or in schools and other institutions, or in the penal system is incompatible with the Convention.

In the recommendations following its General Discussion on “State violence against children” (September 2000), the Committee states:

“The Committee recommends that States Parties review all relevant legislation to

Sweden’s ban on all corporal punishment

Sweden was the first country in the world to abolish all corporal punishment. Its Initial Report notes: “The basic rights of the child are stated in the Code of Parenthood and Guardianship, chapter 6, section 1, of which lays down as follows: ‘A child is entitled to care, security and a good upbringing. A child shall be treated with respect for his person and individuality and may not be subjected to corporal punishment or any other offensive treatment.’” (Sweden IR, para. 52)

ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims.” (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.8. For extracts from text, see box, page 261.)

It reiterated this in recommendations following its General Discussion on “Violence against children, within the family and in schools” (September 2001):

“The Committee urges States Parties, as a matter of urgency, to enact or repeal their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37(a) and taking into account articles 2, 3, 6 and 12 as well as 4, 5, 9, 18, 24, 27, 29 and 39.” (Report on the twenty-eighth session, September/October 2001, CRC/C/111, para. 715. For extracts from text, see box, page 262.)

In the first General Comment adopted by the Committee, on the aims of education, the Committee recalls that

“Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline





reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its Concluding Observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29(1) clearly requires that schools be child-friendly in the fullest sense of that term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.”

(Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, pp. 256 and 257. For full text, see page 434.)

The Committee has stressed that both legislative and educational measures are needed to change attitudes and practice. It has commended States Parties that have implemented a clear prohibition of corporal punishment within the family as well as in institutions. But it has emphasized that prohibition needs to be followed up:

“Although the State Party was the second State in the world to prohibit all corporal punishment of children in the family in its Child Custody and Rights of Access Act of 1983, the Committee is concerned at the number of cases of violence against children, including sexual abuse in their homes. It also regrets the lack of information on this phenomenon.

“The Committee recommends that the State Party consider taking additional measures to prevent and, where this has not been possible, to identify in a timely manner instances of violence against children within families, to intervene at an early stage, and to develop child-friendly programmes and services for prevention, treatment and rehabilitation with personnel specially trained to work with children.” (Finland 2RCO, Add.132, paras. 39 and 40)

“While noting that the Law on the Protection of the Rights of the Child of 1998 explicitly prohibits corporal punishment, the Committee expresses its concern at the still widespread use of corporal punishment, in particular within the family and in school and other institutions.

“In light of articles 19, and 28(2) of the Convention, the Committee encourages the State Party to develop measures to raise awareness on the harmful effects of corporal punishment and to promote alternative forms of discipline in families, to be administered in a manner consistent with the child’s dignity

and in conformity with the Convention. It also recommends the effective enforcement of the ban on corporal punishments in school and other institutions.” (Latvia IRCO, Add.142, paras. 27 and 28)

It has stressed that the purpose is educational rather than punitive and that such reforms tend to lead to less rather than more prosecutions of parents, because of the change in attitudes that they promote. In most, if not all, States, the law does protect children from serious physical assaults, defined as child abuse or child cruelty. But in many countries, either criminal or civil (family) law, or both, includes specific confirmation of parents’, and some other caregivers’ and teachers’ rights to use violent forms of punishment, often with the stipulation that such punishment must be “reasonable” or “moderate”. The Committee has singled out such legislation for particular criticism. Thus, when the Committee examined Spain’s Initial Report, it criticized the legal framework:

“...the Committee expresses concern at the wording of article 154 of the Spanish Civil Code which provides that parents ‘may administer punishment to their children reasonably and in moderation’, which may be interpreted to allow for actions in contradiction with article 19 of the Convention.”

The Committee proposed clear reform:

“...the Committee encourages the Spanish authorities to pursue the law reform to ensure full compliance of the domestic legislation with the provisions of the Convention. In this regard, the Committee recommends that the law reform include the review of the language used in legal provisions and, in particular, the revision of article 154 of the Spanish Civil Code stating that parents ‘may administer punishment to their children reasonably and in moderation’, in order to bring it into full conformity with article 19.” (Spain IRCO, Add.28, paras. 10 and 18)

Similarly, in relation to the United Kingdom’s Initial Report:

“The Committee is disturbed about the reports it has received on the physical and sexual abuse of children. In this connection, the Committee is worried about the national legal provisions dealing with reasonable chastisement within the family. The imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions

and principles of the Convention, including those of its articles 3, 19 and 37. The Committee is equally concerned that privately funded and managed schools are still permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2....

"The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommends that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention. In connection with the child's right to physical integrity, as recognized by the Convention, namely in its articles 19, 28, 29 and 37, and in the light of the best interests of the child, the Committee suggests that the State Party consider the possibility of undertaking additional education campaigns. Such measures would help to change societal attitudes towards the use of physical punishment in the family and foster the acceptance of the legal prohibition of the physical punishment of children." (United Kingdom IRCO, Add.34, paras. 16 and 31)

In a concluding statement to the General Discussion on "The role of the family in the promotion of the rights of the child", organized as the Committee's contribution to the International Year of the Family in October 1994, a Committee member stated, "As for corporal punishment, few countries have clear laws on this question. Certain States have tried to distinguish between the correction of children and excessive violence. In reality the dividing line between the two is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the Convention is to call attention to the contradictions in our attitudes and cultures." (CRC/C/SR.176, 10 October 1994, para. 47)

The Summary Record of the Committee's discussion with government representatives about the United Kingdom's Initial Report states that a member of the Committee said: "It was the Committee's experience that difficulties arose whenever a 'reasonable' level of corporal punishment was permitted under a State's internal law. To draw an analogy, no one would argue that a 'reasonable' level of wife-beating should be permitted. His conclusion was that the United Kingdom position represented a vestige of the outdated view that children were in a sense their parents' chattels. In the Scandinavian countries

and Austria, stricter legislation had resulted in fewer cases going to court than in the United Kingdom, rather than the reverse. Furthermore, he noted from recent press reports that some judges tended to interpret the legislation fairly liberally: one, for example, had ruled that 15 lashes administered with a leather belt did not constitute excessive punishment. The notion of a permissible level of corporal punishment was thus best avoided." (United Kingdom SR.205, para. 63)

The United Kingdom's Initial Report had defended the concept of "reasonable chastisement": "In the United Kingdom Government's view article 19 has to be read in conjunction with article 5 which obliges States to respect a parent's responsibilities to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. The Government's view is that appropriate direction and guidance include the administration, by the parent, of reasonable and moderate physical chastisement to a child... Excessive punishment amounting to abuse is, of course, a criminal offence, and so it must remain." (United Kingdom IR, paras. 335-336)

But in discussion with United Kingdom government representatives, a Committee member stated: "...with regard to corporal punishment within the family the United Kingdom delegation had stated that it was not appropriate to regulate what should be a private matter by means of legislation. It must be borne in mind, however, that article 19 of the Convention required all appropriate measures, including legislative measures, to be taken to protect the child against, *inter alia*, physical violence. A way should thus be found of striking the balance between the responsibilities of the parents and the rights and evolving capacities of the child that was implied in article 5 of the Convention. There was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law..." (United Kingdom SR.205, para. 72)

During discussion with a Jamaican representative, a member of the Committee suggested that "it would also be useful if the word 'excessive' could be removed from the term 'excessive punishment' in the legislation on the ill-treatment of children" (Jamaica SR.197, para. 7).

The implication reflected in national attitudes or legislation, that the use of some level of corporal punishment may be in the interests of children,





has been dismissed by the Committee in other comments:

"...Abandonment of children, the high rate of child headed families and the persistence of corporal punishment, widely envisaged by parents and teachers as an educational measure, are other subjects of concern to the Committee...."

"...The Committee particularly recommends that legislative measures be adopted with a view to ... clearly prohibiting any form of corporal punishment..." (Republic of Korea IRCO, Add.51, paras. 15 and 22)

"...The Committee also expresses its concern at section 7 of the Children's Act which allows parents, members of the family and teachers to beat a child 'if it is thought to be in the interest of the child'..."

"The Committee is concerned that appropriate measures have not yet been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family..." (Nepal IRCO, Add.57, paras. 12 and 19)

To all the States Parties referred to above and to many other countries in all continents, the Committee, following examination of Initial and Second Reports, 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 – and has proposed that legal reform should be coupled with education campaigns in positive discipline to support parents, teachers and others. For example:

"The Committee expresses its concern about the inadequate enforcement of the prohibition on the use of corporal punishment in schools and other institutions and in the penal system. In addition, the Committee expresses its concern that the practice of physical punishment of children in the home is not expressly prohibited by law and remains regarded as socially acceptable. The Committee recommends that the State Party prohibit the use of corporal punishment in the home and take effective measures to enforce the legal prohibition of corporal punishment in schools and other institutions and in the penal system. The Committee further recommends that the State Party undertake educational campaigns for the development of alternative disciplinary measures for children at home, in schools and other institutions." (Costa Rica 2RCO, Add.117, para. 17)

"While the Committee notes that corporal punishment in schools is prohibited by law and that there is an intention also to prohibit its use within the family, it is concerned that this type of punishment continues to be used in schools, families and care institutions.

"The Committee recommends that the State

Party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment, within the family, the schools and care institutions. The Committee further recommends that the State Party, through, for example, public-awareness campaigns, promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in families, the schools and care institutions." (Georgia IRCO, Add.124, paras. 42 and 43)

"While noting the Ministry of Education's interim measures prohibiting the use of corporal punishment in schools, the Committee remains concerned that, in practice, corporal punishment remains common in schools and in the context of the family.

"In the light of article 28.2 of the Convention, the Committee recommends that the State Party permanently prohibit all forms of corporal punishment, including in the context of school and the family, inter alia, through the enforcement of appropriate legislation, through awareness raising activities for parents, teachers and other relevant groups and through the training of teachers in alternative disciplinary sanctions which are not harmful to children. The Committee recommends that, for this purpose, the State Party consider taking advantage of the current drafting of a new penal code. The Committee recommends, in addition, that children be provided with mechanisms through which they can report and complain of corporal punishment practices." (Ethiopia 2RCO, Add.144, paras. 38 and 39. See also: France IRCO, Add.20, para. 24; Honduras IRCO, Add.24, para. 27; Poland IRCO, Add.31, para. 30; Jamaica IRCO, Add.32, para. 7; Canada IRCO, Add.37, para. 25; Belgium IRCO, Add.38, para. 15; Tunisia IRCO, Add.39, para. 17; Sri Lanka IRCO, Add.40, para. 32; Italy IRCO, Add.41, para. 20; Ukraine IRCO, Add.42, para. 29; Senegal IRCO, Add.44, para. 24; Portugal IRCO, Add.45, para. 23; Lebanon IRCO, Add.54, para. 37; Zimbabwe IRCO, Add. 55, paras 18 and 31; Guatemala IRCO, Add.58, para. 33; Morocco IRCO, Add.60, para. 27; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 27; Mauritius IRCO, Add.64, para. 31; Bulgaria IRCO, Add.66, para. 30; Panama IRCO, Add.68, para. 30; Syrian Arab Republic IRCO, Add.70, para. 28; New Zealand IRCO, Add.71, para. 29; ; Ghana IRCO, Add.73, paras. 16 and 36; Algeria IRCO, Add.76, para. 21; Democratic People's Republic of Korea IRCO, Add.88, para. 13; Japan IRCO, Add.90, para. 45; Barbados IRCO, Add.103, para. 22; Peru 2RCO, Add.120, para. 22; Islamic Republic of Iran IRCO, Add.123, para. 40; Jordan 2RCO, Add.125, para. 42; Kyrgyzstan IRCO, Add.127, para. 40; Malta IRCO, Add.129, paras. 29 and 30; Suriname IRCO, Add.130, paras. 41 and 42; Burundi IRCO, Add.133, paras. 40 and 41; United Kingdom – Isle

of Man IRCO, Add.134, paras. 26 and 27; United Kingdom – Overseas Territories IRCO, Add.135, paras. 35 and 36; Tajikistan IRCO, Add.136, para. 35; Marshall Islands IRCO, Add.139, paras. 36 and 37; Slovakia IRCO, Add.140, para. 32; Comoros IRCO, Add.141, paras. 31 and 32; Egypt 2RCO, Add.145, paras. 37 and 38; Lithuania IRCO, Add.146, paras. 25 and 26; Lesotho IRCO, Add.147, paras. 31 and 32; Saudi Arabia IRCO, Add.148, paras. 34, 35 and 36; Palau IRCO, Add.149, paras. 44 and 45)

The Committee has emphasized that no level of corporal punishment should be permitted:

“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28(2), 37(a), (c) and 39...” (Australia IRCO, Add.79, para. 15)

“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, at home. In the view of the Committee, this contravenes the principles and provisions of the Convention.” (Libyan Arab Jamahiriya, IRCO, Add.84, para. 14)

The Committee’s *Guidelines for Periodic Reports* asks “whether legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, including corporal punishment, deliberate humiliation, injury, abuse, neglect or exploitation, *inter alia* within the family, in foster and other forms of care, and in public or private institutions, such as penal institutions and schools” (para. 88).

In General Comments in 1982 and 1992, the Human Rights Committee, which oversees implementation of the International Covenant on Civil and Political Rights, states that the ban on inhuman or degrading treatment or punishment in article 7 of the Covenant includes corporal punishment: “In the Committee’s view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139; see also Human Rights Committee, General Comment 7, 1982, which it replaced: HRI/GEN/1/Rev.5, p. 116)

Violence, including corporal punishment, in institutions

Initial Reports to the Committee from various countries have raised the problem of violence to children in institutions, which can take two particular forms:

- “legalized” use (or continued use despite prohibition) of violent and/or humiliating discipline or treatment such as corporal punishment, physical restraint, solitary confinement and other forms of isolation, obligations to wear distinctive clothing, reduction of diet, restriction or denial of contact with family members and/or friends, verbal abuse or sarcasm and so on;
- violence, or threats of violence, by children against children, termed “bullying” or “mobbing” in some societies, which can range from teasing and harassment (commonly including racial and sexual harassment) to serious physical assault.

The Committee adopted detailed recommendations about violence to children in institutions following its General Discussion day in 2000 on “State violence against children” (see box, page 261).

Article 3(3) requires that “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”. In relation to protection from violence, there should be clear standards established in legislation:

- prohibiting corporal punishment and any other inhuman or degrading treatment or punishment (in addition, rules should specify the prohibition of any forms of inhuman or degrading discipline or treatment known to be commonly used);
- requiring clear policies for the prevention of any forms of violence by children against children in institutions;
- ensuring there are clear and well-publicized procedures to enable children to seek confidential advice and to make representations and complaints about their treatment to an independent body with appropriate powers of investigation and recommendation/action. Such procedures should ensure that where necessary children have access to independent advocates or representatives who can advise them and/or act on their behalf; special arrangements may be required to safeguard disabled children (see Standard Rules on the





Equalization of Opportunities for Persons with Disabilities, rule 9(4)) and very young children.

In relation to schools, article 28(2) requires that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” As the Committee has stressed, in its General Comment on the aims of education (see article 29, page 434), this includes conformity with article 19, and the protection of children from “all forms of physical or mental violence”. Physical punishment and other humiliating punishments amounting to mental violence are thus outlawed. Wherever the reporting process under the Convention has revealed the continued existence of school corporal punishment, the Committee has proposed its abolition (see also article 28, page 405).

The Committee has highlighted bullying in schools in comments to some States (and in recommendations adopted following its General Discussion on “Violence against children, within the family and in schools”). For example:

“The Committee recommends that further measures to protect children from abuse and maltreatment be undertaken, in particular through the development of a widespread public information campaign for the prevention of corporal punishment and bullying of children, whether by adults or by other children.” (Cuba IRCO, Add.72, para. 35)

Challenging bullying in Japan

Bullying is now acknowledged as a serious problem in Japan: “The gravity of the situation was demonstrated by a number of suicides presumably caused by bullying. The Government, therefore, guides the boards of education, etc., to work thoroughly on this issue at schools... The Government also advances measures to respect each child, emphasize individuality, improve the aptitude and ability of teachers, post experts from outside of schools, establish a system to offer educational counselling and promote cooperation between families and local communities. At the same time, the Government tries to instil respect for human rights, including the right to life, in children through all educational activities.” (Japan IR, para. 225)

“In light of, inter alia, articles 3, 19 and 28.2 of the Convention, the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying.” (Japan IRCO, Add.90, para. 45)

“The Committee welcomes the efforts being made to address the problem of bullying in schools, including the ‘Safe Schools’ campaign. The Committee encourages the State Party to continue its efforts to prevent bullying in schools, to collect information on the extent of this phenomenon and, in particular, to strengthen structures to enable children to participate in adequately addressing and resolving this problem.” (Netherlands IRCO, Add.114, para. 22. See also, for example, Sweden 2RCO, Add.101, para. 19; Chad IRCO, Add.107, para. 32)

Corporal punishment in juvenile justice systems

The Committee’s examination of Initial Reports has found that in some States corporal punishment persists as a sentence of the courts for children under 18 years. This conflicts not only with article 19 and other articles of the Convention but also with the United Nations rules and guidelines relating to juvenile justice, which the Committee has consistently promoted as providing relevant standards (see box opposite).

Violence by law enforcement officials

Violence by State officials has concerned the Committee in a number of countries, including violence against children living and/or working on the streets. For example:

“...instances of violence committed by law enforcement officials against abandoned or ‘vagrant’ children are matters of serious concern.” (Bangladesh IRCO, Add.74, para. 18)

“The Committee is concerned about the incidence of police brutality and the inadequate enforcement of existing legislation to ensure that children are treated with respect for their physical and mental integrity and their inherent dignity.”

“The Committee recommends that all appropriate measures be taken to implement fully the provisions of articles 37 (a) and 39 of the Convention. In this regard, the Committee further recommends that greater efforts be made to prevent police brutality and ensure that child victims are provided with adequate treatment to facilitate their physical and psychological recovery and social reintegration and that perpetrators are sanctioned.” (Suriname IRCO, Add.130, paras. 33 and 34)

Corporal punishment and juvenile justice standards

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”: rule 17.3 (Guiding Principles in Adjudication and Disposition) states: “Juveniles shall not be subject to corporal punishment.”

United Nations Rules for the Protection of Juveniles Deprived of their Liberty: rule 67 states: “...all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment...”

United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines: paragraph 21(h) states that education systems should devote particular attention to “avoidance of harsh disciplinary measures, particularly corporal punishment” and paragraph 54 says “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.”

The Commission on Crime Prevention and Criminal Justice adopted a resolution in April 1994 specifically stressing the importance of article 19 of the Convention and called on States to take all possible steps to eliminate violence against children in accordance with the Convention.

(From Committee on the Rights of the Child, Report on the seventh session, September/October 1994, CRC/C/34, p. 63.)



“The Committee is concerned at incidents of police brutality and corporal punishment committed against children, notably in Bangui. The Committee recommends that the State Party end all acts of violence against children, including corporal punishment, committed by, among others, members of the police forces. The Committee also recommends that the State Party provide child rights training programmes for police and detention officials.” (Central African Republic IRCO, Add.138, paras. 44 and 45. See also, for example, Lesotho IRCO, Add.147, paras. 33 and 34.)

Traditional practices involving violence and/or prejudicial to health

The specific reference to protecting children from traditional practices comes in article 24(3), which obliges States to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (see page 365 for further discussion). But traditional practices also need to be reviewed to determine whether they involve any form of physical or mental violence from which children must be protected under article 19.

Suicide and self-harm

Protecting children from self-harm, including suicide and attempted suicide, clearly comes within the ambit of article 19, and also of article 6. Increases in the suicide rate among certain age groups of children in some industrialized countries have caused concern to the Committee, which has proposed research and further action (see article 6, page 102 for discussion).

Violent images

Concern at the levels of interpersonal violence in Western societies has led to a particular focus on

the effects that violent images in the media may have on children, including in particular those on television and videos or computer-generated. The concern is both that frequent exposure to such images may desensitize children to violence, and that they may be encouraged to imitate particular violent behaviour. Article 17(e) requires States Parties to “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18” (see article 17, page 236 for further discussion).

Protective and preventive measures: article 19(2)

The second paragraph of article 19 provides a non-exhaustive list of measures that States should take to protect children and to prevent violence.

“... procedures for the establishment of social programmes to provide ... support for the child and for those who have the care of the child, as well as for other forms of prevention...”

These words emphasize the relevance of social conditions to the protection of children from violence and, in particular, to the protection from neglect and negligent treatment, and they link article 19 with other relevant provisions in the Convention on the Rights of the Child, including the overall duty in article 4 (to implement measures “to the maximum extent of available resources”), article 18 (the obligation of States Parties to render appropriate assistance to



parents in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children), article 26 (the right of children to benefit from social security) and article 27 (the right of the child to an adequate standard of living).

Specific social programmes promoted by the Committee in its comments on Initial Reports include education/information campaigns on positive non-violent forms of discipline, on the prevention of sexual abuse and exploitation, and on the protection of children from ill-treatment in alternative care and institutions:

"The Committee suggests that measures be adopted by the State Party to provide appropriate assistance to the family in the performance of its child-rearing responsibilities, with a view, inter alia, to preventing domestic violence and abuse, abandonment and institutionalization of children, and to promoting research in these areas." (Uruguay IRCO, Add.62, para. 21)

"Despite the recent increase in the number of social workers employed for child abuse cases, it is the view of the Committee that the case-load of each professional may still be too high and the question of taking additional action to address such matters deserves further study. The Committee encourages the efforts made to accord high priority to and pursue more intensely the establishment of day care centres in the community, including as a measure to prevent children being left unattended at home. In addition, the Committee encourages the initiative taken to ensure within future reviews of the Family Life Education Programme an assessment of its effectiveness in preventing child abuse." (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 28)

"identification"

A long history exists of denial by adult societies of the extent of violence to children. The first step towards effective prevention of violence must be to ensure that all those in contact with children are alerted to the various forms of violence to children and the likely indications of it and that they are informed about appropriate action in conformity with the principles of the Convention. Public information campaigns to increase overall awareness of violence to children are essential and have been proposed by the Committee to many States Parties. For example:

"The Committee is concerned that incidents of sexual abuse and family violence may not be adequately identified and addressed."

"The Committee recommends that the State Party conduct training for the police and the

staff of the Centres for Social Work on the detection of child abuse and domestic violence, and on suitable responses." (The Former Yugoslav Republic of Macedonia IRCO, Add.118, paras. 27 and 28)

"reporting"

In many countries there are legal obligations to report instances, and/or suspicion of child abuse to appropriate social authorities and/or the police. In some societies, these duties apply to certain professions (for example, only social workers, teachers, doctors and other health workers); in others, they apply to members of the public as well. The Committee's *Guidelines for Periodic Reports* (para. 89) asks for information on "The existence of any system of mandatory reporting for professional groups working with and for children (for example teachers, medical doctors)".

The Committee has, on at least one occasion, recommended mandatory reporting by some professionals:

"The Committee also recommends that the State Party implement its proposal to introduce legislation making the reporting of child abuse mandatory..." (Belize IRCO, Add.99, para. 22)

Mandatory reporting also raises potential conflicts with the child's right to confidential advice and counselling, from doctors and others (see article 1, page 7; article 12, page 179; and article 16, page 215). Do children have a right to a completely confidential relationship with, for example, their doctor, lawyer, priest or religious elder? Article 12 suggests that children should have a right to express their views and have them taken seriously in any action proposed or taken in relation to violence towards them, and a formal right to be heard in any administrative procedures. Article 16 asserts the child's right to privacy, which is relevant to the child's right to confidential advice and counselling (see page 215). The Committee commends the existence of children's telephone helplines which usually offer confidential advice and counselling on violence and other issues.

The Committee has noted the traditional attitudes and fears that can deter reporting by both women and children and has proposed awareness-raising and training for those who receive such reports.

In some instances, children and others may face reprisals for reporting:

"The Committee is concerned about the problems associated with ill-treatment, abuse and violence directed towards children in school and in the family, which is reinforced

by social custom. In this connection, the Committee notes with concern that child abuse has not yet been clearly addressed, that adequate legal remedies for abused children do not exist and that there are inadequate safeguards against reprisals against children who report abuse.” (Madagascar IRCO, Add.26, para. 11. See also Nicaragua IRCO, Add.36, para. 22; Finland IRCO, Add.53, para. 29)

“referral”

The implication of referral is that the investigation and treatment of violence to children is an issue requiring specialized, trained responses. In systems that require the reporting of child abuse, referral to particular agencies is normally specified, and in many countries there are now detailed administrative procedures for inter-agency collaboration (between social services, education, health, police and prosecution authorities, and including voluntary and private agencies). Such procedures for referral should be in conformity with the Convention, and in particular with article 12.

The Committee has welcomed inter-agency cooperation in child protection:

“... the Committee is encouraged by the steps taken to address the issue of sexual abuse of children, including through the development of the ‘Working Together’ initiative which advocates and promotes an interdisciplinary approach to addressing this serious problem.” (United Kingdom IRCO, Add.34, para. 4)

“investigation”

The State should clearly have formal duties, exercised through one or more agencies, to investigate reported instances or allegations of violence to children, in conformity with the Convention’s principles.

The *Guidelines for Periodic Reports* asks: “Whether complaints procedures have been foreseen and the child can lodge complaints, either directly or through a representative, as well as remedies available (for example, compensation)” (para. 88). In addition, the *Guidelines* asks for information under article 1 (definition of the child) on “the minimum legal age defined by national legislation” for “lodging complaints and seeking redress before a court or other relevant authority without parental consent” (para. 24). The Convention does not support the setting of a particular minimum age for this purpose; the Committee’s intention is to identify any limitations on children’s access to redress.

A Committee member noted during discussion of Senegal’s Initial Report that the fact that children were not entitled to lodge complaints of abuse was a serious cause of concern “since the

child must be treated as a full-fledged subject of law and given the necessary means of defending himself against abuse” (Senegal SR.248, para. 74). The Committee has consistently urged States Parties to develop appropriate complaints procedures to receive complaints from children and others about ill-treatment and other issues, including within the family (see also article 12, page 159):

“...serious concern remains in relation to a child’s opportunity to report abuse and other violations of his/her rights in the family, schools or other institutions and to have a complaint taken seriously and responded to effectively.” (Cuba IRCO, Add.72, para. 19)

“The Committee welcomes the initiative of the State Party to establish a ‘Crisis Line for Children’, which provides children with a means to report cases of sexual abuse and domestic violence.” (Czech Republic IRCO, Add.81, para. 5. See also Pakistan IRCO, Add.18, para. 28; Burkina Faso IRCO, Add.19, para. 9; China IRCO, Add.56, para. 33; Ethiopia IRCO, Add.67, para. 31; Maldives IRCO, Add.91, para. 36; Kuwait IRCO, Add.96, para. 22)

Under article 6, the Committee has drawn attention to the importance of full investigation of all child deaths (see *Guidelines for Periodic Reports*, para. 41). In countries where a rigorous procedure for such investigations has been implemented, it is less likely that preventable violence to children will go undetected (for discussion, see article 6, page 103).

“treatment and follow-up”

Again, these are specialized functions requiring appropriate training and interdisciplinary cooperation. In addition to the child’s rights to health care and relevant services, two other articles of the Convention are relevant:

- the right to periodic review of care and treatment guaranteed by article 25: “States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement” (see page 373);
- the obligation to provide rehabilitation for victims, under article 39: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration



shall take place in an environment which fosters the health, self-respect and dignity of the child” (see page 579).

“and, as appropriate, judicial involvement”

The appropriateness, or otherwise, of judicial involvement over instances of violence to children depends on the type and severity of the violence and on consideration of the Convention’s general principles.

The Committee has in some cases expressed concern that lack of prosecution may lead to a feeling of impunity:

“The Committee is also preoccupied by the level of violence and the high incidence of ill-treatment and abuse of children, including cases attributed to the police or military personnel. It notes with concern that the efforts of the Government to combat child abuse and neglect are insufficient, both from the prevention and the sanction point of view... The failure to take effective steps to prosecute and punish those responsible for such violations or to make public decisions taken in this regard, including towards paedophiles, may lead to a feeling in the population that impunity prevails and that it is therefore useless to bring complaints before the competent authorities.” (Philippines IRCO, Add.29, para. 14)

In other cases the Committee has generally called for more effective legislation:

“The Committee suggests that the State Party considers the possibility of introducing more effective legislation and follow-up mechanisms to prevent violence within the family in the spirit of article 19.” (Argentina IRCO, Add.35, para. 20)

There are two distinct forms of judicial involvement: to prosecute the perpetrator under the criminal law and to protect the child through various forms of supervision, removal of the perpetrator or placement of the child away from home. In regard to the latter, article 9(1) requires that a child “shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child” (see also page 133). Article 9 indicates in paragraph 1 that one of the circumstances in which such separation may be necessary is a case involving abuse or neglect of a child by his or her parents. When one parent is the alleged abuser, article 9 requires efforts to prevent separation of the child from the other parent if he or she is not implicated in the abuse.

The Committee has also indicated that the child may suffer from judicial involvement.

While discussing Ukraine’s Initial Report, a Committee member noted that the report referred to deprivation of parental rights of persons who mistreated their children or inflicted corporal punishment on them: “In fact, there was no need to adopt such drastic solutions for every case. In his opinion, what the Committee had in mind was a clear signal from the relevant legislation that ill-treatment of children should never take place. If it did occur, the solution in all cases might not be for the child to be taken away from the parents. That might also be contrary to the best interests of the child. Efforts should rather be made to solve the problem within the family, if possible.” (Ukraine IR, para. 65 and Ukraine SR.240, para. 65)

In deciding whether judicial involvement is appropriate the Convention’s general principles come into play, in particular the “best interests” principle (article 3), the right of the child to life and maximum development (article 6), and the participation of the child in decision-making (article 12). The Committee has emphasized in particular that child victims of violence should not be criminalized or stigmatized, quoting the importance of article 39 (rehabilitation of child victims, see page 579). For example:

“The Committee... recommends that cases of abuse and ill-treatment of children, including sexual abuse within the family, be properly investigated, sanctions applied to perpetrators and publicity given to decisions taken in such cases, due regard being given to protecting the right to privacy of the child. It is also recommended that consideration be given to adopting child-friendly rules for the provision of evidence in such proceedings. Further measures should be taken with a view to ensuring the provision of support services to children in legal proceedings, the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention, and the prevention of criminalization and stigmatization of victims.” (Kuwait IRCO, Add.96, para. 22)

Recent developments have taken place in a number of countries to safeguard the welfare of child witnesses in cases involving prosecution of adult perpetrators of violence. These include less formal courts and opportunities for children’s evidence to be pre-recorded or for children to give evidence or be cross-examined behind screens or through video links. Such provisions are justified in terms of the welfare and best interests of the child but must also comply with



the rights of the adult defendants as set out in international law.

The Committee has noted that violations of children's rights under article 19 and other provisions of the Convention should not be investigated by military courts:

"...Violations of human rights and children's rights should always be examined by civilian courts under civilian law, not military courts. The outcome of investigations and cases of convictions should be widely publicized in order to deter future offences and thus combat the perception of impunity."
(Colombia IRCO, Add.30, para. 17)

Special training

In addition to its general call for all those working with or for children to receive training in the principles and provisions of the Convention (see article 42, page 611), the Committee has proposed special training in relation to child protection, and the *Guidelines for Periodic Reports* asks for information on "the special training provided for relevant professionals" (para. 89):

"The Committee also recommends that the State Party should develop awareness-raising and training programmes to combat violence against children and prevent their abuse, neglect, abandonment and ill-treatment. Such programmes should be addressed to, inter alia, parents, teachers and law enforcement

officials..." (Pakistan IRCO, Add.18, para 28)

"The Committee recommends that the Government of the State Party consider pursuing the measures adopted to fight situations of child ill-treatment. It stresses the importance of ensuring training activities for the professional groups concerned, as well as of developing mediation measures." (Chile IRCO, Add.22, para. 16. See also Mauritius IRCO, Add.64, para. 27)

In its recommendations to Nicaragua, the Committee emphasized the importance of using training to encourage children to defend their own rights, including rights to protection from violence and abuse, proposing

"that the State Party consider using the Convention as a tool for the prevention of violence and abuse. One way to achieve this, the Committee suggests, is by teaching children to defend their rights and for trained individuals working with and for children to transmit the values of the Convention to children. Thus, the Committee recommends that education about the Convention be incorporated into non-formal and formal educational curricula and into training and retraining programmes for professionals working with or for children, including teachers, health workers, social workers, judges and law enforcement officials."
(Nicaragua IRCO, Add.36, para. 30)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 19, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 19 is relevant to **departments of social welfare, justice, health, education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 19 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 19 likely to include the training of **all those working in child protection or with or for children and their families, and in parenting education**)?

● Specific issues in implementing article 19

- ☐ Does legislation in the State protect children from all forms of physical or mental violence?
- ☐ Has the State ensured there are no exceptions or defences available to parents or others in relation to assaults on children?

Does legislation protect all children from any form of corporal punishment:

- ☐ in the home?
- in schools
 - ☐ state run?
 - ☐ private?



in child-care institutions

- ☐ state run?
- ☐ private?

☐ in foster care?

☐ in other forms of alternative care?

in day care institutions

- ☐ state run?
- ☐ private?
- ☐ other arrangements (e.g. childminding etc.)?

in the penal system

- ☐ as a sentence of the courts?
- ☐ as a punishment in penal institutions?

Does legislation, policy and practice protect all children from

- ☐ ill-treatment and violence, including violence by other children, in schools and all other institutions?
- ☐ traditional practices involving physical or mental violence, or prejudicial to health?

☐ Has the State taken appropriate measures to prevent all forms of violence to children?

Has the State taken appropriate educational and other measures to promote positive, non-violent forms of discipline and treatment

- ☐ in the family?
- ☐ in alternative care?
- ☐ in all institutions which include children?

Do all children in the State have access to effective complaints procedures in relation to ill-treatment

- ☐ while in the care of parents or others legally responsible for them?
- ☐ in all forms of alternative care?
- ☐ in all institutions including schools and custodial institutions?

☐ In cases of ill-treatment, do children have a right to appropriate remedies, including, for example, compensation?

Does legislation in the State require the reporting of all forms of violence and abuse of children to appropriate bodies:

- ☐ by certain professional groups?
- ☐ by all citizens?

☐ Have any reporting arrangements/requirements been reviewed in the light of the Convention's principles, including article 12 (respect for the views of the child) and article 16 (the child's right to privacy)?



Has the State established effective systems for

- ☐ identification of violence, abuse, etc.?
- ☐ reporting?
- ☐ referral?
- ☐ investigation?
- ☐ treatment and follow-up?
- ☐ appropriate judicial involvement?
- ☐ Has the State taken particular measures to identify and respond to sexual abuse within the family and in institutions?
- ☐ Has the State ensured that the principle of respect for the views of the child is observed in child protection procedures and practice?
- ☐ Has the State taken special measures to encourage responsible reporting of child abuse by the mass media?
- ☐ Has the State established or supported confidential helplines, advice or counselling for child victims of violence, abuse or neglect?

Reminder: The Convention is indivisible and its articles are interdependent. Article 19 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 19 include:

Article 5: parental responsibilities and child's evolving capacities

Article 9: separation from parents following abuse or neglect

Article 18: parental responsibilities

Article 20: alternative care

Article 24(3): protection of children from traditional practices

Article 25: periodic review of placement or treatment

Article 28(2): school discipline without violence

Article 34: protection from sexual exploitation

Article 37: protection from torture and inhuman or degrading treatment or punishment

Article 38: armed conflict

Article 39: rehabilitative care for victims of violence

Optional Protocols to the Convention on the Rights of the Child

Children deprived of their family environment



Text of Article 20

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

Article 20 concerns children who are temporarily or permanently unable to live with their families, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed for their best interests.

Such children are entitled to “special protection and assistance”. The method of care for them will depend in part on national traditions (for example Islamic law does not recognize adoption, see article 21, page 295) but must secure the child's rights under the Convention and, in particular, give due regard to the desirability of continuity of upbringing including ethnicity, religion, culture and language (see also article 8 and article 30).

The article principally applies to the social work or welfare departments of government and to social workers, foster caregivers and adoptive parents. Committee members have recommended ratifying States to draw upon the United Nations publication *Human Rights and Social Work: A Manual for Schools of Social Work and the Social Work Profession*. This Manual references all the relevant international and regional rights instruments and sets out basic principles and issues, as well as providing training materials in terms of testing questions and case vignettes. The 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally should also be considered. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the 'best interests of the child' and 'respect for the views of the child' are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...(f) Children deprived of a family environment (art. 20);

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5 paras. 16-18)

Guidelines for Periodic Reports

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

G. Children deprived of their family environment (art. 20)

Please indicate the measures adopted to ensure:

Special protection and assistance to the child who is temporarily or permanently deprived of his or her family environment or in whose own best interests cannot be allowed to remain in that environment;

Alternative care for such a child, specifying the available forms of such care (inter alia foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of the child);

That the placement of such a child in suitable institutions will only be used if necessary;

Monitoring of the situation of children placed in alternative care;

Respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent.

Reports should also indicate the extent to which, when such solutions are being considered, due regard is paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Disaggregated information should be provided on the children concerned by all such measures, including by gender, age, national, social or ethnic origin, language, religion, and by the nature of the measure of alternative care applied.

Reports should also provide information on the progress achieved in the implementation of this article, any difficulties encountered or on targets set for the future."

(CRC/C/58, paras. 80-82. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 35, 37, 43, 59, 86, 87, 165; for full text of *Guidelines*, see Appendix 3, page 674.)

Children who are temporarily or permanently deprived of, or removed in their best interests from, their family environment

It should be noted that this provision refers to family not parents, an important distinction. While it may be in the child's best interests to be removed from his or her parents (see article 9, page 133), the State should first seek placement in the child's wider family, as defined in article 5 (page 92), before looking for alternatives. Article 4 of the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally states: "When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute – foster or adoptive – family or, if necessary, by an appropriate institution should be considered." This suggests a hierarchy of options: first, family relatives; second, substitute family through fostering or adoption; and third, an appropriate institution. This approach is reflected in the provisions of article 20 and the rest of the Convention, as well as in comments by the Committee.

Children may for example successfully be supported in a family that is run by an older sibling (see box). The Committee has encouraged State action in this respect, particularly in the face of the numbers of children orphaned by the AIDS epidemic. For example:

"The Committee recommends that the State Party take all necessary measures to reduce and prevent the increasing number of child-headed households and to introduce adequate support mechanisms for existing child-headed families. The Committee further recommends that the State Party undertake a study on the situation of ... child-headed families with a view to assessing the impact on children." (South Africa IRCO, Add.122, para. 22)

"The Committee recommends that the State Party urgently adopt a programme to strengthen and increase alternative care opportunities for children including... the provision of assistance to extended family members who take on responsibility for orphaned children." (Central African Republic IRCO, Add.138, para. 49)

Such children shall be "entitled to special protection and assistance"

The use of the word "entitled" stresses the obligation the State has towards children who cannot

Support for lone children

"The child-headed household project was started in 1985 to prevent children in need from institutionalization and to support them to live in their community. They are children and young persons under the age of 20 whose parents are not able to provide proper care, economically and emotionally, because of death, divorce, physical or mental disability or disease. As a result, those children have to be responsible for their family's livelihood. They are provided with livelihood aid, medical aid, educational assistance and appropriate support for clothing, food and transportation. In 1993, there were 7,322 child-headed households with 14,293 members..." (Republic of Korea IR, para. 134)

"The Rights of the Child Act (1996) provides that pensions shall be paid to the personal accounts of children who have lost their parents; the procedure for this is also defined by law... The authorities in children's homes and suchlike institutions, as well as the organs of local government and the employment service protect the rights and interests of children who have lost their parents or who are wholly in the care of the State by providing housing, social insurance and job placement." (Armenia IR, para. 43)

be cared for by their parents. It goes to the heart of the duty all societies owe children – that if parents cannot meet children's needs then children have a moral claim on the rest of us. Article 3(2) establishes this general obligation: "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents..."

Children who have been deprived of their families often have greater needs than simply the provision of an alternative placement. The loss of family attachments and identity together with the instabilities and disruptions of a new placement can impede their physical, intellectual and emotional development; children in such circumstances are also vulnerable to abuse and exploitation. When deciding to hold a General Discussion on "State violence against children" in September 2000, the Committee commented:

"Unfortunately it is often children deprived of family protection who are the most common victims of the worst forms of mistreatment and abuse, and too often such abuse takes





place either at the hands of State agents or is made possible by their approval, tolerance or neglect". (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 668)

The Committee has expressed concern about this, for example to Burundi:

"Recognizing the large numbers of orphans and other children in need of alternative care in the State Party, the Committee is deeply concerned at violations of child rights that occur in the context of alternative care, at the lack of systematic monitoring of the situation of children in institutions or informal foster families, at the use of children for labour in some informal foster families and at reports indicating that many of these children do not have adequate emotional support or access to health and education services.

"... the Committee recommends that the State Party urgently develop, and implement, mechanisms to ensure the provision of suitable alternative care for children in need of such assistance and that monitoring mechanisms be established to guarantee a minimum standard of care, including in the long-term, and which ensure that such children are not used for labour and have access to education and health services." (Burundi IRCO, Add.133, paras. 50 and 51. See also Azerbaijan IRCO, Add.77, para. 18)

Therefore, a concerted effort is needed by professionals and providers across the entire spectrum of services for children. Finland, in its Initial Report to the Committee, notes the difficulty in which social workers were placed in relation to children in care, because they were unable to make other agencies give children services they needed – and were even unable to require their own employing authority to act in the interests of these children. (Finland IR, paras. 137 and 138) This difficulty relates to the Committee's general observations, in relation to article 4, about the need for different departments of State and professional disciplines to coordinate their activities (see page 69).

The links between violence and institutionalization led the Committee to make the following recommendations in its General Discussion on "State violence against children":

"The Committee recommends that States Parties develop the use of alternative measures in order to avoid long-term placement of children in institutions that do not provide the type of setting children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity and to prepare the child for an

individual life in a free society, in accordance with article 6 of the Convention.

"...In particular, the Committee points out that, in accordance with the provisions of article 23 of the Convention, special care as well as access to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities should be provided in a manner 'conducive to the child's achieving the fullest possible social integration and individual development'. The Committee encourages States Parties to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent possible on an out-patient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions.

"The Committee recommends that States Parties make every effort to implement fully the provisions of article 20 (3) of the Convention; that special protection provided to children deprived of a family environment include as preferable options providing for the placement of children with suitable families, including members of their own families (including, where appropriate, child-headed families), foster families or adoptive families, whenever appropriate, and providing such families with the necessary support and supervision; and that regularly temporary placements be monitored and reviewed. In developing such alternatives, States should consider the special needs of children affected by HIV/AIDS. Efforts should be made to involve children and their parents in decisions regarding the most appropriate care and placement alternatives for the child.

"The Committee recommends that, for children placed in institutions, consideration be given to the following:

- (a) Small institutions caring for children in home-type settings often have a better record of caring for children;*
- (b) Smaller institutional settings, or the delivery of care and assistance to children and support to their families can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large, sometimes impersonal institutions;*
- (c) A lesser number of better trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers;*
- (d) Efforts should be made to ensure contact between the child and his or her family (when appropriate) and to avoid the isolation of children in institutions (for example, by ensuring that education, recreation, or health services are provided outside the institution).*

"...The Committee recommends that States Parties make every effort to ensure, in recruiting staff to care for children in all types of institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline. Institutions should adopt anti-bullying and anti-violence strategies and policies, and provide training for staff in their implementation.

"The Committee recommends that special training be given to encourage direct dialogue between police and children living or working in the streets. It also recommends that States Parties develop community-based support systems for such children, provide access to social workers and promote education or employment training opportunities without requiring institutionalization." (Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688.17, 688.20-22 and 688.24-25)

".... shall in accordance with their national laws ensure alternative care... such care could include, *inter alia*, foster placement, *kafalah*, adoption, or if necessary, placement in suitable institutions for the care of children"

During the drafting of article 20, the United States delegate made a proposal that States should have to "facilitate permanent adoption" of children in care. The proposal was rejected on the grounds that adoption is not the "only solution" when children cannot be cared for by their families. Even the milder proposal that children should have a right to a "stable family environment" did not survive to reach the final text. (E/1982/12/Add.1, C, pp. 56-59; Detrick, p. 299)

Adoption is unrecognized by Islamic law, which has developed instead the concept of *kafalah* – a permanent form of foster care that generally stops short of the child taking the family name or having inheritance rights. The 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally states in its Preamble: "Recognizing that under the principal legal systems of the world, various valuable alternative institutions exist, such as the *kafalah* of Islamic Law, which provide substitute care to children who cannot be cared for by their own parents...". Notwithstanding the non-prescriptive nature of the list of possible

placements, four Arab States (Brunei Darussalam, Egypt, Jordan and Syrian Arab Republic) have entered explicit reservations to article 20 on the grounds that adoption is incompatible with the principles of Islam (CRC/C/2/Rev.8, pp. 16, 21, 26 and 39).

The Convention on the Rights of the Child specifically addresses adoption in the next article, article 21 (page 293). As regards foster care, articles of the 1986 Declaration provide:

"6. Persons responsible for foster placement or adoption procedures should have professional or other appropriate training...

10. Foster placement of children should be regulated by law.

11. Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

12. In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child."

Even though children are probably most exposed to abuse or neglect in institutions the vulnerability of children in foster care should not be underestimated. The Committee on the Rights of the Child has raised such concerns, for example:

"The Committee notes with concern that foster care has not yet been institutionalized or standardized and that the organizations involved are generally left to develop their own individual systems of monitoring and recruitment. The Committee ... recommends that the State Party develop a clear policy with respect to foster care and introduce measures to ensure a standardized approach with respect to recruitment, monitoring and evaluation under existing foster care programmes." (Mali IRCO, Add.113, para. 22)

"The Committee is concerned about the absence of national standards and statistics on foster care... The Committee is concerned that, with the current informal system of foster care, there is no established mechanism to review, monitor and follow up placement of children.

"... the Committee encourages the State Party to establish a comprehensive national policy and guidelines governing foster care... and to establish a central monitoring mechanism in this regard." (Armenia IRCO, Add.119, paras. 30 and 31)





The numerous problems confronting children's institutions in Bulgaria

"There are numerous problems confronting the children's institutions which considerably reduce the efficiency of the care for the children and their education. The homes are incapable of compensating to a sufficient degree the absence of a family environment, and of maintaining regular contact with the parents (if the children have parents). Children placed in such homes suffer from lagging behind in the development of their personalities, disturbed communicativeness, emotional insufficiency, lack of affection for grown-ups, passiveness and mistrust. Serious deviations are observed in the intellectual and motivational spheres of the psychology of children of primary school age, as well as a proneness to improper behaviour. The inefficiency of child care for children without families is a consequence of former policies and obsolete legislation.

"Children's institutions have been situated in a very irrational manner in the country (in small towns and villages). Acute problems are encountered in financing and maintaining the specialized institutions for children. There are particularly grave problems concerning manpower: teachers have inadequate training and personal motivation, most of them have little experience (one year or less), or are beyond the retirement age; two thirds of them are women. Last but not least come the problems related to organization and legislation. There is an absence of a unified system for organization and management of the institutions. The various kinds of institutions are governed by different laws and regulations, and report to different authorities. In their current form the institutions are hardly able to conform to the requirements contained in the Convention for continuity in child care." (Bulgaria IR, paras. 129-130)

"The Committee recommends that the State Party develop additional programmes to strengthen its alternative care facilities, in particular an adequate and well-supported (e.g. via special grants for foster parents) foster care system." (Lesotho IRCO, Add.147, para. 38)

Foster placement can also be used to disguise one of the more hidden aspects of child abuse – children being kept as domestic workers in conditions of near slavery (see article 32, page 477). The State is not absolved of responsibility because parents have arranged the placement:

"While noting the positive aspects of the placement of children in informal foster care, in particular of children from rural areas, for educational reasons, the Committee is concerned at the lack of adequate monitoring to prevent possible abuse of these children, such as their use as domestic workers.

"The Committee recommends that the State Party undertake the necessary measures to establish outside supervision of these placements, in order to prevent the child being abused by his/her foster family." (Comoros IRCO, Add.141, paras. 29 and 30)

Those training foster caregivers and supervising foster placements should ensure that foster children are not treated as inferior to other children within the family or exploited as domestic workers.

Article 25, in relation to children placed by "competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health," calls for "a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement". The task of the State is not over once a child has been placed in alternative family care or an institution. Too many children have failed to thrive, or have even suffered abuse, following such placements, so continual monitoring is essential (see page 373).

Article 3(3) also requires States Parties to ensure that "the institutions, services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision" (see page 47).

Institutional care

Article 20 implies, but does not spell out, that placement in "suitable institutions for the care of children" is the last resort, second best to placement in an alternative family. The qualifier "if necessary" is used, which reflects the fact that institutional care may be the best placement for some children – for example if the child has suffered multiple foster care breakdowns, or when large families of siblings wish to remain

together, or for older children nearing independence. States must always ensure that there are facilities to care for abandoned children:

"Although the Committee is aware of the long tradition of in-community care for children deprived of a family environment, it expresses its concern at the insufficient number of care centres for abandoned boys and the absence of facilities for abandoned girls. The Committee recommends the State Party to take all available measures to establish alternative care centres for abandoned girls and/or establish alternatives to institutionalizing children (for example, foster families, adoption, kafalah)." (Yemen 2RCO, Add.102, para.23)

Nonetheless the plight of large numbers of children in inappropriate institutional care has led the Committee on the Rights of the Child to refer to institutionalization as a "last resort", and to stress its particular inappropriateness for young children whose developmental needs require a permanent adult caregiver (see, for example, Egypt SR.67, para. 21 and SR.68, para. 21).

Too many children are placed in institutions because the State has failed to put resources into keeping children with their families or finding and maintaining foster families for them, although this is an illusory saving. Chile, for example, notes that its "...emphasis on institutionalization in child-care policy has proved to be extremely expensive and to provide a low level of coverage in relation to care requirements; at the same time, its effects have frequently run counter to the aims of family and social reintegration" (Chile IR, para 258).

The Committee has frequently expressed concern about institutionalized children:

"The Committee ... is concerned that foster care or other forms of family-based alternative care are not sufficiently developed and available; that as a result children are placed in institutions which, owing to a lack of resources, provide children with very low-quality housing and care; and that the location and features of institutions do not facilitate family contact. The Committee is concerned at the absence of effective mechanisms for children to communicate concerns and complaints about their placement.

"... the Committee recommends that the State Party promote the family as the best environment for the child through counselling and community-based programmes to assist parents to keep children at home. Moreover, it is recommended that the State Party take all effective measures to increase and strengthen foster care, family-type foster homes and

other family-based alternative care, and place children in institutions only as a last resort. The Committee recommends that the State Party undertake a comprehensive review of conditions in institutions; take all necessary measures to improve infrastructure; and ensure that children living in institutions enjoy all the rights laid down in the Convention, in accordance with article 2. The Committee recommends that the State Party review existing policies and practices to ensure that children in institutions can maintain links with their families. The Committee recommends that the State Party provide support and training for personnel in institutions, including social workers." (Kyrgyzstan IRCO, Add.127, paras. 35 and 36).

"The Committee is concerned by the predominant use of institutional responses to provide assistance to children in difficulty and that children who are cared for in institutions for many years, and until age 18, are not given the educational and vocational skills necessary for them to make an independent living once they leave the institution."

(Ethiopia 2RCO, Add.144, para. 50. See also Russian Federation IRCO, Add.4, paras. 11 and 19; Belarus IRCO, Add.17, para. 8; Cambodia IRCO, Add.39, para. 39; Federal Republic of Yugoslavia IRCO, Add.49, paras. 15 and 34; Zimbabwe IRCO, Add.55, paras. 17 and 29; China IRCO, Add.56, paras. 18 and 38; Bulgaria IRCO, Add.66, para. 27; Azerbaijan IRCO, Add.77, paras. 18 and 39; Russian Federation 2RCO, Add.110, para. 37 and 38; Armenia IRCO, Add.119, paras. 28 and 29; Tajikistan IRCO, Add.136, paras. 30 and 31; Slovakia IRCO, Add.140, para. 28; Dominican Republic IRCO, Add.150, paras. 30 and 31)

If children are placed in institutions, then the State must take measures to ensure that they are provided with well-trained staff, that the children's needs are met and their quality of life is good and that they are protected from abuse (see also article 3(3), page 47):

"The Committee recommends that the State Party establish a code of standards to ensure that children deprived of a family environment receive adequate care and protection. The Committee recommends that the State Party reinforce its efforts to provide additional training, including in children's rights, for the staff of institutions; ensure the periodic review of placements in institutions; and establish an independent complaint mechanism for children in alternative care institutions. The Committee encourages the State Party to introduce measures to guarantee and protect the human dignity of children living in institutions and to make these institutions more child friendly. The State Party is also encouraged to increase the level of resources allocated for the protection





and care of children deprived of a family environment. Finally, the Committee recommends that the State Party increase its efforts to prevent institutionalization and pay special attention in that regard to vulnerable families by, for example, providing them with adequate support services.” (Georgia IRCO, Add.124, para. 35. See also Ukraine IRCO, Add.42, paras. 14 and 27; Thailand IRCO, Add.97, para. 22)

It is particularly important for all institutions where children are living to implement the principles of article 12. The natural way in which family members talk and listen to each other, and particularly parents listen to their children, cannot easily be replicated in more formal living institutions. Deliberate steps must be taken to ensure that staff hear and take proper account of the children’s views and respect their civil rights.

Other Convention provisions, for example article 2 (protection from discrimination), article 13 (freedom of expression), article 16 (right to privacy) and article 19 (protection from violence), should secure that institutions do not adopt measures that are prejudicial to the child’s normal development and socialization, for example requiring the children to wear uniforms, or revealing children’s personal history to their schools or other inmates, or using inappropriate controls or sanctions (such as corporal punishment, restriction of liberty, or the use of tranquilizing drugs or the deprivation of food, sleep or contact with family).

Deprivation of liberty

Article 37 addresses the rights of children deprived of their liberty, which includes “arrest, detention or imprisonment”. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides a more precise definition: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority.” Many children in institutions, including mental health institutions, are subjected to rules and administrative orders preventing them from leaving the establishment, that go beyond family-type rules intended to safeguard their welfare (for example, forbidding them to go out late at night). Where children are deprived of their liberty in institutions the provisions of Article 37 and of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (endorsed by the Committee) should apply, even though these institutions operate outside the penal system.

In 1996 the Special Rapporteur of the Commission on Human Rights on the question of torture raised the issue of conditions of detention of children, expressing concern about their ill-treatment in custody and pre-trial detention. He wrote:

“... Another problem, reported to be widespread in many regions of the world, is that of overcrowding of children’s cells, both in places of pre-detention and in prisons. Some facilities are said to hold a number of children that is more than three times the officially proclaimed capacity. The lack of adequate space and facilities has in some situations resulted in children being held together with adult detainees or prisoners, a circumstance which leaves them vulnerable to violent attacks, as well as damaging influence. Even in situations where children are held separately, prison personnel may often lack the training to deal with the special requirements of juvenile detention.

“Children are reportedly often detained in unsanitary conditions, leaving them exposed to the risk of disease and other health problems. In some cases, the provision of food is inadequate, resulting in instances of malnutrition and, in extreme cases, starvation... Many prisons and other detention centres where children are kept are also bereft of any or adequate medical facilities. Moreover, the absence of recreational and educative facilities may adversely effect the mental and emotional well-being and development of detained children.” (E/CN.4/1996/35, paras. 11 and 12)

The Committee expressed its concern to Lesotho about

“...the insufficient number of alternative care facilities and the insufficient financial support provided to existing ones... The Committee is deeply concerned, in addition, that Juvenile Training Centres are used by courts to detain children for ‘welfare and education’ ... even though these children have not committed any criminal offence. The Committee is concerned that some parents choose to send their children to such institutions as a way of disciplining their children.” (Lesotho IRCO, Add.147, para. 37)

Disabled children

Disabled children are vulnerable to abandonment by parents, either at birth or when they are older, often because the parents have inadequate support or are frightened that they will not be able to cope. Also, traditions and cultures sometimes express prejudice or hostility towards disabled people, encouraging parents to abdicate responsibility for a disabled child. Social

workers may find that foster caregivers are reluctant to accept disabled children and small, home-like institutions may not have the staff or facilities to receive them. As a result such children may end up living in large or uncaring institutions (see article 23, page 319).

Rule 9(1) of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides: “Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families that include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.”

Thus States should first ensure that all measures of support have been taken to keep a disabled child within his or her family. It should perhaps be noted that expenditure on such measures is often cost-effective in the long term. The social-care services should ensure that foster caregivers are trained and encouraged to accept placements of disabled children and that small “family” institutions are equipped and staffed to receive disabled children alongside children without disabilities.

The Committee took up this issue with Ukraine and the Former Yugoslav Republic of Macedonia:

“The Committee is concerned about the absence in Ukraine of a programme involving social work. In particular, the Committee expresses its concern at the situation of the institutionalization, treatment and protection of handicapped children. Alternatives to institutionalization are not sufficiently taken into account; support services to parents who keep their handicapped child at home are inadequate.” (Ukraine IRCO, Add.42, para. 13)

“The Committee recommends ... that the State Party strengthen community services in favour of... families caring for children with disabilities and with emotional or behavioural problems, in a manner which assures greater respect for the principles of the Convention.” (The Former Yugoslavia Republic of Macedonia IRCO, Add. 118, para. 26)

Children who live and/or work on the streets

The phenomenon of “street children” (see article 2, page 34 for discussion of this term) is not addressed explicitly within the Convention on the Rights of the Child, but the number of children living or working on the streets of cities in almost all countries of the world is large and growing and is a source of great concern to the Committee on the Rights of the Child, which urges practical responses to their difficulties. For example:

“The Committee is concerned at the large and increasing number of children living and/or working on the streets, who are among the



The challenges in helping street children: a Thai analysis

“Work aimed at helping street children undertaken by both public and private sectors faces many problems that prevent the services from reaching those who need them most. This is because:

There are insufficient numbers of personnel when compared with the numbers of children needing assistance. They are often under stress and this directly affects their young charges. Many of the personnel actually have negative attitudes towards street children. Many do not know proper child psychology and unintentionally bore children or inhibit their development. Besides, neither governmental agencies nor NGOS can provide guarantees or incentives to attract these people to work for them permanently.

There are insufficient funds, equipment and space to organise activities. This situation directly undermines the expansion of services;

The problem of coexistence among children of different age groups, different family backgrounds and different levels of education and capability is a serious one. It causes rifts, bullying and physical harm which are most apparent in remand homes where the children are temporarily housed;

The problem of work duplication and overlapping projects run by the Government and the private sector is caused by lack of clear coordination and a central coordinating agency to orchestrate government and private efforts;

There is a lot of data and statistics and an independent information network on street children. Currently available data are dispersed and out of date while data collection is often not continuous.” (Thailand IR, para. 267)



most marginalized groups of children in India. "The Committee recommends that the State Party establish mechanisms to ensure these children are provided with identity documents, nutrition, clothing and housing. Moreover, the State Party should ensure these children have access to health care; rehabilitation services for physical, sexual and substance abuse; services for reconciliation with families; education, including vocational and life-skills training; and access to legal aid. The Committee recommends that the State Party cooperate and coordinate its efforts with civil society in this regard." (India IRCO, Add.115, paras. 54 and 55. See also Peru IRCO, Add.8, para.12; Armenia IRCO, Add.119, paras. 42 and 43; Iran IRCO, Add.123, paras. 45 and 46; Kyrgyzstan IRCO, Add.127, paras. 49 and 50; Suriname IRCO, Add.130, para. 27; Colombia 2RCO, Add.137, paras. 40 and 42; Comoros IRCO, Add. 140, paras. 39 and 40; Palau IRCO, Add.149, paras. 38-41)

However, many such children do not, as is commonly believed, fall within the scope of article 20 because they are not in fact "deprived of their family environment". For example, a Namibian survey of 515 "street children" found that "Almost all of the children surveyed had a family to which they returned on a regular basis, and most came from families of five or more children. About half of the children came from single-parent families, most of these being households headed by mothers, who are often more vulnerable than men to unemployment..." (Namibia IR, paras. 190-192). In such cases, economic want has driven them on to the streets, rather than rejection or abuse within the family. Damage is sometimes done by State or non-governmental organization intervention into the lives of these children because it was assumed that any child found roaming the streets must be rescued by removal to a permanent alternative home.

Nonetheless, a significant proportion of children on city streets are there because they are orphaned (for example from conflict or famine or AIDS) or because they have been abandoned by their parents or because they have run away from physical, sexual or emotional abuse.

Today, most projects offering assistance to "street children" take a more considered and careful approach, looking both at the children's need to maintain relationships with their families and communities, and at the children's own sense of independence and self-reliance. Such projects increasingly advocate and support the principles of the Convention, which uphold children's autonomy as individuals and their civil rights (such as in articles 5, 12-16, 19, 29 and 32) and those which support the child's family

(articles 5, 9, 18, 26, 27 and 30). Projects tend to be based in the locality of the child's street existence, providing practical services while supporting the child's ability to control the pace of change and encouraging rehabilitation with their families or communities.

In addition to increasing these children's opportunities, States should take active measures to protect them from abuse:

"Noting that begging is an offence, the Committee is concerned that children who are picked up for this crime risk court proceedings, or placement in detention or orphanages."

"The Committee recommends to the State Party to repeal the legal provisions criminalizing vagrancy and begging." (Jordan 2RCO, Add.125, paras. 51 and 52)

"...the Committee recommends that the State Party ... provide the police services with training on children's rights so that the police can contribute to the protection of children from acts of violence or other abuse while on the street." (Burundi IRCO, Add.133, para. 70)

"...serious concern is expressed at allegations of rape, ill-treatment and torture, including murder for the purpose of 'social cleansing', of children living in the streets."

"The Committee recommends that the State Party expedite the adoption of a National Plan for the Care of Street Children and ensure that children living in the streets are provided with nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development. Moreover, the State Party should ensure that these children are provided with rehabilitation services for physical, sexual and substance abuse; protection from police brutality; and services for reconciliation with their families." (Guatemala 2RCO, Add. 154, paras. 54 and 55)

When considering solutions, due regard to be paid to "the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background"

This provision relates to article 7 (right to know and be cared for by parents, see page 119) and article 8 (preservation of the child's identity, see page 123). Unfortunately a number of countries have histories of violating this right, compulsorily removing children from indigenous or

minority groups and settling them with well-off childless parents. Though well-intentioned, such actions reveal a crude racism and have caused damage to many children and adults. It should be noted that this provision reflects the right of children of minority or indigenous backgrounds under article 30 generally to enjoy their culture, practice their religion and use their language (see page 453).

Continuity of upbringing implies continuity of contact, wherever possible, with parents, family and the wider community – achievable even when the child is adopted (see further discussion under article 21, page 299). Continuity of upbringing also implies finding a foster or adoptive home from the same cultural background, or ensuring that all or some members of the staff in an institution are from the same culture, and, preferably, that the institution itself is located in an appropriate community. The specifying of “linguistic background” is very important. Fluency in language is best – and often only – obtained during childhood, so every effort should be made to ensure that children learn their mother tongue even when placed with speakers of another language.

In regard to religion and culture, two caveats must be noted. First, the best interests of the child, in terms of article 3(1), may not be served by the continuity of religion or culture – for example if the child has been removed from parents because of harmful religious or cultural practices or if the child has run away from home because of a clash with parental beliefs or practices. Second, once children have sufficiently evolved capacity, their own rights to determine their religion, as well as their rights to freedom of expression and association, should be respected under articles 12 to 15.

Continuity of upbringing also implies that the State should take all measures to avoid multiple placements of children in its care. When children have suffered the trauma of losing their family they may present behavioural problems that could result in them being passed from one foster home to another, or in their spiralling downwards, through increasingly restrictive institutions, which could then lead to further behavioural problems. Care must be taken to avoid such disruption in children’s lives.



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 20, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 20 is relevant to the **departments of social welfare, education and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 20 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 20 likely to include the training of **social workers, adoption agency staff, staff of institutions, foster parents, teachers and medical personnel**)?

● Specific issues in implementing article 20

- ☐ Are parents provided with appropriate support to avoid the need to seek alternative care for the child?
- ☐ When children cannot be cared for by parents, are systematic efforts made to seek a placement with members of their wider family, with appropriate support where necessary?
- ☐ Where child-headed families occur, does the State provide the family with appropriate measures of support?
- ☐ Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?

How to use the checklists, *see page XVII*



- ☐ Are social services able to require assistance from health, education and other professionals in meeting the needs of children without families?
- ☐ Are those responsible for the placement of children without families appropriately trained?

Are the views of children obtained when

- ☐ alternative placements are being considered for them?
- ☐ alternative placements are chosen?
- ☐ alternative placements are being monitored?
- ☐ Are independent, child-friendly complaints systems available to protect children placed away from their family environment?
- ☐ Are foster parents fully investigated and authorized as appropriate before placement?
- ☐ Are foster parents recruited and encouraged to care for disabled children?
- ☐ Are foster parents trained to care for disabled children?
- ☐ Are foster placements regularly monitored?
- ☐ Are foster caregivers required to ascertain the views of the child in all matters affecting him or her and to give these views due weight?
- ☐ Does the State monitor the welfare of children fostered privately by parents?
- ☐ Are children placed in institutions only when necessary?
- ☐ Are institutional placements regularly monitored?
- ☐ Do all institutions caring for children have sufficient numbers of, and suitably qualified, staff?
- ☐ Are staff trained to secure children's rights under the Convention?
- ☐ Do such institutions respect children's human dignity, provide children with as normal a life as possible and take all measures to secure their integration in society?

For example, do such institutes prohibit

- ☐ the use of compulsory uniforms?
- ☐ child labour (which goes beyond normal domestic chores)?
- ☐ corporal punishment?
- ☐ restriction of liberty?
- ☐ the use of drugs for control purposes?
- ☐ deprivation of food?
- ☐ deprivation of sleep?
- ☐ deprivation of contact with families for control purposes?
- ☐ Are such institutions required to ascertain the views of the child in all matters affecting him or her and give these views due weight?

How to use the checklists, see page XVII



- ☐ Do all institutions, where possible, accommodate disabled children together with children without disabilities?
- ☐ Are changes in placements of children avoided if possible?
- ☐ Do projects for children living and/or working on the streets ensure that the children, where possible, maintain contact with their families and communities?

When choosing or supporting a placement, do the social-work authorities pay due regard to the desirability of continuity in the child's upbringing in relation to

- ☐ the child's ethnic background?
- ☐ the child's religious background?
- ☐ the child's cultural background?
- ☐ the child's linguistic background?

(for example, by maintaining contact with the child's family, friends and community or, where this is not possible, by making special arrangements.)

Reminder: The Convention is indivisible and its articles are interdependent. Article 20 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 20 include:

Article 3(2) and (3): State obligations to provide protection and care and to ensure consistent standards in all placements and services for children

Article 7: right to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

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

Article 18: parents having primary and joint responsibility with appropriate state support

Article 21: adoption

Article 22: refugee children

Article 25: periodic review of placement

Article 30: children of minorities or indigenous peoples

Adoption



Text of Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in 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 intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 21 addresses the rights of children who are adopted – in those countries which permit adoption – establishing the paramountcy of children's best interests in all adoption arrangements and detailing minimum requirements for adoption procedures. It states that intercountry

adoption is only to be considered if the child cannot be suitably placed in his or her own country. The need of all young children for a family, and for a sense of security and permanency in their relationships, is recognized in most parts of the world and is celebrated in the Convention's Preamble which asserts that

Summary

the family is “...the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” and that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Adoption as the permanent solution to meet this need is, however, more controversial.

The Convention on the Rights of the Child remains neutral about the desirability of adoption even within the child’s country of origin, though article 20 mentions it as one of the possible options for the care of children without families. It is clear that children’s psychological need for permanency and individual attachments can be met without the formality of adoption, but where it is used it should be properly regulated by the State to safeguard children’s rights. ■



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the ‘best interests of the child’ and ‘respect for the views of the child’ are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of...

(g) Adoption (art. 21)

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedure

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 16-18)

Guidelines for Periodic Reports

“V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

H. Adoption (art. 21)

Please indicate the measures adopted, including of a legislative, administrative or judicial nature, to ensure that, when the State recognizes and/or permits the system of adoption, the best interests of the child shall be the paramount consideration. Information should also be provided on:

The authorities which are competent to authorize the adoption of a child;

The applicable law and procedures and the pertinent and reliable information on the basis of which adoption is determined;

The child’s status concerning his or her parents, relatives and legal guardians necessary for adoption to be considered permissible;

The involvement of the persons concerned, the circumstances under which their informed consent is required and necessary counselling provided, including to allow for the consideration of the alternatives to and consequences of adoption, and the extent to which the participation of the child is ensured and his or her views are given due weight;

Existing safeguards to protect the child, including any monitoring mechanism put in place;

The effects of adoption on the rights of the child, particularly his or her civil rights, including the child's identity and the right of the child to know his or her biological parents.

In the case of intercountry adoption, please indicate the measures undertaken to ensure that:

Such a solution is only considered as an alternative means of care for the child if he or she 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;

The child involved in intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

Placement by intercountry adoption does not result in improper financial gain for those involved in it;

Appropriate mechanisms have been established to monitor the situation of the child, including following his or her placement through intercountry adoption, and to ensure that his or her best interests prevail as a paramount consideration.

Reports should also indicate:

Any bilateral or multilateral arrangements or agreements concluded by the State to promote the objectives of article 21 (for example, the Hague Convention of May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption);

Within this framework, the measures adopted to ensure that the placement of a child in another country is carried out by competent authorities or organs;

Relevant disaggregated data on the children involved in intercountry adoption, including by age, gender, status of the child, situation of the child's family of origin and of adoption, as well as country of origin and of adoption;

Progress achieved in the implementation of article 21, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 83-85. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 35, 160 and 165; for full text of *Guidelines*, see Appendix 3, page 674.)



States Parties which “recognize and/or permit the system of adoption”

There are those who believe that adoption is the best solution for children without families. For example, the delegate from the United States in the Working Group drafting the Convention proposed: “In cases where a child cannot be cared for by his parents or other members of his biological family, the competent authorities of States Parties shall take appropriate measures to facilitate permanent adoption of the child.” (E/1982/12/Add.1.C, pp. 56-59; Detrick, p. 299)

At the other end of the spectrum of opinion are those States which operate in accordance with Islamic law and so do not recognize adoption at all. Others report negative aspects of adoption. For example, there are also reports of “fake adoptions” to disguise the bonded labour of children (Report of the Working Group on Contemporary Forms of Slavery, Eighteenth session, Economic and Social

Council, E/CN.4/Sub.2/1993/30, p. 33. See also article 32, page 475). The Committee has expressed concern about abuse of adoption:

“The Committee further notes with concern the inadequacy of existing laws in protecting children who are ‘adopted’ – a situation which has led to abuses such as exploitation through domestic labour, particularly of girls. (Ghana IRCO, Add.73, paras. 18 and 38)

“The Committee is concerned at ... the potential misuse of intercountry adoption for purposes of trafficking, inter alia, for economic and sexual exploitation.” (Russian Federation 2RCO, Add.110, para. 43)

“The Committee joins the State Party in expressing concern at the practice of ‘fictitious’ care ... for children deprived of their parents, as a replacement for genuine adoption, which deprives these children of care and education.” (Democratic Republic of the Congo IRCO, Add.153, para. 44. See Democratic Republic of the Congo IR, para. 85)

Islamic law does not recognize the concept of an adoption which disguises the true parentage and



blood relationships of a child. Children without families are able to live in permanent forms of foster care under *kafalah* which means in most Islamic States that they may not take the family name or have rights of inheritance. Some countries, such as Lebanon, prohibit adoption for Muslims but permit it for non-Muslims (Lebanon IR, paras. 46 and 47). Notwithstanding the article's careful wording a number of States with Islamic populations entered a specific reservation to article 21, including Bangladesh, Brunei Darussalam, Egypt, Indonesia, Jordan, Kuwait, Maldives, the Republic of Korea and the Syrian Arab Republic (CRC/C/2/Rev.8). The Committee observed to Jordan:

"The Committee observes that the State Party's reservation to article 20 and 21 of the Convention is superfluous. It points out that article 20(3) of the Convention expressly recognizes kafalah of Islamic law as alternative care, and article 21 expressly refers to those States that 'recognize and/or permit' the system of adoption, which in any case does not apply to Jordan.

"The Committee recommends to the State Party to withdraw its reservation..." (Jordan 2RCO, Add.125, paras. 10 and 11)

Other countries have traditional forms of adoption which the State should ensure are consistent with the Convention. The Committee has encouraged Canada to withdraw its reservation to the provisions of article 21 "...to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada" (CRC/C/2/Rev.8, p. 16; Canada IRCO, Add.37, para. 10). It also encouraged the Marshall Islands to investigate its customary adoptions:

"The Committee is concerned ... at the absence of information and data about the practice of 'customary adoptions' by family members...

"Further, it encourages the State Party to undertake a study, including data disaggregated by gender, age and rural/urban area provenance, to analyze the phenomenon of 'customary adoptions' by family members with a view to understanding the scope and nature of this practice and adopting adequate policies and measures." (Marshall Islands IRCO, Add.139, paras. 40 and 41)

The best interests of the child shall be the paramount consideration

In adoption the best interests of the child must be "the paramount" consideration rather than simply "a primary" consideration as in article 3. The provision establishes that no other interests,

whether economic, political, state security or those of the adopters, should take precedence over, or be considered equal to, the child's. As Peru put it in its Second Report:

"a family is found for the child, not a child for the family" (Peru 2R, para. 179).

The paramountcy principle should be clearly stated in law. Any regulation that fetters the principle could lead to a breach of the Convention – for example inflexible rules about the adopters, such as the setting of age limits, or about the child, for example only permitting adoption in cases where the child has been legally declared abandoned. (For further discussion of "best interests" see article 3, page 41 and article 18, page 246).

"The child" is of course the child being proposed for adoption, but best interests consideration should not necessarily be limited to that child; other children may be affected by adoption procedures. Philippine law, for example, requires that "the child of the adoptive parents who is 10 years or older shall give his or her consent to the adoption" (Philippines IR, para. 52). An adoption considered to be contrary to the best interests of the other children within the family would be difficult to square with the principles of the Convention.

Countries considered to have too many adoptions have been the subject of Committee concern, but the Committee has also questioned the lack of domestic adoptions:

"It is the opinion of the Committee that further measures should be taken by the State Party to promote the possibilities for children, particularly those who have been abandoned, to grow up in a home-like environment through, inter alia, fostering and adoption." (China IRCO, Add.56, para. 38)

Adoption procedures can also give rise to forms of discrimination, for example in Grenada:

"The Committee is also concerned about the apparent gender bias in favour of girls in the adoption process... The Committee recommends that the State Party undertake a study to assess the situation and determine the impact of intercountry adoptions and to determine why girls are favoured over boys in the adoption process." (Grenada IRCO, Add.121, para. 19)

The Committee sees central monitoring of all forms of adoption by the State as essential if the best interests of children are to be secured:

"The Committee is concerned about the absence of national standards and statistics on ... adoption... the Committee is concerned

about vague adoption procedures and the absence of mechanisms to review, monitor and follow up adoptions.

"... the Committee encourages the State Party to establish a comprehensive national policy and guidelines governing ... adoption, and to establish a central monitoring mechanism in this regard." (Armenia IRCO, Add.119, paras. 30 and 31)

"The Committee recommends that the State Party establish a comprehensive national policy and guidelines governing foster care and adoption, including screening, and a central monitoring mechanism in this regard." (Kyrgyzstan IRCO, Add.127, para. 38. See also Tajikistan IRCO, Add.136, para. 33)

Adoption authorized "only by competent authorities ... in accordance with applicable law"

In all countries where adoption is allowed, the Committee has expected to see legislation regulating both its domestic and international forms.

For example,

"The Committee also suggests that the State Party review the present legislation on adoption, in the light of the principles and provisions of the Convention, notably those of its articles 20 and 21, so as to evaluate the effectiveness of national legislation in facilitating domestic legislation." (China IRCO, Add.56, para. 38)

"... the Committee is concerned at the absence of uniform adoption law in India and effective measures to monitor and follow up placement within the State Party and abroad.

"The Committee recommends the State Party to review the legislative framework of domestic and intercountry adoption." (India IRCO, Add.115, paras. 42 and 43)

"The Committee remains concerned at gaps in the State Party's domestic legislation on adoption and that existing adoption procedures are usually not respected and are reported to be subject to arbitrary decisions. Concern is also expressed at the prevalence of illegal informal adoption. The Committee is further concerned at the limited capacity properly to follow up cases of intercountry adoption, which constitute the majority of adoption cases.

"The Committee recommends that the State Party take further measures to revise its legislation and practices in the area of domestic and intercountry adoption..."

(Colombia 2RCO, Add.137, paras. 43 and 44. See also Sri Lanka IRCO, Add.40, paras. 17 and 35; Bulgaria IRCO, Add.66, para. 15; Myanmar IRCO, Add.69, para. 17)

"Competent authorities" covers the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered. Thus, both trained social workers and adjudicators should be involved in the process. The Committee recommended that, in relation to adoptions in Panama

"adequate training be provided to concerned professionals" (Panama IRCO, Add.68, para. 31).

Determination "on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary"

While the best interests of children are the paramount consideration in an adoption process, there is a presumption within the Convention that children's best interests are served by being with their parents wherever possible (articles 7 and 9) and that their parents have "primary responsibility" for their upbringing, a responsibility they must exercise within the framework of the child's best interests, his or her rights under the Convention and his or her evolving capacity (articles 5 and 18). An adoption can only occur if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility – any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children's and parents' rights under the Convention. The requirement for proper consent for adoption has arisen because of cases in which children have been wrongfully removed from their parents. The Committee expressed concern, for example, at the Hungarian practice of making an adoption placement before the child has been born:

"In light of the principles and provisions of the Convention, especially its articles 3, 7 and 21, the amendment to Act XV of 1990, which grants the parent the option of placing a child up for adoption before birth, is a matter of concern for the Committee.

"The Committee recommends that the State Party consider reviewing its legislation and practice relating to the possibility of placing a





child up for adoption before birth.” (Hungary IRCO, Add.87, paras. 17 and 33)

These safeguards do however mean that the “paramountcy” of children’s best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child’s best interests.

The Convention’s provisions mean that each potential adoption will require proper investigation with full reports by independent professionals to the authorities considering the adoption application. The question of what consents must be obtained is hedged here. “If required” leaves it up to domestic legislation – although any gross violation of either the child’s or a natural parent’s rights to family life would amount to a breach of this (see articles 7 and 9) and other human rights instruments. States should reconsider, for example, laws that do not permit fathers of children born outside marriage to have any potential rights in adoption procedures. Where consents are required, the Convention provides that these must be given “on the basis of such counselling as may be necessary”.

The child’s views

The child’s views are not explicitly mentioned in the requirements relating to consent, but proper consideration of them is undoubtedly implied, as well as required under article 12 (see page 173). Children’s ascertainable views must be central to any consideration of their “best interests”.

In addition to taking the child’s views into account, adoption legislation may also require that the child’s formal consent be obtained. Some countries report that ages are set above which the child’s consent is legally required for adoption (for example Nova Scotia, where consent to an adoption is needed from any child aged 12 or more (Canada IR, para. 1129), from any child aged 10 or more in Croatia (Croatia IR, para. 103) and aged 9 or more in Mongolia (Mongolia IR, paras. 135-139)). Another possibility is giving children the power to veto their own adoption. Adoption is never essential (the Islamic experience shows that permanency can be achieved without it) and is usually irrevocable. Consent to adoption therefore carries more risk, is a weightier decision, than vetoing it. Passively refraining from exercising a right of veto, rather than actively stating consent, is also less likely to place a burden of guilt on children in relation to their natural parents and complies with the principle of article 12 that children should be free to express their views, but should not feel forced to do so. It

is hard to imagine in what circumstances a child of any age should be adopted against his or her expressed wishes. Even if a very young infant objected, it would seem wise to accept his or her wishes and return to the subject at a later date.

The Hague Convention on Protection and Cooperation of Children in respect of Intercountry Adoption provides that such adoptions can only take place if the authorities of the State of origin “have ensured, having regard to the age and degree of maturity of the child, that he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required” and that “consideration has been given to the child’s wishes and opinions...” (article 4(d)). It also states that where consent is required, it must be given freely, without inducements (article 4(d)).

The Committee has emphasized the importance of the child’s right under article 12 to have his or her wishes considered in relation to adoption:

“The Committee recommends that the State Party ensure that its adoption procedures are in conformity with the provisions of the Convention, especially its articles 3, 12 and 21...” (Honduras IRCO, Add.24, para. 26)

“In the framework of the adoption process, due consideration should be given to the provisions of article 12 of the Convention.” (Mexico IRCO, Add.13, para. 18)

“...the Committee recommends that consideration be given to extending and broadening the involvement of children in decisions affecting them in the family and in social life, including in proceedings relating to family reunification and adoption.” (Germany IRCO, Add.43, para. 29)

“Intercountry adoption may be considered as an alternative means of child’s care under certain conditions”

The wording deliberately falls short of saying that countries must consider international adoption as one of the options of care for children without families, and, as discussed below (see opposite), must only be undertaken as a last resort.

The rising number of intercountry adoptions has been the cause of much concern. Children are a highly desirable commodity in countries where low birth rates and relaxed attitudes towards illegitimacy have restricted the supply of babies for adoption. Colombia, for example, reported to the Committee that many more Colombian chil-

dren are adopted by foreign couples than by Colombian couples, even though the latter are given priority over foreign applicants (Colombia IR, paras. 133-35 and p. 31). This has led an apparently increasing number of adoptions to be arranged on a commercial basis or by illicit means. Without very stringent regulation and supervision children can be trafficked for adoption or can be adopted without regard for their best interests; some children are even adopted for nefarious purposes, such as child prostitution or forms of slavery. This has been recognized in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see page 647). This requires States to take measures to criminalize as extraditable offence any sort of trafficking in children, including: “Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal legal instruments on adoption.” (articles 2, 3 and 5)

The Committee has frequently expressed concern about the phenomenon:

“The Committee expresses its grave concern over the information brought to its attention of alleged trafficking in intercountry adoptions in violation of the provisions and principles of the Convention. It is further concerned about the absence of a normative framework in the field of intercountry adoptions, namely in the light of articles 3, 12 and 21 of the Convention.” (Paraguay IRCO, Add.27, para. 11)

“The Committee notes with concern the information provided by the State Party that an illegal adoption network has been uncovered and that the mechanisms to prevent and combat such violations of children’s rights are insufficient and ineffective.” (Guatemala IRCO, Add.58, para. 21. See also Nicaragua IRCO, Add.36, para. 18; Ukraine IRCO, Add.42, para. 11)

Even when intercountry adoptions are regulated, the Committee has remained concerned – for example it expressed anxiety to Belarus, Costa Rica, Mexico and others about the number of international adoptions. The Committee encouraged the Danish Government, in the light of information it had received from Denmark about the poor outcome of international adoption

“to take steps to monitor more closely the situation of foreign children placed in adoptive families”. (Denmark IRCO, Add.33, para. 27. See also Sweden IRCO, Add.2, para. 13)

Argentina entered a reservation to paragraphs (b), (c), (d) and (e) of article 21, but not because it was unconcerned about international adoption. On the contrary it stated that these provisions do

not apply within its jurisdiction: “because, in its view, for the purpose of their implementation, a rigorous mechanism for the legal protection of the child in respect of international adoption must already be in place, in order to prevent the trafficking and sale of children” (CRC/C/2/Rev. 8, p. 13, Argentina IR, para. 62). The Committee was not satisfied with this argument and recommended that Argentina review the reservation with a view to withdrawing it (Argentina IRCO, Add.35, paras. 8 and 14).

Intercountry adoption only “if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin”

In other words, intercountry adoption is clearly viewed as a solution of last resort. This was spelt out to Mexico by the Committee:

“intercountry adoption should be considered in the light of article 21, namely as a measure of last resort” (Mexico IRCO, Add.13, para. 18).

States are thus under an obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her country of origin. This “last resort” provision is consonant with article 20(3) requiring due regard to be paid to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; with article 7, upholding the child’s rights to know and be cared for by parents, and with article 8, the child’s right to preserve identity. It is confirmed in the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which establishes the “subsidiarity principle” that an intercountry adoption should only take place “after possibilities for placement of the child within the State of origin have been given due consideration”.

Duty to “ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption”

Thus every international adoption must be authorized as being in the best interests of the child by competent authorities of the child’s State, on the basis of proper investigation and





information and with proper consents (with counselling, if necessary) having been obtained. While the Hague Convention lays down these ground rules and provides the details for inter-country adoption, it is, of course, up to each State to ensure that its adoption legislation, professional training and administrative mechanisms are in place. The Committee has urged any country not doing so to take immediate action, for example:

“The Committee recommends that the State Party introduce the measures necessary to monitor and supervise effectively the system of adoption of children in the light of article 21 of the Convention. It is also recommended that adequate training be provided to concerned professionals. In addition, it is recommended that the Government consider ratifying the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.” (Guatemala IRCO, Add.58, para. 34. See also Mongolia IRCO, Add. 48, para. 25; Armenia IRCO, Add.119, para. 31)

Inter-country adoption should not result in “improper financial gain”

Country reports and Committee observations highlight the widespread concern about the trafficking of children for adoption. While payments by adoptive couples may be made in good faith and without harm to the child, a system that puts a price on a child’s head is likely to encourage criminality, corruption and exploitation. Article 35 requires States Parties to take measures to prevent the sale of children for any purpose. Article 32 of the Hague Convention states:

States that have ratified the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption (as at December 2001)

Albania	Denmark	Panama
Australia	Ecuador	Peru
Austria	El Salvador	Philippines
Brazil	Finland	Poland
Burkina Faso	France	Romania
Canada	Germany	Slovakia
Chile	Israel	Slovenia
Colombia	Italy	Spain
Costa Rica	Mexico	Sri Lanka
Cyprus	Netherlands	Sweden
Czech Republic	Norway	Venezuela

“1. No one shall derive improper financial or other gain from an activity related to an inter-country adoption.

2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”

The Optional Protocol on the sale of children, child prostitution and child pornography (see page 647) obliges States Parties to criminalize any improper financial gain from the adoption of a child as an extraditable offence (articles 2, 3 and 5).

States should conclude “bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs”

The most important treaty for States to join as parties is now the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption (See Appendix 4, page 731). This was drafted to meet the need for detailed, legally binding international standards, for an agreed system of supervision and for channels of communications and effective relationships between the authorities in the countries of the adopted child and the adopters. It builds upon article 21 and the rest of the Convention on the Rights of the Child and reflects the provisions of the 1986 United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. The Hague Convention’s first objective is “to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law” (article 1a).

The Committee has systematically taken note of the signing of this Convention, taking pains to commend those countries that have become parties (see box) and strongly encouraging those that have not yet done so. It should be noted that most of the States that have become parties have significant numbers of inter-country adoptions.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 21, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 21 is relevant to the **departments of justice, social welfare and foreign affairs**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 21 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 21 likely to include the training of **social workers, judiciary, port and border control authorities, adoption agency staff and development of education for adoptive parents**)?

● Specific issues in implementing article 21

- ☐ Does the State recognize and/or permit a system of adoption of children?

If yes:

Does legislation and administration ensure that in all adoption proceedings (domestic, "customary" and intercountry)

- ☐ the best interests of the child are the paramount consideration?
- ☐ adoptions are authorized only by competent authorities?

- ☐ these authorities make their decisions on the basis of all pertinent and reliable information?
- ☐ Does this information include the ascertainable views of the child?
- ☐ Are the views of the child given due weight, having regard to age and maturity?
- ☐ Are the views and best interests of other children affected by a proposed adoption (such as the children of the prospective adopters) considered by the competent authorities?
- ☐ In this process is due regard paid to the child's right to know and be cared for by his or her parents?
- ☐ In this process is due regard paid to preservation of the child's identity and the desirability of continuity in the child's background and to the child's ethnic, religious, cultural and linguistic background?

Before agreeing to an adoption, must the authorities be satisfied that

- ☐ the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians?
- ☐ all consents required by law have been given by the persons concerned?
- ☐ Where consents are required by law, are the persons concerned provided with counselling?

Do children have a right to consent to an adoption

- ☐ at any age?
- ☐ at a particular age?
- ☐ according to age and maturity?
- ☐ Do all children have a right to veto their adoption?
- ☐ Are all adoption placements centrally monitored and periodically reviewed by the authorities?
- ☐ Are intercountry adoptions only permitted if the child cannot be placed in a foster or an adoptive family or cannot be cared for in any other suitable manner within the jurisdiction?
- ☐ Do all children involved in intercountry adoptions (whether leaving or entering the State) enjoy safeguards and standards equivalent to those regulating domestic adoptions?
- ☐ Do border controls monitor the entry and exit of babies and children travelling with adults who are not their parents?
- ☐ Is improper financial gain from intercountry adoption prohibited by law?
- ☐ Has the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption been ratified or acceded to?

How to use the checklists, see page XVII



- ☐ If yes, have all its provisions relating to law or administrative procedures been implemented?
- ☐ Has the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography been ratified?
 - ☐ If yes, have all its provisions been implemented?
- ☐ Have any other bilateral or multilateral treaties relating to adoption been concluded?

Reminder: The Convention is indivisible and its articles are interdependent. Article 21 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 21 include:

Article 5: parental guidance and child's evolving capacities

Article 7: child's right to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

Article 10: family reunification

Article 11: protection from illicit transfer and non-return

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

Article 18: parents having joint responsibility

Article 20: children deprived of their family environment

Article 25: periodic review of placement

Article 35: prevention of sale, trafficking and abduction

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



Refugee children



Text of Article 22

- 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*
- 2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

Article 22 addresses the rights of refugee and asylum-seeking children to appropriate protection and humanitarian assistance, including tracing family members or his or her previous legal or customary primary caregiver. The United Nations High Commissioner for Refugees (UNHCR) estimates that at the beginning of the 21st century some 10 million out of the world's 23.3 million refugees were children. Earlier drafts of the article emphasized that the refugee child “needs special protection and assistance”. This special focus dwindled, first because the

drafters recognized that the needs of these children would be met if the articles of the Convention on the Rights of the Child were properly applied to them and were fully implemented, and, second, in response to pressure from States that were cautious about according children special rights of residence or nationality, or which did not want to bear the cost of tracing family members (E/1982/12/Add.1, C, pp. 64-68; Detrick, pp. 320-329). It is important that the emphasis be retained on the fact that the refugee and asylum seeking child “needs special protection and assistance”. There have been a number





of UNHCR Executive Committee Conclusions to this effect, for example Executive Committee Conclusions No.47 (1987) on Refugee Children; No.59 (1989) on Refugee Children; No.84 (1997) on Refugee Children and Adolescents and No.88 (1999) on Protection of the Refugee's Family.

The article must be read in conjunction with article 9 (separation from parents only when necessary in the best interests of the child), article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), article 20 (protection of children without families), article 37 (deprivation of liberty a measure of last resort) and article 39 (recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse). It should also relate to the

guidelines of the United Nations High Commissioner for Refugees (UNHCR), notably the 1994 *Refugee children – Guidelines on Protection and Care*, which was, as the Committee on the Rights of the Child noted

“fully inspired by the Convention and shaped in the light of its general principles. This book undeniably shows that it is possible, effective and meaningful to use the Convention as a framework for action and to foster international cooperation.” (Report on the seventh session, November 1994, CRC/C/34, p. 61)

Since then UNHCR has also issued *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum* (1997).

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Children in situations of emergency

(i) Refugee children (art. 22);...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23.”

(CRC/C/5 paras. 23 and 24)

Guidelines for Periodic Reports

“VIII. SPECIAL PROTECTION MEASURES

A. Children in situations of emergency

1. Refugee children (art. 22)

Please provide information on the appropriate measures adopted pursuant to article 22, paragraph 1 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, whether unaccompanied or accompanied by his or her parents or by any other person, receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention and in other international human rights or humanitarian instruments to which the State is a party.

Reports should also indicate:

The international and domestic law and procedures applicable to the child who is considered a refugee or is seeking asylum;

Relevant international human rights and humanitarian instruments to which the State is a party, at the multilateral, regional and bilateral levels;

The domestic legislation and procedures in place, including to determine refugee status and ensure and protect the rights of asylum seeking and refugee children, as well as any safeguards established and remedies made available to the child;

The protection and humanitarian assistance provided for the child in the enjoyment of his or her rights set forth in the Convention, as well as in other relevant international instruments, including civil rights and freedoms and economic, social and cultural rights;

The measures adopted to ensure and protect the rights of the unaccompanied child or the child accompanied by his or her parents or by any other person, including in relation to temporary and long-term solutions, family tracing and family reunion;

The measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible;

The measures adopted to ensure appropriate dissemination of information and training on the rights of the child who is a refugee or is seeking asylum, particularly to the officials competent in the areas addressed by this article;

The number of asylum seeking and refugee children disaggregated inter alia by age, gender, country of origin, nationality, accompanied or unaccompanied;

The number of such children going to school and covered by health services;

The number of staff handling refugee children who attended training courses to understand the Convention on the Rights of the Child during the reporting period, classified by type of job.

Please also indicate the measures adopted pursuant to article 22, paragraph 2 to provide cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to:

Protect and assist the child;

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, please indicate the measures adopted to ensure that the child is 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 Convention.

Pursuant to this article, please also indicate any evaluation mechanism established to monitor the progress achieved in the implementation of the measures adopted, any difficulties encountered, as well as any priorities set for the future."

(CRC/C/58, paras. 119-122. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 25, 27, 35, 43, 49, 53, 74, and 87; for full text of *Guidelines*, see Appendix 3, page 674.)

"...a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures"

The Convention relating to the Status of Refugees 1951 (as amended by the 1967 Protocol relating to the Status of Refugees) provides the international definition of refugees. The defining conditions for adults and children are, broadly speaking, that refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being perse-

cuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, and they must be unable or unwilling to return because of this fear. A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return.

This definition has sometimes proved restrictive in its application and does not meet the needs of those having to flee a country because of famine or plague. As pressure on receiving countries mounts, so do the restrictions. For example, some States have adopted prejudgements about which countries are safe or unsafe



in terms of the definition. The Committee has nonetheless recommended ratification of the Convention and its Protocol to countries that have not ratified.

Internal displacement

Children and their families may be fleeing persecution or armed conflict within their own country and thus, technically, fall outside the scope of the definition of a refugee, though their experiences are often the same. Indeed, families may oscillate between being refugees and internally displaced persons as they cross and recross their State's frontier.

The Representative of the Secretary-General for Internally Displaced Persons issued *Guiding Principles on Internal Displacement* (1998) which addresses the situation of internally displaced people, asserting their right to be protected from arbitrary displacement – for example from ethnic cleansing, or from clearances arising from large-scale development projects not justified by compelling or overriding public interests. The Principles recognize the particular needs of children, including those separated from their families or his or her previous legal or customary primary caregiver, and require that their rights to basic services, education and civil liberties are secured.

The Committee has expressed concern about the plight of internally displaced children, referring States to the Principles. For example:

"...The Committee is disturbed ... by the massive numbers of people who been forcibly regrouped within the country and by the very poor, sometimes life-threatening conditions in displaced and regrouped persons camps, and the poor health and education services available to camp populations..."

"The Committee urges the State Party to make every effort to protect the civilian population from displacement and to implement its plans to end regroupment, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State Party to ensure that all displaced children and their families, including those who have been regrouped, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee also urges the State Party to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition, the Committee urges the State Party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees

in safety and in the context of a durable solution." (Burundi IRCO, Add.133, paras. 67 and 68)

"The Committee expresses its concern that the State Party has one of the largest internally displaced populations in the world, forced to leave their home towns owing to the high level of violence in certain regions of the country..."

"The Committee recommends that the State Party give the highest priority to the protection of the rights of children belonging to internally displaced groups. In this regard, the Committee endorses the recommendations made in the reports of the Special Representative of the Secretary-General on Internally Displaced Persons to the Commission on Human Rights on the situation in the State Party... and recommends that the State Party, in cooperation with the international community, urgently follow up these recommendations, in particular that on the incorporation of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) in the State Party's legislation and policies on internally displaced persons." (Colombia 2RCO, Add.137, paras. 60 and 61. See also Georgia IRCO, Add.124, para. 56)

"a child who is seeking refugee status"

Article 22 specifically includes within its scope children who are "seeking refugee status", which is essential to protect the needs of those children whose applications for asylum have not yet been determined. Where there are inadequate systems for establishing refugee status the situation of children can become dire:

"The Committee is deeply concerned about administrative measures which have allegedly made it impossible for applicants from certain regions to acquire refugee status. It is reported that once refugee status is denied the applicants, including children, no longer have a legal basis for remaining in the country and consequently become vulnerable to police harassment and to the loss of social welfare entitlements." (Federal Republic of Yugoslavia IRCO, Add.49, para. 20)

Accompanied children usually, but not always, assume their parents' refugee status. Problems particularly arise when unaccompanied or separated children have to prove refugee status – the difficulty of establishing this status may be compounded by their lack of maturity and the fact that the claim for refugee status may have arisen from circumstances relating to their families or relatives rather than directly to the children themselves. The UNHCR *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, (1997) and *Refugee*

Children – Guidelines on Protection and Care (1994) detail essential safeguards for the determination of the status of such children (see box page 311) and stress that the interviews and hearings should be conducted in child-friendly environments and that there should be access to appeal. A guardian or adviser who is appointed to ensure that all decisions taken are in the child's best interests should assist unaccompanied and separated children. The Committee has supported this advice:

"Information on children's rights should be made available to all refugee children in their own language." (Portugal IRCO, Add.45, para. 21)

"Procedures should be developed in cooperation with UNHCR in order to facilitate family reunification as well as to appoint legal representatives for unaccompanied children and to apply, when relevant, child friendly interview techniques." (Panama IRCO, Add.68, para. 34)

"...the Committee...recommends that the State Party review its procedures for considering applications for asylum from children, whether accompanied or unaccompanied, to ensure that children are provided with sufficient opportunities to participate in the proceedings and to express their concerns. Recognizing further the valuable contribution that can be made by the guardian mechanism developed by the State Party, the Committee recommends that additional efforts be made to implement the mechanism and to ensure that it functions as intended, including through the provision of appropriate training to guardians..."

"The Committee recommends that the State Party examine the reasons for delays in the procedures for processing applications and for the settlement of children, with a view to shortening them..." (Norway 2RCO, Add.126, paras. 49 and 50)

"The Committee encourages the State Party to examine the reasons for the delays in the procedures for processing asylum applications and for the settlement of children, with a view to shortening them."

"The Committee is concerned that unaccompanied minors applying for asylum are interviewed in the same way as adults..."

"The Committee recommends that the State Party ensure adequate resources for the training of the officials who receive refugee children, in particular in child-interviewing techniques, and of the representatives of unaccompanied minors applying for asylum..." (Finland 2RCO, Add.132, paras. 38, 51 and 52)

Refugee child's rights to "receive appropriate protection and humanitarian assistance" in relation to this Convention and any other ratified international treaty

Refugee children are among the most vulnerable groups in the world – for example, UNHCR points out that they are disproportionately likely to be victims of sexual abuse or military recruitment, and the Committee has taken up these issues with reporting States. Whatever the pressure on the receiving State its legal and moral obligations to protect these children are unarguable.

Detention of children

Because some countries fear being besieged by "economic migrants", asylum-seekers may find themselves in detention while their claim to refugee status is determined. Under the Convention the detention of refugee children should only be used as "a measure of last resort and for the shortest appropriate period of time" (article 37(b)). The decision to detain them should be subject both to the provisions of the Convention on the Rights of the Child and to the "Beijing Rules" (United Nations Standard Minimum Rules for the Administration of Juvenile Justice); similarly, the conditions of their detention should conform to those of the Convention (article 37, page 552 and article 39, page 585) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The Committee expressed concern to Austria:

"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 IRCO, Add.98, para. 27)

And suggested to Sweden:

"...that consideration be given to providing alternatives to the incarceration of children under the Aliens Act..." (Sweden IRCO, Add.2, para. 12. See also Guinea IRCO, Add.100, para. 30)

The Committee also deplored the practice in Kyrgyzstan of requiring asylum-seekers to pay





The special needs of adolescent refugees

UNHCR points out that: “The needs of young children are usually evident as adequate nutrition, health care and support are essential for mere survival. The needs of older children, and particularly those of adolescents who are mid-way between childhood and full maturity, may be less visible but are of equal importance...”

“Unaccompanied and separated adolescents may find themselves in situations of great responsibility for themselves and others. They may be difficult to place in foster families, and, moreover, may be part of child-headed households assuming responsibility for younger children. Access to post-primary education, vocational training and income-generating opportunities are the key means of supporting the rights and capacities of adolescents to develop life skills and become self-sufficient. Examples of such activities are the vocational skills training programmes in Azerbaijan, the small business management projects in Burkina Faso and the assistance programme for returnees in Burundi under which returning adolescents are given a plot of land, a house kit and are encouraged to build a house. In Myanmar, special assistance is given to unaccompanied and separated children to enable them to become self sufficient.”

(From Summary Note on UNHCR’s Strategy and Activities concerning Refugee Children and Adolescents, September 2000)

the costs of their detention (Kyrgyzstan IRCO, Add.127, para. 54).

“States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental or non-governmental organizations cooperating with the United Nations”

During the drafting of article 22, some delegates to the Working Group were unhappy with the idea that their countries might be obliged to

cooperate with non-governmental or intergovernmental organizations, so the words “as they consider appropriate” were added to clarify the discretionary nature of that cooperation. The requirement that IGOs and NGOs had to be “working in cooperation with the United Nations” was made because, as some representatives pointed out, terrorist organizations were technically NGOs – although others were concerned because some valid NGOs did not work with the United Nations (E/CN.4/1989/48, pp. 63-66; Detrick, p. 325).

The *Manual on Human Rights Reporting*, 1997, comments: “International action is naturally also required to ensure the implementation of article 22 and generally the enjoyment of their fundamental rights by children who are refugees or seeking refugee status. Paragraph 2 addresses this reality in detail, stressing the importance of cooperation with United Nations bodies, intergovernmental organizations and non-governmental organizations cooperating with the United Nations. Their combined action is in fact essential to protect and assist the child, particularly when there is a need to trace the parents or other members of the child’s family with a view to promote family reunification.” (*Manual*, p. 471)

The unique and important work of the United Nations High Commissioner for Refugees (UNHCR) was stressed at all stages of drafting the Convention. The role of the UNHCR, established by the General Assembly in 1949, is to provide international protection to refugees under the auspices of the United Nations and, together with governments, to seek durable solutions to their plight and provide them with material assistance.

The 2000 *Summary Note on UNHCR’s Strategy and Activities concerning Refugee Children and Adolescents* highlights the special needs of adolescents as well as of children and prioritizes key areas for action: separation, sexual exploitation, military recruitment and education.

The value of UNHCR’s work in relation to child refugees is frequently emphasized by the Committee to States Parties.

“...to trace parents or other members of the family of any refugee child in order to obtain information necessary for reunification”

UNHCR’s primary objective for refugee children, alongside ensuring their protection and

Unaccompanied Children Seeking Asylum – UNHCR Guidelines

“Access to the territory

Because of their vulnerability, unaccompanied children seeking asylum should not be refused access to the territory.

Identification and initial action

Authorities at ports of entry should take necessary measures to ensure that unaccompanied children seeking admission to the territory are identified as such promptly and on a priority basis.

Unaccompanied children should be registered through interviews. Effective documentation of the child will help to ensure that subsequent actions are taken in the ‘best interests’ of the child.

A guardian or adviser should be appointed as soon as the unaccompanied child is identified. The guardian or adviser should have the necessary expertise in the field of child-caring, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met.

Initial interviews of unaccompanied children to collect biodata and social history information should be done immediately after arrival and in an age-appropriate manner.

It is desirable that all interviews with unaccompanied children be carried out by professionally qualified persons, specially trained in refugee and children’s issues. Insofar as possible, interpreters should also be specially trained persons.

In all cases, the views and wishes of the child should be elicited and considered.

Access to asylum procedures

Children should always have access to asylum procedures, regardless of their age.

Interim care and protection of children seeking asylum

Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.

Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.

Refugee status determination

Considering their vulnerability and special needs, it is essential that children’s refugee status applications be given priority and that every effort be made to reach a decision promptly and fairly.

Not being legally independent, an asylum-seeking child should be represented by an adult who is familiar with the child’s background and who would protect his/her interests.

Interviews should be conducted by specially qualified and trained officials.

Appeals should be processed as expeditiously as possible.

In the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to the circumstances such as the child’s stage of development, his/her possibly limited knowledge of the conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability.”

(Extracts from the Executive Summary of UNHCR *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, 1997)



healthy development, is: “To achieve durable solutions which are appropriate to the immediate and long-term developmental needs of refugee children”.

Preserving and restoring the child’s family unity is of the highest priority in the search for durable solutions. The principles of article 10 should

apply to family reunification of refugee children; in particular that applications be dealt with in “a positive, humane and expeditious manner”. This point has been made by the Committee to a number of countries, for example to Denmark:

“The Committee is also concerned about the application of the law and policy concerning children seeking asylum, particularly with



regard to methods of interviewing children, including unaccompanied minors, and to ensuring that applications for the purpose of family reunification are dealt with in a positive, humane and expeditious manner.”

(Denmark IRCO, Add.33, para. 13. See also Spain IRCO, Add.28, para. 22; Canada IRCO, Add.37, para. 24; Belgium IRCO, Add.38, para. 19; Germany IRCO, Add.43, para. 19)

Germany was pressed heavily on its measures relating to family reunion (see article 10, page 149), and the Committee drew the attention of Yugoslavia to

“the constraints that are reported to be hampering the reunification of unaccompanied refugee children with their families...” (Federal Republic of Yugoslavia IRCO, Add.49, para. 19)

Registration is the first step in tracing family members of refugees. It is essential that a receiving State at the first possible opportunity registers unaccompanied and separated children. The International Committee of the Red Cross coordinates such efforts, but the success of tracing largely depends on the energy and commitment of the State receiving the child. The first task must be to set up comprehensive registration and tracing systems:

“... The Committee recommends that the State Party develop a legislative and administrative framework to guarantee and facilitate family reunification...” (South Africa IRCO, Add.122, para. 35)

“The Committee recommends that the State Party... set up a central system of registration and monitoring of refugees in order to provide accurate statistics, and clarify the status of refugees ...” (Islamic Republic of Iran IRCO, Add.123, para 50. See also Pakistan IRCO, Add.18, para. 33; Zimbabwe IRCO, Add.55, para.13)

Many refugee children will carry no documentation and speed is essential in determining their asylum claims and in assisting family reunification:

“... The Committee recommends that the State Party undertake effective public education campaigns to inform asylum-seekers, especially those newly arrived, about asylum procedures and the importance of children having documentation; provide practical assistance in obtaining birth certificates for every child and adequate procedures for the replacement of lost identity and travel documentation; and establish a system allowing refugee and asylum-seeking children to have their own documentation. The Committee recommends that the State Party ensure that the payment

of fines for non-possession of documentation should be made only to a court or officials not involved in the citation; issuance of receipts be mandatory...” (Kyrgyzstan IRCO, Add.127, para. 54. See also Tajikistan IRCO, Add.136, para. 45)

It should, however, be noted that family reunification should not be used as a justification for acting against the child’s best interests. Children may not wish to be reunited with their family or the family may reject them (for example if they have to return to the country of origin). As article 9 provides, separation from families may exceptionally be necessary in the child’s best interests. The Human Rights Committee states in a General Comment: “In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States Parties should indicate in their reports what measures they have adopted to that end.” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 140)

Even action to trace family members may inadvertently endanger children or their families by inappropriately breaching confidentiality. For example, the Committee raised concerns about a hazardous practice of Spain:

“The Committee is worried about one aspect of the treatment of unaccompanied minors seeking refugee status which may contradict the principle that each case be dealt with on an individual basis and on its own merits. The practice of automatically informing the authorities of their country of origin may lead to their persecution, or the persecution of their relatives, for political reasons.” (Spain IRCO, Add.28, para. 9)

Social work support may be needed when family reunion is achieved. Family members may not have seen each other for long periods and may have experienced very traumatizing events in the interim.

“In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason”

This provision underlines the fact that refugee and asylum-seeking children are entitled to be treated the same as other children deprived of

their family environment. Article 20 provides that such children are “entitled to special protection and assistance” and should be provided with alternative care, preferably family-based, if no family members are able to look after them (see page 279). Unaccompanied and separated refugee children are, by definition, “temporarily deprived of their family environment” and States should ensure that appropriate arrangements are in place to ensure that their needs are met (see box, page 311).

The needs of refugee children are extensive, including ensuring that they are in safe and habitable environments and accommodated wherever possible with family and community, that their cultural and linguistic backgrounds are respected, that they have access to education and that their emotional needs are recognized, including responding to any abuse that they may have suffered. The general principles of article 2 (non-discrimination) and article 12 (respect for the views of the child) should always be taken into account. The UNHCR *Refugee Children – Guidelines on Protection and Care* provides much practical advice on these matters.

Mass numbers of refugees clearly pose great challenges to receiving States. The Committee has taken pains to give credit where it is due, both to rich countries, such as Germany and Canada, for accepting large numbers of refugees, and to poorer countries who have responded humanely to crises in bordering countries, often at great cost to themselves. For example the efforts of Georgia, Guatemala, Guinea, Jordan, Pakistan and the Sudan were commended by the Committee, (though the commendation is usually accompanied by recommendations for improvement).

Non-discrimination

Article 22 covers both children with refugee status and children seeking it, but in any event the Convention’s provisions cover **all** children within the country’s jurisdiction (article 2), so even those children who have been refused refugee status are still protected as long as they remain in the country. The Committee told Belgium that it was

“particularly concerned that unaccompanied minors who have had their asylum request rejected, but who can remain in the country until they are 18 years old, may be deprived of an identity and denied the full enjoyment of their rights, including health care and education. Such a situation, in the view of the Committee, raises concern as to its compatibility with articles 2 and 3 of the Convention.” (Belgium IRCO, Add.38, para. 9)

The point was also raised with Denmark, the Committee commenting that

“...all children who have their asylum requests rejected but who remained in the country have their rights to health, care or education provided de facto but not de jure. It is the view of the Committee that this situation is not fully compatible with the provisions and principles of articles 2 and 3 of the Convention...”

“With regard to the situation of refugee children and children seeking asylum, the Committee suggests that the State Party consider reviewing its Alien Act as regards its compatibility with the provisions and principles of the Convention ... with regard to the provision of health and education services to children in asylum-seeking situations, the Committee wishes to draw attention to the provisions of article 2 of the Convention which state, inter alia, that ‘States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction.’” (Denmark IRCO, Add.33, paras. 14 and 30. See also Sudan IRCO, Add.10, para. 24; Sri Lanka IRCO, Add.40, paras. 20 and 38; Federal Republic of Yugoslavia IRCO, Add.49, para. 21; New Zealand IRCO, Add.71, paras. 20 and 32; Ghana IRCO, Add.73, paras. 23 and 44; Norway 2RCO, Add.126, paras. 48 and 49)

Discrimination can occur because States are devolving increasing power and responsibilities to local administration, which can lead to variations in services to children. While such variations are an inevitable product of decentralization, States should not permit local governments to violate children’s human rights under the Convention. The Committee expressed concern about this geographical form of discrimination in relation to refugee children in Finland:

“...It... appears that education for refugee children in their languages is available only in those municipalities which provide for sufficient resources.

“The Committee... encourages the State Party to consider measures through which asylum-seeking and refugee children can be granted equal access to the same standard of services, in particular education, irrespective of who they are and where they live.” (Finland 2RCO, Add.132 paras. 51 and 52)

Nationality

Article 7 provides that all children are entitled to the “right to acquire a nationality” and States Parties are particularly reminded of the importance of this “where the child would otherwise be stateless” (article 7, see page 114). The UNHCR Guidelines comments: “Statelessness is often caused by States’ deliberate policies not to confer nationality to children born to refugees.





It may also be caused by the existence of conflicting laws regarding nationality ... All refugee children in the country of asylum must be considered as having, or being able to acquire, including through naturalization, an effective nationality” (UNHCR *Refugee Children – Guidelines on Protection and Care*, 1994, pp. 104 and 106).

The Committee on the Rights of the Child’s *Guidelines for Periodic Reports* asks: “Please provide information on the measures adopted pursuant to article 7, paragraph 2, to ensure the child’s right to acquire a nationality, in particular where the child would otherwise be stateless. Reference should also be made to the implementation of this right in relation to children born out of wedlock, and asylum-seeking and refugee children.” (para. 53)

The Committee has expressed concern, for example, over the fact that in India there

“exists the potential for children born of refugee parents to become stateless”
(India IRCO, Add.115, paras. 61 and 62)

and at the housing registration requirements for refugees in Armenia acting as a barrier to their naturalization (Armenia IRCO, Add.119, para. 47).

Appropriate education, health and social services

Refugee children must obviously be provided with the basic essentials for survival, and the Committee has expressed concern at any evidence that this is not the case. For example:

“The Committee is concerned at the situation of some refugee children who are obliged to beg for food and money on city streets.
“Noting the State Party’s considerable efforts to welcome refugees from neighbouring countries, the Committee recommends that the State Party continue to assist child refugees and their families and to maintain its cooperation with UNHCR, making particular efforts to assist refugee children who are living

or working on the streets.” (Central African Republic IRCO, Add. 138, paras. 74 and 75)

Ideally, however, refugees should not be dependent on government or charitable aid. The box on page 310 describes innovative programmes seeking to enable adolescent refugees to become self-sufficient. The Committee signified its concern to the Islamic Republic of Iran and to Jordan about their employment policies over issuance of work permits which

“affect the capacity of refugee families ... to support themselves”. (Islamic Republic of Iran IRCO, Add.123, para. 50. See also Jordan 2RCO, Add.125, para. 56)

The social inclusion of refugee children should also be an integral part of these services. This implies inclusion of these children in mainstream schools, and, where necessary, therapy for their inevitably traumatic experiences. For example:

“While noting the efforts to deal with unaccompanied asylum-seeking minors, the Committee is concerned that they may need to receive increased attention. The Committee recommends that the State Party strengthen measures so as to provide immediate counselling and prompt and full access to education and other services for refugee and asylum-seeking children. Furthermore, the Committee recommends that the State Party take effective measures for the integration of these children into its society.” (Netherlands IRCO, Add.114, para. 23)

“The Committee ... recommends that the State Party make further efforts to ensure the rapid integration of children into the normal school system....

“The Committee recommends that the State Party pursue its plans to extend the current available psychological assistance to a wider number of children and their parents, and to ensure that every effort is made to identify children who require such help, upon their arrival in the State Party...” (Norway 2RCO, Add.126, paras. 50 and 52)

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 22, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 22 is relevant to the **departments of justice, foreign affairs, home affairs, social welfare, health, social security and education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 22 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 22 likely to include the training of **social workers, teachers, port and border control officers, lawyers, interpreters, child development experts, mental health personnel and child advocates**)?

● Specific issues in implementing article 22

- ☐ Has the State ratified the Convention relating to the Status of Refugees (1951) as amended by the Protocol relating to the Status of Refugees (1967)?
- ☐ Has the State ratified the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961)?
- ☐ Are procedures in place to determine the refugee status of children?

- ☐ Do the procedures for determining refugee status take into account the special needs and rights of children, particularly when the child is unaccompanied or separated from his or her previous legal or customary primary caregiver?
- ☐ Are the interviews and hearings conducted in a child-friendly environment?
- ☐ Are the child's views heard or represented in these proceedings?

Are unaccompanied or separated children seeking asylum

- ☐ provided with legal representation?
- ☐ provided with professional interpreters?
- ☐ provided with decision makers experienced in child development?
- ☐ given the benefit of the doubt in relation to their claim for refugee status?
- ☐ Are applications by child refugees and/or their parents for the purpose of family reunion treated in a positive, humane and expeditious manner?
- ☐ Are unaccompanied or separated children who are refused refugee status allowed to remain in the receiving country when to do so would be in their best interests?
- ☐ Are child refugees or children seeking refugee status given special assistance and protection appropriate to all their needs and in accordance with their rights under the Convention?
- ☐ Are children who have been refused refugee status but are nonetheless permitted to stay in the country entitled to the same assistance and facilities on the same basis as children with accredited status?
- ☐ Are such children informed of these rights in their own language?
- ☐ Are such children only deprived of their liberty as a measure of last resort and for the shortest appropriate period of time?
- ☐ Are they able to challenge such deprivation of liberty in a fair hearing?
- ☐ Are the conditions of detention humane and conducive to the health, self-respect, dignity and social integration of the child?

Are refugee and asylum seeking children

- ☐ accommodated in safe and habitable environments, wherever possible with their family?
- ☐ in receipt of education which recognizes their culture, language and need for social integration?
- ☐ provided with appropriate support and rehabilitative care for any traumas they may have suffered?
- ☐ in receipt of all necessary health care?
- ☐ Are the particular needs of adolescent refugees recognized (for example to develop skills which will allow them to become self-sufficient)?

How to use the checklists, see page XVII



- ☐ Does the State cooperate with non-governmental organizations or intergovernmental organizations acting in association with the United Nations in respect of refugee and asylum-seeking children and in particular with the United Nations High Commissioner for Refugees and the International Committee of the Red Cross?
- ☐ Are all efforts made to trace family members of such children?
- ☐ Do such efforts ensure that the child and the child's family members are not endangered?

Reminder: The Convention is indivisible and its articles are interdependent. Article 22 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 article 22 include:

Article 7: child's right to nationality and to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

Article 10: international family reunification

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

Article 20: children deprived of their family environment

Article 21: adoption

Article 30: children of minorities or indigenous peoples

Article 37: deprivation of liberty as a last resort

Article 38: children affected by armed conflict

Article 39: rehabilitative care for child victims

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



Rights of disabled children



Text of Article 23

- 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*
- 2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*
- 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*
- 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.*

Summary



The inclusion in the Convention of a specific article on the rights of “the disabled child” and the inclusion of disability as a specific ground for protection against discrimination under article 2 reflects growing understanding and acknowledgement of the links between disability and human rights.

Under article 2, States are required to ensure and respect all the rights set forth in the Convention on the Rights of the Child to disabled children within their jurisdiction. Article 23 provides further guidance on realizing the rights of disabled children. In its overall comments on implementation, the Committee has frequently underlined the importance of respecting the child as a subject of rights. Article 23 reemphasizes this from the perspective of the disabled child, who should be provided with conditions for living that “promote self-reliance” and facilitate “active participation in the community”. Paragraphs 2 and 3 set out the right of the disabled child to “special care”, again stressing that assistance should be designed to ensure “effective access” to various

services, “in a manner conducive to the child’s achieving the fullest possible social integration and individual development...”. Paragraph 4 promotes international cooperation to improve the capabilities and skills of States Parties. No reservations or declarations have been made with reference to article 23 by States Parties.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly in 1993 (resolution 48/96), is the first detailed instrument reaffirming rights for all disabled people. It refers in its Preamble, to 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”. The Committee on the Rights of the Child urges States Parties to comply with the Standard Rules. It held a General Discussion on “The rights of children with disabilities” in 1997 and adopted detailed recommendations.

United Nations estimates suggest there are 500 million disabled people worldwide. ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“General principles

Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of:

(a) Non-discrimination (article 2). [‘Disability’ is included as a specific ground for discrimination in article 2]

...

In addition, States Parties are encouraged to provide relevant information on the application of these principles in the implementation of articles listed elsewhere in these guidelines.

Basic health and welfare

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

...

(b) Disabled children (art. 23);

...”

(CRC/C/5, paras. 13, 14 and 19)

Guidelines for Periodic Reports

“III. GENERAL PRINCIPLES

A. Non-discrimination (art. 2)

Reports should indicate whether the principle of non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions. Reports should further indicate the measures adopted to ensure the rights set forth in the Convention to each child under the jurisdiction of the State without discrimination of any kind, including non-nationals, refugees and asylum-seekers.

Information should be provided on steps taken to ensure that discrimination is prevented and combated, both in law and practice, including discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his/her parents or legal guardians.

Please indicate the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers, and children who are living and/or working on the streets.



VI. BASIC HEALTH AND WELFARE

A. Disabled children (art. 23)

Please provide information on:

The situation of the mentally or physically disabled child and the measures taken to ensure:

The child's enjoyment of a full and decent life, in conditions which ensure the child's dignity and self-reliance;

The child's enjoyment of his or her rights without discrimination of any kind and the prevention and elimination of discriminatory attitudes against him or her;

The promotion of the child's active participation in the community;

The child's effective access to education, training, health care and 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;

The consideration given to the inclusion of disabled children together with children without disabilities in institutions, services and facilities, including within the education system;

The child's right to special care and the steps taken to ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance appropriate to the child's condition and to the circumstances of the parents or others caring for the child;

That, whenever possible, assistance is provided free of charge, taking into account the financial resources of the parents or others caring for the child;

The measures taken to ensure an effective evaluation of the situation of disabled children, including the development of a system of identification and tracking of disabled children, the establishment of any appropriate monitoring mechanism, the assessment of progress and of difficulties encountered, as well as any targets set for the future;

The measures taken to ensure adequate training, including specialized training, for those responsible for the care of disabled children, including at the family and community levels and within relevant institutions;

The measures taken to promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of the medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services. An indication should be given of the measures taken with the aim of enabling States Parties to the Convention to improve their capabilities and skills and to widen their experience in these areas, and the consideration given to the particular needs of developing countries;

The children concerned, including by type of disability, the coverage of the assistance provided, programmes and services made available, including in the fields of education, training, care, rehabilitation, employment and recreation, the financial and other resources allocated, and other relevant information, disaggregated inter alia by gender, age, rural/urban area, and social and ethnic origin."

(CRC/C/58, paras. 25-27 and 92. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 86-87, 108; for full text of *Guidelines*, see Appendix 3, page 674.)



General Discussion on “The rights of children with disabilities”

In October 1997 the Committee on the Rights of the Child held a General Discussion on “The rights of children with disabilities”, from which arose detailed recommendations. The Committee decided to constitute a working group to follow these up (for details including recommendations, see below).

Since the General Discussion day the Committee has consistently focused on the situation of disabled children in its examination of States Parties’ reports and drawn the attention of States to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96; see Appendix 4, page 735) and to its own recommendations. It has placed a particular emphasis on the importance of including disabled children in the mainstream education system. For example:

“While aware of the State Party’s efforts to integrate children with disabilities into formal education and into regular recreation programmes, the Committee remains concerned that children with disabilities

remain excluded from many such activities. With regard to children with disabilities requiring additional facilities, the Committee is concerned by the quality of educational, health and other facilities available, inter alia, facilities providing access to schools.

“In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee’s recommendations adopted at its Day of General Discussion on the Rights of Children with Disabilities (CRC/C/69), the Committee recommends that the State Party make further efforts to integrate children with disabilities into educational and recreational programmes currently used by children without disabilities. With particular reference to article 23 of the Convention, the Committee further recommends that the State Party continue with its programmes to improve the physical access of children with disabilities to public service buildings, including schools, review the facilities and assistance available to children with disabilities and in need of special services, and improve these services in accordance with the provisions and spirit of the Convention.” (The Former Yugoslav Republic of Macedonia IRCO, Add.118, paras. 33 and 34)

Recommendations of the Committee on the Rights of the Child’s General Discussion on “The rights of children with disabilities”

On the basis of the discussions on the various issues, the following recommendations were formulated by the Chairperson of the Committee following the General Discussion held on 6 October 1997:

- “(a) In its examination of States Parties reports, the Committee should commit itself to highlighting the situation of disabled children and the need for concrete measures to ensure recognition of their rights, in particular the right to life, survival and development, the right to social inclusion and to participation; it should also emphasize that adequate monitoring of the situation of disabled children in all States must be undertaken and encourage moves to promote the collection of statistics and other information to enable constructive comparisons between regions and States;
- (b) The Committee should consider the possibility of drafting a general comment on disabled children;
- (c) The various bodies providing information to the Committee in the course of the reporting process should ensure that the information they provide includes disabled children;
- (d) States should review and amend laws affecting disabled children which are not compatible with the principles and provisions of the Convention, for example legislation
 - (i) which denies disabled children an equal right to life, survival and development (including – in those States which allow abortion – discriminatory laws on abortion affecting disabled children, and discriminatory access to health services);
 - (ii) which denies disabled children the right to education;
 - (iii) which compulsorily segregates disabled children in separate institutions for care, treatment or education;

- (e) States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention, including infanticide, traditional practices prejudicial to health and development, superstition, perception of disability as a tragedy;
- (f) In view of the appalling impact of armed conflict, which disables hundreds of thousands of children, States should be encouraged to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction, due to be opened for signature in Ottawa in December 1997;
- (g) The Committee should promote the Standard Rules on the Equalization of Opportunities for Persons with Disabilities as being relevant for full implementation of the Convention on the Rights of the Child, and strengthen its cooperation with the Special Rapporteur on Disabilities and his panel of experts;
- (h) The Committee, in cooperation with UNESCO, UNICEF and other relevant agencies, should ensure that inclusive education is included on the agendas of meetings, conferences and seminars as an integral part of debates concerning education;
- (i) Relevant agencies should be encouraged to develop programmes which promote alternatives to institutionalization and to develop and promote strategies to deinstitutionalize children;
- (j) The rights and interests of disabled children should be included on the agenda of multi- and bilateral agencies, development agencies, donor agencies, funding organizations such as the World Bank and regional banks, as well as technical cooperation agencies;
- (k) Research into the provision of statistics and empirical evidence should be promoted with a view to:
 - (i) promoting awareness of the extent to which the right to life of disabled children is denied;
 - (ii) challenging the widespread existence of superstition, prejudice, social stigma and denial of access to education in relation to disabled children;
 - (iii) challenging the argument of 'cost-effectiveness' used to marginalize disabled children and evaluating the costs of exclusion and lost opportunities;
 - (iv) bringing the issue to prominence in the process of drafting and adopting conventions on bio-ethics;
- (l) Disabled children should be consulted, involved in decision-making and given greater control over their lives; existing good practices should be publicized and shared, and appropriate training materials devised;
- (m) Governments should be encouraged to make these materials available at the community level in appropriate forms for children and disabled people; this could potentially be undertaken by one of the development agencies such as the Swedish Organization of Handicapped International Aid Foundation or Save the Children, in collaboration with some of the disabled peoples' organizations;
- (n) Training materials on promoting the participation of disabled children should be produced. The UNICEF International Child Development Centre (Innocenti Centre) should be requested to produce an edition in its series of information digests on the subject of inclusion, as its contribution to the issues raised during the general discussion.

In view of the various contributions made and the importance of the issues considered, the Committee felt that there was a need to ensure follow-up to the general discussion. It was decided to set up a working group on the rights of children with disabilities including members of the Committee, representatives of relevant United Nations bodies and agencies and non-governmental organizations of disabled people, including disabled children, to consider further the various recommendations made and elaborate a plan of action to facilitate the concrete implementation of the various proposals. The Committee decided to pursue further the question of the mandate, composition and activities of the working group at its next session in January 1998." (Report on the sixteenth session, September/October 1997, CRC/C/69, paras. 338 and 339)



Follow-up to General Discussion

In the Report on its seventeenth session (January 1998) the Committee decided to participate in a working group to follow up the recommendations arising from the General Discussion held on 6 October 1997:

“...the Committee expressed its firm support for the establishment of a small independent informal working group with the participation of representatives from relevant United Nations Agencies and bodies and main disability organizations; the primary aim of the working group should be to bring together existing expertise and resources with a view to ensure a better protection of the rights of children with disabilities. The Committee decided to be represented in the working group, which would regularly report to it. It also requested that progress on the mandate, membership and plan of action of the working group be presented to the Committee at its next (eighteenth) session.”
(Report on the seventeenth session, January 1998, CRC/C/73, paras. 171 and 172)

A report on the activities of the working group was presented to the nineteenth session of the Committee. It is chaired by Mr. Bengt Lindquist, Special Rapporteur of the Commission on Social Development of the United Nations on disabilities, and composed of representatives of the Committee and NGOs, with a wider reference group (Report on the nineteenth session, September/October 1998, CRC/C/80, paras. 244-247).

A report on the first meeting of the working group, held in London in January 1999, is included in the report on the twentieth session. The working group agreed a programme including: organizing a series of regional meetings at which disabled children and young people and local disability organizations would be invited to present their experiences and recommendations; collect examples of good practice in promoting the rights of children with disabilities – for example, participation, inclusion, deinstitutionalization – for widespread dissemination; explore the possibility of the Committee adopting a general comment on article 23; holding a hearing in Geneva and possibly New York to invite United Nations agencies and bodies to present current and planned work; to provide evidence to the pre-sessional working group of the Committee on the situation of disabled children in the States Parties under discussion; to contribute to the United Nations General Assembly Special Session on Children planned for 2002; to contribute to the debate on bioethics from the perspective of the rights of children with disabili-

ties; and to design a logo and leaflet to promote and explain the role and aims of the group. The title of the group is: “Rights of children with disabilities: a working group in consultation with the Committee on the Rights of the Child.” (Report on the twentieth session, January 1999, CRC/C/84, paras. 219-221)

The report of the working group’s second meeting in May 1999 states that issues raised included the need to develop good practice guidelines focusing on the rights of the child, and the need to contact United Nations agencies and bodies, particularly the IMF and the World Bank, and encourage them to take into account the impact of structural adjustment programmes on the rights of children with disabilities. (Report on the twenty-first session, May/June 1999, CRC/C/87, paras. 272-275)

Recognizing the human rights of disabled people

Background to the Standard Rules

The only explicit reference to disability or handicap in the International Bill of Human Rights is in article 25 of the Universal Declaration on Human Rights, which recognizes that everyone has “the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. Disability is not mentioned in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

During the 1970s, the United Nations General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons (20 December 1971) and the Declaration on the Rights of Disabled Persons (9 December 1975), which proclaimed that disabled people have the same civil and political rights as other human beings. 1981 was designated as the International Year of Disabled Persons, with the theme “Full participation and equality”. In 1982 the General Assembly adopted the World Programme of Action Concerning Disabled Persons, which stressed that “More than 500 million people in the world are disabled as a consequence of mental, physical or sensory impairment. They are entitled to the same rights as all other human beings and to equal opportunities. Too often their lives are handicapped by physical and social barriers in society which hamper their full participation. Because of this, millions of children and adults in all parts of the world often face a life that is segregated and debased.”

Within the United Nations Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted a recommendation that Governments give consideration to difficulties encountered by disabled persons in the enjoyment of universally proclaimed human rights, as well as to the need to strengthen procedures for them to bring allegations of violations of their human rights to a competent body vested with the authority to act on such complaints, or to the attention of the Government (resolution 1982/1). In 1984, the Special Rapporteur on Human Rights and Disability was appointed. The final report prepared by the Special Rapporteur in 1991 notes that “In the majority of countries, at least 1 out of 10 persons has a physical, mental or sensory impairment, and at least 25 per cent of the entire population are adversely affected by the presence of disabilities ... these persons frequently live in deplorable conditions, owing to the presence of physical and social barriers which prevent their integration and full participation in the community. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights, and lead a wretched, marginal life.” (E/CN.4/Sub.2/1991/31, para. 3)

In 1987, the Global Meeting of Experts to Review the World Programme of Action Concerning Disabled Persons at the mid-point of the United Nations Decade of Disabled Persons in Stockholm recommended that the General Assembly should convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade. A draft outline was prepared by Italy and presented to the General Assembly at its forty-second session. There were further presentations at the forty-fourth session, but no consensus could be reached: in the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons. Following these debates in the General Assembly, the Economic and Social Council, at its first regular session in 1990, agreed to concentrate on the elaboration of an international instrument of a different kind. The Commission for Social Development was authorized to establish an ad hoc open-ended Working Group of government experts to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults, in close collaboration with the specialized agencies, other inter-governmental

bodies and NGOs, especially organizations of disabled persons.

The introduction to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities notes that they have been developed on the basis of experience gained during the United Nations Decade of Disabled Persons: “The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.”

The Standard Rules

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities was adopted by the United Nations General Assembly at its forty-eighth session on 20 December 1993 (for full text of Rules, see Appendix 4, page 735). The Rules uphold the principle of equal rights – “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”. The Introduction to the Rules emphasizes: “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 structure of education, health, employment and social services.” The Standard Rules has been upheld as particularly important by the Committee on Economic, Social and Cultural Rights in a General Comment on disability and the International Covenant (see below, page 326).

Most of the Standard Rules is relevant to disabled children. Various rules refer directly to children. For example:

Rule 1. Awareness-raising: “Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes... 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 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.... 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....”

Other rules are quoted below in relation to various elements of article 23, and throughout the Implementation Handbook in relation to other articles.

Definitions of “disability” and “handicap”

The introduction to the Standard Rules distinguishes between “disability” and “handicap” as follows: “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.

“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.”

The introduction goes on to explain: “The use of the two terms ‘disability’ and ‘handicap’... should be seen in the light of modern disability history. During the 1970s, there was a strong reaction among representatives 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.”

Using a medical rather than a social definition of disability has been an important factor in building the concept of disabled people as “different”, and has resulted in the provision of specialized solutions that emphasize the differences rather than integrating them.

Monitoring the Standard Rules: the Special Rapporteur

Section IV, paragraph 2, of the Rules states that the Rules will be monitored within the frame-

work of the sessions of the Commission for Social Development and that a Special Rapporteur with relevant and extensive experience will be appointed for a three-year term to monitor implementation of the Rules together with a Panel of Experts formed by appropriate non-governmental organizations. The Special Rapporteur is required to send out questionnaires on implementation plans for the Rules. The Special Rapporteur of the Commission for Social Development on Monitoring the Implementation of the Standard Rules was appointed in March 1994. In his December 1996 report he notes: “The recommendations in the Standard Rules are very progressive and, in the opinion of the Special Rapporteur, no country, not even among the most advanced countries, has fully implemented the Rules. Nonetheless, there is no doubt that the Rules, in the short time since their adoption, have been widely accepted and are being used as the main policy guidelines in the disability field both by Governments and non-governmental organizations.” He notes that “the child aspect and the gender perspective are vague in the texts of the Rules”. Both should receive more attention in future implementation efforts (A/52/56, 23 December 1996, paras. 130 and 152). The Special Rapporteur notes that there had been a very poor response to the first questionnaire circulated on implementation; a second questionnaire, transmitted in December 1995, had generated more response (A/52/56, paras. 50-65).

The Economic and Social Council adopted a resolution in 1997 on “Children with disabilities”. This recognizes the need for special attention to be directed towards children with disabilities and their families or other caretakers, and requests the Special Rapporteur in his monitoring of the Rules, “to pay special attention to the situation of children with disabilities, to pursue close working relations with the Committee on the Rights of the Child in its monitoring role with respect to the Convention on the Rights of the Child, and to include in his report to the Commission for Social Development at its thirty-eighth session his findings, views, observations and recommendations on children with disabilities”. The resolution also urges Governments to ensure, in accordance with rule 6 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, that children with disabilities have equal access to education and that their education is an integral part of the educational system. UNESCO is urged to continue its programme activities aimed at the integration of children and youth with disabilities into mainstream education (E/Res/1997/20).

Committee on Economic, Social and Cultural Rights: General Comment on disability

A lengthy 1994 General Comment on persons with disabilities from the Committee on Economic, Social and Cultural Rights draws attention to the importance of addressing disability explicitly: “The absence of an explicit, disability-related provision in the Covenant [on Economic, Social and Cultural Rights] can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (article 23); the African Charter on Human and Peoples’ Rights (article 18(4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (article 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes.” (Committee on Economic, Social and Cultural Rights, General Comment 5, HRI/GEN/1/Rev.5, p. 29)

The General Comment lists the instruments in which “the international community has affirmed its commitment to ensuring the full range of human rights for persons with disabilities”:

- the World Programme of Action concerning Disabled Persons, providing a policy framework aimed at promoting “effective measures for prevention of disability, rehabilitation and the realization of the goals of ‘full participation’ of [persons with disabilities] in social life and development, and of ‘equality’”;
- the Guidelines for the Establishment and Development of National Coordinating Committees on Disability or Similar Bodies (adopted in 1990);
- the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (adopted in 1991);
- the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, whose purpose is to ensure that all persons with disabilities “may exercise the same rights and obligations as others” (adopted in 1993).

The Comment notes: “The Standard Rules are of major importance and constitute a particularly valuable reference guide in identifying more pre-

cisely the relevant obligations of States Parties under the Covenant.”

Causes of disability

Many articles in the Convention on the Rights of the Child are related to causes of disability, and thus their implementation can help to prevent disability: for example, articles concerned with protecting the child from involvement in armed conflict and protecting the child from violence and from various forms of exploitation. Article 6 (right to life and maximum survival and development) and article 24 (right to health and health services) are relevant to the prevention of disability, as well as to respecting the right of the disabled child to special care.

The final report of the Special Rapporteur on Human Rights and Disability lists the following causes, which appeared most often in responses received from governmental and non-governmental sources, most but not all of which are causes of disability in childhood: “heredity, birth defects, lack of care during pregnancy and childbirth because of lack of coverage or ignorance, insalubrious housing, natural disasters, illiteracy and the resulting lack of information on available health services, poor sanitation and hygiene, congenital diseases, malnutrition, traffic accidents, work-related accidents and illnesses, sports accidents, the so-called diseases of ‘civilization’ (cardiovascular disease, mental and nervous disorders, the use of certain chemicals, change of diet and lifestyle, etc.), marriage between close relatives, accidents in the home, respiratory diseases, metabolic diseases (diabetes, kidney failure, etc.), drugs, alcohol, smoking, high blood pressure, old age, Chagas’ disease, poliomyelitis, measles, etc. Non-governmental sources also place particular emphasis on factors related to the environment, air and water pollution, scientific experiments conducted without the informed consent of the victims, terrorist violence, wars, intentional physical mutilations carried out by the authorities and other attacks on the physical and mental integrity of persons, as well as violations of human rights and humanitarian law in general.” (E/CN.4/Sub.2/1991/31, para. 109)

Poverty and disability

The World Programme of Action Concerning Disabled Persons notes that the relationship between disability and poverty has been clearly established: “While the risk of impairment is much greater for the poverty-stricken, the converse is also true. The birth of an impaired child, or the occurrence of disability in the family,





often places heavy demands on the limited resources of the family and strains on its morale, thus thrusting it deeper into poverty. The combined effect of these factors results in higher proportions of disabled persons among the poorest strata of society. For this reason, the number of affected families living at the poverty level steadily increases in absolute terms. The negative impact of these trends seriously hinders the development process.” (World Programme of Action, para. 41)

Armed conflict and disability

Armed conflict is a major and probably increasing cause of disability among children in many countries because of the targeting of civilians and the use of modern weapons, including, in particular, landmines (see also article 38, page 575). Such conflicts are often accompanied by a reduction or breakdown of basic health and other services. Thus the Special Rapporteur on Human Rights and Disability reports that “in the armed conflicts in Angola and Mozambique, for example, less than 10 to 20 per cent of the children received inexpensive prosthetic devices. In Nicaragua and El Salvador, only 20 per cent of children in need were provided with the necessary services.” (E/CN.4/Sub.2/1991/31, para. 135)

Many disabilities are not visible. Millions of children suffer psychological trauma caused by exposure to or involvement in armed conflict. The Graça Machel study on the *Impact of Armed Conflict on Children* states that millions of children are killed by armed conflicts, “but three times as many are seriously injured or permanently disabled by it. According to WHO [World Health Organization], armed conflict and political violence are the leading causes of injury, impairment and physical disability and primarily responsible for the conditions of over 4 million children who currently live with disabilities. In Afghanistan alone, some 100,000 children have war-related disabilities, many of them caused by landmines. The lack of basic services and the destruction of health facilities during armed conflict mean that children living with disabilities get little support....” (A/51/306, 1996, para. 145)

In the recommendations adopted following its General Discussion (see box, page 322), the Committee states:

“In view of the appalling impact of armed conflict, which disables hundreds of thousands of children, States should be encouraged to ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction, due to be opened for signature in Ottawa in

December 1997.” (Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338)

Child labour and disability

Child labour can have terrible consequences for the child’s mental and physical development, and children may be particularly prone to accidents at work, causing disabilities (see article 32, page 475). The International Labour Organization has adopted a Convention and a Recommendation concerning vocational rehabilitation and employment of disabled persons (see below, page 339).

Abuse, punishment and other treatment and disability

The Special Rapporteur on Human Rights and Disability mentions some deliberately inflicted forms of punishment and other practices as causing disability: amputation as a punishment; the institutionalization of disabled people, institutional abuse, including the use of drugs; forced sterilization, castration and female circumcision (genital mutilation); and the blinding of detainees as an alternative to detention (E/CN.4/Sub.2/1991/31, para. 174). All such practices not only cause physical disabilities but also affect mental health.

The Special Rapporteur also refers to physical and psychological ill-treatment of children, both within and outside of the family, as an “extremely serious cause of disability in both developed and developing countries. The harm that can be caused in children by their parents or other persons beating, insulting, humiliating and maltreating them can be so great that in many cases it causes mental illness, social maladjustment, difficulties in school or at work, sexual impairment, etc.” (E/CN.4/Sub.2/1991/31, para. 139)

The prevention of all forms of violence and exploitation, highlighted in various articles of the Convention, are relevant to prevention of disability: in particular articles 19 (protection from all forms of physical or mental violence), 32 (economic exploitation), 34 (sexual exploitation), 36 (other forms of exploitation) and 37 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment). Special measures are required to provide safeguards for disabled children, in particular in situations where they remain in institutions or other forms of alternative care.

“...a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation”

Similar to the Standard Rules on the Equalization of Opportunities for Persons with Disabil-

ities, article 23 affirms the equal rights of disabled children and thus the importance of active participation, which is reflected in the other paragraphs of the article. In a report to the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities in February 1996, the Committee on the Rights of the Child summarized the general concerns that arose from its examination of States Parties' reports:

"The Committee has examined the situation of disabled children in the light of article 23 of the Convention, especially focusing on the rights of mentally and physically disabled children, with a view to ensuring their active participation in the community and respect for their dignity and the promotion of their self-reliance. The Committee is also taking into account the general principles of the Convention including article 2 (non-discrimination), article 3 (best interests of the child) and article 4.

"A first matter of concern is that some societies are not sufficiently sensitive to the needs and situation of disabled children, in the light of article 2 of the Convention. The

Committee is preoccupied by the widespread discriminatory attitudes towards those children. Strategies and educational programmes, along with the adequate dissemination of information, should be undertaken to avoid certain prejudices which affect disabled children negatively...

"The Committee recognizes the prevalence of certain negative attitudes which hamper the implementation of the rights of disabled children with regard to article 23, such as isolation from the rest of society. The promotion of their rights should be further advanced through, for instance, support to parents' organizations and to community-based services and a sustained programme for moving children from institutions to a good family environment.

"The Committee is negatively impressed by the fact that some disabled children do not have adequate access to health and social care services and it expresses concern over the low number of disabled children enrolled in schools, which might reflect an insufficient attention to their specific needs. More protection should be offered them, including the possibility, through education, of integrating properly into society and participating actively in



Disability policy in Sweden

"The Government and Riksdag have defined the objectives of disability policy in various connections. The principles of full participation, equality of living conditions, self-determination and access are the foundation stones on which Swedish policy for the disabled is built. The point of departure is the equal dignity and equal rights of all human beings. The realization that people have different functional capacities must form the basis of social planning. Resources must be used in such a way that all individuals will as far as possible be given equal opportunities of participating in the life of the community. The terms participation and equality encompass a process whereby different areas of society, as well as the surrounding environment, are made accessible to persons with functional impairment. This applies both to physical access and to the availability of information and services, care and support, culture, leisure activities, etc. The aim is to create the preconditions for independent, dignified living for persons with functional impairment.

"Disability policy impinges on all areas of society and practically every question has a disability aspect. And yet there are cases of measures for persons with functional impairment being discussed and dealt with outside their rightful context. They are not always regarded as a natural part of current topics of discussion.

"It is the Government's view that disability aspects must be taken into account in all policy fields and in planning at central, regional and local levels. The reforms of disability policy introduced in recent years have to a great extent been concerned with improving individual support for persons with functional impairment. Measures in future will to a greater extent be made to focus on improving the accessibility of activities and environments.

"On 1 July 1994, a new central administrative authority, the Office of the Disability Ombudsman, was tasked with supervising the rights and interests of persons with functional impairment and with furthering the achievement of the overarching objectives of disability policy. Among other things, the Disability Ombudsman observes legal practice in the disability sector and offers legal advice. Another priority task is that of disseminating knowledge of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities and evaluating compliance with them." (Sweden 2R, paras. 463-466)

Policies for disabled children in Finland

“Equal opportunity of movement has been one of the most important objectives when public transport has been developed. According to the Act on Passenger Transport, as amended in 1994, the municipalities shall take into account the needs of different population groups, such as children, elderly people and disabled persons, when public transport services are determined. Measures making public transport easier to use also improve the possibilities of disabled children, other children and adults travelling with children for equal participation in society. For example, the new service routes of buses and systems of door-to-door service are especially suitable even for transport of children whose disabilities are not severe. Ordinary taxis and taxis with special equipment for the disabled have been used for years for school transport and excursions of disabled children.”

When the constitutional provisions on fundamental rights were amended, the language and minority rights of those using sign language and of those who require interpretation or translation because of a disability were confirmed – these rights shall be guaranteed by Act of Parliament. The Ministry of Justice set up a working group in 1996 to examine ways to ensure the equal rights of people using sign language. The working group gave suggestions, for example, for developing the upbringing and education of deaf children.” (Finland 2R, paras. 142 - 144)

family life. Efforts for the early detection of the incidence of handicap should be made. “Budgetary reductions have also affected disabled children who are particularly disadvantaged in their access to adequate health and educational facilities. The Committee urges countries to take all the necessary steps to minimize the negative impact of the structural adjustment policies on the situation of disabled children. The Committee recognizes, in the light of article 4, the priority of allocating the maximum extent of the available resources to protect these children. “International assistance and the exchange of appropriate information will also be needed to address more effectively the challenge of improving the situation of disabled children, in conformity with article 23, paragraph 4 of the Convention.” (E/CN.4/Sub.2/1996/27, paras. 7-13)

Discrimination against disabled children

In the recommendations adopted following the Committee’s General Discussion, (see box, page 322) it noted that

“States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention, including infanticide, traditional practices prejudicial to health and development, superstition, perception of disability as a tragedy.” (Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338)

In its examination of States Parties’ reports, the Committee has frequently listed disabled children among a number of groups of children suffering discrimination.

It is important to note that article 2 requires that there must be no discrimination on the grounds of either the child’s disability or his or her parents’ or legal guardian’s disability (the Standard Rules promotes the full participation of persons with disabilities in family life and has a series of provisions with this aim in rule 9).

The Committee has also noted discrimination between different groups of disabled children:

“The Committee expresses its concern about the fact that children with disabilities living in rural areas do not have access to the same level of services and medicines as children living in other parts of the country and that not all medicines are available for free. Further, it is concerned at the large number of children with disabilities who are institutionalized and the general lack of resources and specialized staff for children with disabilities.

“The Committee recommends that the State Party allocate the necessary resources for programmes, medicines, trained staff and facilities for all children with disabilities, especially the ones living in the rural areas, and develop community-based programmes in order to allow children to stay at home with their families. In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee’s recommendations adopted at its day of general discussion on the rights of children with disabilities (see CRC/C/69), it is also recommended that the State further encourage their integration into the educational system and their inclusion into society.” (Lithuania IRCO, Add.146, paras. 37 and 38)

Non-discrimination legislation. The Committee's *Guidelines for Periodic Reports* asks for information on whether "the principle of non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children, and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions..." (para. 25). The Committee has indicated that it expects to see the principle of non-discrimination in national law.

In its recommendations following the General Discussion (see box, page 322), the Committee suggested that States

"should review and amend laws affecting disabled children which are not compatible with the principles and provisions of the Convention, for example legislation

(i) which denies disabled children an equal right to life, survival and development (including – in those States which allow abortion – discriminatory laws on abortion affecting disabled children, and discriminatory access to health services);

(ii) which denies disabled children the right to education;

(iii) which compulsorily segregates disabled children in separate institutions for care, treatment or education." (Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338)

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides further guidance on non-discrimination legislation in Rule 15: "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 effect 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 cases of violations of the principle 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."

The survey conducted by the Special Rapporteur monitoring implementation of the Standard Rules found that in 27 of the 80 countries providing information, persons with disabilities are not considered to be full-fledged citizens in a number of areas within the general legislation, including the right to vote, the right to property and the right to privacy. In 10 of the 80 countries the right to education is not guaranteed (see below, page 337); in 17, the right to marriage is not guaranteed by law; in 16, rights to parenthood/family, access to courts of law, privacy and property are not guaranteed by law; and in 14 of the countries, persons with disabilities have no political rights (A/52/56, paras. 70-71). This illustrates how far many countries still have to go in eliminating discrimination against disabled people, including disabled children, and in equalizing opportunities.

In its General Comment on disability, the Committee on Economic, Social and Cultural Rights states: "Despite some progress in terms of legislation over the past decade, the legal situation of persons with disabilities remains precarious. In order to remedy past and present discrimination, and to deter future discrimination, comprehensive anti-discrimination legislation in relation to disability would seem indispensable in virtually all States Parties. Such legislation should not only provide persons with disabilities with judicial remedies as far as possible and appropriate, but also provide for social-policy programmes which enable persons with disabilities to live an integrated, self-determined and





independent life. Anti-discrimination measures should be based on the principle of equal rights for persons with disabilities and the non-disabled, which, in the words of the World Programme of Action Concerning Disabled Persons, ‘implies that the needs of each and every individual are of equal importance, that these 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, for every individual, equal opportunity for participation. Disability policies should ensure the access of [persons with disabilities] to all community services...’” (Committee on Economic, Social and Cultural Rights, General Comment 5, 1994, HRI/GEN/1/Rev.5, p. 32)

As discussed in relation to article 2 (page 21), the Human Rights Committee in a General Comment has reviewed the definition of “discrimination” in human rights instruments, concluding that it believes “the term ‘discrimination’ as used in the Covenant [on Civil and Political Rights] should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (Human Rights Committee, General Comment 18, 1989, HRI/GEN/1/Rev. 5, p. 135).

This definition reinforces the need to look at implementation of every provision of the Convention from the perspective of disabled children, to determine whether they experience any distinction, exclusion, restriction or preference that has either the purpose or the effect of “nullifying or impairing” their recognition, enjoyment or exercise, on an equal footing, of all the rights and freedoms guaranteed.

In its most extreme form, discrimination against disabled children can lead to selective infanticide. The varied incidence of certain forms of disability in different regions of the world strongly suggests this. In many countries genetic testing is available, allowing the identification of certain disabilities, for example Downs Syndrome, in the womb.

In some countries where abortion is permitted, discriminatory legislation allows termination at a later stage – even up to full term – in cases of identified disability (see also article 6, page 98). The Committee noted “discriminatory laws on abortion affecting disabled children” in its re-

commendations following the General Discussion on “The rights of children with disabilities” (see box, page 322).

It raised one potentially discriminatory issue with Austria:

“The Committee regrets that forced sterilization of mentally disabled children is legal with parental consent. The Committee recommends that existing legislation be reviewed so as to make sterilization of mentally disabled children require the intervention of the courts, and that care and counselling services be provided to ensure that this intervention is in accordance with the provisions of the Convention, especially article 3 on the best interests of the child and article 12.” (Austria IRCO, Add.98, para. 17)

Girls with disabilities. The Platform for Action prepared by the Fourth World Conference on Women confirmed that “The girl child with disabilities faces additional barriers and needs to be ensured non-discrimination and equal enjoyment of all human rights and fundamental freedoms in accordance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities.” (Platform for Action, para. 270)

The report on the follow-up special session of the United Nations General Assembly (2000) states: “Girls and women of all ages with any form of disability are generally among the more vulnerable and marginalized of society. There is therefore need to take into account and to address their concerns in all policy-making and programming. Special measures are needed at all levels to integrate them into the mainstream of development.” (A/RES/S-23/3, para. 63)

The media and discrimination against disabled children. The Standard Rules emphasizes that 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” (rule 1(3)). In addition, “States should encourage the media, especially television, radio and newspapers, to make their services accessible” (rule 5(9)). And in relation to promoting measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and women with disabilities, “The media should be encouraged to play an important role in removing such negative attitudes.” (rule 9(3); see also article 17, page 234)

Monitoring the situation of disabled children. The *Guidelines for Periodic Reports*

requires information on “measures taken to ensure an effective evaluation of the situation of disabled children, including the development of a system of identification and tracking of disabled children, the establishment of any appropriate monitoring mechanism...” (para. 92). The Standard Rules on the Equalization of Opportunities for Persons with Disabilities outlines more detailed requirements for information that should be collected and disseminated on disabled persons and research “on all aspects, including obstacles that affect the lives of persons with disabilities” (rule 13). Rule 20 sets out requirements for national monitoring and evaluation of disability programmes in the implementation of the Rules.

The Committee on the Rights of the Child has called for more research, and it has also noted the importance of monitoring the situation of disabled children. In the recommendations following its General Discussion it emphasizes the need for research with four particular aims:

“(i) promoting awareness of the extent to which the right to life of disabled children is denied; (ii) challenging the widespread existence of superstition, prejudice, social stigma and denial of access to education in relation to disabled children; (iii) challenging the argument of “cost-effectiveness” used to marginalize disabled children and evaluating the costs of exclusion and lost opportunities; (iv) bringing the issue to prominence in the process of drafting and adopting conventions on bio-ethics.” (Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338)

It has encouraged individual States to undertake studies of the situation of disabled children.

The right of the disabled child to special care and assistance designed to promote the fullest possible social integration and individual development

Paragraphs 2 and 3 of article 23 acknowledge the need for positive action to equalize opportunities for disabled children. The words “subject to available resources” reflect the general principle found in article 4, and similar provisions in articles 26 and 27. Assistance must be requested and must be appropriate to the child’s condition and to the circumstances of parents or others caring for the child. It should be provided free “whenever possible, taking into account the financial resources of the parents and others caring for the child”.

The purpose of the assistance is to ensure that the child has “effective access” to a range of services (detailed below) 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”.

According priority to disabled children

The Committee has stressed that ensuring the rights of disabled children should be perceived as a priority, and it has commended Governments that have adopted such priorities:

“...In addition the Committee recommends that future development plans should accord priority to the situation of disabled children.” (Sudan IRCO, Add.10, para. 23)

“The Committee also notes with satisfaction the priorities set by the Government and its serious efforts to face existing social problems, including in the fields of health and education, as well as to ensure the protection of the rights of disabled children.” (Chile IRCO, Add.22, para. 8)

The Committee has suggested that insufficient attention has been paid to the implementation of article 23:

“As recognized by the State Party, the Committee is concerned that measures are lacking to implement the provisions of article 23 of the Convention relating to disabled children.” (Honduras IRCO, Add.24, para. 16)

“The Committee is also concerned at the insufficient measures and programmes for the protection of the rights of the most vulnerable children, in particular ... disabled children ...” (Yemen IRCO, Add.47, para. 9. See also Argentina IRCO, Add.35, para. 11; Morocco IRCO, Add.60, para. 26)



Promoting the cause of disabled people in government

China’s 1990 Protection of the Disabled Act states: “People’s government at every level must incorporate the cause of the disabled into national plans for economic and social development, list the associated spending in their budgets, plan comprehensively, strengthen leadership, coordinate their actions, and take steps to ensure the coordinated advance of the disabled alongside that of the economy and society... The relevant people’s government departments at every level must maintain close contacts with disabled people, seek their opinions and work with them in their respective domains...” (China IR, para. 119)

Legal framework in Costa Rica

The Equality of Opportunity for Handicapped Persons Act was adopted in 1996, ushering in “a modern national policy on disabilities. It has proved effective in benefiting handicapped persons and their parents inasmuch as it has enabled them to demand enforcement of their fundamental rights and freedoms and has created the necessary conditions for the fulfilment of their obligations as citizens”.

The aims of the Act include:

- assisting disabled people to achieve a maximum of development and participation in society and also the full exercise of their rights and obligations as citizens;
- guaranteeing equal opportunity with the rest of the population of Costa Rica in areas such as health, education, work, family life, recreation, sport, culture, etc.;
- ending all types of discrimination against such persons; and
- establishing the legal and material basis necessary for the achievement of equal opportunities and non-discrimination. (Costa Rica 2R, para. 180)

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities emphasizes that States should ensure that disability aspects are included in all relevant policy-making and national planning and that “the needs and concerns of persons with disabilities should be incorporated into general development plans and not be treated separately” (rule 14.3), which applies equally to National Plans of Action for Children (see article 4, pages 67-69). The Committee has nevertheless proposed that States should have plans relating to disabled children:

“... The lack of a national policy to ensure the rights of children with disabilities is also noted...” (Bangladesh IRCO, Add.74, para. 20)

“The Committee notes the commitment of the State Party to increase available services to children with disabilities, and welcomes the efforts to identify all cases of children with disabilities. Nevertheless, the Committee remains concerned that the focus is on the provision of separate services rather than inclusion. The Committee recommends that the State Party implement its policies, together with a plan of action in regard to children with disabilities.” (Barbados IRCO, Add.103, para. 24)

Safeguarding disabled children in resource allocation

The Committee on the Rights of the Child has stated that when considering the allocation of resources to children, special attention should be paid to the needs of disabled children, among other groups. The Convention’s non-discrimination principle does not prevent positive action being taken to assure the rights of such particular groups. The Standard Rules includes provisions on economic policies, noting that States have

financial responsibility for national programmes and measures to create equal opportunities for persons with disabilities and suggesting that 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” (rule 16.3). Rule 8 covers income maintenance and social security, and rule 4, support services, “including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights”.

The Committee has proposed particular attention to disabled children in budgeting:

“The Committee expresses its concern that stringent budgetary measures amounting to decreases in the resources allocated for social expenditures have entailed high social costs and have adversely affected the rights of the child in Peru. Vulnerable groups of children, including children living in areas affected by the internal violence, displaced children, orphans, disabled children, children living in poverty and children living in institutions are particularly disadvantaged in their access to adequate health and educational facilities and are the primary victims of various forms of exploitation, such as child prostitution...”

“...The authorities should, in the light of articles 3 and 4 of the Convention, undertake all appropriate measures to the maximum extent of their available resources to ensure that sufficient resources are allocated to children. In that regard, particular attention should be paid to the protection of ... disabled children ...” (Peru IRCO, Add.8, paras. 10 and 19)

The Committee followed this up in more detail when it examined Peru’s Second Report:

"With regard to the situation of children with disabilities, the Committee remains concerned at the inadequate infrastructure, limited number of qualified staff, specialized institutions for these children, and the inadequate resources, both financial and human. In addition, the Committee is particularly concerned at the insufficient implementation of the existing governmental policies and programmes for children with disabilities and at the insufficient monitoring of private institutions for these children. In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted on its day of general discussion on children with disabilities (see A/53/41, chap. IV, sect. C), the Committee recommends that the State Party develop early identification programmes to prevent disabilities, implement alternative measures to the institutionalization of children with disabilities, envisage awareness-raising campaigns aiming at the elimination of discrimination against them, establish special education programmes and centres and encourage their inclusion in the educational system and in society, and establish adequate monitoring of private institutions for children with disabilities. The Committee further recommends to the State Party to seek technical cooperation from WHO and specialized non-governmental organizations for the training of professional staff working with and for children with disabilities." (Peru 2RCO, Add.120, para. 23)

Early identification

The Committee has persistently maintained the importance of the early identification of a disability, to ensure necessary special care and the realization of the rights of disabled children, and it has welcomed relevant measures taken by particular States:

"The Committee welcomes specific action taken by schools and local community services to identify children's disabilities at an early stage." (Canada IRCO, Add.37, para. 7)

"...The situation of disabled children generally is an issue of concern to the Committee. The Committee requires more concrete information on the measures taken for the early identification of disabilities and the prevention of neglect or discrimination against children with disabilities." (Federal Republic of Yugoslavia IRCO, Add.49, para. 17. See also Egypt IRCO, Add.5, para. 13; Costa Rica 2RCO, Add.117, para. 23)

Participation rights of disabled children

Disabled children have the same rights to participation in decision-making as other children, under article 12 (see also page 167). In order

to equalize their opportunities to participation, special training and strategies may be required, as well as adaptation of buildings and programmes, and the provision of appropriate technologies.

Following its General Discussion, the Committee recommended to States that

"Disabled children should be consulted, involved in decision-making and given greater control over their lives; existing good practices should be publicized and shared, and appropriate training materials devised."

(Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338)

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities focuses on 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, the State should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication" (rule 5).

The Standard Rules emphasizes throughout the importance of involving disabled persons and organizations of disabled persons "in all decision-making relating to plans and programmes concerning persons with disabilities or affecting their economic and social status" (rule 14(2)). Rule 18 expands on the role of organizations of persons with disabilities – for example "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" (rule 18(3)).

Avoiding institutionalization

The emphasis in article 23 on "active participation in the community" and "the fullest possible social integration" implies minimizing the institutionalization of disabled children. Article 20 also supports non-institutional placements for children deprived of their family environment (see page 279), and in the light of article 2 this must apply equally to disabled children. The Committee on the Rights of the Child has questioned institutionalization. In the recommendations adopted following the General Discussion, the Committee proposes:

"Relevant agencies should be encouraged to develop programmes which promote alternatives to institutionalization and to develop and promote strategies to deinstitutionalize children."

(Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338. For full recommendations, see box, page 322)





Also in the recommendations adopted following the 2000 General Discussion on “State violence against children”, the Committee noted:

“In particular, the Committee points out that, in accordance with the provisions of article 23 of the Convention, special care as well as access to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities should be provided in a manner ‘conducive to the child’s achieving the fullest possible social integration and individual development’. The Committee encourages States Parties to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent possible on an out-patient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions.” (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.20)

To States it has proposed that improved levels of family support should be provided to avoid institutionalization (in line with article 18, see page 243).

The Initial Report of the Russian Federation acknowledges that physical installations and living conditions in boarding institutions taking orphans and children from deprived families are unsatisfactory. “There has been a recent increase in attempts by parents of large and deprived families to have their children admitted to such institutions, even going to the lengths of disowning their children (especially if they are disabled because of the high cost of looking after them). In general, there is a rapidly growing demand for boarding schools where children’s upkeep is provided by the State.”

During discussion on the Initial Report, a Committee member commented on the Convention’s attitude to care of disabled children: “The Convention philosophized to a certain extent about the relationship between disabled children, parents and the authorities, and on the whole favoured care by parents, even though in some cases it was necessary to find a balance in the best interests of the child. Throughout the world the emphasis was shifting from institutional care to care in the family and the community, even in the poorer countries. This reflected the view held by WHO and UNICEF that the disabled child was not the problem, but society’s inability to deal with such children was. The report had tended to emphasize technical measures so that the problem was presented as a technical one, but disabled children themselves would say that they were first and foremost children. Politicians the world over needed to review their thinking on

that point and to encourage the integration of disabled children into society...” (Russian Federation IR, para. 36, SR.64, para. 21)

When the Committee examined the Russian Federation’s Second Report, it commented:

“The Committee encourages the State Party to pursue its efforts to improve the early diagnosis of children with physical and mental disabilities and to prevent as far as possible their being placed in institutions. It recommends the strengthening of professional treatment services and the support and counselling provided to families in order to enable children to live at home and to promote their social inclusion.” (Russian Federation 2RCO, Add.110, para. 41)

Disabled children and alternative care

In relation to articles 9, 18 and 21 of the Convention in particular, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities expects States to promote the full participation of persons with disabilities in family life, which may require special information, counselling and support measures: “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. 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...” (rule 9)

Restriction of liberty of disabled children

Children who are detained because of mental illness should have the various safeguards provided by the Convention on the Rights of the Child and relevant United Nations rules and guidelines. Under article 37 of the Convention any restriction of liberty must be authorized by legislation, must not be arbitrary and must only be used as a measure of last resort and for the shortest appropriate time. Article 37(c) requires that every child deprived of liberty “shall be separated from adults unless it is considered in the child’s best interest not to do so”. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty has a similar provision. Its rule 29 applies equally to children detained because of mental illness. The Committee on the Rights of the Child has implied that in any insti-

tutional placement, disabled children should be separated from adults, and under article 25, it has also noted the importance of the regular review of placement and treatment (see page 373):

“... Further efforts are also required to ensure the active participation of disabled children in the community in conditions which ensure their dignity and promote their self-reliance, as well as to ensure that disabled children are separated from adults suffering from mental ill-health. The Committee recommends that measures be taken to review periodically the placement and treatment of children as required under article 25 of the Convention.” (Guatemala IRCO, Add.58, para. 38)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty notes in rule 53: “A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.” The Rules also notes that any juvenile who “demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer” (rule 51).

Disabled children in the juvenile justice system

In the Convention on the Rights of the Child, article 40(2)(b)(vi) requires that any child alleged as or accused of having infringed the penal law should have the free assistance of an interpreter if the child cannot understand or speak the language used: this may require special measures for disabled children.

Disabled children and inclusive education

The Committee on the Rights of the Child has expressed concern about disabled children’s basic right to education (article 28) and about the low proportion of disabled children enrolled in schools worldwide.

In its examination of a number of States Parties’ reports the Committee has gone beyond this general concern about the right to education to emphasize the importance of recognizing the right of disabled children to full inclusion in regular schools (and the *Guidelines for Periodic Reports* specifically asks for information on inclusion in schools and other institutions – para. 92). In discussions with Egypt a Committee member was reported as stating: “Rather than placing disabled children in specialized institutions, efforts should be made to place them in schools attended by normal children. It was important not to favour material assistance for

the disabled at the expense of human and psychological factors.” (Egypt SR.67, para. 82)

The Committee consistently recommends development of inclusive education systems:

“The Committee further recommends that all appropriate measures be undertaken to integrate children with disabilities into mainstream education.” (Azerbaijan IRCO, Add.77, para. 34. See also, for example, Lebanon IRCO, Add.54, para. 39; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 29; Mauritius IRCO, Add.64, para. 15; India IRCO, Add.115, paras. 46 and 47; Islamic Republic of Iran IRCO, Add.123, paras. 41 and 42; Georgia IRCO, Add.124, paras. 48 and 49; Jordan 2RCO, Add.125, paras. 43 and 44; Kyrgyzstan IRCO, Add.127, paras. 41 and 42; Cambodia IRCO, Add.128, paras. 48 and 49; Malta IRCO, Add.129, paras. 35 and 36; Suriname IRCO, Add.130, paras. 47 and 48; Lithuania IRCO, Add.146, paras. 37 and 38; Lesotho IRCO, Add.147, paras. 49 and 50; Palau IRCO, Add.149, paras. 51 and 52)

The 1996 report of the Special Rapporteur monitoring implementation of the Standard Rules (see page 326) notes that his survey had found that disabled persons in 10 out of the 80 countries providing information are not guaranteed by law the right to education. “The right to education is denied to millions of children with special educational needs, who either receive inadequate and inappropriate public education or are excluded from the public school systems. Although many developing countries have recognized the right to education, it has in many cases not been applied to persons with special educational needs.” (A/52/56, paras. 71 and 110)

The Special Rapporteur refers to other surveys carried out by UNESCO: “Sixty-five countries provided information on legislation. Forty-four countries reported that general legislation applied to the children with special educational needs. Thirty-four countries reported that children with severe disabilities were excluded from education. In 18 of the 34 countries reporting exclusion, those children were excluded by law from the public educational system. In 16 countries, the exclusion was the result of other, non-legal factors. The most common reason given for excluding some children from the public education system was the severity of the disability, lack of facilities and trained staff, long distances to schools and the fact that regular schools do not accept pupils with special educational needs. Ten countries reported that no legislation on special education exists.” The Special Rapporteur tentatively concludes that “schooling for the children with special educational needs is still predominantly provided in a segregated educational system



and that the rates of attendance in schools of persons with special educational needs is very low in numerous countries... In most countries integration represents an aspiration for the future.” (A/52/56, paras. 111 and 113)

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities identifies education as a “target area for equal participation”. Under rule 6: “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.” The rule goes on to emphasize that “education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization,” to outline key elements of an inclusive system and to identify the interim role of special education and ways of meeting the communication needs of deaf and deaf/blind persons.

In 1994, following five regional seminars, a World Conference on Special Needs Education, representing 92 Governments and 25 international organizations, was held and adopted “The Salamanca Statement and Framework for Action on Special Needs Education” (more than 300 participants were brought together by UNESCO and the Government of Spain). The Statement emphasizes that “those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting those needs; regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system”. The Statement calls on all Governments “to give the highest policy and budgetary priority to improve their education systems to enable them to include all children regardless of individual differences or difficulties.” (The Salamanca Statement and Framework for Action on Special Needs Education, UNESCO ED-94/WS/18, 1994)

The Final Report of the Special Rapporteur on Human Rights and Disability (1991) notes that the World Programme of Action concerning Disabled Persons stipulates that education should, as far as possible, be provided within the ordinary school system, without any discrimination against handicapped children or adults.

Among the commitments made at the World Summit for Social Development (Copenhagen, 1995) is to “Ensure equal educational opportunities at all levels for children, youth and adults with disabilities, in integrated settings, taking full account of individual differences and situations.” (A/CONF.166/9, p. 19)

Health care and rehabilitation services

Disabled children have exactly the same rights to health and health care as all other children. Under the Standard Rules, States should ensure the provision of effective medical care to persons with disabilities. In particular, “States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society.” (rule 2.3)

As noted above, (page 330), the Committee has expressed concern about disabled children’s access to basic services including health care.

Also under the Standard Rules, “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”; again, the emphasis is on the provision of services to promote equalization of opportunities.

The Graça Machel study on the *Impact of Armed Conflict on Children* reports that “only 3 per cent of disabled children in developing countries receive adequate rehabilitative care, and the provision of prosthetics to children is an area that requires increased attention and financial support. In Angola and Mozambique, less than 20 per cent of children needing them received low-cost prosthetic devices; in Nicaragua and El Salvador, services were also available for only 20 per cent of the children in need. This lack of rehabilitative care is contrary to article 23 of the Convention on the Rights of the Child...” (A/51/306, para. 145)

Preparation for employment

Under the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, States are asked to 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” (rule 7); vocational training is an essential part of seeking integration of persons with disabilities into open employment. Under article 28(1)(d) of the Convention on the Rights of the Child, States Parties are required to “Make edu-

cational and vocational information and guidance available and accessible to all children”.

The International Labour Organization has adopted the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159). For the purposes of the Convention, “each Member shall consider the purpose of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person’s integration or reintegration into society”. Each Member is required to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons, “in accordance with national conditions, practice and possibilities”. Article 4 requires the national policy to be based “on the principle of equal opportunities between disabled workers and workers generally ... Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers.” This ILO Convention and an accompanying Recommendation (Recommendation, 1983 (No. 168)) Vocational Rehabilitation and Employment (Disabled Persons) have obvious implications for the preparation of disabled children for employment, and for their employment.

Recreation opportunities

The rights of the disabled child under article 31 to rest, leisure and participation in artistic and cultural life should be realized without discrimination. The Standard Rules requires States to ensure that persons with disabilities “are integrated into and can participate in cultural activities on an equal basis”, and take measures to ensure “that persons with disabilities have equal opportunities for recreation and sports” (rules 10 and 11). These requirements raise issues of accessibility (rule 5) – both to the physical environment for play, recreation, culture and the arts and to information and communication. They may also demand adaptation of activities to ensure inclusion of disabled children.

The positive role of the media in promoting recreation and culture should be developed with consideration of the equal rights of disabled chil-

dren. In its 1997 resolution on Children with disabilities, the Economic and Social Council called on governments “to ensure the participation of children with disabilities in recreational activities and sports” (E/1997/L.23).

International cooperation: article 23(4)

Article 23(4) requires States Parties to promote through international cooperation the exchange of information to improve their capabilities and skills in relation to disabled children, with particular account being taken of the needs of developing countries. The Standard Rules sets out in more detail State responsibilities to cooperate. States should participate in international cooperation in order to develop common standards for national evaluation in the disability field (rule 20, para. 4). Under “Technical and economic cooperation” in rule 21, “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.”

Measures should be integrated into general development programmes, and when planning and reviewing programmes of technical and economic cooperation, special attention should be given to the effect of such programmes on disabled people. People with disabilities and their organizations should be consulted and involved directly in the development, implementation and evaluation of development projects. Under rule 22, “International cooperation”, States are encouraged to “participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities”; various strategies are suggested.

The Committee has encouraged States to benefit from international cooperation. For example:

“The Committee further encourages the State Party to make every effort to benefit from international cooperation in favour of children with disabilities, in accordance with article 23 paragraph 4 of the Convention.”
(Sierra Leone IRCO, Add.116, para. 58)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 23, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 23 is relevant to **all government departments, and any coordinating agency set up to consider disability issues**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 23 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 23 likely to include the training of **all those working with or for disabled children and their families, and parenting education**)?

● Specific issues in implementing article 23

- ☐ Does the State have a national coordinating committee or similar body to serve as a focal point for disability matters?
- ☐ Has the State reviewed legislation, policy and practice in the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities?
- ☐ Is there anti-discrimination legislation covering discrimination against disabled children?

How to use the checklists, *see page XVII*



- ☐ Does legislation in the State guarantee the disabled child enjoyment of all the rights in the Convention without discrimination?
- ☐ Do all disabled children have access to an independent mechanism for considering complaints relating to discrimination on the grounds of disability?
- ☐ Is special care and assistance available on application for all disabled children and for those caring for him/her in the State?

Is such special care and assistance provided

- ☐ free of charge in all cases?
- ☐ on a means-tested basis?
- ☐ Are there national and local arrangements to ensure that parents are given advice, financial assistance and practical help in bringing up a disabled child?

Do all disabled children have effective access to, and receive without discrimination in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

- ☐ preschool care and education?
- ☐ education?
- ☐ training?
- ☐ health care services?
- ☐ rehabilitation services?
- ☐ recreation and play opportunities?
- ☐ cultural and artistic opportunities?
- ☐ preparation for employment?
- ☐ employment?

Are the following services provided for disabled children in an integrated setting with children without disabilities

- ☐ education ?
- ☐ training?
- ☐ alternative care including institutional care?
- ☐ play and recreation?
- ☐ Are special arrangements made in the State to ensure respect for disabled children's participation rights under articles 12, 13, 14 and 15?
- ☐ Do legislative and other measures ensure the equal right to life and maximum survival and development for the disabled child?

How to use the checklists, see page XVII



Are special measures taken to safeguard disabled children from all forms of violence and abuse,

- ☐ in the family?
- ☐ in alternative care?
- ☐ in the community?
- ☐ Has the State promoted the involvement of organizations of disabled children in planning, policy development and evaluation at all levels of government?
- ☐ Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to provision of services, etc. for disabled children?

Reminder: The Convention is indivisible and its articles are interdependent. Article 23 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

All articles of the Convention should be considered with a view to equalizing the opportunities of disabled children to exercise their rights.

Child's right to health and health services



Text of Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate prenatal and postnatal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.



Summary

Article 24 of the Convention on the Rights of the Child builds on and develops the right to life and to survival and development to the maximum extent possible that is set out in article 6. Applying the Convention's non-discrimination principle (article 2) requires States to recognize the right of all children without discrimination to "the highest attainable standard of health" as well as to "facilities for the treatment of illness and rehabilitation of health". And States Parties must strive to ensure "that no child is deprived of his or her right of access to such health care services". Paragraph 2 provides a non-exclusive list of appropriate measures that States must take in pursuing full implementation of the right, including "to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care". The holistic nature of the Convention and the Committee's interpretation stress the obvious connections between realizing the child's health rights and the child's right to an adequate standard of living (article 27) and to education (article 28) as well as to protection from all forms of physical or mental violence (article 19).

Respect for the views of the child needs to be built into health care and into the design of health services, and respect for evolving capacities (article 5, page 85) underlines the need for full consideration of adolescent health issues.

Article 24, paragraph 3, requires action to abolish traditional practices "prejudicial to the health of children", drafted because of particular concern over female genital mutilation and requiring a review of all potentially harmful practices. Paragraph 4 asserts the importance of inter-

national cooperation (reflecting the general provision found in article 4) in achieving full realization of the right to health and health care services.

The Convention's health provisions developed from provisions in the Universal Declaration of Human Rights and the two International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – and from the formulation of definitions and principles by international organizations, in particular the World Health Organization (WHO) and UNICEF. The broad definition of health adopted by the WHO in its Constitution – a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity – emphasizes again the holistic nature of the Convention and links to the broad definition of child development the Convention promotes. Healthy development of the child is of basic importance. The World Summit for Children Declaration and Plan of Action defined detailed goals for improving child health by the year 2000, derived from goals already agreed upon by UNICEF and WHO. The 2002 special session on Children of the United Nations General Assembly will review these and develop a new Plan of Action. The World Summit for Social Development (Copenhagen, 1995) and its follow-up special session of the United Nations General Assembly (Geneva, 2000) reaffirmed and added to the World Summit goals. The International Conference on Population and Development (Cairo, 1994), the Fourth World Conference on Women (Beijing, 1995) and its follow-up special session of the General Assembly in 2000, as well as the Millennium Summit of the United Nations (2000), have important detailed recommendations on health, including particularly adolescents' health rights. ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Basic health and welfare

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

...

(c) Health and health services (art. 24);

..."

(CRC/C/5, para. 19)

Guidelines for Periodic Reports

"VI. BASIC HEALTH AND WELFARE

B. Health and health services (art. 24)

Please indicate the measures adopted pursuant to articles 6 and 24:

To recognize and ensure the right of the child to the enjoyment of the highest attainable standard of health and to facilities for treatment and rehabilitation;

To ensure that no child is deprived of his or her right of access to such health care services;

To ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, and survival and development to the maximum extent possible.

Reports should also provide information about the measures adopted to identify changes which have occurred since the submission of the State Party's previous report, their impact on the life of children, as well as the indicators used to assess the progress achieved in the implementation of this right, the difficulties encountered and any targets identified for the future, including in relation to child mortality and child morbidity, service coverage, data collection, policies and legislation, budget allocation (including in relation to the general budget), involvement of non-governmental organizations and international assistance.

Please also provide information on the measures undertaken in particular:

To diminish infant and child mortality, indicating the average rates and providing relevant disaggregated data, including by gender, age, region, rural/urban area, ethnic and social origin.

To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care, including:

The distribution of both general and primary health care services in the rural and urban areas of the country and the balance between preventative and curative health care;

Information on the children having access to and benefiting from medical assistance and health care, as well as persisting gaps, including by gender, age, ethnic and social origin, and measures adopted to reduce existing disparities;

The measures adopted to ensure a universal immunization system.

To combat disease and malnutrition, including in 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 account the risks and dangers of environmental degradation and pollution; reports should indicate the overall situation, persisting disparities and difficulties, as well as policies to address them, including priorities identified for future action, and information should also be provided, including by gender, age, region, rural/urban, and social and ethnic origin on:

The proportion of children with low birth weight;

The nature and context of the most common diseases and their impact on children;

The proportion of the child population affected by malnutrition, including of a chronic or severe nature, and lack of clean drinking water;

The children provided with adequate nutritious food;

The risks from environmental pollution and the measures adopted to prevent and combat them.

To ensure appropriate prenatal and postnatal health care for mothers, indicating the nature of services provided, including appropriate information given, the coverage ensured, the rate of mortality and its main causes (average and disaggregated, inter alia, by age, gender, region, urban/rural area, social and ethnic origin), the proportion of pregnant women who have access to and benefit from pre- and postnatal health care, trained personnel and hospital care and delivery;

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; in this regard, information should also be provided on:





Campaigns, programmes, services and strategies and other relevant mechanisms developed to provide basic knowledge, information and support to the general population, in particular to parents and children;

The means used, particularly in relation to the areas of child health and nutrition, the advantages of breastfeeding and the prevention of accidents;

The availability of safe sanitation;

The measures adopted to increase food production to ensure household food security;

The measures adopted to improve the system of education and training of health personnel;

Disaggregated data, including by age, gender, region, rural/urban area, social and ethnic origin.

To develop preventive health care, guidance for parents and family planning education and services; in this regard, reports should also provide information on:

The policies and programmes developed, as well as services available;

The population covered, including in rural and urban areas, by age, gender, social and ethnic origin;

The measures adopted to prevent early pregnancy and to take into consideration the specific situation of adolescents, including provision of appropriate information and counselling;

The role played by the education system in this regard, including in the school curricula;

Disaggregated data on the incidence of children's pregnancy, including by age, region, rural/urban area, and social and ethnic origin.

Please indicate the prevalence of HIV/AIDS and the measures adopted to promote health information and education on HIV/AIDS among the general population, special groups at high risk and children, as well as:

The programmes and strategies developed to prevent HIV;

The measures adopted to assess the occurrence of HIV infection and AIDS, among both the general population and children, and its incidence inter alia by age, gender, rural/urban area;

The treatment and management provided in case of HIV infection and AIDS among children and parents, and the coverage ensured nationwide, in urban and rural areas;

The measures adopted to ensure an effective protection and assistance to children who are orphans as a result of AIDS;

The campaigns, programmes, strategies and other relevant measures adopted to prevent and combat discriminatory attitudes against children infected by HIV or with AIDS, or whose parents or family members have been infected.

Please provide information on the measures adopted pursuant to article 24, paragraph 3, with a view to abolishing all traditional practices prejudicial to the health of children, particularly girls, or otherwise contrary to the principles and provisions of the Convention (for example genital mutilation and forced marriage). Reports should also indicate any assessment made of traditional practices persisting in society that are prejudicial to children's rights.

Information should also be provided on the measures adopted pursuant to article 24, paragraph 4, to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article, and the particular consideration given to the needs of developing countries. Reports should inter alia indicate the activities and programmes developed in the framework of international cooperation, including at the bilateral and regional levels, the areas addressed, the target groups identified, the financial assistance provided and/or received and the priorities considered, as well as any evaluation made of the progress achieved and of the difficulties encountered. Mention should be made, whenever appropriate, of the involvement of United Nations organs and specialized agencies and non-governmental organizations."

(CRC/C/58, paras. 93-98. The following paragraphs of the Guidelines for Periodic Reports are also relevant to reporting under this article: 24, 32, 40-41, 46, 86-87, 108, 143, 166; for full text of Guidelines, see Appendix 3, page 674.)

Health rights in the International Bill of Human Rights

The Universal Declaration of Human Rights includes the right to care as part of everyone's right to "a standard of living adequate for the health and well-being of himself and of his family", adding: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection" (article 25).

The International Covenant on Economic, Social and Cultural Rights, in article 12, provides:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the still-birth 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 11 of the Covenant sets out the right of "everyone" to an adequate standard of living, including adequate food, clothing and housing. The Committee on Economic, Social and Cultural Rights has adopted General Comments on the right to adequate housing and the right to adequate food (see article 27, page 396 and below, page 354).

Both instruments also assert the right to life (for further discussion see article 6, page 95). The Convention on the Rights of the Child goes further in establishing a right of access to health care services, and providing a non-exclusive list of appropriate measures States should take.

Declaration on Primary Health Care

The World Health Organization includes in its Constitution (adopted at the International Health Conference in New York in 1946) a broad definition of "health", and the same definition was

used in the Declaration of Alma-Ata on Primary Health Care – the result of the 1978 International Conference on Primary Health Care, which met in Alma-Ata, (jointly sponsored by the WHO and UNICEF). The Declaration reaffirmed that health, "which is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important worldwide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector".

The Declaration of Alma-Ata defines primary health care, promoted as a priority in article 24 of the Convention on the Rights of the Child, as "essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. It forms an integral part both of the country's health system, of which it is the central function and main focus, and of the overall social and economic development of the community. It is the first level of contact of individuals, the family and community with the national health system bringing health care as close as possible to where people live and work, and constitutes the first element of a continuing health care process" (Declaration of Alma-Ata, paras. I and VI. For further details, see box on page 348).

The Declaration urges all governments to formulate national policies, strategies and plans of action to launch and sustain primary health care as part of a comprehensive national health system (Declaration of Alma-Ata 1978, paras. I, VI, VII and VIII). The Declaration was endorsed by the United Nations General Assembly in a resolution – "Health as an integral part of development" – that reiterated WHO's appeal to the international community "to give full support to the formulation and implementation of national, regional and global strategies for achieving an acceptable level of health for all" (General Assembly resolution 34/58, 29 November 1979).

More recently, in 1998, the World Health Assembly reaffirmed the Alma-Ata principles in its policy paper "Health for all in the twenty-first century" (A51/5).



Declaration of Alma-Ata

The following is the text of the Alma-Ata Declaration on Primary Health Care:

“Primary health care:

1. reflects and evolves from the economic conditions and sociocultural and political characteristics of the country and its communities and is based on the application of the relevant results of social, biomedical and health services research and public health experience;
2. addresses the main health problems of the community, providing promotive, preventive, curative and rehabilitative services accordingly;
3. includes at least: education concerning prevailing health problems and the methods of preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against the major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs;
4. involves, in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors;
5. requires and promotes maximum community and individual self-reliance and participation in the planning, organization, operation and control of primary health care, making fullest use of local, national and other available resources; and to this end develops through appropriate education the ability of communities to participate;
6. should be sustained by integrated, functional and mutually supportive referral systems, leading to the progressive improvement of comprehensive health care for all, and giving priority to those most in need;
7. relies, at local and referral levels, on health workers, including physicians, nurses, midwives, auxiliaries and community workers as applicable, as well as traditional practitioners as needed, suitably trained socially and technically to work as a health team and to respond to the expressed health needs of the community.”

(Declaration of Alma-Ata, 1978, para. VII)

The Committee on the Rights of the Child has reinforced the Convention’s emphasis on primary health care in its examination of reports from States Parties (see below, page 353).

World Summit for Children Declaration and Plan of Action

The World Declaration on the Survival, Protection and Development of Children and the Plan of Action for implementing it, adopted at the World Summit for Children on 30 September 1990, provided both general and specific commitments for child health, related to the Convention’s standards, which the Committee on the Rights of the Child has referred to in its examination of States Parties’ reports.

The special session on Children of the United Nations General Assembly to be held in May

2002 will review and build on the World Summit Declaration and Plan of Action.

The Committee has urged States consistently to fulfil World Summit for Children goals. For example:

“The Committee welcomes the State Party’s efforts to fulfil the goals set by the World Summit for Children. However, it remains concerned about regional inequalities in access to health services, as well as in immunization coverage and infant mortality rates. The Committee recommends that the State Party continue taking effective measures to ensure access to basic health care and services for all children.” (Costa Rica 2RCO, Add.117, para. 21)

In 2000 a special session of the United Nations General Assembly reviewed progress since the World Summit for Social Development (Copenhagen, 1995). It adopted a detailed res-

olution on further initiatives for social development (A/RES/S-24/2): “Five years have passed since the World Summit for Social Development, which marked the first time in history that heads of State and Government had gathered to recognize the significance of social development and human well-being for all and to give these goals the highest priority into the twenty-first century. The Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development established a new consensus to place people at the centre of our concerns for sustainable development and pledged to eradicate poverty, promote full and productive employment, and foster social integration to achieve stable, safe and just societies for all.” (para. 1)

The resolution urges the use of health policies as an instrument for poverty eradication, along the lines of the World Health Organization strategy on poverty and health, including the development of “sustainable and effectively managed pro-poor health systems which focus on the major diseases and health problems affecting the poor, achieving greater equity in health financing, and also taking into account the provision of and universal access to high-quality primary health care throughout the life cycle, including sexual and reproductive health care, not later than 2015, as well as health education programmes, clean water and safe sanitation, nutrition, food security and immunization programmes...” It urges detailed, multisectoral action at the national level to challenge HIV/AIDS (commitment 2, para. 27(u) and commitment 7, para. 97)

Progressive implementation of health rights

As with other economic, social and cultural rights, article 4 of the Convention on the Rights of the Child requires States Parties to implement article 24 “to the maximum extent of their available resources and, where needed, within the framework of international cooperation”. The right to life (article 6, paragraph 1) is a principle which must be respected in all circumstances, and is included in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (see page 97). Article 24 stresses the progressive nature of implementation: States Parties “shall strive to ensure” that no child is deprived of his or her right of access to health care services, “shall pursue full implementation of this right” (paragraph 2), and shall promote and encourage international coop-

eration “with a view to achieving progressively” full realization of the right (paragraph 4).

Similarly, article 2(1) of the International Covenant on Economic, Social and Cultural Rights indicates that each State Party undertakes to take steps “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”.

The Committee on the Rights of the Child has not yet commented in detail on the interpretation of article 24 and the obligations of States Parties. But in a key General Comment on the nature of States Parties’ obligations under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights notes that the concept of progressive realization is, on the one hand, a necessary flexibility device, reflecting the realities of the real world. “On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être* of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...”

“... the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant ... even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints.” (Committee on Economic, Social and Cultural Rights, General Comment 3, 1990, HRI/GEN/1/Rev.5, pp. 20 and 21. For further discussion, see article 4, page 56.)





The Committee frequently expresses general concern at lack of access, and lack of free access, to health services, in particular for disadvantaged groups. It has commented on low investment, shortages and high cost of drugs. For example:

"The Committee wishes to reiterate the concerns expressed by the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.39) with regard to the deterioration in the health of the Armenian people, especially women and children, and decreasing budgetary allocations in this sector. The Committee's concerns include the deterioration in the quality of care; inadequate prenatal and neonatal care; poor nutrition; that the cost of care is a barrier to access to health care for poor households; and that abortion is the most commonly used means of family planning.

"The Committee recommends that the State Party increase allocation of resources towards an effective primary health care system. The Committee recommends that the State Party continue its efforts to distribute food to the poorest sections of society; expand use of iodized salt; and establish family planning programmes. The State Party is encouraged to continue cooperation with and seek assistance from, inter alia, UNICEF, WHO, the World Food Programme and civil society." (Armenia IRCO, Add.119, paras. 36 and 37)

"The Committee is deeply concerned at low immunization rate, high levels of malnutrition and micro-nutrition deficiencies and extremely poor health conditions among children in general and particularly in camps. Further, the Committee is concerned at high mortality rates among children, high maternal mortality rates, at low investment in health care, the limited number of hospitals and health centres that are operational, the limited drug supply and relatively high cost of medicines, including generic drugs, and the concentration of medical professionals in Bujumbura city.

"The Committee urges the State Party to make significant increases in the health budget, to make every effort to improve public health, including primary health care, and to ensure adequate access for all children to health services, with particular regard to those living in rural communities and in camps. The Committee recommends that the State Party implement integrated policies and programmes for the management of childhood illnesses and measures to improve child and maternal health. The Committee recommends that the State Party seek the assistance of UNICEF and WHO in this regard." (Burundi IRCO, Add.133, paras. 54 and 55)

"The Committee is concerned at the very high mortality rate among young children and the

high maternal mortality rate, the high level of serious illnesses, problems related to malnutrition among children and mothers, low immunization rates and poor access to safe drinking water. The Committee is concerned, in addition, that the charging of fees for basic health care, and particularly prenatal and maternal care, may limit the access of disadvantaged children and their mothers to health services. Further, the Committee is concerned at weaknesses in the health information system and the lack of health statistics in particular.

"The Committee urges the State Party to make every additional effort to address urgently health concerns among children and adults and to improve access for the whole population, including poor families, to health services. The Committee urges the State Party in particular to consider and apply means through which charges for health services can be removed or reduced for disadvantaged children and mothers and to improve the decentralization of effective health services. The Committee recommends that the State Party make free medical assistance available to pregnant women, including the assistance of trained professionals during childbirth. The Committee urges the State Party to continue to seek international cooperation in this regard, including from UNICEF, WHO and others." (Central African Republic IRCO, Add.138, paras. 54 and 55)

Discrimination in access to health/health care

Article 24 stresses that the State Party must recognize the right of the child to the enjoyment of the highest attainable standard of health and it must strive to ensure that no child is deprived of access to health care services. Article 24 read with article 2 requires that no child in the jurisdiction suffers discrimination in the implementation of the article – "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status". According to the Alma-Ata Declaration: "The existing gross inequality in the health status of the people particularly between developed and developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries." (Declaration, para. II)

The Committee has linked concerns about health to discrimination issues in many cases. In particular, it has highlighted discrimination against children living in poverty, girls, disabled chil-

dren, children living in rural areas and different regions of a State, ethnic groups, children of indigenous communities, asylum-seeking and refugee children and illegal immigrants (see also article 2, page 19). For example:

"In the light of article 24 of the Convention, the Committee notes that the State Party has already focused and placed priority on the main health issues by establishing several national programmes. Nevertheless, the Committee is concerned at high maternal mortality, and very high levels of low birth weight and malnutrition among children, including micronutrient deficiencies, linked to the lack of access to prenatal care and, more generally, limited access to quality public health care facilities, insufficient numbers of qualified health workers, poor health education, inadequate access to safe drinking water and poor environmental sanitation. This situation is exacerbated by the extreme disparities faced by women and girls, especially in rural areas.

"The Committee recommends that the State Party take all necessary steps to adapt, expand and implement the Integrated Management of Child Illness strategy, and to pay particular attention to the most vulnerable groups of the population. The Committee also recommends that the State Party undertake studies to determine the socio-cultural factors which lead to practices such as female infanticide and selective abortions, and to develop strategies to address them. The Committee recommends continued allocation of resources to the poorest sections of society and continued cooperation with and technical assistance from, inter alia, WHO, UNICEF, the World Food Programme and civil society." (India IRCO, Add.115, paras. 48 and 49. See also, for example, Peru 2RCO, Add.120, para. 24; South Africa IRCO, Add.122, para. 29)

Disability

Article 23 of the Convention on the Rights of the Child requires recognition of "the right of the disabled child to special care"; assistance provided "shall be designed to ensure that the disabled child has effective access to and receives ... health care services, rehabilitation services ... in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

According to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society." (rule 2.3; see article 23, page 338)

Among the recommendations adopted by the Committee following its October 1997 General Discussion on "The rights of children with disabilities" (see article 23, page 322) were proposals to review laws which deny disabled children an equal right to life, survival and development and which segregate disabled children in separate institutions. In general, the Committee recommended:

"States should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention, including infanticide, traditional practices prejudicial to health and development, superstition, perception of disability as tragedy". (Report on the sixteenth session, September/October 1997, CRC/C/69, para. 338(e))

Girls

In the report of its General Discussion on "The girl child" (January 1995), the Committee noted that

"...The son preference, historically rooted in the patriarchal system, often manifested itself by neglect, less food and little health care. Such a situation of inferiority often favoured violence and sexual abuse within the family, as well as problems associated with early pregnancy and marriage..." (Report on the eighth session, CRC/C/38, p. 49)

The Platform for Action of the Fourth World Conference on Women states: "Existing discrimination against the girl child in her access to nutrition and physical and mental health services endangers her current and future health. An estimated 450 million adult women in developing countries are stunted as a result of childhood protein-energy malnutrition..." (para. 266). The Platform for Action proposes that all barriers be eliminated to enable girls without exception to develop their full potential and skills through equal access to education and training, "nutrition, physical and mental health care and related information" (para. 272).

In the political declaration and further action and initiatives to implement the Beijing Declaration and Platform for Action (A/RES/S-23/3) adopted at the Special Session of the General Assembly (2000), there are substantial sections summarizing achievements and obstacles since 1995 (paras. 11 and 12) and making detailed recommendations for States on health services generally (para. 72) and for adolescents in particular (para. 79, see page 363).

The Committee on the Elimination of Discrimination against Women adopted a General Recommendation in 1999 on women





and health (relating to article 12 of the Convention on the Elimination of All Forms of Discrimination against Women). It provides detailed recommendations relating to women's health rights, including reproductive and sexual health rights and emphasizes that for the purposes of the recommendation, "'women' includes girls and adolescents". It stresses that "unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability". The recommendation proposes that States should implement a "comprehensive national strategy to promote women's health throughout their lifespan". (General Recommendation 24, 1999, Committee on the Elimination of Discrimination against Women, HRI/GEN/1/Rev.5, pp. 246, 247 and 251)

Participation in relation to health rights

Article 12 requires that children's right to express their views and have them given due consideration, and to be heard in any judicial or administrative proceedings, is implemented in relation to health and health services. Consideration of participation is required both in relation to the overall planning, delivery and monitoring of health services relevant to the child, and also in relation to treatment of the individual child, and the child's right to consent or refuse consent to treatment (see article 12, page 179 for further discussion). The *Guidelines for Periodic Reports* seeks information on any legal minimum age defined in legislation for medical counselling without parental consent and also for medical treatment or surgery without parental consent. The Convention does not support the setting of a particular age but rather requires respect for the "evolving capacities" of the child to make decisions for him or herself (see article 1, definition of the child, page 8).

"States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...": article 24(2)

The wording indicates that the list of measures in paragraph 2 is not exclusive; other measures may be required to implement the right.

"(a) To diminish infant and child mortality"

Article 6 requires recognition that "every child has the inherent right to life"; States must ensure "to the maximum extent possible" the survival of the child (see page 95). The infant mortality rate is the probability of dying between birth and exactly one year of age, expressed per 1,000 live births; the term child mortality rate is the probability of dying between birth and exactly five years of age, expressed per 1,000 live births. But in the context of the Convention, "child" means every human being below the age of 18, and thus the concern to diminish mortality extends to 18.

The under-five mortality rate is chosen by UNICEF as its single most important indicator of the state of a nation's children. In 2000, under-five mortality rates varied from 316 per 1,000 live births (Sierra Leone) to 4 per 1,000 live births (Iceland, Japan, Norway, Singapore, Sweden and Switzerland). (*The State of the World's Children 2002, Official Summary*, UNICEF, p. 11).

The Committee on the Rights of the Child has congratulated States that have made progress in reducing rates, and has expressed grave concern wherever rates have risen and also at situations in which rates vary in a discriminatory way:

"The Committee is deeply concerned at the extremely high infant mortality rates and low life expectancy in the State Party. The Committee is concerned, in particular, at the high incidence of malaria and tuberculosis and their effects upon children, at the fragile health infrastructure, limited health awareness among the public and the limited implementation of the 1993 Health Policy and the 1994 Social Policy. The Committee is deeply concerned that implementation of health policies has been slow and that only limited progress has been achieved in this area."

"The Committee urges the State Party to ensure that access to primary health care services is increased, that national health infrastructure is strengthened and that public health education programmes are used to lower infant mortality rates and raise life expectancy in the State Party. The Committee recommends that the State Party seek assistance from the World Health Organization, UNICEF and the United Nations Development Programme in this regard." (Ethiopia 2RCO, Add.144, paras. 52 and 53)

It has noted the connection between education of mothers and infant mortality:

"Noting the correlation, identified by studies, between low education among mothers and high infant mortality, and between the incidence of such mortality and certain regions, the Committee urges the State Party to continue its efforts to address this concern, inter alia, through the effective provision of adequate health education to mothers. The Committee recommends that the State Party seek technical assistance from UNICEF and WHO in this regard." (The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 37)

There are diverse causes of infant and child mortality, acknowledged in the World Summit for Children Declaration and other statements.

The obligations of States to respond to these causes of child deaths is pursued in the following subparagraphs of article 24(2), and in other articles of the Convention on the Rights of the Child – for example to provide appropriate support for parenting (article 18) and to protect children from various forms of violence, exploitation and abuse (articles 19, 32-38).

In its *Guidelines for Periodic Reports*, the Committee acknowledges the importance of the adequate investigation of and reporting on the deaths of all children and the causes of death, and the registration of deaths and causes (para. 41). Adequate investigation is vital to inform preventive strategies to reduce infant and child mortality rates (see also article 6, page 103).

"(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care"

Here again, emphasis is on "all children". The Committee's general concerns have focused on a lack of priority given to primary health care, reflecting the Declaration of Alma-Ata (see above, page 348). For example:

"The Committee recommends that the primary health care system be improved regarding the effectiveness of, inter alia, antenatal care, health education, including sex education, family planning and immunization programmes. As regards problems relating specifically to the immunization programme, the Committee suggests that the Government should look to international cooperation for support in the procurement and manufacturing of vaccines." (Russian Federation IRCO, Add.4, para. 20)

When it examined the Russian Federation's Second Report, the Committee expressed concern at the persistence of a high infant mortality rate and the deteriorating health infrastructure and services. It recommended

Celebrating infant life

"In addition to [a] constitutional mandate, the survival and development of children are also supported by tradition. The Marshallese infant receives extraordinary support from the traditional extended family, which represents a reservoir of experience in raising children and readily available assistance with child care. One of the greatest feasts of Marshallese tradition is the kamem, observed on the first birthday of a child. The ceremony has its origins in the pre-Contact era when few infants survived the first year of life. The tradition has continued into the present-day, with the parents and grandparents of the child hosting large evening meals, sometimes with hundreds of guests.

"This commitment to children, along with improved clinical care funded by the United States, has resulted in a dramatic increase in the number and percentage of children over the past 50 years. Since the close of the Second World War the population has increased fivefold, from 11,000 to over 55,000. Today, over 60 per cent of the population is 18 years of age or younger. Thus, a relatively small number of adults must support and supervise a far larger number of children."

(Marshall Islands IR, paras. 90 and 91)

"...that the State Party consider seeking technical assistance to continue its efforts to reverse the deterioration in primary health care..." (Russian Federation 2RCO, Add.110, para. 46)

The Committee commented to Kyrgyzstan:

"Noting efforts to strengthen the primary health sector, the Committee is nevertheless concerned by the deterioration in the health of the most vulnerable groups, especially women and children. In particular, the Committee notes the increase in the incidence of communicable diseases, including vaccine-preventable diseases, and in childhood malnutrition. Moreover, the Committee is concerned that because of distant facilities and insufficient numbers of personnel and medication, children in rural regions suffer most.

"The Committee recommends that the State Party ensure that its commitment to primary health care, including implementation of the Integrated Management of Childhood Illnesses strategy, is met by adequate allocation of resources, both human and





financial, and that all children, especially from the most vulnerable groups, have access to health care. The Committee recommends that the State Party undertake awareness-raising campaigns to ensure that families, especially refugee families, are adequately informed of the need to be registered in polyclinics. The Committee recommends that the State Party establish comprehensive family planning programmes, as well as measures to ensure that abortion is not perceived as a method of contraception. The State Party is encouraged to continue cooperation with and seek assistance from, among others, UNICEF and WHO.” (Kyrgyzstan IRCO, Add.127, paras. 43 and 44. See also, for example, Tajikistan IRCO, Add.136, paras. 38 and 39)

“(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution”

Again, this subparagraph emphasizes the framework of primary health care; the Committee’s comments have highlighted the basic issues of nutrition and clean water and the dangers of environmental pollution. Discrimination in provision and access to primary health care is often mentioned, particularly affecting children in rural areas and children living in poverty.

Nutrition. Nutrition is also mentioned in subparagraph (e) of article 24(2): States should ensure dissemination of basic knowledge of nutrition, particularly to parents and children. Article 27 of the Convention (adequate standard of living) requires States Parties in cases of need to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (see also article 27, page 389).

In the 1969 Declaration on Social Progress and Development, the “elimination of hunger and malnutrition and the guarantee of the right to proper nutrition” (article 10(b)) are listed as among the “main goals”. The Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services...” (article 25), and the International Covenant on Economic, Social and Cultural Rights similarly recognizes the right of everyone to an adequate standard of

living... “including adequate food” and the fundamental right of everyone to be free of hunger (article 11(1)).

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food – “of crucial importance for the enjoyment of all rights”. “Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, *inter alia* because of poverty, by large segments of the world’s population.” The “core content” of the right to adequate food implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”. Accessibility must be “in ways that are sustainable and that do not interfere with the enjoyment of other human rights”. The Committee defines the right to adequate food as being realized when “every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger... even in times of natural or other disasters.”

The General Comment also notes that “Any person or group who is a victim of a violation of the right to adequate food should have access to effective juridical or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition, National Ombudsmen and human rights commissions should address violations of the right to food”. (Committee on Economic, Social and Cultural Rights, General Comment 12, 1999, HRI/GEN/1/Rev.5, pp. 66-68 and 72)

The Committee on the Rights of the Child often expresses concern at malnutrition and emphasizes the need for a multisectoral approach to ending it:

“...Nevertheless, concern is expressed that the State Party’s infant mortality and under-five mortality rates remain among the highest in the region. Child malnutrition is also an area of concern.

"The Committee recommends that the State Party address the issue of childhood morbidity and mortality by taking a multisectoral approach recognizing the critical role of illiteracy, lack of clean water supplies and food insecurity in the current pattern of childhood illnesses. Priority areas must be identified on the basis of baseline data collected by careful and comprehensive research. Such a strategy must take into account that most health care takes place outside health facilities and outside State control; it must also recognize the needs of particularly isolated communities." (Cambodia IRCO, Add.128, paras. 44 and 45)

"The Committee, while noting that the State Party has implemented a food and nutrition programme, expresses its concern at the increasing number of cases of malnutrition, due also to overcrowding in urban areas and the importation of food having high levels of sugar and fat, and at the low levels of breastfeeding."

"The Committee recommends that the State Party strengthen its nutrition programme in order to prevent and combat malnutrition and assess the impact of the programme on those affected with a view eventually to improving its effectiveness, in particular by encouraging healthier nutritional habits." (Marshall Islands IRCO, Add.139, paras. 46 and 47)

It has noted obesity as a threat to children's health:

"...The Committee notes with concern the increasingly poor nutrition practices and food choices, including within the school lunch programme, as well as the high incidence of overweight and obesity among children, especially those living in urban areas..."

"The Committee recommends that the State Party take all appropriate measures to promote and encourage healthy nutritional practices to prevent and address overweight and obesity among children." (Palau IRCO, Add.149, paras. 46 and 47)

The International Conference on Nutrition (Rome, December 1992) prepared the World Declaration and Plan of Action for Nutrition, which recognizes that "access to nutritionally adequate and safe food is a right of each individual". The Declaration also affirmed "in the context of international humanitarian law that food must not be used as a tool for political pressure. Food aid must not be denied because of political affiliation, geographic location, gender, age, ethnic, tribal or religious identity." (Declaration, paras. 1 and 15)

Environmental pollution. The Committee has begun to highlight the damaging effects on

Protection from pollution in Norway

"People living in densely populated areas, particularly in larger cities, are exposed to unhealthy levels of air pollution and noise. Children and adolescents are among the groups which are specially vulnerable to air pollution. To reduce these problems the Norwegian Government introduced regulations pursuant to the Pollution Control Act with binding threshold limit values for local air quality and noise on 30 May 1997. Transport is the most important source of local air pollution and noise, and the new regulations apply to transport pollution as well as other kinds of pollution.

"This is the first example in Norwegian environmental policy of binding threshold limit values for environmental pollution. In order to gain more knowledge about the air quality in local environments, the polluters in the most polluted areas are being required to register their contributions to air pollution and noise. This will be an important contribution to surveys of children's and adolescents' physical environment, especially in cities and other densely populated areas. Several municipalities already have systems for controlling air pollution, which now can be further developed."

(Norway 2R, paras. 254 and 255)

the realization of children's rights of environmental pollution, both in general and from specific incidents. It has mentioned contamination of water supplies, sea pollution, and air pollution. For example:

"In light of article 24 of the Convention, the Committee recommends that particular attention be given to the impact of environmental pollution on children and that a study be undertaken on this subject. International cooperation in this field should be considered." (Democratic People's Republic of Korea IRCO, Add.88, para. 31)

"The Committee expresses its concern at the high incidence of environmental threats, including to the health of children, in particular in oil exploitation areas of the Amazonia region. In the light of article 24(2)(c) of the Convention, the Committee recommends that the State Party take all appropriate measures, including seeking international cooperation, to prevent and





combat the damaging effects of environmental degradation, including pollution, on children.” (Ecuador IRCO, Add.93, para. 24)

“While noting the State Party’s intention to improve the situation of environmental health services through, inter alia, the establishment of a Solid Waste Management Authority and the expansion of the collection areas from 55 per cent to approximately 95 per cent, the Committee remains concerned at the poor environmental health conditions. In this connection, the Committee notes the continued widespread use of pit-latrines, increasing sea pollution, and the inadequate solid waste disposal programme. The Committee recommends that the State Party intensify its efforts to address environmental health concerns, particularly as regards solid waste management.” (Grenada IRCO, Add.121, para. 24)

“Concern is expressed at the increase in environmental degradation, especially as regards air pollution. The Committee recommends that the State Party increase its efforts to facilitate the implementation of sustainable development programmes to prevent environmental degradation, especially as regards air pollution.” (South Africa IRCO, Add.122, para. 30)

“The Committee also expresses its concern at the problems of environmental degradation in the State Party, including very limited access to drinkable water, and at the precarious conditions of housing facilities for families. “In the light of article 24(2)(c) of the Convention, the Committee recommends that the State Party take all appropriate measures, including through international cooperation, to prevent and combat the damaging effects of environmental degradation on children, including pollution and contamination of water supplies. The Committee also recommends that the State Party take effective measures, including through international cooperation, to improve housing facilities for families.” (Comoros IRCO, Add.141, paras. 41 and 42. See also, for example, Armenia IRCO, Add.119, paras. 40 and 41; Jordan 2RCO, Add.125, paras. 49 and 50; Dominican Republic IRCO, Add.150, paras. 35 and 36)

“(d) To ensure appropriate prenatal and postnatal health care for mothers”

The World Summit for Children Plan of Action notes: “... The causes of the high rates of infant mortality, especially neonatal mortality, are linked to untimely pregnancies, low birth weight and pre-term births, unsafe delivery, neonatal tetanus, high fertility rates, etc...” (para. 16). Almost a fifth of under-five deaths are due to perinatal causes.

Sufficient health personnel, adequately trained and supervised, should be provided to assist all who need them. The Committee has emphasized the importance of training for everyone involved in supporting birth, including traditional birth attendants.

The Committee has noted the particular threats to mortality rates and health early motherhood poses (see further discussion under article 24(2)(f) below – family planning education and services).

To some States it has promoted paid maternity leave:

“The Committee encourages the State Party to review its legislation and make paid maternity leave mandatory for employers in all sectors, in the light of the principle of the best interests of the child and articles 18(3) and 24(2) of the Convention.” (Australia IRCO, Add.79, para. 31)

“(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents”

This paragraph of article 24 underlines the key importance of health education and information, and support, to achieving the child’s right to health and access to health care services, an idea echoed in the World Summit Declaration and Plan of Action, and the Platform for Action of the Fourth World Conference on Women. The link between health and access to basic education and achievement of literacy is acknowledged and reflected in goals in these and other plans. Article 17 of the Convention on the Rights of the Child promotes the potential role of the mass media in disseminating information of benefit to children (see article 17, page 235). Article 18 requires States to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and the Committee on the Rights of the Child has frequently called for parenting and family education (see also article 18, page 243).

Breastfeeding. There are two aspects to the promotion of breastfeeding: the need for positive information, education and promotion of its advantages, and the need to challenge the negative impact of the commercial marketing of substitutes. A widely used standard for positive education is the 1989 WHO/UNICEF *Ten steps to successful breastfeeding*. These steps form the

backbone of the worldwide Baby-Friendly Hospital Initiative, launched in 1991 by the WHO and UNICEF.

In 1981 the International Code of Marketing of Breastmilk Substitutes was adopted by the World Health Assembly (WHA resolution 34.22, 1981). The Code aims “to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution” (Code, para. 1). In 1990, the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding included national action to implement the Code as one of its four operational targets for 1995. The World Health Assembly (WHA) has repeatedly reiterated its recommendation to Member States to adopt the Code and subsequent WHA resolutions in their entirety. The Code specifies that Member States “shall communicate annually to the Director-General information on action taken to give effect to the principles and aim of the Code”. The Director-General of WHO is required to report to the World Health Assembly in even years on the status of implementation of the Code, and to provide technical support on request to Member States (paras. 11.6 and 11.7).

The Committee has recognized that implementation of the Code by States Parties is a concrete measure towards the realization of parents’ right to objective information on the advantages of breastfeeding and, thus, to fulfilling the obligations of article 24:

“The Committee recommends that the ban of the commercial marketing of infant formula be implemented and that breastfeeding be promoted among mothers in health facilities...” (Lebanon IRCO, Add.54, para. 34)

“The Committee expresses its concern at the noticeable reduction in the rate of breastfeeding following the first month of birth. It is further concerned by the short maternity leave period and that the International Code for Marketing of Breast Milk Substitutes is not fully implemented.

“The Committee recommends that the State Party undertake a comprehensive study to identify reasons for the drop in breast-feeding after the first month. It also recommends the extension of the period of maternity leave, serious efforts to educate the public – especially new parents – on the benefits of breastfeeding and the adoption of other measures, as necessary, to counteract any negative impact on employment of women who wish to continue breastfeeding their children for a longer period of time. Finally,

the Committee recommends that the State Party increase its efforts to promote compliance with the International Code for Marketing of Breast Milk Substitutes.” (Luxembourg IRCO, Add.92, paras. 18 and 36)

“Concern is expressed at the State Party’s low breastfeeding rate...”

“The Committee recommends that the State Party take effective measures to increase and promote the use of breastfeeding practices...and promote a healthy lifestyle among children.” (Malta IRCO, Add.129, paras. 35 and 36)

The Committee has noted the importance of informing mothers to the risk of HIV transmission through breastfeeding:

“...The Committee recommends that effective measures be taken to provide information and support to HIV-infected mothers to prevent HIV transmission, in particular by providing safe alternatives to breastfeeding. The Committee recommends that the State Party address the social factors preventing vulnerable groups (including women and children) from seeking health care, and that particular efforts be made to reach refugee and displaced children and those living on the streets. The Committee urges the State Party to develop effective partnerships with NGOs and civil society groups, and to seek the technical assistance of United Nations agencies such as WHO and UNICEF in this respect.” (Djibouti IRCO, Add.131, para. 42)

In 1997, UNAIDS, and two of the six cosponsoring agencies, WHO and UNICEF, issued a joint policy statement on HIV and infant feeding, and initiated the development of guidelines to help national authorities to implement the policy. These include a review of transmission of HIV through breastfeeding, guidelines for decision makers, as well as a guide for health care managers and supervisors. A Technical Consultation on HIV and Infant Feeding was convened by WHO in Geneva in April 1998 to discuss their implementation, and a broad consensus on a public health approach based on universally recognized human rights standards was reached.

Accident prevention. Few Initial Reports have given much information on accident prevention, and there has been little comment from the Committee. Under article 3(2), States undertake to provide the protection and care necessary for children’s welfare. While accident prevention is clearly part of parental responsibilities, there are aspects of it which can only be promoted adequately through State action (transport and environmental policies, provision of appropriate advice, financial support for domestic safety aids



Excerpts from Declaration of Commitment on HIV/AIDS

The Declaration of Commitment, adopted at the 2001 special session on HIV/AIDS, defines several goals to address the HIV/AIDS crisis:

“Prevention

Prevention must be the mainstay of our response

By 2003, establish time-bound national targets to achieve the internationally agreed global prevention goal to reduce by 2005 HIV prevalence among young men and women aged 15 to 24 in the most affected countries by 25 per cent and by 25 per cent globally by 2010, and intensify efforts to achieve these targets as well as to challenge gender stereotypes and attitudes, and gender inequalities in relation to HIV/AIDS, encouraging the active involvement of men and boys...

By 2005, ensure that at least 90 per cent, and by 2010 at least 95 per cent of young men and women aged 15 to 24 have access to the information, education, including peer education and youth-specific HIV education, and services necessary to develop the life skills required to reduce their vulnerability to HIV infection, in full partnership with young persons, parents, families, educators and health-care providers;

By 2005, reduce the proportion of infants infected with HIV by 20 per cent, and by 50 per cent by 2010, by ensuring that 80 per cent of pregnant women accessing antenatal care have information, counselling and other HIV-prevention services available to them, increasing the availability of and providing access for HIV-infected women and babies to effective treatment to reduce mother-to-child transmission of HIV, as well as through effective interventions for HIV-infected women, including voluntary and confidential counselling and testing, access to treatment, especially anti-retroviral therapy and, where appropriate, breast-milk substitutes and the provision of a continuum of care...

Reducing vulnerability

The vulnerable must be given priority in the response

Empowering women is essential for reducing vulnerability

By 2003, develop and/or strengthen strategies, policies and programmes which recognize the importance of the family in reducing vulnerability, *inter alia*, in educating and guiding children and take account of cultural, religious and ethical factors, to reduce the vulnerability of children and young people by ensuring access of both girls and boys to primary and secondary education, including HIV/AIDS in curricula for adolescents; ensuring safe and secure environments, especially for young girls; expanding good-quality, youth-friendly information and sexual health education and counselling services; strengthening reproductive and sexual health programmes; and involving families and young people in planning, implementing and evaluating HIV/AIDS prevention and care programmes, to the extent possible...

Children orphaned and made vulnerable by HIV/AIDS

Children orphaned and affected by HIV/AIDS need special assistance

By 2003, develop and by 2005 implement national policies and strategies to build and strengthen governmental, family and community capacities to provide a supportive environment for orphans and girls and boys infected and affected by HIV/AIDS, including by providing appropriate counselling and psychosocial support, ensuring their enrolment in school and access to shelter, good nutrition and health and social services on an equal basis with other children; and protect orphans and vulnerable children from all forms of abuse, violence, exploitation, discrimination, trafficking and loss of inheritance;

Ensure non-discrimination and full and equal enjoyment of all human rights through the promotion of an active and visible policy of de-stigmatization of children orphaned and made vulnerable by HIV/AIDS;

Urge the international community, particularly donor countries, civil society, as well as the private sector, to complement effectively national programmes to support programmes for children orphaned or made vulnerable by HIV/AIDS in affected regions and in countries at high risk and to direct special assistance to sub-Saharan Africa” (paras. 65, 66 and 67).

(Declaration of Commitment on HIV/AIDS “Global Crisis – Global Action”; resolution adopted by the United Nations General Assembly, twenty-sixth special session, 25-27 June 2001, A/RES/S-26/2, pp. 7-10)

and so forth). As noted above (page 353), the Committee has stressed in its *Guidelines for Periodic Reports* the importance of investigating causes of death (para. 41). Accidents are a major cause of child death and injury in many States. According to a WHO fact sheet, road traffic accidents killed an estimated 1,171,000 people in 1998, making it the tenth leading cause of death worldwide; young adults are the most vulnerable group (*Facts about injuries: road traffic injuries*, WHO, 2000). Investigation is a vital part of accident prevention:

"The Committee also recommends that all appropriate measures be taken to prevent traffic accidents, such as teaching traffic rules at school." (Lao People's Democratic Republic IRCO, Add.78, para. 47)

"While noting that the National Health Programme runs until the year 2005, the Committee expresses its concern at the high rates of child morbidity, in particular the increase in cases of tuberculosis, and the low rates of breastfeeding. Further, it notes that there is a high rate of child deaths due to traumas and accidents, in particular motor vehicle accidents..."

"The Committee recommends that the State Party allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children, including measures aiming at a safe and healthy environment. Further, measures to raise awareness about and prevent deaths from accidents and suicide among children and youth should be taken and enforced." (Lithuania IRCO, Add.146, paras. 35 and 36)

The challenge of HIV/AIDS

The grave threat which HIV/AIDS poses to the realization of children's rights has been highlighted by the Committee, which held a General Discussion in 1998 on "Children living in a world with AIDS". Following the General Discussion, it formulated detailed recommendations (see box, page 360). The Committee resolved in 2001 to develop a General Comment on HIV/AIDS and children's rights. In 2000 a special session of the United Nations General Assembly reviewed progress since the World Summit for Social Development (Copenhagen, 1995). It adopted a detailed resolution on further initiatives for social development (Twenty-fourth special session, A/RES/S-24/2). The resolution focuses in detail on strengthening political commitment and efforts at the international and national levels against HIV/AIDS, with a focus on developing countries and countries with economies in transition (see, for example, paras. 97 and 98 of commitment 6).

In June 2001 a special session of the United Nations General Assembly was convened to review and address the problem of HIV/AIDS in all its aspects as well as to secure a global commitment to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner (for excerpts, see box opposite).

HIV/AIDS is threatening to reverse the progress made in reducing death and disease in many countries. Every day 1,000 children around the world die from AIDS (*The Progress of Nations 1997*, UNICEF, p. 23). UNICEF's report *The Progress of Nations 2000* predicted that 10.4 million children would be orphans by the end of 2000 because of AIDS. In Botswana 1 in 3 young women and 1 in 7 young men aged 15 to 24 are infected with HIV, as are 1 in 4 young women and 1 in 10 young men in Lesotho, South Africa and Zimbabwe (p. 4).

The Joint United Nations Programme on HIV/AIDS (UNAIDS), established in 1996, is a co-sponsored programme that brings together seven agencies: UNICEF, UNDP, UNFPA, UNDCP, UNESCO, WHO and the World Bank. It develops the priorities to be pursued in country programmes. In 1997, UNAIDS published a guide to United Nations human rights machinery, summarizing the relationship between human rights and HIV/AIDS, giving a general overview of the main United Nations human rights bodies and including in an annex (annex 5(d), p. 87) "Possible issues to be addressed by the Committee on the Rights of the Child" (*The UNAIDS Guide to the United Nations Human Rights Machinery*, UNAIDS, 1997). As a follow-up to the Committee on the Rights of the Child 1997 General Discussion, it was reported to the Committee in January 2000 that UNAIDS had collaborated with the Harvard School of Public Health to develop a publication entitled *Human Rights and the Prevention and Care of HIV/AIDS in Children and Young People*, including papers submitted to the discussion and the recommendations.

The Committee has increasingly focused on adolescent health issues, among them the importance of reproductive health education and counselling to combat the increasing incidence of HIV/AIDS (see below, page 363).

The Committee has noted that armed conflict and population displacement can increase the incidence of HIV/AIDS:



Recommendations following General Discussion day on “Children living in a world with AIDS”

The Committee chose as the theme for its General Discussion during the nineteenth session, on 5 October 1998, “Children living in a world with AIDS”.

Following the General Discussion, the Committee formulated detailed recommendations:

“On the basis of the recommendations of the discussion groups and the general discussion that followed on the various issues, the following recommendations were formulated by the Committee:

- (a) States, programmes and agencies of the United Nations system and NGOs should be encouraged to adopt a children’s rights centred approach to HIV/AIDS. States should incorporate the rights of the child in their national HIV/AIDS policies and programmes and include national HIV/AIDS programme structures in national mechanisms for monitoring and coordinating children’s rights;
- (b) States should adopt and disseminate the International Guidelines on HIV/AIDS and Human Rights and ensure their implementation at the national level. Programmes and agencies of the United Nations system, as well as NGOs, should contribute to the dissemination and implementation of the guidelines;
- (c) The right of children to participate fully and actively in the formulation and implementation of HIV/AIDS strategies, programmes and policies should be fully recognized. A supportive and enabling environment should be provided, in which children are allowed to participate and receive support for their own initiatives. The proven effectiveness of peer education strategies, in particular, should be recognized and taken into account for its potential contribution to the mitigation of the impact of the HIV/AIDS epidemic. The key objective of HIV/AIDS policies should be to empower children to protect themselves;
- (d) Access to information as a fundamental right of the child should become the key element in HIV/AIDS prevention strategies. States should review existing laws or enact new legislation to guarantee the right of children to have access to HIV/AIDS related information, including to voluntary testing;
- (e) Information campaigns targeting children should take into account the diversity of audience groups and be structured accordingly. Information on HIV/AIDS should be adapted to the social, cultural and economic context, and it should be made available through age-appropriate media and channels of dissemination. In the selection of target groups, attention should be given to the special needs of children who experience discrimination or who are in need of special protection. Information strategies should be evaluated for their effectiveness in leading to changes of attitude. Information on the Convention on the Rights of the Child and on HIV/AIDS issues, including the teaching of life-skills, should be incorporated in school curricula, while different strategies should be designed to distribute such information to children who cannot be reached through the school system;
- (f) HIV/AIDS data collected by States, and by programmes and agencies of the United Nations system, should reflect the Convention’s definition of a child (human beings under 18 years of age). Data on HIV/AIDS should be disaggregated by age and gender and reflect the situation of children living in different circumstances and of children in need of special protection. Such data should inform the design of programmes and policies targeted to address the needs of different groups of children;
- (g) More information should be collected and disseminated on best practices, in particular on community-based approaches to HIV/AIDS which have positive outcomes;
- (h) More research should be carried out on mother-to-child transmission, and in particular on the risks of and alternatives to breastfeeding;
- (i) Information designed to raise awareness about the epidemic should avoid dramatizing HIV/AIDS in ways that can lead to further stigmatization for those affected by the epidemic;
- (j) the Child, in particular to prohibit expressly discrimination based on real or perceived HIV status and to prohibit mandatory testing;
- (k) Urgent attention should be given to the ways in which gender-based discrimination places girls at higher risk in relation to HIV/AIDS. Girls should be specifically targeted for access to services, information and participation in HIV/AIDS related programmes, while the gender-based roles predominant in each situation should be carefully considered when planning strategies for specific communities. States should also review existing laws or enact new legislation to guarantee inheritance rights and security of tenure for children irrespective of their gender;

(l) Prevention and care strategies designed to deal with the epidemic should focus on children in need of special protection, including those living in institutions (whether social welfare ones or detention centres), those living or working in the streets, those suffering from sexual or other types of exploitation, those suffering from sexual or other forms of abuse and neglect, those involved in armed conflict, etc. States should, in particular, review existing laws or enact new legislation to protect children against sexual exploitation and abuse and to ensure rehabilitation of victims and the prosecution of perpetrators. Particular attention should also be given to discrimination based on sexual orientation, as homosexual boys and girls often face acute discrimination while being a particularly vulnerable group in the context of HIV/AIDS;

(m) HIV/AIDS care should be defined broadly and inclusively to cover not only the provision of medical treatment, but also of psychological attention and social reintegration, as well as protection and support, including of a legal nature;

(n) Barriers to the provision of youth friendly health services should be identified and removed. States should review existing laws or enact new legislation to regulate the minimum age for access to health counselling, care and welfare benefits. The formulation of comprehensive adolescent reproductive health policies should be based on the right of children to have access to information and services, including those designed to prevent sexually transmitted diseases or teenage pregnancy;

(o) States should review existing laws or enact new legislation to recognize the specific rights of the child to privacy and confidentiality with respect to HIV/AIDS, including the need for the media to respect these rights while contributing to the dissemination of information on HIV/AIDS;

(p) States, programmes and agencies of the United Nations system, and NGOs should explore the possibilities for new partnerships which could bring together organizations that deal with human rights, children-centred ones and AIDS-focused ones to look together for ways to respond to the epidemic and to work together in reporting to the Committee on the Rights of the Child.

(Committee on the Rights of the Child, Report on the nineteenth session, September/October 1998, CRC/C/80, para. 243)

"The Committee is deeply concerned that the incidence of HIV/AIDS in the State Party is likely to have risen significantly during the period of armed conflict and population displacement. The Committee recommends that the State Party urgently develop mechanisms to effectively monitor the incidence and spread of HIV/AIDS. The Committee further recommends that the State Party rapidly develop and implement a strategy for prevention, including through the use of information campaigns, and for care of people who are victims of HIV/AIDS, including for alternative care of their children. In this regard, the Committee urges the State Party to seek assistance from the World Health Organization." (Sierra Leone IRCO, Add.116, paras. 59 and 60)

"(f) To develop preventive health care, guidance for parents, and family planning education and services"

Programmes of preventive health care, health promotion and guidance exist in all countries and are promoted by the WHO, UNICEF and other agencies.

The Committee has promoted education for parenthood, including education on health matters. The Committee's *Guidelines for Periodic Reports* asks for information on family counselling and parental education programmes, and also asks how knowledge and information on child development is transmitted to parents and

other responsible adults (para. 63). Article 18 requires States to render "appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and to ensure "the development of institutions, facilities and services for the care of children" (see article 18, page 232).

Immunization. Immunization is one particular aspect of preventive health care. The Committee on the Rights of the Child has expressed grave concern where immunization rates have fallen and has congratulated States that have achieved significant increases in their rates. Here again, discrimination is an issue. For example:

"While the Committee notes that the State Party is receiving technical assistance for the immunization campaign, it is concerned that vaccines continue to be unavailable and that negative social attitudes towards vaccinations have resulted in a resurgence of preventable diseases such as diphtheria."

"The Committee recommends that the State Party allocate appropriate resources for the implementation of the National Health Policy and, where appropriate, develop additional policies and programmes to improve the health situation of children, especially those living in mountainous regions and conflict zones; facilitate greater access to and quality of primary health services; ensure the availability of vaccines..." (Georgia IRCO, Add.124, paras. 44 and 45)

Compulsory immunization

Initial Reports from some States Parties note that immunization is compulsory: for example, it is obligatory in Croatia to immunize children against tuberculosis (tuberculosis activa), diphtheria, tetanus, whooping cough (pertussis), poliomyelitis, measles, mumps, German measles and hepatitis B (Croatia IR, para. 293). In Italy, vaccination against tuberculosis is compulsory for children between 5 and 15 years of age who have a negative cuti-reaction or have been exposed to tuberculosis. The Italian Constitutional Court found the refusal of parents to allow their child to be subjected to compulsory vaccination to be “conduct prejudicial to the child”. (Italy IR, para. 149)

In 1996, WHO and UNICEF jointly published *State of the world's vaccines and immunization, a review of progress, constraints and challenges*. Worldwide nearly 80 per cent of children under one year old are immunized, but at the same time millions of children are not fully vaccinated, especially those in remote and marginalized areas. UNICEF's report *The Progress of Nations 2000* suggests that, in the developing world, immunization saves 2.5 million children every year. It reports that 40 developing countries have attained the 90 per cent coverage goal set at the World Summit for Children in 1990. The world average is 77 per cent. A new Global Alliance for Vaccines and Immunization (GAVI) has been created to assist developing countries to reach at least 80 per cent DPT3 (diphtheria, pertussis and tetanus) and measles coverage in all districts (pp. 22-25).

Family planning education and services.

Some States Parties made declarations or reservations with reference to subparagraph (f) of article 24. For example, “... the Argentine Republic considers that questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under this article, to adopt measures providing guidance for parents and education for responsible parenthood.” The Holy See's reservation states “that it interprets the phrase ‘family planning education and services’ in article 24(2) to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning”. And Poland's reservation said “With respect to article 24, paragraph 2(f), of the Convention, the Republic of Poland considers that

family planning and education services for parents should be in keeping with the principles of morality.” (CRC/C/2/Rev.8, pp. 13, 23, 36)

Family planning is of importance not only to prevent early or unwanted pregnancy but also to space and limit numbers of children, to enable mothers to meet the needs of existing children and to protect maternal health. Family planning issues should be of equal concern to boys and young men as to girls and young women.

The Report of the International Conference on Population and Development (Cairo, 1994) proposed as a Principle that “Reproductive health care should provide the widest range of services without any form of coercion...” (A/CONF.171/13, Principle 8). Special emphasis should be placed on men's shared responsibility and active involvement in sexual and reproductive behaviour, including family planning, prenatal, maternal and child health, prevention of sexually transmitted diseases, including HIV and prevention of unwanted and high-risk pregnancies (A/CONF.171/13, paras. 4.26 and 4.27).

The Report also stressed that youth should be actively involved in the planning, implementation and evaluation of programmes: “This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse” (para. 6.15).

The Report urged support for “integral sexual education and services for young people, with the support and guidance of their parents and in line with the Convention on the Rights of the Child, that stress responsibility of males for their own sexual health and fertility and that help them exercise those responsibilities...”.

One of the agreed objectives of the Cairo Conference was to substantially reduce all adolescent pregnancies. (A/CONF.171/13, paras. 7.37 and 7.45)

The Platform for Action of the Fourth World Conference on Women states: “More than 15 million girls aged 15 to 19 give birth each year. Motherhood at a very young age entails

complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world...” In addition: “Sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children’s health, and girls are more vulnerable than boys to the consequences of unprotected and premature sexual relations...” (Platform for Action, paras. 268 and 269)

The United Nations General Assembly special session follow-up to Beijing (2000) has similar detailed proposals for development of services for adolescents. It suggests that governments should “Design and implement programmes with the full involvement of adolescents, as appropriate, to provide them with education, information and appropriate, specific, user-friendly and accessible services, without discrimination, to address effectively their reproductive and sexual health needs, taking into account their right to privacy, confidentiality, respect and informed consent, and the responsibilities, rights and duties of parents and legal guardians to provide in a manner consistent with the evolving capacities of the child appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention on the Rights of the Child...” (A/RES/S-23/3, para. 79(f))

The Committee on the Rights of the Child has frequently expressed concern at high rates of teenage pregnancy, and has proposed health education and family planning programmes.

Adolescent health services. Responding to the recommendations of the various global conferences and United Nations agencies, the Committee has placed an increasing emphasis on development of appropriate health services for adolescents in its examination of States Parties’ reports and almost invariably comments in detail. It often expresses concern at a lack of research and proposes a comprehensive study to develop policies. For example:

“With regard to adolescent health, the Committee is concerned at the high and increasing rate of teenage pregnancies, and the consequent high rate of abortions among girls under 18, especially illegal abortions; and the rise in rates of STDs and spread of HIV. Although parents play the most important role in this regard, nevertheless cultural attitudes, and lack of personal knowledge and communication skills on the part of parents are barriers to accurate reproductive health information and counselling.

“The Committee recommends that the State Party undertake a comprehensive study on the nature and extent of adolescent health problems, to be used as a basis for formulating adolescent health policies. In the light of article 24, the Committee recommends that adolescents have access to and be provided with reproductive health education, and child-friendly counselling and rehabilitation services.” (Armenia IRCO, Add.119, paras. 38 and 39)

While reproductive and sexual health and the dangers of HIV/AIDS and sexually transmitted diseases is the overwhelming focus, the Committee also expresses concerns at often rising rates of youth suicide (for further discussion,



The Ottawa Charter on Health Promotion

In 1986, the first International Conference on Health Promotion, meeting in Ottawa, Canada, adopted a Charter on Health Promotion “for action to achieve Health for All by the year 2000 and beyond”. The Charter describes health promotion “as the process of enabling people to increase control over, and to improve, their health ... Health is a positive concept emphasizing social and personal resources, as well as physical capacities. Therefore, health promotion is not just the responsibility of the health sector, but goes beyond healthy lifestyles to well-being.

“Health promotion focuses on achieving equity in health. Health promotion action aims at reducing differences in current health status and ensuring equal opportunities and resources to enable all people to achieve their full health potential. This includes a secure foundation in a supportive environment, access to information, life skills and opportunities for making healthy choices. People cannot achieve their fullest health potential unless they are able to take control of those things which determine their health. This must apply equally to women and men.”

(Health Promotion – the Ottawa Charter, adopted at an International Conference on Health Promotion, November 1986, Ottawa, Canada; co-sponsored by the Canadian Public Health Association, Health and Welfare Canada, and the World Health Organization.)



see article 6, page 102) and increasing use of tobacco, alcohol and drugs:

"The Committee is particularly concerned with the high and increasing incidence of teenage pregnancy and HIV/AIDS and sexually transmitted diseases (STDs). The Committee notes with concern that the 1920 law continues to prohibit the use of contraceptives, including for health purposes, and to impede the full implementation of family planning programmes, including the safe motherhood initiative. The Committee recommends that the State Party increase its efforts in promoting adolescent health policies, particularly with respect to accidents, suicide and violence, and in strengthening reproductive health education and counselling services. In this regard, the Committee also recommends the inclusion of men in all training programmes on reproductive health. The Committee further suggests that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy as well as the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs. Additionally, it is recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent, where in the best interests of the child. The Committee recommends that the State Party repeal the 1920 law concerning family planning and the use of contraceptives." (Benin IRCO, Add.106, para. 25)

"The Committee expresses its concern with respect to the limited availability of programmes and services and the lack of adequate data in the area of adolescent health, including accidents, violence, suicide, mental health, abortion, HIV/AIDS and STDs. The Committee is particularly concerned with the high incidence of teenage pregnancy and the situation of teenage mothers, especially in relation to their late attendance at antenatal clinics as well as their generally poor breast-feeding practices. The Committee is concerned that most of the current cases of infant and maternal mortality are related to teenaged mothers. The Committee recommends that the State Party increase its efforts in promoting adolescent health policies and counselling services, as well as strengthening reproductive health education, including the promotion of male acceptance of the use of contraceptives. The Committee further suggests that a comprehensive and multi-disciplinary study be undertaken to understand the scope of

adolescent health problems, including the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs. Additionally, it is recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, and making efforts to increase the number of social workers and psychologists, to develop youth-friendly care, counselling and rehabilitation facilities for adolescents." (Grenada IRCO, Add.121, para. 22)

The Committee has emphasized that services must be user-friendly and confidential and that their design must involve adolescents:

"The Committee urges the State Party to address the sexual and reproductive health-care needs of older children, including those married at a young age and those in vulnerable situations. It recommends that the State Party provide access to information about sexual and reproductive health, and that services in this area be user friendly and address the concerns and need for confidentiality of adolescents. The Committee recommends that the State Party seek technical assistance from WHO and UNICEF, among others, to develop a comprehensive strategy that can address the needs of young people, and that it encourage civil society and adolescents to participate in the design, implementation and evaluation of such a strategy." (Djibouti IRCO, Add.131, para. 46)

"It is also recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular reproductive health, and to develop youth-friendly counselling, care and rehabilitation facilities that are accessible, without parental consent when in the best interests of the child." (Marshall Islands IRCO, Add.139, para. 51)

The Committee resolved in 2001 to develop a General Comment on adolescent health.

Mental health. The Committee has commented on the lack of mental health services in various States. For example:

"The Committee is concerned at the lack of mental health assistance for children and at the situation of mental health among children and adolescents, particularly in the context of widespread family instability and the armed mutinies.

"The Committee recommends that the State Party ensure the availability of mental health assistance to children, taking into consideration the developmental needs of children and addressing in particular those children affected by family instability,

HIV/AIDS and the armed mutinies.” (Central African Republic IRCO, Add.138, paras. 62 and 63)

When it examined Norway’s Second Report, it was concerned about various adolescent mental health problems, and a lack of appropriate services:

“The Committee is concerned at the high incidence of anorexia nervosa and bulimia and by the prevalence of alcohol consumption among adolescents. The Committee also expresses its concern at the continuing incidence of suicide by children, especially boys.

“The Committee encourages the State Party to continue its efforts to address cases of anorexia nervosa and bulimia which are both medical and psychological problems. In addition, the Committee notes the efforts made by the State Party to reduce the level of alcohol consumption among adolescents and recommends that the State Party continue to promote a healthy lifestyle among adolescents. Further, recognizing that it can be difficult to identify all cases of suicide by children and in accordance with its recommendation in paragraph 17 of its 1994 concluding observations (CRC/C/15/Add.23), the Committee recommends that the State Party continue its research into the incidence and causes of child suicide, including by children under the age of 10, and to use the results of this research to inform and further develop the State Party’s 1994 suicide prevention programme...

“The Committee joins the State Party in expressing concern at the long waiting list and delayed access to mental health services and professionals for children which are due to an insufficient number of psychologists and psychiatrists.

“The Committee encourages the State Party to explore ways of providing children with more timely access to mental health services, and to address in particular the shortage of psychiatrists and psychologists.” (Norway 2RCO, Add.126, paras. 36, 37, 40 and 41)

“States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”: article 24(3)

Article 24(3) – together with article 19 (which requires protection from all forms of physical or mental violence, see page 257) and the non-discrimination principle in article 2 – requires a review in all States of any traditional practices that involve violence and/or are prejudicial to the health of children.

The health risks of practices which involve some invasion of the child’s bodily integrity may be intensified by their performance by people with no medical training, and in unhygienic conditions. The lack of appropriate anaesthesia intensifies the suffering of children.

Traditional practices often take place when the child is very young and unable to consent. The degree to which a mature child can, him or herself, give an informed consent to a practice that involves violence or is prejudicial to his or her own health is a distinct issue from invasive practices without consent. But article 24(3) states unequivocally that appropriate measures should be taken with a view to abolishing traditional practices prejudicial to health. Presumably, mature children should have the same rights, if any, as adults have under the law in each society to consent to practices that involve a degree of violence but are not significantly prejudicial to health.

The proposal that the Convention should protect children from traditional practices harmful to health was made by the *ad hoc* NGO group during the drafting of the Convention (E/CN.4/1986/39, pp. 10-11; Detrick, p. 350). Various country representatives proposed that the provision should refer in particular or for example to the practice of female circumcision (genital mutilation of girls and young women), which was opposed on the grounds that it would be wrong to single out one practice. One other specific practice, that of preferential care of male children, was referred to during the drafting discussions of the Working Group on the Convention (E/CN.4/1987/25, pp. 8-10; Detrick, p. 351).

Several representatives concurred that the term traditional practices would include all those outlined in the 1986 Report of the Working Group on Traditional Practices affecting the Health of Women and Children (E/CN.4/1986/42). The Report refers to female circumcision, other forms of mutilation (facial scarification), forced feeding of women, early marriage, the various taboos or practices that prevent women from controlling their own fertility, nutritional taboos and others. There was also discussion of other traditional practices, including dowries in certain regions of the world, crimes of honour and the consequences of preferential treatment for male children (E/CN.4/1986/42, para. 18).

The Working Group decided that female circumcision, preferential treatment for male children, and traditional birth practices should be given priority consideration. It reports that in Africa alone the practice of female circumcision (more



accurately described as female genital mutilation) “exists in at least 28 African countries and continues to menace the health of about 75 million women and children”. The Working Group makes detailed recommendations for action, in particular, that “with a view to attaining the goal of health for all by the year 2000, national health policies should include among their priorities strategies aimed at the eradication of female circumcision in their primary health care programmes” (E/CN.4/1986/42, para. 127).

“Son preference” is defined as “the preference of parents for male children which often manifests itself in neglect, deprivation or discriminatory treatment of girls to the detriment of their mental and physical health” (E/CN.4/1986/42, para.143). The Working Group found the practice prevalent in many parts of the world. It notes a World Fertility Survey, which as part of its inquiry into fertility motivations, asked women to state their preference as to the sex of their next child. The results revealed that in 23 of the 39 countries studied, women showed a preference for sons (“daughter preference” was found in only two countries). The Report states that “abnormal sex ratios in infant and young child mortality rates, in nutritional status indicators and even population sex ratios show that discriminatory practices are widespread and have serious repercussions” (paras. 149 and 150). When linked to neglect and discrimination towards female children, “it leads to serious health consequences which account for between 500,000 to one million deaths among female children”.

The Working Group notes that the availability of amniocentesis and other techniques which enable the sex of the foetus to be determined are leading to selective abortion on grounds of gender in some areas of the world. Its Report also notes that “excess female mortality in childhood is an indicator of serious external influences against the normal biological advantages with which nature has endowed the female. Male infants have an inherently greater vulnerability than female infants for many causes of death... male mortality in childhood is higher than female mortality. The greater the proportion of deaths due to infections and malnutrition, the larger the expected difference becomes” (para. 164). Thus, the report emphasizes the importance of recording and analyzing infant and child mortality rates by gender.

The third priority for study by the Working Group is traditional birth practices, which include dietary restrictions affecting pregnant women, and unhygienic and harmful practices

during labour and childbirth, including inappropriate treatment of obstructed labour, and during the period following delivery (paras. 193 et seq.).

The Committee on the Elimination of Discrimination against Women, in a General Recommendation, in 1990, expresses concern at the continuation of “the practice of female circumcision and other traditional practices harmful to the health of women”, and proposes that States Parties should “take appropriate and effective measures with a view to eradicating the practice of female circumcision”.

The General Recommendation also proposes that States Parties “include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful consequences of female circumcision.” (Committee on the Elimination of Discrimination against Women, General Recommendation 14, 1990, HRI/GEN/ 1/Rev.5, p. 212)

In 1999, the General Assembly adopted a resolution on traditional or customary practices affecting the health of women and girls (A/RES/54/133). It received a report from the Secretary-General (A/54/341) which provides examples of national and international developments.

The General Assembly special session follow-up to the Fourth World Conference on Women noted that efforts towards the eradication of harmful traditional practices had received national, regional and international policy support: “Many Governments have introduced educational and outreach programmes, as well as legislative measures criminalizing these practices.” The Report welcomes the appointment of the Special Ambassador for the Elimination of Female Genital Mutilation by the United Nations Population Fund. It proposes that Governments should: “Develop, adopt and fully implement laws and other measures, as appropriate, such as policies and educational programmes, to eradicate harmful customary or traditional practices, including female genital mutilation, early and forced marriage and so-called honour crimes, which are violations of the human rights of women and girls and obstacles to the full enjoyment by women of their human rights and fundamental freedoms...” (A/RES/S-23/3, paras. 13 and 69(e))

Practices which should be reviewed in the light of the Convention’s principles include:

- all forms of genital mutilation and circumcision;

- binding, scarring, burning, branding, coin-rubbing, tattooing, piercing;
- initiation ceremonies involving, for example, forced holding under water;
- deliberate discriminatory treatment of children involving violence and/or prejudicial to health – for example, preferential feeding and/or care of male children; lack of care for disabled children or children born on certain days; food taboos; etc.;
- forms of discipline which are violent and/or prejudicial to health;
- early marriage and dowries.

The Committee has expressed grave concern about persisting harmful traditional practices and recommended various actions in the Concluding Observations on Initial Reports and Second Reports from many States Parties. For example:

"The Committee remains concerned at the persistence of traditional attitudes and harmful practices, such as female genital mutilation, early marriages, teenage pregnancies and Trokosi (ritual enslavement of girls)..."

"The Committee shares the view of the State Party that serious efforts are required to address harmful traditional practices such as early marriage, female genital mutilation and Trokosi. The Committee recommends that all legislation be reviewed to ensure its full compatibility with children's rights and that public campaigns involving all sectors of society be developed and pursued with a view to changing attitudes. All appropriate action in this regard should be taken on a priority basis." (Ghana IRCO, Add.73, paras. 21 and 42)

"The Committee is very concerned at the widespread practice of female genital mutilation."

"In the light of article 24.3 of the Convention, the Committee urges the State Party to pass legislation prohibiting practices of female genital mutilation, to ensure that such legislation is enforced in practice and to undertake preventive information campaigns. The Committee further recommends that the State Party benefit from the experience of other States in this area and consider, inter alia, adopting alternative practices of a purely ceremonial nature, which do not involve any physical acts." (Sierra Leone IRCO, Add.116, paras. 61 and 62)

"Recognizing that there has been some improvement, the Committee, nevertheless, remains deeply concerned at reports from the National Committee on Traditional Practices in Ethiopia (NCTPE) (September 1998) indicating that 72.7 per cent of the female population undergoes some form of female genital

mutilation. The Committee is concerned, further, at other practices reported by the NCTPE, including uvulectomy, milk-teeth extraction and forced marriage.

"The Committee urges the State Party to continue and strengthen its current efforts to end practices of female genital mutilation, early and forced marriage and other harmful traditional practices, and recommends that the State Party take advantage of the experience gained by other countries." (Ethiopia 2RCO, Add.144, paras. 64 and 65)

"Taking note of the Government's 1996 decision to prohibit female genital mutilation and the 1997 ministerial decree banning this practice in Ministry of Health service outlets, as well as various efforts to educate the public about the harm caused by this practice, including campaigns in the media and in the curricula, the Committee is concerned that the practice is still widespread."

"The Committee, concurring with the Committee on Economic, Social and Cultural Rights, recommends that the State Party address the issue of female genital mutilation as a matter of priority. In addition, the State Party is urged to design and implement effective education campaigns to combat traditional and family pressures in favour of this practice, particularly among those who are illiterate." (Egypt 2RCO, Add.145, paras. 45 and 46. See also, for example, Sudan Prelim. Obs. Add.6, para. 4; Sudan IRCO, Add.10, para. 22; Burkina Faso IRCO, Add.19, paras. 3, 5 and 14; Senegal IRCO, Add.44, paras. 18 and 24; Lebanon IRCO, Add.54, paras. 16 and 38; Cyprus IRCO, Add.59, para. 16; Nigeria IRCO, Add.61, paras. 15 and 36; Lao People's Democratic Republic IRCO, Add.78, paras. 18 and 42; Togo IRCO, Add.83, para. 48; Djibouti IRCO, Add.131, paras. 43 and 44)

It has proposed extraterritorial legislation:

"The Committee welcomes the efforts made and understands the difficulties faced by the State Party in protecting girls within its jurisdiction from female genital mutilation carried out outside its territory. Nevertheless, the Committee urges the State Party to undertake strong and effectively targeted information campaigns to combat this phenomenon, and to consider adopting legislation with extraterritorial reach which could improve the protection of children within its jurisdiction from such harmful traditional practices." (Netherlands IRCO, Add.114, para. 18)

The Committee has expressed concern at male circumcision carried out in unsafe or unhygienic conditions:

"The Committee is concerned that male circumcision is carried out, in some instances,





in unsafe medical conditions... The Committee recommends that the State Party take effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision.” (South Africa IRCO, Add.122, para. 33)

“The Committee also recommends that the State Party address health risks associated with male circumcision.” (Lesotho IRCO, Add.147, para. 44)

The Committee has expressed concern at virginity testing in South Africa:

“The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls...The Committee also recommends that the State Party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness-raising programmes for practitioners and the general

public to change traditional attitudes and discourage the practice of virginity testing in light of articles 16 and 24 (3) of the Convention.” (South Africa IRCO, Add.122, para. 33)

“States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries”: article 24(4)

WHO, UNICEF and various other United Nations and UN-related agencies are particularly engaged in promoting international cooperation. Cooperation includes aid, advice and technical assistance, collaboration on research, and so on (see also article 4, page 79).

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 24, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 24 is particularly relevant to **departments of health, welfare, education, planning and environment**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 24 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 24 likely to include the training of **health workers, social workers and teachers, and also parenting education and health promotion for children and adolescents**)?

● Specific issues in implementing article 24

- ☐ Has the State undertaken measures to implement article 24 to the maximum extent of available resources?

Does legislation in the State provide for the respect for article 12 (1) and (2) (the views of the child) in relation to

- ☐ the planning and development of all health care services?
- ☐ decision-making in relation to individual health treatment of the child?

How to use the checklists, *see page XVII*



Do all children in the jurisdiction

- ☐ have the right to enjoyment of the highest attainable standard of health?
- ☐ have access to facilities for the treatment of illness and the rehabilitation of health?
- ☐ Do all disabled children have the right to the same level of health care in the same system as other children?
- ☐ Do girls have equal rights to health care?

Is adequate information collected

to ensure accuracy of

- ☐ infant mortality rates?
- ☐ under-five mortality rates?
- ☐ mortality rates for older children?
- ☐ to provide disaggregated data in order to consider issues of discrimination?
- ☐ Is there a consistent and continuing reduction in the infant and child mortality rates in the State?
- ☐ Has the State developed a definition of necessary medical assistance and health care for the child?
- ☐ Do all children in the jurisdiction have access to necessary medical assistance and health care?
- ☐ Do children have access to appropriate confidential health services, including information, counselling and supplies?
- ☐ Are adolescents directly engaged in the design of health services for their use?
- ☐ Is the development of primary health care adopted as a priority?

Has the State set appropriate targets for the full attainment of the child's right under article 24 in relation to

- ☐ infant, under-five, under-18 and maternal mortality rates?
- ☐ access by all women to prenatal care, trained attendants during childbirth and referral facilities for high-risk pregnancies and emergencies?
- ☐ access by all couples to information and services to ensure that pregnancies are not too early, too closely spaced, too late or too many?
- ☐ reduction of severe and moderate malnutrition among children?
- ☐ reduction of rate of low birth weight?
- ☐ reduction of iron-deficiency anaemia?
- ☐ elimination of vitamin A deficiency?
- ☐ access to safe drinking water?



Reminder: The Convention is indivisible and its articles are interdependent.
Article 24 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 article 24 include:

Article 5: parental guidance and the child's evolving capacities

Article 17: access to appropriate information and role of the media

Article 18: parental responsibilities and State assistance

Article 19: protection from all forms of violence

Article 23: rights of disabled children

Article 25: right to periodic review of treatment

Article 27: right to adequate standard of living

Article 28: right to education

Article 29: aims of education

Articles 32-36: protection from various forms of exploitation

Article 39: recovery and reintegration for child victims

- ☐ access to sanitary means of excreta disposal?
- ☐ elimination of guinea worm disease?
- ☐ protection from environmental pollution?
- ☐ eradication of poliomyelitis?
- ☐ elimination of neonatal tetanus?
- ☐ elimination of measles?
- ☐ maintenance of high levels of immunization coverage?
- ☐ reduction in deaths due to diarrhoea and the diarrhoea incidence rate?
- ☐ reduction in deaths due to acute respiratory infections?

(this list is based on World Summit Plan of Action goals)

Has the State ensured adequate access to health education, health promotion and support to the public and in particular to parents and children on

- ☐ child health and nutrition?
- ☐ advantages of breastfeeding?
- ☐ hygiene and environmental sanitation?
- ☐ prevention of accidents?
- ☐ preventive health care?
- ☐ family-planning education and services, including appropriate services for adolescents?
- ☐ HIV/AIDS-related prevention education and information?
- ☐ Has the State taken appropriate action to ensure implementation of the Inter-Agency Guidelines for Breastfeeding in areas affected by HIV/AIDS?
- ☐ Has the State taken appropriate action to ensure implementation of the International Code of Marketing of Breastmilk Substitutes?
- ☐ Has the State reviewed all traditional practices involving children in all sectors of the population to ensure that none is prejudicial to health or incompatible with other articles in the Convention (in particular articles 3, 6, and 19)?
- ☐ Has the State taken effective and appropriate measures to abolish all traditional practices prejudicial to the health of children or incompatible with other provisions of the Convention?
- ☐ Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to realizing the health rights of children?

Child's right to periodic review of treatment



Text of Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 25 requires periodic review of the treatment and circumstances of children who have been placed by the authorities for the purposes of care, protection or treatment of their health. This includes placements in families or institutions (private or state-run) for children deprived of their family environment (article 20), adopted children (article 21), refugee children (article 22), disabled children (article 23), sick or mentally disordered children (article 24), children placed in residential schools (article 28), children deprived of their liberty (article 37), children being provided with rehabilitative care (article 39) or in other placements for offending behaviour (article 40). Reviews should consider both the appropriateness of the placement and the progress of the treatment or care.

In its quiet way article 25 is a very important right under the Convention on the Rights of the

Child because it provides safeguards against one of the most serious forms of child abuse – abuse by the State. Under the banner of “the best interests of the child”, often sincerely believed by the authorities involved, children in all parts of the world have suffered neglect and mistreatment having been placed by State authorities in hospitals, health units, children’s homes, boarding schools, detention centres, foster and adoption placements and therapeutic communities.

Article 25 is also important because it offers great potential in developing enforceable legal rights and safeguards. Regulations governing “periodic review of treatment” can establish high standards, goals and detailed practices for all professionals working with children in placements and can secure children’s rights, for example to be heard, to be in touch with the outside world and to have access to an effective complaints procedure. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Family environment and alternative care

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the 'best interests of the child' and 'respect for the views of the child' are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:...

(j) Periodic review of placement (art. 25)

In addition, States Parties are requested to provide information on the numbers of children per year within the reporting period in each of the following groups, disaggregated by age group, sex, ethnic or national background and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, children entering the country through intercountry adoption procedures and children leaving the country through intercountry adoption procedures.

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 16-18)

Guidelines for Periodic Reports

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

I. Periodic review of placement (art. 25)

Please indicate the measures undertaken, including of a legislative, administrative and judicial nature, to recognize the right of the 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 treatment provided to the child in public and private institutions, services and facilities, as well as all other circumstances relevant to his or her placement.

Information should be provided inter alia on:

The authorities considered competent for such purposes, including any appropriate independent mechanism established;

The circumstances taken into account in deciding on the placement of the child for his or her care, protection and treatment;

The frequency of review of the placement and treatment provided;

The respect ensured to the provisions and principles of the Convention, including non-discrimination, the best interests of the child and respect for the views of the child;

Relevant data on the children concerned, including in situations of abandonment, disability and asylum seeking and refugees, including unaccompanied children, and in situations of conflict with the law, disaggregated inter alia by age, gender, national, ethnic and social origin, family situation and place of residence, as well as by duration of placement and frequency of its review;

Progress achieved in the implementation of article 25, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 86-7. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 80 and 143; for full text of *Guidelines*, see Appendix 3, page 674.)

“...a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health”

The word “competent” means that the authorities have the appropriate competence to act and is not a qualitative judgement on professional abilities. Sadly this article is partly designed to protect children who have been placed by professionally incompetent authorities.

The forms of placement falling within the scope of this article may be run by the State or privately. They include foster and adoptive families, children’s homes and institutions, immigration and refugee detention centres, hospitals, health units and wards, therapeutic centres, boarding schools, detention centres and prisons. Residential schools must be included even though “education” is not mentioned among the purposes listed in article 25, since the point of a boarding placement is to secure the care of children as well as their education. “Punishment” is also not one of the purposes, but detention centres and other placements for offending behaviour all provide care for children as well as punishment.

Though it covers State placements in private institutions, article 25 does not appear to include placements privately arranged by parents. At one stage in the drafting procedure, it was proposed that a specific exemption should be made of placements arranged by parents. Although this exemption did not appear in the final text, there was general agreement that placements by parents were not included (E/CN.4/1986/39 pp.11-13; Detrick, p. 360). Exactly why privately arranged placements should not be periodically reviewed was not made clear, since the children concerned are, if anything, more vulnerable than those who are placed by the State. The Committee has nonetheless encouraged States to check on the welfare of privately placed children:

“Independent monitoring should be set up for public and private care institutions. In the light of article 25 of the Convention, the Committee further suggests the State Party to systematically review the conditions of children living in an informal type of placement.” (Guinea IRCO, Add.100, para. 21)

“The Committee is also concerned about the conditions of children living in informal types of placement (intra-family ‘adoption’), whose situation is not periodically reviewed in accordance with article 25 of the Convention... In the light of article 25 of the Convention, the Committee further suggests that the State

Party undertake a study to review the conditions of children living in an informal type of placement.” (Chad IRCO, Add.107, para. 22)

Article 3(3) requires States to ensure standards in all institutions, services and facilities. Both articles 3(3) and 25 are about monitoring. The difference between them is that 3(3) concerns the monitoring of institutions and staff, and article 25 the monitoring of the individual progress of each child in the institution. The Committee often encourages States to “monitor” the rights of children in institutions and foster care, which, under the Convention, must mean both the systems and the individual children concerned.

Article 12, requiring that the views of children are heard, is also relevant in that children’s voices should be heard in their reviews and also that adequate complaints procedures must be available to children (see page 171). The Committee has made clear that it sees effective complaints mechanisms as an integral part of effective monitoring:

“The Committee recommends that the State Party provide additional training, including in children’s rights, for social and welfare workers, ensure the periodic review of placements in institutions and establish an independent complaints mechanism for children in alternative care institutions.” (Grenada IRCO, Add.121, para. 18. See also Guatemala IRCO, Add.58, para. 38; Bulgaria IRCO, Add.66, para. 27; Kyrgyzstan IRCO, Add.127, para. 36; Tajikistan IRCO, Add.136, para. 37; Slovakia IRCO, Add.140, para. 28)

First and foremost the Committee has been anxious that there is a regular review of placement of children in institutional care:

“The Committee is concerned that the State Party does not have a procedural requirement for periodic review and systematic monitoring when children are placed in alternative care, such as in a children’s home, a guest house or any other similar institution... and an appropriate mechanism for the systematic monitoring and review of placement in institutional care should be established, in the light of article 25 of the Convention.” (Kuwait IRCO, Add.96, para. 24)

“The Committee is concerned about the extended time-frame for the review of placement ordered by the courts for mentally ill children. The Committee encourages the State Party, in determining the periodicity for the review of placement, to consider the principles and provisions of the Convention, in particular the best interests of the child.” (Austria IRCO, Add.98, para. 20)

“The Committee recommends that regular periodic review of placement be instituted and that mechanisms be established to



Examples of periodic reviewing

Denmark informed the Committee on the Rights of the Child that the decision to place a child outside the home is periodically reviewed by “Youth Committees” – usually at one year intervals, but longer or shorter periods may be ordered. (Denmark IR, para.188).

The United Kingdom requires a formal review of the progress of all children in care every six months, but where their liberty is deprived for welfare reasons the appropriateness of this intervention must be reviewed every three months. Children detained under mental health legislation also have rights to periodic review. Government guidance makes clear that the attendance of children at their own review should be the norm, not the exception. (United Kingdom IR, paras. 132, 339-355)



evaluate and monitor the conditions in these institutions.” (Armenia IRCO, Add.119, paras. 28 and 29. See also Poland IRCO, Add.31, para. 34; Nicaragua IRCO, Add.36, para. 18; Ukraine IRCO, Add.42, para. 27; Guatemala IRCO, Add.58, para. 38; Bulgaria IRCO, Add.66, para. 27; Cuba IRCO, Add.72, para. 18; Azerbaijan IRCO, Add.77, paras. 18 and 39; Peru IRCO, Add.120, para. 21)

Foster placements must be checked regularly:

“The Committee...notes that the regular monitoring focuses more on the quality of placement of children in foster care than on the need to review the placement decision as such, in accordance with article 25 of the Convention. The Committee is concerned that the efforts to provide permanence and stability for children in care may on occasion lead to a premature decision that family reunification is no longer possible.” (Barbados IRCO, Add.103, para. 21)

“... a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement”

What is to be considered in the review and how often it should occur will necessarily depend on individual circumstances, but States may establish minimum requirements in their legislation. The child’s “treatment” encompasses not only clinical treatment for health purposes but also all other aspects of the child’s institutional experience, including, for example, measures used to control the child, the child’s access to the outside world and how the child’s education is affected. In addition “... all other circumstances relevant to his or her placement” must essentially include the reason and justification for the placement. In the report on its General Discussion on “Administration of juvenile justice” the Committee commented :

“Concern was expressed at the placement of children in institutions, under a welfare pretext, without taking into due consideration

the best interests of the child nor ensuring the fundamental safeguards recognized by the Convention, including the right to challenge the decision of a placement before a judicial authority, to a periodic review of the treatment provided to the child and all other circumstances relevant to the child’s placement and the right to lodge complaints.” (Report on the tenth session, October/November 1995, CRC/C/46, para. 228)

Different sorts of review may be required:

- reviews by judicial or administrative authorities to monitor the appropriateness of compulsory placements (the Committee, for example, recommended that Bulgaria consider establishing a “guardian *ad litem*” system for children in institutional care (Bulgaria IRCO, Add.66, para. 27)). Where deprivation of liberty is concerned, article 37 requires that its use be “as a measure of last resort and for the shortest appropriate time” (see page 549). Rule 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: “The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.” If children are to have the possibility of early release before expiration of a determinate sentence then some form of periodic review will be necessary to determine whether such early release is possible;
- reviews by the involved professionals to assess progress of the treatment;
- reviews by independent persons as a safeguard against abuse and to check on the general welfare of the child. An essential component of the last form of review is that children should have the opportunity to speak in private about their treatment.

How often should the periodic review occur? While this is at the discretion of the State Party, it can be assumed that the more involuntary the placement is and the more extreme the treatment, the more frequently a review will be required (see box).

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 25, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 25 is relevant to the **departments of justice, social welfare, education and health**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 25 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 25 likely to include the training of **social workers, lawyers, judiciary, child advocates, teachers, institutional staff, medical personnel (including mental health)**)

● Specific issues in implementing article 25

Are legal and/or formal administrative measures adopted to ensure the periodic review of each child who has been placed for the purposes of care and protection, including

- ☐ foster care?
- ☐ adoption?
- ☐ child care institutions?
- ☐ boarding schools?
- ☐ prisons and detention centres?

How to use the checklists, see page XVII



and for the treatment of his or her physical or mental health, including

- ☐ hospitals?
- ☐ health units?
- ☐ psychiatric wards?
- ☐ therapeutic centres?

Are such reviews required to consider

- ☐ the treatment of the child (including all aspects of his or her care)?
 - ☐ the placement of the child (including whether its continuation is necessary)?
 - ☐ the views of the child (ascertained in private)?
- ☐ Are such reviews at sufficient intervals to secure the child's protection and welfare?

Reminder: The Convention is indivisible and its articles are interdependent.
Article 25 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 25 include:

Article 20: children deprived of their family environment

Article 21: adoption

Article 22: refugee children

Article 23: disabled children

Article 24: health services

Article 28: education services

Article 37: deprivation of liberty

Article 39: rehabilitative measures

Article 40: juvenile justice systems

Child's right to benefit from social security



Text of Article 26

- 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.*
- 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.*

Article 26 concerns financial support for children provided by the State. Generally, children are economically dependent upon adults. When the adults who have responsibility for children are unable to provide for them, either because they are unable to find gainful employment or because their circumstances (illness, disability, child bearing, old age and so on) prevent them from working, then the State has an obligation to ensure that the child has some form of financial support, paid directly to the child or via a responsible adult. This obligation is upheld in article 26.

Article 26 is subject to the proviso of article 4: "... With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." During the drafting of article 26, proposals were made to make the right to social security explicitly dependent on the availability of national

resources, but this was perceived to be unnecessary in view of article 4 (E/CN.4/1984/71, pp. 16-18; Detrick, pp. 364-367).

Article 9 of the International Covenant on Economic, Social and Cultural Rights provides: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." The Convention on the Rights of the Child alters these words in that the child has a right to "benefit from" social security rather than a right "to" social security. This reflects the fact that children's economic security is generally bound up with that of their adult caregivers. This dependence also led to the drafting of the second paragraph of article 26, making social security contingent on the caregiver's lack of resources – concerns were expressed that, otherwise, ratifying States might have to grant benefits to all children, including those of wealthy parents. The drafters did, however, agree to make clear that children could apply for benefits directly (E/CN.4/1989/48, pp. 75-78; Detrick, p. 368). ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Basic health and welfare

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions, in respect of:

...(d) Social security .. (arts. 26 and 18, para. 3)

In addition to information provided under paragraph 9(b) of these guidelines [relating to coordination and monitoring], States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 19-20)

Guidelines for Periodic Reports

“VI. BASIC HEALTH AND WELFARE

C. Social security and child-care services and facilities (arts. 26 and 18, para. 3)

With respect to article 26, please provide information on :

The measures adopted to recognize for every child the right to benefit from social security, including social insurance;

The necessary measures taken to achieve the full realization of this right in accordance with the national law;

The manner in which the benefits granted take into account the resources and the circumstances of the child and of the persons having responsibility for his or her maintenance, as well as any other considerations relevant to an application for benefits made by or on behalf of the child.

Reports should also indicate the legal provisions relevant to the implementation of this right, the circumstances under which children themselves are allowed to apply for social security measures, either directly or through a representative, the criteria taken into account to grant the benefits, as well as any relevant disaggregated information concerning the coverage and financial implications of such measures, its incidence by age, gender, number of children per family, civil status of the parents, the situation of single parents, and the relationship of social security to unemployment.”

(CRC/C/58, paras. 99-100. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 35 and 66; for full text of *Guidelines*, see Appendix 3, page 674.)

Children’s right “to benefit from social security, including social insurance”

The decade spanning 1985 to 1995 saw an economic recession across the world. The recession, allied with crippling national debts and a

prevailing economic philosophy calling for restraints in social security expenditure, often under aid-linked “structural adjustment” programmes, led to many ratifying countries freezing or cutting back social security for children. Since then, governments, donor countries and international financial institutions have begun to

realize that unless the State supports basic services to all the population, a market-oriented strategy is not likely to succeed. The 1995 World Summit for Social Development in Copenhagen recommended strong social security safety nets (see box). Copenhagen's follow-up General Assembly special session, five years later, reported on some progress in eradicating poverty, for example in programmes supporting microcredit, but also marked new threats to the poor, such as the increasing strength of the multinational corporations (Twenty-fourth special session of the General Assembly, A/RES/S-24/2, 2000).

Following the tenth anniversary of the Convention on the Rights of the Child, the Committee pointed out (see page 58):

"The Committee calls attention to the fact that economic policies are never child-rights neutral. The Committee calls on civil society to assist it in seeking the support of key international leaders, and in particular the High Commissioner for Human Rights, the Executive Director of UNICEF, and the President

of the World Bank, to examine how macro-economic and fiscal policies impact on children's rights, and how these policies can be reformed so as to make them more beneficial to the implementation of the rights of the child.

"... the Committee calls for action to promote and disseminate evidence that demonstrates that investing in children and basic social services makes excellent economic sense, and that their neglect undermines economic and social development." (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (m) and (n))

During the recession some countries endeavoured to protect children's access to social security. The Committee has commended a number, for example:

"The Committee welcomes the commitment expressed by the Delegation to adopt measures to face increasing poverty and reduce existing disparities, in spite of difficulties arising from the present economic recession. The Committee notes in this regard the establishment of the Family Support Enforcement Fund intended to



Weathering financial crises: lessons from the World Bank

"Economic reversals and social setbacks highlighted the costs of financial crises in different countries in the 1990s. During the most recent crisis that began in East Asia in 1997, social issues, including protection of the well being of children, have been at the centre of the Bank's operations and political priorities. For example, an innovative scholarship distribution scheme succeeded in helping the Government of Indonesia provide an 'education safety net' for poor children at the height of the Indonesian economic crisis. Approximately ninety per cent of the scholarship and grant funds were in the hands of children and of schools. Enrolment declined much less than expected, and less than five per cent of the scholarship recipients dropped out of school.

"Giving specific attention to children and adolescents in economic crises is particularly important. What has become apparent in recent years is that children have tended to be invisible in the shaping of policies on poverty reduction or risk management, both in crisis and non-crisis settings. Social risk management and lifecycle risk assessments are able to identify key indicators and areas of vulnerability in the lives of children, and thus shape prevention and coping programmes. Effective social risk management can provide support for the fabric of the local community in order to reduce the pressures on children to live on the street or to accept harsh employment conditions. An attention to children's lives helps inform and build the essential linkages between economic and institutional reforms on the one hand and the mending and repairing of the social fabric on the other. The separation of macroeconomic policy and social development is a recipe for failure.

"What occurred in emerging markets in recent years is a tough lesson on the need for financial and social systems that reduce risk, protect vulnerable groups – especially children and women – and provide for resilience when shocks occur. No country can secure a better future for its children without healthy, well-nourished and educated people who have ample opportunities to participate in their own development. Investing in the future, in the lives of children, is at the heart of building the foundation for long term economic growth and poverty reduction."

(Keeping the Promise: Promoting Children's Well-being, A Submission by the World Bank to the Special Session of the General Assembly for Follow-up to the World Summit for Children 2001, December 2000, paras. 3.21-3.23)



help provincial and territorial governments in the field of promotion and protection of children's rights." (Canada IRCO, Add.37, para. 6) (Canada's Child Tax Benefit represented an increase in federal government support to children and families of \$2.1 billion over the period 1994-9. (Canada IR, para. 14))

"The Committee notes with satisfaction that during the present period of economic recession, attention has been paid by the authorities with a view to ensuring that the budgetary resources for the social welfare of the most disadvantaged groups of the population and, among them children, will not decrease in the State Party." (Belgium IRCO, Add.38, para. 7. See also Romania IRCO, Add.16, para. 4; France IRCO, Add.20, para. 20; Germany IRCO, Add.43, para. 31; Portugal IRCO, Add.45, para. 4; Finland IRCO, Add.53, para. 3; United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 7; Finland 2RCO, Add.132, para. 3)

However, a number of these commendations were qualified by the Committee's concern that, nonetheless, children from the poorest and most vulnerable sectors were falling through the social security net. In almost every country social security systems were considered inadequate. In commenting on the Russian Federation's Second Report, the Committee highlighted the consequences of neglecting children financially:

"The Committee is concerned that the prolonged financial crisis has had a negative impact on the development of children, leading to a worsening of their living conditions, as well as on the implementation of social investment programmes and, ultimately, on respect for the rights of the child. In particular, the Committee is seriously concerned at the widespread poverty, the weakening of the family structure, the increasing numbers of neglected and homeless children and children living and working in the street, the high numbers of suicides, the extent of drug and alcohol abuse and increases in juvenile delinquency."

"The Committee recognizes the State Party's efforts to temporarily 'target' existing assistance to families with the lowest incomes, however, the Committee is particularly concerned that those families and children who will not receive assistance during this interim period will suffer. The Committee is also concerned at non-, or delayed, payment of State benefits, in particular child allowances." (Russian Federation 2RCO, Add.110, paras. 12 and 13. See also, for example, Czech Republic IRCO, Add.81, para. 7; Georgia IRCO, Add. 124, paras. 18 and 19)

Few developed countries can afford to be complacent about their social security systems.

Even though the Committee commended those Scandinavian countries that have the lowest levels of child poverty in the world and that took conscious measures to protect children from the recession, it also raised a new concern when responding to Second Reports that decentralization was leading to inequitable distribution of welfare benefits. For example:

"Although the State Party has one of the widest public support systems, disparities between municipalities and social strata seem to be widening, resulting in social exclusion and tension and poor services being delivered to the economically disadvantaged groups. The Committee recommends that all appropriate measures be taken, in accordance with articles 2, 26, 27 and 30 of the Convention, to ensure universal access to social benefits, in particular for the poorer families, and that the public be better informed of their rights in this regard." (Sweden 2RCO, Add.101, para. 18)

"The Committee is concerned that the breadth and standard of welfare services provided by local authorities to children from low-income families, and consequently the standard of living of some children, are unequal in different municipalities across the country partly as a result of significant differences in the financial resources available to different municipal authorities, differences in the priorities set by those authorities and differences in systems of assessing needs and granting assistance. These disparities have the effect of providing either unequal access, or different levels of welfare assistance to children, particularly those with disabilities, according to the area of the country in which they reside. "The Committee urges the State Party to consider ways in which all children can be guaranteed equal access to the same standard of services, irrespective of where they live, such as, for example, by establishing nationwide standards for and allocation of resources to the implementation of the Convention's provisions, in the context of the provision of welfare services." (Norway 2RCO, Add.126, paras. 16 and 17. See also Finland 2RCO, Add.132, paras. 15 and 16)

While it is undoubtedly more shameful that children in rich nations are suffering unacceptable levels of poverty, even the poorest nations have obligations under the Convention that cannot be excused, as the Committee told Nigeria:

"In view of the considerable incidence of poverty in the country and insufficiency of the minimum wage in meeting basic needs, the Committee views the absence of social support to families, including single-parent families, especially female-headed households, as a matter of serious concern..."

"The Committee wishes to emphasize that the general lack of financial resources cannot be used as a justification for neglecting to establish social security programmes and social safety nets to protect the most vulnerable groups of children. Accordingly, it is the opinion of the Committee that a serious review should be undertaken to determine the consistency of the economic and social policies being developed with the State Party's obligations under the Convention, in particular articles 26 and 27, especially with respect to the establishment or improvement of social security programmes and other social protection." (Nigeria IRCO, Add.61, paras. 17 and 33)

The duty to "take the necessary measures to achieve the full realization of this right in accordance with their national law"

Social security legislation contains many pitfalls. A common one is that it fails to target resources to those most in need. As Colombia reported to the Committee: "Social programmes and projects had previously concentrated on the provision of services, on the assumption that a satisfactory supply of services would meet the demand for services. However, this led to



The World Summit for Social Development (Copenhagen, 1995)

The following recommendations were made by the World Summit for enhanced social protection and reduced vulnerability:

"Social protection systems should be based on legislation and, as appropriate, strengthened and expanded, as necessary... Actions to this end should include:

- (a) Strengthening and expanding programmes targeted to those in need, programmes providing universal basic protection, and social security insurance programmes, with the choice of programmes depending on national financial and administrative capacities;
- (b) Developing, where necessary, a strategy for a gradual expansion of social protection programmes that provide social security for all, according to a schedule and terms and conditions related to national contexts;
- (c) Ensuring that social safety nets associated with economic restructuring are considered as complementary strategies to overall poverty reduction and an increase in productive employment. Short term by nature, safety nets must protect people living in poverty and enable them to find productive employment;
- (d) Designing social protection and support programmes to help people become self-sufficient as fully and quickly as possible, to assist and protect families, to reintegrate people excluded from economic activity and to prevent the social isolation or stigmatization of those who need protection;
- (e) Exploring a variety of means for raising revenues to strengthen social protection programmes, and promoting efforts by the private sector and voluntary associations to provide social protection and support;
- (f) Promoting the innovative efforts of self-help organizations, professional associations and other organizations of civil society in this sphere;
- (g) Expanding and strengthening social protection programmes to protect working people, including the self-employed and their families, from the risk of falling into poverty, by extending coverage to as many as possible, providing benefits quickly and ensuring that entitlements continue when workers change jobs;
- (h) Ensuring, through appropriate regulation, that contributory social protection plans are efficient and transparent so that the contributions of workers, employers and the State and the accumulation of resources can be monitored by the participants;
- (i) Ensuring an adequate social safety net under structural adjustment programmes;
- (j) Ensuring that social protection and social support programmes meet the needs of women, and especially that they take into account women's multiple roles and concerns, in particular the reintegration of women into formal work after periods of absence, support for older women, and the promotion of acceptance of women's multiple roles and responsibilities."

(World Summit for Social Development, 19 April 1995, A/CONF.166/9, pp. 52 and 53)



inequalities because it was often the sectors with the least need which benefited.” (Colombia IR, para. 28)

Careful monitoring and planning is needed to surmount this difficulty. States must also anticipate the possibility of cyclical recessions or financial crises and lay contingency plans for protecting their most important asset, children (see boxes on pages 381 and 383).

This duty also implies that States Parties must take active measures to ensure that there is full take-up of social security entitlements where appropriate for or on behalf of children. Resources should therefore be given to public information campaigns on benefit entitlements, effective administrative systems and “applicant-friendly” benefit offices, forms and procedures. Article 25 is not prescriptive as to how social security should be delivered, but States must ensure that everyone who is entitled to receive it is able to do so without discrimination or social stigma or loss of any other right and with respect for their privacy.

“... taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child”

The Convention underlines the financial as well as caring responsibilities of parents and others with child-rearing responsibilities. Article 27(4) specifically provides for the recovery of maintenance by the State when necessary (see page 399).

In addition, means-testing of child social security is generally regarded as desirable, given the need to target limited resources effectively. It should, however, be noted that some degree of financial support for **all** children, regardless of their parents’ circumstances, is neither unreasonable nor unviable. The State has good cause to invest in children, since they represent its future security, and families with children can be encouraged and supported by tax rebates or direct benefits. Universal benefits to all children have the added advantage of ensuring full take-up rates with very low administrative costs, since no means-testing is involved.

Where benefits are means-tested, great care has to be taken to ensure that the eligibility terms are non-discriminatory and non-stigmatizing to the families concerned.

Applications for benefits to be made “by or on behalf of the child”

This right emphasizes the fact that while it is important to ensure that those with legal responsibility for children are entitled to claim benefits on their behalf, it is equally important to ensure that children are directly eligible in their own right where necessary. The Netherlands entered a reservation to article 26, relating to this aspect: “The Kingdom of the Netherlands accepts the provisions of article 26 of the Convention with the reservation that these provisions shall not imply an independent entitlement of children to social security, including social insurance.” (CRC/C/2/Rev. 8, p. 31) In its Initial Report, the Netherlands indicated that: “Although, in the Netherlands, a child may in certain circumstances (in its capacity as employee or resident) have an individual entitlement to social security benefits, what tends to happen in practice is that the child’s rights to social security are derived from those of the parents,” and therefore indicated it would not withdraw the reservation. (Netherlands IR, para. 223) Nevertheless, the Committee encouraged withdrawal of this reservation (Netherlands IRCO, Add.114, para. 7).

The need for an autonomous claim by the child may occur if parents are for some reason disqualified from claiming or are unable to claim. The Committee noted such a problem in Lebanon, suggesting:

“...that a health insurance card be issued for children whose parents are not entitled to social security benefits.” (Lebanon IRCO, Add.54, para. 34)

Children’s access to benefits needs not – arguably, should not – be dependent only on their adult caregivers. Denmark, for example, places a duty on “persons in public offices or public service” to inform the relevant authorities if they believe that anybody, including children, may be in need of social assistance (Denmark IR, para. 50). Norway reported that it made provision for older children to apply directly for social assistance in special circumstances, such as not receiving the necessary support from their parents (Norway 2R, para. 273).

Also, children may be unable to claim because they are deemed “too old” (see article 1, definition of the child, page 4). The Committee noted with concern to New Zealand:

“...the appearance of a wide range of age cut-offs which do not appear to be necessarily consistent under legislation administered by various government entities for eligibility for

different types of government support". (New Zealand IRCO, Add.71, para. 10)

This was also an issue of concern in the United Kingdom, where many 16- and 17-year-olds are unable to claim income support even when they are not living with their families:

"The Committee notes with concern the increasing number of children living in poverty. The Committee is aware that the phenomenon of children begging and sleeping on the streets has become more visible. The Committee is concerned that the changed regulations regarding benefit entitlement to young people may have contributed to the increase in the number of young homeless people..."

"...With regard to the implementation of article 4 of the Convention, the Committee would like to suggest that the General Principles of the Convention, particularly the provisions of its article 3, relating to the best interests of the child, should guide the determination of policy-making at both the central and local levels of government. This approach is of relevance to decisions taken about

the allocation of resources to the social sector at the central and local governmental levels, including with regard to the allocation of benefits to children who have completed compulsory schooling and have no full-time employment..." (United Kingdom IRCO, Add.34, paras. 15 and 24)

It should also be noted that social benefit systems for adults can have unintended consequences for children, as the Committee pointed out to China:

"It is the Committee's view that inadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the right of girls and disabled children..."

"It is the Committee's view that remedial measures should be sought to avoid families' over-dependence on their children, in particular providing them with care in their old age." (China IRCO, Add.56, paras. 12 and 32)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 26, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 26 is relevant to the **departments of social security, finance, employment, justice, housing and social welfare**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 26 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 26 likely to include the training of **benefits administrators, social workers and the judiciary**)?

● Specific issues in implementing article 26

- ☐ Does every child in need have a potential right to benefit from social security (including social insurance)?
- ☐ Are measures taken to ensure that legal entitlements to social security are made known to children and their families?
- ☐ Are measures taken to ensure that take-up of benefits is made as easy as possible (for example by automatic payments, simple application forms, accessible benefit offices and officers)?

How to use the checklists, *see page XVII*



- ☐ Are measures taken to ensure that the process of applying for benefits does not discriminate against any children (for example those in remote areas or of illiterate parents)?
- ☐ Do systems for the delivery of social security respect the child's right to privacy?
- ☐ Are children able to make applications for social security in their own right?
- ☐ Are those responsible for children's maintenance able to make applications on their behalf?
- ☐ Are third parties (that is, those not directly responsible for children's maintenance) able to make applications on their behalf?

Reminder: The Convention is indivisible and its articles are interdependent.
Article 26 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 26 include:

Article 3(2): State to ensure child necessary protection and care

Article 18: parents having joint responsibility

Article 23: rights of disabled children

Article 24: right to health care services

Article 27: right to an adequate standard of living and to maintenance from parents and others

Article 28: right to education



Child's right to an adequate standard of living



Text of Article 27

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*
- 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.*

Article 27 provides children with a right to an adequate standard of living for their full development. Parents have primary responsibility for securing this right; States must if necessary assist parents in doing so and in cases of need provide material supports to the child, such as food, clothing and housing. States shall also take appropriate measures to recover maintenance from parents.

Article 27 links two essential principles of the Convention on the Rights of the Child, also found in other articles. The first, set out in paragraph (1) of article 27, is the right of each child to “development”, which, as the Convention elsewhere makes clear, must be to “the maximum extent” (article 6) or to the child’s “fullest potential” (article 29). The second, set out in paragraphs (2) and (4) of article 27, is that parents have primary responsibility for securing this development,

Summary

with the assistance of the State. This principle is also asserted in articles 5, 7 and 18.

Article 27 recognizes that the child's development cannot be divorced from his or her conditions of living. By listing the different components of full development – physical, mental, spiritual, moral and social – article 27 makes clear that an adequate standard of living is not

just limited to the basics of food, clothing and housing, important though these are. There are very few countries that have reported to the Committee to date that can claim to be using their available resources to the maximum extent possible to alleviate child need – some of the wealthiest nations of the globe have children experiencing unacceptable levels of deprivation. ■



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

● ARTICLE 27(1)-(3)

"Basic health and welfare

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions, in respect of:

...(e) *Standard of living (art. 27, paras. 1-3)*

In addition to information provided under paragraph 9(b) of these guidelines, States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 19 and 20)

● ARTICLE 27(4)

"Family environment and alternative care

Under this section, States parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, particularly how the principles of the "best interests of the child" and "respect for the views of the child" are reflected therein; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...(e) *Recovery of maintenance for the child (art. 27, para. 4)...*

States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 16 and 18)

Guidelines for Periodic Reports

● ARTICLE 27(1)-(3)

"VI. BASIC HEALTH AND WELFARE

D. *Standard of living (art 27. paras. 1-3)*

Please provide information on:

The measures adopted to recognize and ensure the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

The relevant indicators used to assess such an adequate standard of living, and its incidence among the child population, including by gender, age, region, rural/urban area, social and ethnic origin, and family situation;

The criteria established to assess the ability and financial capacity of parents or others responsible for the child to secure the living conditions necessary for the child's development, as well as to identify those conditions;

All the measures taken, in accordance with national conditions and within the State Party's means, to assist parents and others responsible for the child to implement this right, including the nature of the assistance made available, its budget implications, its relation to the cost of living and its impact on the population; where relevant, the information provided should be disaggregated, inter alia by region, rural/urban area, age, gender and social and ethnic origin, the measurements adopted to provide in case of need, material assistance and support programmes, particularly with regard to nutrition, clothing and housing, indicating inter alia, the nature of such assistance and programmes, the population addressed by them, including by gender age, rural/urban area, social and ethnic origin, proportion of budget allocated, the coverage ensured, the priorities and targets identified;

Relevant measures adopted as a follow-up to the Declaration and Plan of Action adopted by the United Nations Conference on Human Settlements (Habitat II).

Reports should also provide information on the progress achieved in the implementation of these rights, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 103 and 104)

● ARTICLE 27(4)

"V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

F. Recovery of maintenance for the child (art. 27, para. 4)

Please indicate the measures adopted (including legislative, administrative and judicial measures) and mechanisms or programmes developed 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 and from abroad, including in cases of the separation or divorce of the parents. Information should also be provided on:

Measures taken to ensure the maintenance of the child in cases where parents or other persons having financial responsibility for the child evade the payment of such maintenance;

Measures adopted to ensure respect for the General Principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent;

The factors and difficulties which may have affected the recovery of maintenance for the child (for example, lack of birth registration) or the enforcement of decisions concerning maintenance obligations;

The relevant international agreements the State has concluded or to which it has acceded, as well as any other appropriate arrangement it has made;

Relevant disaggregated data in this area, including by gender, age, national origin and place of residence of the child and his or her parents, or of the persons financially responsible for him or her."

(CRC/C/58, para. 79. Paragraph 66 of the *Guidelines for Periodic Reports* is also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)



Background

The Universal Declaration of Human Rights provides that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and neces-

sary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." (article 25)

The International Covenant on Economic, Social and Cultural Rights develops this: "The States Parties to the present Covenant recognize the



right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement to living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” (article 11(1))

The reporting guidelines for the Covenant, with particular reference to “the continuous improvement of living conditions”, asks countries to report on whether the standard of living of all social groups has improved over time, for example over the last five or ten years. It also asks for reports on the per capita GNP of the poorest 40 per cent and for information on any “poverty line” definition, as well as for a great deal of detailed information about the “food security” of the population and the country’s housing situation (*Manual on Human Rights Reporting*, 1991, pp. 60 and 61).

The Committee on Economic, Social and Cultural Rights has also made a significant General Comment in relation to the nature of States Parties’ obligations, quoted at length in article 4 (page 62). This accepts that not all countries will be able to meet economic and social rights in full, a fact which is explicitly recognized in the Covenants (and in the Convention on the Rights of the Child). However the goal of full implementation is set and the Covenant on Economic, Social and Cultural Rights “...imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...”

“... the Committee [on Social, Economic and Cultural Rights] is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or even of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant...” (Committee on Economic, Social and Cultural Rights, General Comment 3, 1990, HRI/GEN/1/Rev.5, p. 20)

“... the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”

Article 6, one of the Convention’s general principles, gives States the responsibility to “ensure to the maximum extent possible the survival and development of the child”. Article 27(3) spells out three vital contributions to children’s physical development – nutrition, clothing and housing. Article 24 enlarges on these, for example stressing the need for clean drinking water, health education, good hygiene and sanitation, breastfeeding, and preventive action in relation to environmental pollution, child accidents and harmful traditional practices. Articles 29 and 31 focus on children’s rights to have opportunities to develop their physique, amongst other things, through sport and play – perhaps particularly important for urban children.

The civil rights of children under articles 12 to 17, the rights to enjoy their culture and religion within the security of family and community (articles 5, 7, 8, 9, 18, 20, 21 and 30) and the aims of education in article 29, all contribute to the development of children’s social, moral, mental and spiritual development.

“The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development”

The primary responsibility of parents and others responsible for the child to meet the child’s needs reflects the principles stated in article 3(2), article 5 and article 18. Where provision for the child’s development is concerned under article 27, parental responsibility is expressly qualified by the proviso “within their abilities and financial capacities”. This is an important reminder that, where parents lack the requisite skills or resources, the State must assist the parents in meeting their responsibilities, including the provision of material assistance such as food, clothing and housing. The Committee commented to the Democratic Republic of the Congo that:

“The Committee agrees with the State Party in expressing deep concern that the State seems increasingly to be shifting its duties and responsibilities onto parents and persons

effectively or legally responsible for a child's upbringing..." (Democratic Republic of the Congo IRCO, Add.153, para. 36)

As discussed below, in relation to maintenance under paragraph 4 of article 27 (page 399), legislation can be very precise about what is expected from parents by defining "parental responsibility" in law in terms of meeting the child's material, emotional, developmental and intellectual needs. That such legislation might be unenforceable is not the point; the law has an important educational function as well.

"States Parties, in accordance with national conditions and within their means..."

When parents are unable to ensure an adequate standard of living for their child, the State should step in. Article 27 also puts explicit qualifications on the State's obligations – "in accordance with national conditions and within their means". These words reflect a general nervousness of governments about financial commitments and control over government expenditure (including wealthy governments – it was the United States delegate who introduced the phrase "in accordance with national conditions" and the United Kingdom delegate, "within their means" (E/CN.4/1985/64, pp. 8-10; Detrick, pp. 374-375)). However, it is doubtful whether these qualifications dilute the overarching obligation to meet the economic rights of the child "to the maximum extent of ... available resources" under article 4. "Available" surely implies "in accordance with national conditions and within... means". Certainly no country has yet argued to the Committee that the provisions of article 4 do not apply to rights under article 27.

The Committee has frequently expressed alarm about the impact on children of structural adjustment policies of the late 1980s and early 1990s in countries dependent on international aid, and of the transition to a market economy in many countries, particular in post-communist eastern Europe. The recession in the first half of the 1990s also brought restraints on public expenditure everywhere. The result was an increasing, often catastrophic impoverishment of children from population groups dependent on State aid for their survival. This period has been called the 'lost decade' by those working against world poverty, and some of its more extreme policies have now been reconsidered by international donors and financial institutions. For example, the World Bank's most detailed-ever investigation of world poverty, *World Development*

Report 2000/2001: Attacking Poverty, recommends action in three priority areas:

"Promoting opportunity: Expanding economic opportunity for poor people by stimulating overall growth and by building up their assets (such as land and education) and increasing the returns on these assets, through a combination of market and nonmarket actions.

"Facilitating empowerment: ... strengthening the participation of poor people in political processes and local decisionmaking, and removing the social barriers that result from distinctions of gender, ethnicity, race, religion, and social status.

"Enhancing security: Reducing poor people's vulnerability to ill health, economic shocks, crop failure, policy-induced dislocations, natural disasters, and violence, as well as helping them cope with adverse shocks when they occur." (*World Development Report 2000/2001: Attacking Poverty*, the World Bank, Oxford University Press, Inc., 2000, p. VI)

Notwithstanding the pressure on developing countries to reduce State expenditure, the Committee reminds even the most beleaguered nations of their obligations under the Convention.

For example, the grave living conditions of the majority of Honduran children were recognized by the Committee, which noted in response to Honduras' Initial Report:

"that the measures taken by the Government of Honduras to repay the external debt and to implement the structural adjustment programme have put a strain on the country's resources. The deteriorating economic situation in Honduras is causing a worsening in the living and social conditions of Hondurans, so much so that about 60 per cent of the population live in extreme poverty. It also recognizes that drought, floods and other ecological problems have had serious consequences for Honduran families, dependent on agriculture as a means of livelihood, to maintain an adequate standard of living and thus support themselves and their children.

"As almost 60 per cent of the Honduran population is under the age of 18, the country's worsening economic situation has had serious consequences for the children in Honduras. The Committee notes that the social inequalities existing in the country, including through the unequal distribution of income and land, have contributed to the considerable problems facing children in Honduras." (Honduras IRCO, Add.24, paras. 7 and 8)





The Committee recommended:

"The Committee takes note of the initiative... to map out the poorest areas of the country with a view to prioritizing the provision of basic services to the areas most in need... "The committee takes note of the efforts made by the State Party to provide family and social assistance programmes as well as to implement supplementary food programmes with the aid of international cooperation, including from the World Food Programme. Notwithstanding these efforts, the Committee recommends that major attention and resources must be focused on further measures to address the problems of extreme poverty affecting the majority of the population which have adversely affected the rights of the child, to, inter alia, adequate nutrition, clothing and housing." (Honduras IRCO, Add.24, paras. 6 and 29)

When Honduras submitted its Second Report, though noting that poverty was still widespread and the devastating effect Hurricane Mitch had had, the Committee welcomed

"the establishment of poverty alleviation programmes such as the ones carried out by the Honduran Social Investment Fund (FHS), Family Assistance Programme (PRAF) and the Social Housing Fund, which are in line with the Committee's recommendations..." (Honduras 2RCO, Add.105, para. 7)

The Committee does not underestimate the responsibilities of the donor community, for example in relation to Bolivia. In responding to its Initial Report the Committee observed:

"The Committee notes that economic factors, including a high level of external debt, have made the full application of the Convention more difficult. In this respect, the Committee notes with concern that the long-term considerations embodied in many structural adjustment policies have not adequately taken into account the needs of today's children. While the State is responsible for implementation of the Convention on the Rights of the Child, the Committee recognizes that additional international assistance will be needed to more effectively address the challenge of improving the situation of children living in poverty, particularly those from the rural areas of the country." (Bolivia IRCO, Add.1, para. 5)

By the time Bolivia submitted its Second Report, international financial institutions had introduced a process to provide debt reduction to some of the poorest countries :

"While the Committee is aware of the efforts undertaken by the State party to allocate substantial financial resources for the benefit of children, it reiterates its concern ... that the

stringent budgetary measures and external debt, as well as the persistence of widespread poverty and uneven income distribution, are still having a negative impact on the situation of children in the State Party... the Committee encourages the State Party ... to continue ensuring that sufficient budgetary allocation is provided to social services for children and that particular attention is paid to the protection of children belonging to vulnerable and marginalized groups ... the Committee encourages the State Party to continue with its efforts to reduce the burden of its external debt, including the measures taken within the framework of the World Bank/International Monetary Fund's initiative 'Highly Indebted Poor Countries'." (Bolivia 2RCO, Add.95, para. 15)

The Committee encouraged similar action in Georgia :

"The Committee notes with concern the large percentage of the population living below the poverty line (approximately 43 per cent and mainly in urban centres) and the inability of the social security system to improve the situation of the growing number of poor families.

"In accordance with article 27 of the Convention, the Committee recommends that the State Party increase its efforts to provide material assistance and support to economically disadvantaged families and guarantee the right of children to an adequate standard of living. In this context, the State Party is encouraged to promote programmes to discourage and prevent child begging. The Committee encourages the State Party to proceed with the programme, in cooperation with the World Bank, to eradicate poverty, especially among children." (Georgia IRCO, Add.124, paras. 50 and 51)

While the Committee may commend energetic action taken by richer nations to reduce poverty, it will still encourage more action, as with Canada:

"The Committee is concerned by the emerging problem of child poverty, especially among vulnerable groups. It is also worried by the increasing number of children who are brought up by single parent families, or in other problematic environments. While appreciating the programmes already set up, the Committee emphasizes the need for special programmes and services to provide the necessary care, especially in terms of education, housing and nutrition, for such children..."

"While recognizing the steps already taken, the Committee notes with concern the special problems still faced by children from vulnerable and disadvantaged groups, such as aboriginal children, with regard to the

enjoyment of their fundamental rights, including access to housing and education.” (Canada IRCO, Add.37, paras. 12 and 17)

A main thrust of the Committee’s recommendations in relation to article 27 is that countries – both rich and poor – should undertake an holistic analysis of the extent, origin and cross-relationships of all forms of child deprivation. Poverty should be mapped and its root causes addressed. For example:

“The Committee recommends that the State Party consider the possibility of focusing its attention on the organization of a more comprehensive and coordinated campaign in order to address the interrelated family and social-related problems of: the high number of family separations, the relatively high maternal mortality rate and teenage pregnancies, the number of children who are victims of violence or abuse, and the rising number of children living or begging on the street who are at risk of sexual exploitation.” (Nicaragua IRCO, Add.36, para. 35)

“Taking note of the allocation of additional resources to family-related benefits and of the willingness to undertake other measures to achieve further progress in addressing the problems facing single parents, and recognizing the State Party’s commitment to undertake measures to improve poorer children’s access to out-of-school activities, including leisure activities, the Committee believes that greater priority should be given to an analysis of the occurrence of child poverty. Such an analysis should be undertaken from a holistic perspective, taking into account the possible linkages between such matters as housing conditions, family support to the child at home and in school, and the risk of dropping out of school. The results of this research could serve as a vehicle for discussion of these matters both in Parliament and with the relevant authorities as well as for the development of a more comprehensive and integrated approach for responding to the problems identified.” (Germany IRCO, Add.43, para. 31)

“The Committee ... notes that the social policies of the State Party, in spite of their comprehensiveness, have resulted in the socio-economic exclusion of certain groups of children such as the Roma and children living in the streets and in institutions.

“The Committee recommends that the State Party include NGOs, especially family and children’s NGOs, and civil society, in general, through dialogue, in the development of social policies in order to better understand the reasons for exclusion and to stimulate new ideas to raise the standard of living of vulnerable groups of children.” (Slovakia IRCO, Add.140, paras. 43 and 44)

“States Parties ... shall take appropriate measures to assist parents and others responsible for the child ... and shall in case of need provide material assistance and support programmes...”

The emphasis in article 27 on the State assisting parents in the exercise of their primary responsibility to secure children’s living conditions, rather than directly assisting the child, is both self-protective and principled: self-protective, because the drafting nations were anxious not to be placed under duties to support the children of rich parents, or to allow parents generally to off-load their responsibilities onto the State; principled, because – as the Convention stresses – children have a right wherever possible to be cared for by their parents and kept within a family environment. Article 27 reaffirms the principle established in article 18 that while both parents have primary responsibility for their children, the State also has obligations to support parents in the role of protecting and promoting the well-being of their children.

The Committee was concerned that States might not recognize that some parents were unable to undertake their responsibilities and needed support:

“...Further steps should be taken to strengthen the system of assistance to both parents in the performance of their child-rearing responsibilities, in particular in the light of articles 18 and 27 of the Convention. It is further suggested that the problem of single parenthood be studied and that relevant programmes be established to meet the particular needs of single parents.” (Poland IRCO, Add.31, para. 33)

“In view of the high rate of abandonment of children and of abortion, the Committee recommends that the State Party adopt a strategy and policy to assist vulnerable families for the support of their children. The adequacy of the current social security system and of the family planning programmes should be evaluated...” (Ukraine IRCO, Add.42, para. 26)

“The Committee encourages the State Party to adopt further measures to ensure assistance for the family to ensure its responsibilities in the upbringing and development of the child, in particular in the light of articles 18 and 27 of the Convention. Special attention should be paid to the prevention of child abandonment, as well as to the prevention of, and appropriate assistance to, child-headed families.” (Republic of Korea IRCO, Add.51, para. 27)



Meeting children's nutritional needs in Jordan

The Jordanian Government reported that, acting in collaboration with the World Food Programme, it was studying a school nutrition project under which an estimated 60,000 male and female students attending school in the least affluent areas will be provided with a meal designed to meet one third of their daily nutritional needs, and was also developing a school nutrition project to feed about 30,000 students in younger grades. It also reported that students themselves helped establish school cafeterias and played a role in all aspects of their management. As well as helping to meet their nutritional needs, the students were learning about management and co-operation. The scheme had the added bonus of reducing the number of traffic accidents as it meant students did not have to leave the school grounds at lunch time. (Jordan 2R, paras. 113-115)

General support for parents is discussed in greater detail under article 18 (see page 243).

"particularly with regard to nutrition"

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food. This affirms that the right to adequate food under article 11 of the International Covenant on Economic, Social and Cultural Rights is "indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights". The Committee on Economic, Social and Cultural Rights defines the core content of the right to adequate food supplies as implying: "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." The General Comment provides detailed discussion of the implications of implementation (Committee on Economic, Social and Cultural Rights, General Comment 12, 1999, HRI/GEN/1/Rev.5, p. 57).

The Committee on the Rights of the Child has expressed deep concern at any evidence of child malnutrition, for example when examining

Initial Reports from Burkina Faso, Guatemala, Honduras, Mauritius, Nicaragua, Sri Lanka – where it cited the rate of 23 per cent of infants with low birthweight – and Uruguay. Children will fail to make any significant progress in their "physical, mental, spiritual, moral and social development" if they are malnourished, so nutrition will always be at the top of any list of priorities for children, as the World Summit for Children made clear (see page 348).

Where children are threatened with malnutrition, the Committee has on occasion recommended a "National Nutritional Policy for children", for example:

"Further steps should be taken in the area of health and welfare services. In particular concerted efforts are needed to combat malnutrition and ensure the implementation of a National Nutritional Policy for children." (Bangladesh IRCO, Add.74, para. 41)

However, the Committee often subsumes malnutrition under general concerns about "poverty" and "health" in relation to impoverished groups of children (see article 24(2)(c), page 354). This may occur because no evidence has been submitted to it on child malnutrition – the country may be simply too poor to amass data on, for example, birth weight or infant undernourishment. Thus, the Committee advised Guatemala:

"...The Committee shares the concern expressed by the representative of the State Party at the widespread severe malnutrition and at the inadequacies of data and statistics monitoring nutrition." (Guatemala IRCO, Add.58, para. 17)

Similarly the Committee encouraged Mauritius *"...to undertake a comprehensive study on the impact of malnutrition on child development in connection with school drop-out and child labour, and to take all appropriate measures to address this problem. International cooperation could be requested to achieve this task and consideration should be given to the strengthening of cooperation with the International Labour Organization and the United Nations Children's Fund (UNICEF)."* (Mauritius IRCO, Add.64, para. 28)

The World Summit for Social Development, in 1995, agreed the goal of: "Achieving food security by ensuring a safe and nutritionally adequate food supply, at both the national and international levels, a reasonable degree of stability in the supply of food, as well as physical, social and economic access to enough food for all, while reaffirming that food should not be used as a tool for political pressure" (Programme Action of the World Summit for Social Development,

Children's rights and housing

In February 1996, a group of experts from UNICEF, United Nations Centre for Human Settlements (UNCHS) and others met to establish the relevance of the Convention on the Rights of the Child to the goals of Habitat II. Their declaration includes the following:

"Within the home environment

- The child's need for a secure, safe, healthy environment begins in the prenatal period.
- A healthy home includes a safe and sufficient water supply, safe and accessible sanitation and waste management; also protection from traffic and other hazards, freedom from exposure to pollution, radiation and disease, and from excessive noise and overcrowding.
- The home environment should facilitate caregiving, and should meet children's basic physical, social and psychological needs.
- Children of both sexes should be provided with equal opportunities and challenges for play and learning in the home and its immediate surroundings.
- Particular attention should be given to the home-based needs of disabled and other vulnerable children.

Within the neighbourhood and community

- A supportive environment for children includes healthy, crime free, and peaceful communities. It is essential that conditions promote social justice, gender equality and participation in community life.
- Childhood and adolescence must be recognized as unique stages in human cultural development, requiring the respect and understanding of the community and society. Street children and others in difficult circumstances should not be excluded.
- Health care, education, and child-care services of high quality must be available and accessible within the community.
- It is essential that children have safe, secure, and protected environments within the community where they can play, participate and learn about their social and natural world. Adolescents, too, need places where they can be together, experience autonomy, and feel a sense of belonging.
- Children have a special interest in the creation of sustainable human settlements that will support long and fulfilling lives for themselves and future generations. They require opportunities to participate and contribute to a sustainable urban future."

Children's Rights and Habitat – Declaration and Report of the Expert Seminar, UNICEF, UNCHS/Habitat, 1996.



A/CONF.166/9, p. 51). The World Summit follow-up General Assembly special session, five years later, reported that the goal of reducing malnutrition in under-fives by 2000 had not been achieved (Twenty-fourth special session of the General Assembly, A/RES/S-24/2, 2000, p. 5)

"housing"

Children in both wealthy and poor countries suffer from inadequate housing or are homeless. The Committee on Economic, Social and Cultural Rights has issued a long General Comment on "the right to adequate housing" under article 11 of the Covenant, which details requirements such as security of tenure, availability of basic services, affordability and accessibility of housing (Committee on Economic, Social and Cultural Rights, General Comment 4, 1991, HRI/GEN/1/Rev.5, p. 24). More recently the

Committee on Economic, Social and Cultural Rights issued a General Comment on forced evictions, pointing out that evictions frequently violate people's rights even when they are justifiable, and in particular have a disproportionate impact on children and other vulnerable individuals (Committee on Economic, Social and Cultural Rights, General Comment 7, 1997, HRI/GEN/1/Rev.5, p. 51).

General Comment 4 was endorsed by the Committee on the Rights of the Child in its Statement to the Second United Nations Conference on Human Settlements (Habitat II, Istanbul, 1996) supporting the Expert Seminar on children's rights and housing (see box). The Committee commented:

"The Committee believes that... the right to housing should not be interpreted in a narrow or restrictive sense, but has to be interpreted



as a right to live somewhere in security, peace and dignity...

"It is important to emphasize that the rights to housing of children are interrelated to and interdependent with nearly every other right contained in the Convention. This underlines the comprehensive and holistic thrust of the Convention, as well as of its process of implementation and monitoring." (Report on the eleventh session, January 1996, CRC/C/50, pp. 77 and 79)

The Committee has occasionally asked countries to report on what measures it has taken under Habitat II (see *Guidelines for Periodic Reports*, para. 103). For example it raised the issue, as well as concerns about forced evictions, with India :

"The Committee is concerned at the high percentage of children living in inadequate housing, including slums, and their inadequate nutrition and access to safe drinking water and sanitation. The Committee is concerned at the negative impact on families and the rights of children of structural adjustment projects. "In accordance with article 27 of the Convention, the Committee recommends that the State Party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children's access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State Party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services." (India IRCO, Add.115, paras. 52 and 53)

In its Statement to Habitat II, the Committee mentions children's right to participate in decisions relating to housing (article 12). Where children are homeless this may seem a luxurious consideration, but it is of course important that any Government undertaking to improve children's housing takes into account children's views on planning and architecture. Although "housing" is singled out in article 27, any consideration of housing has to encompass the whole of the built environment – children's needs and views are equally crucial in relation to areas used primarily by them, such as schools, play areas, residential institutions, clinics and hospitals.

Habitat II declares that: "The needs of children and youth, particularly with regard to their living environment, have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the

shaping of cities, towns and neighbourhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment. Special attention must be paid to the shelter needs of vulnerable children, such as street children, refugee children and children who are victims of sexual exploitation." (United Nations Conference on Human Settlements (Habitat II), A/CONF.165/14, p. 15)

Detailed information by countries on the housing situation of children or detailed comment by the Committee is rare but occasionally arises, for example in relation to Croatia:

"The Committee expresses concern about the Law on Temporary Possession, according to which property may be occupied by temporary settlers in the absence of the property owners. The Committee is concerned that families affected by this law will face problems if they should return before the present occupiers have found alternative shelters..."

"The Committee recommends that in the light of the best interests of the child and, when necessary, in the framework of international cooperation, the Government make special efforts to resolve the problem of property owners returning to their homes before their occupiers have been able to find alternative shelter." (Croatia IRCO, Add.52, paras. 15 and 26)

In addition the Committee has consistently expressed concern about the group of children termed "street children", whom, following the recommendation of the Human Rights Commission (resolution 1994/93), it prefers to describe as: "Children who, in order to survive, are forced to live and/or work on the streets". Though many such children have families with whom they are in touch, they often do not live with them and are forced to sleep on the streets or in unacceptable forms of accommodation. This topic is discussed in article 20 (page 287). Again, one of the main initial strategies encouraged by the Committee is research and analysis of the phenomenon:

"The Committee encourages the State Party to undertake to prevent and combat the phenomenon of children working and/or living on the street by, inter alia, engaging in research and collection of data, promoting integration and vocational training programmes as well as guaranteeing equal access to health and social services." (Ghana IRCO, Add. 73, para. 39)

"The Committee recommends that further research be carried out to identify the causes of the spread of homelessness, particularly among young persons and children, including,

Namibia's maintenance laws

In Namibia "...any person who is legally entitled to maintenance needs only to make a complaint under oath to the maintenance officer at any magistrate's court; there is no need to incur the expense of obtaining legal counsel. The maintenance officer then has a duty to investigate the complaint, instituting a court enquiry if necessary. The court is empowered to make maintenance orders, to grant a judgement in the woman's favour for any money owing to her, and to punish a failure to pay with fines or imprisonment where necessary. The court also has the power to attach the man's wages if he is working. However, under the Act, a failure to make payments will not be punished where it is due to lack of means which is not the result of misconduct or unwillingness to work...There is no specific age at which a child becomes too old for maintenance payments – the test is whether or not the child is in a position to support him or herself independently." (Namibia IR, paras. 160-163)



inter alia, the socio-economic background of the child and his/her family, and to identify any link between homelessness and child abuse, including sexual abuse, child prostitution, child pornography, and trafficking in children. The Committee also encourages the State Party to adopt further policies of poverty alleviation, and to further strengthen the support services that it provides to homeless children." (Australia IRCO, Add.79, para. 33)

The child's right to maintenance: article 27(4)

The provisions of article 27(4), relating to the financial maintenance of children by parents and others legally responsible for them, are undoubtedly important for many children whose conditions of living can be greatly improved by recovery of maintenance from an absent parent (usually the father).

However, maintenance is a muddled issue – this "right of the child" can be used in a way that is not necessarily in the child's interests. For example, fathers can use financial leverage to secure unwanted access to the child or to assert a greater right to determine the child's future; mothers can retain custody of children simply in order to secure financial support or accommodation for themselves; children of second families can sometimes be the unnoticed victims of maintenance orders. States, too, can be unscrupulous about pursuing maintenance simply as a means of reducing their public expenditure bill. Care, therefore, needs to be taken to emphasize the article 3 principle that the best interests of the child must be a primary consideration (ideally the paramount consideration) when maintenance legislation and procedures are drawn up.

Nonetheless, the maintenance of children often carries wider social benefits than simply improv-

ing the living standards of individual children. In particular it addresses the increasingly important issue of the absent father and the worldwide growth of female-headed single-parent families (both unmarried and divorced), discussed under article 18 (see page 248). Good maintenance recovery procedures can deter men from taking feckless attitudes to family planning and fatherhood and can encourage them to play a more active role in children's upbringing. Namibia, for example, a country with many challenges, including high levels of female-headed families, has taken action to ensure a simple, low-cost and effective system for mothers to pursue maintenance and reported a high volume of successful take-up by unmarried women in urban areas (see box). The Committee expressed concern to Côte d'Ivoire that, despite the existence of legal provisions for maintenance, there was widespread ignorance of the law:

"The Committee recommends that the State Party make widely known the provisions of domestic legislation concerning maintenance allowance, notably to women who are illiterate, and that it ensure that professional groups dealing with this issue are adequately trained and that the courts are stricter regarding the recovery of allowances from solvent parents who refuse to pay." (Côte d'Ivoire IRCO, Add.155, para. 33)

Legal definitions of 'maintenance' can also be a method of spelling out parental and family responsibilities. For example the Committee was informed that parents in Argentina are under a legal duty to meet their children's needs in terms of sustenance, education, leisure, clothing, housing, assistance and expenditure on account of illness (Argentina IR, paras. 56-58). The law on the duties of parents in Bolivia goes even further, specifying responsibility to ensure that children acquire a trade or profession for the

future, if necessary by covering the cost of training (Bolivia IR, para. 99). Costa Rica's legislation establishes a precedence of financial responsibility for the child within the family – parents, elder siblings, grandparents and great-grandparents, in that order (Costa Rica IR, para. 155).

Recovery of maintenance from abroad.

Article 27(4) was introduced during the drafting sessions of the Convention by Finland's representative in a draft that referred only to the effective recovery of maintenance from abroad, because of difficulties both children and States had experienced in this area. The recovery of maintenance from within the State was an afterthought (E/CN.4/1988/28, p. 17; Detrick, p. 378).

International conventions have established rules governing where, from whom and how children may claim maintenance in circumstances where children change their country of habitual residence and where one or both parents live or move abroad – these include the United Nations Convention on the Recovery Abroad of Maintenance (New York, 1956); and the Reciprocal Enforcement of Maintenance Orders, Hague Convention Countries Order 1993. In addition, there are a number of bilateral and regional treaties and reciprocal enforcement agreements relating to maintenance orders. In countries where there is a lot of fluidity across borders, it is particularly important for these agreements to be ratified and made easily enforceable.



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 27, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 27 is relevant to the **departments of justice, home affairs, housing, social welfare and housing**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 27 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 27 likely to include the training of **community developers, environmental planners, emergency aid personnel, court officers, social workers, health workers and those involved in parent education**)?

● Specific issues in implementing article 27

- ☐ Has the State identified the minimum standard of living necessary to secure the child's development?

Are appropriate measures taken to assist parents and others responsible for the child in securing the conditions of living necessary for the child's

- ☐ physical development?
- ☐ mental development?
- ☐ spiritual development?

- ☐ moral development?
- ☐ social development?
- ☐ Are measures taken to make parents fully aware of these responsibilities?
- ☐ Are legal or administrative criteria in place to determine whether parents have the ability and financial capacities to meet their responsibilities?
- ☐ Are measures and procedures taken in order to identify all children within the State who are in need because their parents are unable to secure adequate standards of living for them?
- ☐ Are measures adopted to analyze why children's conditions of living are insufficient for their proper development?
- ☐ Where children are in need, whether with their parents or otherwise, are they provided with necessary material assistance and support programmes to secure their proper development?
- ☐ Does the State take measures (including budgetary allocations) to ensure that every child is well nourished?

Does the State take measures to ensure that every child is housed in accommodation that is:

- ☐ secure?
- ☐ well-serviced (particularly as regards water, sanitation and fuel)?
- ☐ safe?
- ☐ healthy?
- ☐ appropriately located (particularly as regards hospitals, schools and recreation)?
- ☐ in accordance with measures recommended by Habitat II?
- ☐ Are the views of children taken into account when shaping the environment in which they live?
- ☐ Does the State take measures to ensure that every child is adequately clothed?
- ☐ Where the State has insufficient resources available to secure an adequate standard of living for all children, do its economic plans include securing such standards as an explicit goal?
- ☐ Are appropriate applications made for international aid and technical assistance where there are insufficient resources to secure children's standard of living?

Maintenance

- ☐ Is legislation implemented to ensure that children can recover maintenance from both parents and from any others who have responsibility for their conditions of living?
- ☐ Does such legislation make the child's best interests a primary or paramount consideration?

How to use the checklists, *see page XVII*



- ☐ Is such legislation simple and cheap for the child or child's caregiver to enforce?
- ☐ Does it include measures to obtain income or assets from those who default on their maintenance responsibilities?
- ☐ Has the State acceded to all appropriate international or bilateral agreements and treaties relating to the recovery of maintenance abroad?

Reminder: The Convention is indivisible and its articles are interdependent. Article 27 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 27 include:

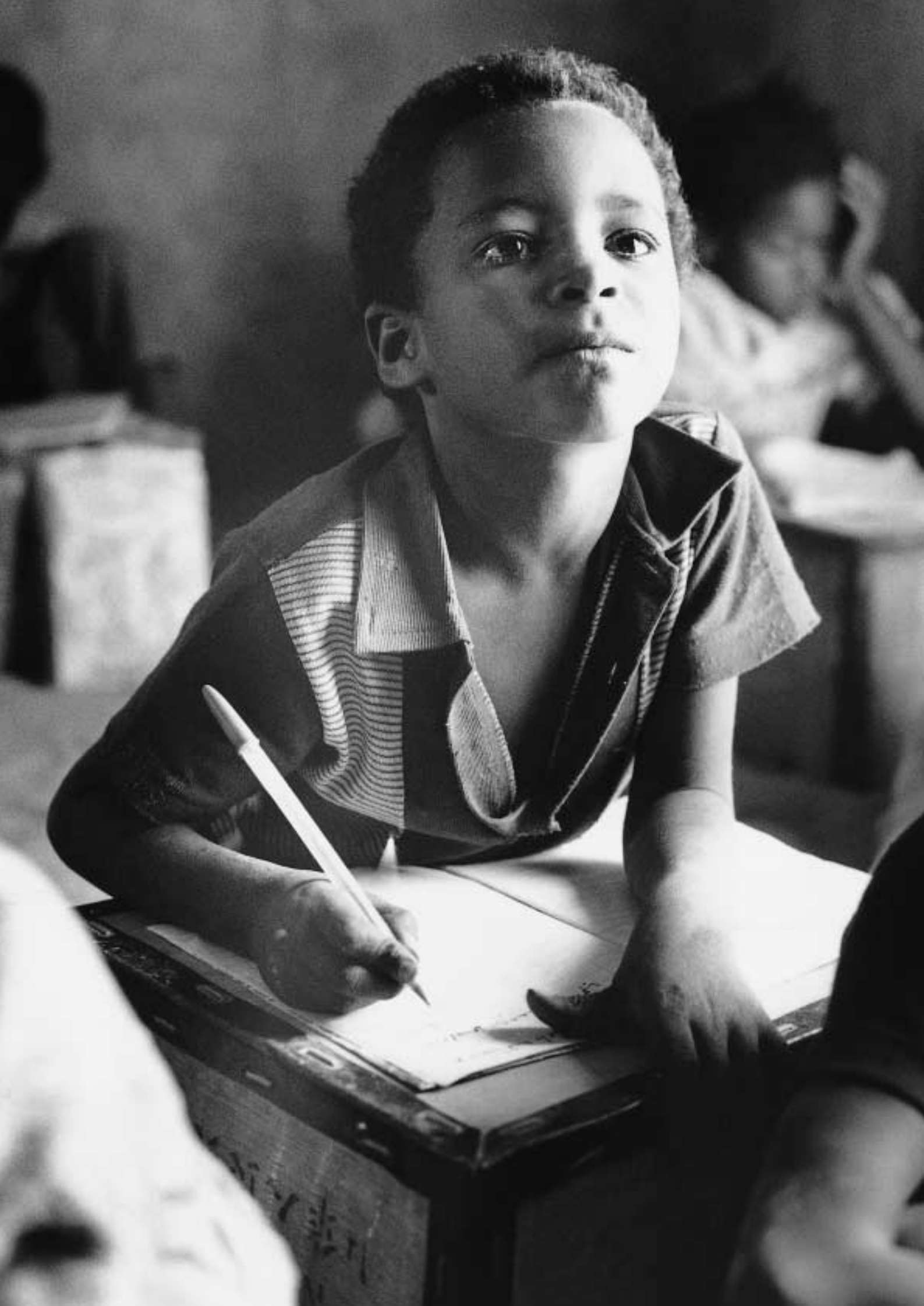
Article 3(2): State to ensure child necessary protection and care, taking into account parents' rights

Article 5: Parental responsibilities and child's evolving capacities

Article 18: parents having joint responsibility, State support for parents

Article 24: right to health and health services

Article 26: right to social security



Child's right to education



Text of Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 28 of the Convention on the Rights of the Child establishes the child's right to education. Education is recognized to be essential for all children. The article stresses the right must be

achieved "on the basis of equal opportunity," reflecting the fact that vast numbers of children suffer discrimination in access to education (particularly children in rural areas, girls and disabled children). Education is also expensive and not all

Summary

States will be able to meet the educational needs of their children – often the right will need to be achieved “progressively”. However article 28 states the core minimum: free, compulsory primary education for all, and different forms of secondary education and vocational guidance “available and accessible” to all. Higher education must be accessible “on the basis of capacity”.

The article also addresses the delivery of education, in so far as States must take measures to reduce school drop-out rates and to ensure that school discipline respects the child’s rights. It also encourages international cooperation on education, reflecting the fact that education can be the engine for economic growth. ■



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Education, leisure and cultural activities

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(a) Education, including vocational training and guidance (art. 28)...

... States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 21 and 22)

Guidelines for Periodic Reports

“VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

Please indicate the measures adopted, including of a legislative, administrative and budgetary nature, to recognize and ensure the right of the child to education, and to achieve this right progressively and on the basis of equal opportunities.

In this regard, reports should indicate, inter alia:

The measures adopted to ensure respect for the general principles of the Convention, namely the best interests of the child, respect for the views of the child, the right to life, survival and development to the maximum extent possible, and non-discrimination, including with a view to reducing existing disparities;

The proportion of the overall budget (at the central, regional and local, and where appropriate at the federal and provincial levels) devoted to children and allocated to the various levels of education;

The consideration given to the real cost to the family of the child’s education and the appropriate support provided;

The measures adopted to ensure that children may be taught in local, indigenous or minority languages;

Mechanisms developed to ensure the access of all children, including girls, children with special needs and children in especially difficult circumstances, to quality education adapted to the child’s age and maturity;

The steps taken to ensure that there are sufficient teachers in the school system, to enhance their competence, and to ensure and assess the quality of teaching;

The measures adopted to provide adequate educational facilities, accessible to all children;

The rate of illiteracy below and over 18 years, and the rate of enrolment in literacy classes, including by age, gender, region, rural/urban area, and social and ethnic origin;

Any systems of non-formal education;

Any system or extensive initiatives by the State to provide early development and education services for young children, especially for young children from disadvantaged social groups;

The changes that have occurred in the education system (including with regard to legislation, policies, facilities, budgetary allocation, quality of education, enrolment, drop-out and literacy);

Any monitoring mechanism developed, factors and difficulties encountered and targets identified for the future;

Other relevant disaggregated data on the children concerned, including on education outcomes, inter alia by gender, age, region, rural/urban area, and national, ethnic and social origin.

Reports should also indicate the particular measures adopted:

To make primary education compulsory and available free for all, particularly children, indicating the minimum age for enrolment in primary school, the minimum and maximum ages for compulsory education, the proportion of children enrolled, who complete primary education, as well as any relevant disaggregated data including by age, gender, region, urban/rural area, national, social and ethnic origin, service coverage and budgetary allocation;

To encourage the development of different forms of secondary education, including general and vocational education, and measures adopted:

To make such forms available and accessible to every child, providing inter alia any relevant disaggregated data including by gender, age, region, rural/urban area, national, social and ethnic origin, coverage and budgetary allocation;

To introduce free secondary education and offer financial assistance in case of need, indicating the children concerned, including by gender, age, region, rural/urban area, and national, social and ethnic origin, and the budget allocated for that purpose;

To make higher education accessible to all on the basis of capacity, indicating inter alia the rate of access to higher education by age, gender and national, social and ethnic origin;

To make educational and vocational information and guidance available and accessible to all children, indicating, inter alia, the forms of such information and guidance, the mechanisms used to assess their effectiveness, the budget allocated for that purpose, as well as any relevant disaggregated data, including by age, gender, region, urban/rural area, and social and ethnic origin;

To encourage regular attendance at school and to reduce drop-out rates, including research, any mechanisms developed to assess the situation, and incentives provided to encourage school entrance, regular school attendance and school retention, any alternatives provided for children who are excluded from school, as well as other relevant data disaggregated by age, gender, region, urban/rural area, and social and ethnic origin.

Reports should also provide information on any category or group of children who do not enjoy the right to education and the circumstances in which children may be excluded from school temporarily or permanently (for example disability, deprivation of liberty, pregnancy, HIV/AIDS infection), including any arrangements made to address such situations and to ensure alternative education. Disaggregated data should be provided, including by age, gender, region, rural/urban area, and social and ethnic origin.

Please indicate all appropriate measures taken pursuant to article 28, paragraph 2, to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention, including:

Legislation applying to public and private schools and other education institutions and prohibiting all forms of violence, including corporal punishment, as well as any other disciplinary measures which are not consistent with the child's human dignity or in conformity with the provisions of the Convention, including articles 19, 29 and 37(a), and its general principles particularly of non-discrimination, best interests and respect for the views of the child;



Any monitoring system of the administration of the school discipline, as well as mechanisms of reporting and complaint;

Any independent mechanism established for that purpose;

Legislation providing the opportunity for the child to participate in administrative or judicial proceedings in relation to education and affecting him or her, including those relating to the choice of school, school exclusion.

With regard to article 28, paragraph 3, please provide information on the measures adopted to 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;

Facilitating access to scientific and technical knowledge and modern teaching methods;

Taking particular account of the needs of developing countries.

Reports should also indicate the activities and programmes developed, including at the bilateral and regional levels, the target groups identified, including by age, gender and national, social and ethnic origin, the financial assistance provided and/or received and the priorities established, and the consideration given to the aims of education as identified by article 29 of the Convention, as well as any evaluation made of the progress achieved and of the difficulties encountered. Mention should be made, whenever appropriate, of the involvement of United Nations organs and specialized agencies and non-governmental organizations."

(CRC/C/58, paras. 105-111. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 43, 46, 57, 88, 92, 95, 118, 152 and 166; for full text of *Guidelines*, see Appendix 3, page 674.)

Background

The 1948 Universal Declaration of Human Rights states: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit" (article 26).

This Declaration was enhanced in the International Covenant on Economic, Social and Cultural Rights: "Primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education" (article 13(2)). The International Covenant goes on to provide that any ratifying State that does not provide free compulsory primary education shall undertake "within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years,

to be fixed in the plan, of the principle of compulsory education free of charge for all" (article 14). During the drafting of article 28 on the Convention on the Rights of the Child, concern was expressed by State representatives that the Convention should neither be weaker nor stronger than the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1985/64, pp.11-15; Detrick, pp. 383-386). In 1999, the Committee on Economic, Social and Cultural Rights adopted two General Comments on education – General Comment 11 on plans of action for primary education (article 14 of the Covenant) and General Comment 13 on the right to education (article 13 of the Covenant).

The 1990 World Summit for Children declared: "At present, over 100 million children are without basic schooling, and two thirds of them are girls. The provision of basic education and literacy for all are among the most important contributions that can be made to the development of the world's children" (para. 13). The World Summit set a goal: "By the year 2000... universal access to basic education and achievement of primary education by at least 80 per cent of primary school-age children". That goal has yet to be achieved. Although some developing countries have made significant progress in school enrolment, 130 million children of school

age were estimated to be without access to primary education by the year 2000, of whom about two thirds were girls.

Also in 1990 a World Conference on Education for All was held in Jomtien, Thailand. The resulting World Declaration on Education for All asserts that basic education “is more than an end in itself. It is the foundation for lifelong learning and human development on which countries may build, systematically, further levels and types of education and training” (article 1(4)). It states: “Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet his basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time.” (article 1(1))

A decade later, in 2000, the World Education forum, held in Dakar, set a Framework for Action, identifying six goals and strategies for attaining them; a principal commitment is that “all States will be requested to develop or strengthen existing national plans of action by 2002 at the latest”. Dakar’s six goals and strategies are presented in the box on page 419.

In 1998 the United Nations Commission on Human Rights appointed a Special Rapporteur on the right to education. Her mandate is a large one: to report on the status of the right to education throughout the world and the difficulties in implementing this right, with particular attention to gender-inequality, and to assist Governments in securing progressive implementation, including collaboration with the relevant international agencies and identifying sources of funding for assistance (General Assembly resolution 1998/33). The focus of her work has been on “the two pillars of human rights obligations: securing free and compulsory education for all children, and respecting freedom *of* and *in* education”. (Annual Report of the Special Rapporteur on the right to education, 2001, E/CN.4/2001/52)

During the drafting of the Convention on the Rights of the Child, members of the Working Group were keen to include the principle established in both the International Covenant on Economic, Social and Cultural Rights and the

International Covenant on Civil and Political Rights that States should respect parents’ rights to ensure that the education of their children is in conformity with their own religious and moral convictions. However, this was rejected on the grounds that parents’ overall rights and responsibilities were dealt with elsewhere in the Convention. (E/CN.4/1985/64, pp. 11-15 and E/CN.4/1989/48, pp. 79-84; Detrick, pp. 384 and 394)

The Holy See was sufficiently concerned by this omission to enter a reservation: “That it interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular in so far as those rights concern education (articles 13 and 28)” (CRC/C/Rev.8, p. 23). The Convention does not safeguard “primary and inalienable” rights of parents in education. These rights are subject, for example, to the best interests of the child, the evolving capacities of the child (article 5, page 89, article 12, page 172 and article 18, page 246) and the child’s own rights under the Convention, including the right to an education that promotes tolerance and respect for others (article 29, page 445). Article 29 does however safeguard the rights of parents and others to establish schools outside the state system, and article 30 provides that children of minority cultures should not be denied rights to practise their language, religion and culture. The Committee urged the Holy See to review its reservations, expressing concern:

“in particular with respect to the full recognition of the child as a subject of rights”. (Holy See IRCO, Add.46, para. 7)

The “right of the child to education” to be achieved “progressively”

The child’s basic right to education is enshrined in the first paragraph of article 28. Subparagraphs (a) to (e), which detail particular duties for States Parties in this respect, are governed by the initial statement, which provides that States Parties shall achieve the right to education “progressively and on the basis of equal opportunity.” Some countries include a specific right of children to education in their constitutions or education legislation, others imply such a right by placing duties on parents to secure their children’s education. India reported to the Committee that: “the inability of the State to provide free compulsory education for all children within a period of 10 years from the commencement of the Constitution has compelled the Supreme Court to declare the right to education to be part of the fundamental right to personal liberty (article 21), as without





education, life cannot be lived with dignity.” (India IR, para. 75)

“Education”

The definition of “education” is not limited to instruction delivered within schools (though subparagraph (e), on “school” drop-outs, and article 29(2), on private “educational institutions”, imply that this will normally be the case). Article 28 mentions “vocational education”, “the elimination of ... illiteracy” and “access to scientific and technical knowledge”; the broad aims of education are set out in article 29, but the Convention on the Rights of the Child does not attempt to define the detail of a basic curriculum.

However, the Eighteenth General Conference of UNESCO Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms (1974) states: “The word ‘education’ implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities.” (article 1(a))

Nor does the Convention indicate how much time education should take up of the child’s life, although the Committee raised with Madagascar a concern that:

“...In particular, the number of hours during which schools are open have been restricted.” (Madagascar IRCO, Add.26, para. 13)

High illiteracy levels are often a subject of the Committee’s expressed concern (see, for example, Jordan IRCO, Add.21, para. 25; Nepal IRCO, Add.57, para. 17; Guatemala IRCO, Add.58, para. 37; Mauritius IRCO, Add.64, para. 15). Otherwise, the Committee has tended to focus on the relevance of the curriculum to the child’s life (as discussed in relation to subparagraph (e) below, page 420) rather than examining whether, for example, children’s curricula includes adequate scientific or technical instruction. The *Guidelines for Periodic Reports* asks for details on “education outcomes” disaggregated by social groups and on the mechanisms to assess the effectiveness of educational provisions and measures to reduce school drop-out rates, all of which should focus Governments’ attention on the content as well as the delivery of education (paras. 106 and 107).

“Progressively”

Some developing nations may lack the resources to ensure that secondary education, or even prim-

ary education, is accessible to all children, and even rich nations claim difficulties in ensuring that higher education is available to all young people on the basis of capacity. Nonetheless, all ratifying nations must plan for progressive provision of education, and, in line with article 4, they must ensure that this is done “to the maximum extent of available resources”. The General Comment by the Committee on Economic, Social and Cultural Rights on what is meant by “progressively” realizing rights is significant here (see article 4, page 62).

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment to remind States Parties that under article 14 of the International Covenant, if they have not been able to secure compulsory, free primary education, they have an obligation to develop and adopt, within two years, a detailed plan of action for the progressive implementation within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all. The Comment notes that the clear and unequivocal obligation under article 14 needs to be “scrupulously observed”.

“The Committee is fully aware that many diverse factors have made it difficult for States Parties to fulfil their obligation to provide a plan of action. For example, the structural adjustment programmes that began in the 1970s, the debt crises that followed in the 1980s and the financial crises of the late 1990s, as well as other factors, have greatly exacerbated the extent to which the right to primary education is being denied. These difficulties, however, cannot relieve States Parties of their obligation to adopt and submit a plan of action to the Committee, as provided for in article 14 of the Covenant.” (Committee on Economic, Social and Cultural Rights, General Comment 11, 1999, HRI/GEN/1/Rev.5, p. 64) The box on the Dakar Framework for Action describes what is entailed in the development of a plan of action (see page 419).

The *Guidelines for Periodic Reports* asks States Parties to provide information on: “The proportion of the overall budget (at the central, regional and local, and where appropriate at the federal and provincial levels) devoted to children and allocated to the various levels of education” (para. 106). What proportion of the national budget should be allocated to education has not been established by the Committee on the Rights of the Child or by United Nations’ bodies. UNICEF’s data indicate that the average percentage of government expenditure on education was 4 per cent for industrialized countries, 11 per cent for developing countries and 13 per

cent for the least developed countries (*The State of the World's Children 1999*, UNICEF, p. 117). However these figures do not reveal the proportion spent on primary, secondary and higher education – a crucial factor both in realizing children's rights to education and in raising the country's economic potential.

The Committee has commended high levels of expenditure on education, for example in Mongolia, Paraguay and Costa Rica:

"The Committee takes note with satisfaction that the Government has put children high on its political agenda, during a difficult period of political and economic transition... by declaring 1995 the Year for Children and 1996 the Year for Education, and by allocating 20 per cent of its national budget to education." (Mongolia IRCO, Add.48, para. 3)

"The Committee takes note of the provision of the 1992 Constitution that not less than 20 per cent of the national budget must be devoted to education..." (Paraguay IRCO, Add.75, para. 3)

"With regard to education, the Committee welcomes the fact that the State Party's budget allocation to education is one of the highest among developing countries and that measures are being taken, in cooperation with the World Bank (Basic Education Project), to improve primary education, specially for children living rural and marginal areas." (Costa Rica 2RCO, Add.117, para. 24. See also Costa Rica IRCO, Add.11, para. 8; Portugal IRCO, Add.45, para. 5)

On the other hand, the Committee notes with concern inadequacies in education expenditure, in both rich and poor nations:

"The State party's recognition of the importance of promoting education for all as a tool to improve the situation of children, especially girl children, is welcomed. However, the Committee remains concerned about the effectiveness of measures being taken to harmonize policy priorities in this area with adequate budgetary allocations." (Nigeria IRCO, Add.61, para. 18)

"The Committee notes that budgetary austerity measures have affected the working of the school system, for example by introducing some family contributions for school books and enrichment activities, or by reducing the choice of optional subjects. The Committee recommends that these measures be examined carefully with regard to their impact on the progressive implementation of the child's right to education and leisure activities, in accordance with articles 28, 29 and 31 of the Convention, and in particular so as to limit their impact on the most vulnerable

and disadvantaged groups." (Austria IRCO, Add.98, para 26)

"...the Committee... expresses its concern at the prevailing poor situation in the State Party with respect to education, which is characterized by a general lack of infrastructure, facilities and equipment, insufficient numbers of qualified teachers and a drastic shortage of text books and other relevant learning materials." (India IRCO, Add.115, para. 56)

It can be assumed that the Committee expects to see all education budgets increasing, or at any rate not decreasing, in order to comply with the expectation inherent in the word "progressively", with the approach to implementation of social and economic rights under article 4, and in relation to other treaties, particularly the International Covenant on Economic, Social and Cultural Rights (see page 62). The Covenant's requirement for plans of action for progressively implementing the right to free primary education has been endorsed by the Committee on a number of occasions. The word "progressively" does not only relate to financial expenditure, it also relates to the administration of education, with recommendations from the Committee that countries take a step back and review the whole of their education systems rather than tinker with specific aspects. For example:

"...it is strongly recommended that the State Party undertake, within two years, to elaborate, adopt and submit to the Committee a detailed plan of action for the progressive implementation, within a reasonable number of years, of compulsory education free of charge for all. The Committee further recommends that the State Party undertake a study of the educational system with a view to improving access to education at all levels of the system, increasing the enrolment rate of girls, particularly at the secondary level, introducing local languages as additional tools of instruction, and improving the overall quality of education. The Committee also recommends that a public education campaign be undertaken to promote the importance of education and to influence cultural attitudes positively in this regard." (Vanuatu IRCO, Add.111, para. 21. See also Honduras IRCO, Add.24, paras. 17 and 30; Jamaica IRCO, Add.32, para. 15; Mauritius IRCO, Add.64, para. 29)

The right to education to be achieved "on the basis of equal opportunity"

"On the basis of equal opportunity" stresses the general principle of article 2 on non-discrimination (page 19).



Mexico's "Children in Solidarity" education programme

The "Children in Solidarity" Programme, part of Mexico's National Solidarity Programme to combat poverty, aims to help children living in extreme poverty who are in danger of dropping out of school. They are awarded scholarships for a 12 month period which include economic support, the provision of a monthly stock of basic food for the whole family, curative and preventive medical assistance and the monitoring of nutrition, and the promotion of recreational workshops and activities of benefit to the whole community. Children themselves contribute to the selection body for choosing beneficiaries... "The intention is to arouse the children's interest in their school and to foster an exercise that involves them in community life... The criteria applied in selection of beneficiaries are as follows: that candidates must be enrolled in school; attend school regularly; come from a family with scarce resources; and show an aptitude for collaboration and participation, both in school and within the community" (Mexico IR, paras. 321-328).



The foremost bar to equality of opportunity in education is, usually, the lack of resources – either in terms of a low government budget applied to education so that education is not made available to all members of the population, or in terms of families' poverty so that children have to be withheld or withdrawn from education. Governments can adopt strategies to help such families, such as Mexico's "Children in Solidarity" programme (see box above).

In addition, the Committee has expressed concern that specific groups of children are discriminated against in education, both in terms of the definition of the Convention against Discrimination in Education, 1960: "...Of depriving any person or group of persons of access to education of any type or at any level ... [or]... limiting any person or group of persons to education of an inferior standard" and through less direct forms of discrimination (article 1). The Committee identified various groups as suffering discrimination in education, as discussed below.

Girls

The 1990 World Summit for Children estimated that two thirds of the world's 100 million children without basic education were girls and set

goals for increasing the education of female children. These goals were endorsed by the 1995 World Conference on Women, in Beijing, which attributed the disproportionately low numbers of girls in education to "customary attitudes, child labour, early marriages, lack of funds and lack of adequate schooling facilities, teenage pregnancies and gender inequalities in society at large as well as in the family ... In some countries the shortage of women teachers can inhibit the enrolment of girls. In many cases, girls start to undertake heavy domestic chores at a very early age and are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and an early drop-out from schooling". The Conference called for full implementation of article 28 of the Convention on the Rights of the Child, including a call on governments to "Increase enrolment and improve retention rates of girls by allocating appropriate budgetary resources and by enlisting the support of the community and parents through campaigns and flexible school schedules, incentives, scholarships, access programmes for out-of-school girls and other measures". (The Fourth World Conference on Women, Platform for Action, Beijing, 1995, A/CONF.177/20/Rev. 1, paras. 263 and 279)

Five years later the General Assembly held a special session to follow up the Beijing Conference. It noted some progress, but charted the continuing obstacles to improving the education of girls: lack of resources, insufficient political will, persisting gender discrimination and gender stereotyping, lack of child-care facilities, inadequate links between education and women's labour markets and inadequate teacher salaries (twenty-third special session of the General Assembly, 2000, A/RES/S-23/3, paras. 9 and 10).

In 2001 the Special Rapporteur on the right to education also reported on progress: "The record thus far has been mixed – China has eliminated gender disparity in access to school, girls outnumber boys in countries such as Botswana, Lesotho, Mongolia or the Philippines, but in the Arab States gender disparity has actually increased in 1995-2000 with proportionately fewer girls having had access to schooling." (E/CN.4/2001/52, para. 7)

While the figures for the percentage of girls enrolling in primary and secondary education have increased in some countries, in others girls still lag behind their male peers and, once enrolled, are much more likely to drop out of school.

The Committee pointed out that:

“Several States had identified persistent traditions and prejudices as a main difficulty affecting the enjoyment of girls’ fundamental rights. Discrimination often arose from the way roles were traditionally distributed within the family. Girls often shared the responsibilities of the household, taking care of younger siblings and refused access to education and participation in social life...Girls below the age of 15 often do the same household work as adult women; such labour is not regarded as ‘real work’ and is therefore never reflected in the statistical data. To free girls from this cycle they must have equal chances and equal treatment, with special emphasis on education.” (General discussion on “The girl child”, report on the eighth session, February 1995, CRC/C/38, para. 286)

Girls tend to be the first to be pulled out of school. Bolivia’s Initial Report, for example, points out that: “Although some statistics show a high proportion of boys and girls are enrolled for basic education, defection, giving up and repetition are higher among girls because they have to carry out other duties in the family, such as looking after younger children, housework or assisting their mother in her work.” (Bolivia IR, para. 174. See also Zimbabwe IRCO, Add.55, para. 19)

The Committee took up the issue of girls’ education with a number of countries. For example, Pakistan was told:

“In line with international recommendations, the Committee wishes to emphasize the importance of focusing attention on improving the provision and quality of education, especially in view of its potential benefit for addressing various concerns, including the situation of girls and reducing the incidence of children at work, school drop-out, and illiteracy, especially of girls and women. Attention is drawn to the possibility of benefiting from the activities of women’s groups to improve access to education for girls at the community level.” (Pakistan IRCO, Add.18, para. 30)

Causes of female drop-out rates were identified by the Committee, for example:

“... the Committee is concerned about the low level of school enrolment and the high drop-out rates for girls, due to, inter alia, early marriage, the lack of learning and teaching facilities and materials, and the shortage of trained teachers.” (Uganda IRCO, Add.80, para. 18)

It also pointed out that high rates of early pregnancy were linked to low school attendance and the high drop-out rates of girls (Uruguay IRCO, Add.62, para.12. See further discussion on

Practical help for girls in Nepal

“Various programmes have been initiated to provide equal opportunities to the girl child by reducing their work burden and providing better access to school and health facilities. These include:

- The Out-of-School Programme, under the Non-Formal Education Programme, is designed so that children, especially girls, can have access to basic education with which they can re-enter the primary school system as well as learn skills that are useful in the home;
- The Early Childhood Education and Care (ECEC) project within the Education Programme promotes home-based child care and parenting education, as well as community-based child-care centres. Child development activities help reduce the child-care burden of older girls, allowing them to attend school.” (Nepal IR, para. 71)



school drop-out rates, page 420). It also expressed concern to the United Republic of Tanzania and to the Democratic Republic of the Congo that some girls were the victims of sexual harassment by teachers, another cause of girls dropping out of school:

“The Committee strongly encourages the State Party to take all effective measures to protect children, especially girls, against sexual abuse and violence within the school environment...” (United Republic of Tanzania IRCO, Add. 156, para. 57. See also Democratic Republic of the Congo IRCO, Add.153, paras. 60 and 61)

The Committee gave special mention to China’s “Spring Buds Scheme”, which directed resources at the enrolment of girls in primary education, a serious issue of concern in that country where girls were at the time (1994) the majority of the 2.6 million children who were not in school. Between 1989 and 1994, over 800 classes for girls were established across China, enabling 400,000 girls to go to school (China IR, paras. 187 and 178, and China IRCO, Add.56, para. 6).

It should perhaps be noted in passing that, because of changing work patterns and social attitudes, the education of boys appears likely to become one of the problems confronting both developed and developing nations in the twenty-

first century, particularly as regards drop-out rates and underachievement. This phenomenon has also been noted by the Committee:

"The Committee recommends that all appropriate measures be taken to prevent and discourage truancy and further to encourage children, especially boys, to stay in school, particularly during the period of compulsory education. The Committee urges the State Party to undertake a study on the academic under-achievement of boys, with a view to understanding the scope and nature of the problem and to enhancing the academic achievement of boys, particularly in the Caribbean Territories and the Falkland Islands." (United Kingdom – Overseas Territories IRCO, Add.135, para. 44. See also Mongolia IRCO, Add.48, para. 15; Barbados IRCO, Add.103, para. 27)

Rural children

Within the developing world there are often striking discrepancies between the education of rural and urban-based children, often commented on by the Committee (see, for example, Bolivia IRCO, Add.1, para. 10; Russian Federation IRCO, Add.4, para. 13; Philippines IRCO, Add.29, para. 15; Colombia IRCO, Add.30, para. 20; Sri Lanka IRCO, Add.40, para. 21; Senegal IRCO, Add.44, para. 28; Mongolia IRCO, Add.48, para. 23; Zimbabwe IRCO, Add.55, para. 18; China IRCO, Add.56, para. 11; Nepal IRCO, Add.57, para. 17; Hungary IRCO, Add.87, para. 34; India IRCO, Add. 115, para. 57; Sierra Leone IRCO, Add.116, para. 69; Peru 2RCO, Add.120, para. 25; Colombia 2RCO, Add.137, para. 53).

Poor educational opportunities for children in rural areas arise from a combination of factors, including the administrative cost and difficulty of servicing remote and scattered farms and villages, a dearth of teachers prepared to live in the countryside, the dependence of poor farming communities on children as labourers and the apparent irrelevance of schools and the curriculum to rural lives.

UNICEF's *The Progress of Nations 1997* identifies the massive disparity between the attendance of primary school age children in urban areas and that of children in rural areas in many developing countries. In 41 countries surveyed from 1990 to 1996: "Nearly two thirds of the countries surveyed have urban/rural gaps of at least 10 percentage points or more. In only 3 of the 41 countries – Bangladesh, Kenya and Namibia – are attendance rates in rural areas slightly higher than in urban areas." The survey also compared the disparities between boys' and girls' school attendance with the urban/rural difference and found that "In only 2 of the 41 countries – Yemen

and Nepal – were gender disparities greater than urban-rural differences." It noted that disparities between regions within countries are also significant (*The Progress of Nations 1997*, UNICEF, p. 39).

The State of the World's Children 1999 reports that: "Studies in Nepal have shown that for every kilometre a child walks to school, the likelihood of school attendance drops by 2.5 per cent. In Egypt, if a school is one kilometre instead of two kilometres away, enrolment goes up 4 per cent for boys and 18 per cent for girls." (*The State of the World's Children 1999*, UNICEF, p. 33).

Minority groups

Particular groups within populations are also liable to suffer discrimination in educational opportunities, such as children of minority cultures, indigenous peoples, gypsies, immigrants, refugees and children caught up in armed conflict. (See, for example, Mexico IRCO, Add.13, para. 14; Madagascar IRCO, Add.26, para. 13; Philippines IRCO, Add.29, para. 15; Portugal IRCO, Add.45, para. 13)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration underlines "the links between the right to education and the struggle against racism, racial discrimination, xenophobia and related intolerance and the essential role of education, including human rights education and education which is sensitive to and respects cultural diversity, especially amongst children and young people, in the prevention and eradication of all forms of intolerance and discrimination" (Declaration, para. 97).

The Programme of Action of the World Conference makes detailed recommendations for education, urging States to commit themselves to ensuring access without discrimination, including access to free primary education for all children, both girls and boys. States should ensure equal access to education for all, in law and in practice, and refrain from any legal or other measures leading to imposed racial segregation in access to schooling (Programme of Action, A/CONF.189/12, paras. 121 and 122.)

Failure to take up educational opportunities can sometimes be attributed to the group itself, for example because they speak a minority language or pursue a nomadic lifestyle, but such forms of indirect discrimination are unacceptable to the Committee. For example it recommended the United Kingdom take "pro-active" measures to secure the education rights of children belonging to gypsy and traveller communities (United

Kingdom IRCO, Add.34, para. 40) in order to accommodate their particular culture. The Committee linked the educational underachievement of Dutch ethnic minorities with their social exclusion:

"The Committee notes the monitoring of the educational performance of children from ethnic minorities, but it remains concerned that the results continue to show noticeable disparities. The Committee urges the State Party to review its efforts closely and to consider the possibility of providing further assistance to children at risk and the need to provide assistance to families from ethnic minorities with socioeconomic problems, thus addressing the root causes of poor educational performance." (Netherlands IRCO, Add.114, para 29)

Equality of educational opportunity can only be achieved if education is recognized as a right for all children, irrespective of their background. The Committee has noted with concern that asylum-seeking children often do not have the same access to education as other children in the country. For example, the Committee encouraged Finland:

"to consider measures through which asylum-seeking and refugee children can be granted equal access to the same standard of services, in particular education, irrespective of who they are and where they live." (Finland 2RCO, Add.132, para. 52)

It was also concerned that in India refugee children had no legal entitlement to education:

"The Committee is concerned ... that although refugee children attend school on a de facto basis, there is no legislation which entitles these children to education."

"The Committee recommends that the State Party adopt comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, including in the field of ... education..." (India IRCO, Add.115, paras. 61 and 62. See also, for example, Ghana IRCO, Add.73, paras. 23 and 44; Armenia IRCO, Add.119, para. 47; South Africa IRCO, Add.122, para. 35; Georgia IRCO, Add.124, para. 56; Norway 2RCO, Add.126, paras. 48, 50 and 52)

In contrast, the Committee welcomed Iceland's special programmes, set up under the auspices of the Ministry of Education, to train teachers at all levels on the education of immigrant children (Iceland IRCO, Add.50, para. 10).

The Committee recommended that Guatemala *"...focus greater efforts on... ensuring the availability of bilingual education for indigenous children... Such measures will contribute to the prevention of any form of*

discrimination on the basis of language with regard to the right to education." (Guatemala IRCO, Add.58, para. 37. See also Peru 2RCO, Add.120, para. 25; Georgia IRCO, Add.124, para. 52)

Inequality of educational opportunity can reflect a wider social or political discrimination towards the group. The Committee noted that Tibetan children's "quality of education is inferior" in China and suggested:

"that a review be undertaken of measures to ensure that children in Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing". (China IRCO, Add.56, paras. 19 and 40)

Disabled children

All children, no matter how seriously disabled they are, are entitled to education that maximizes their potential. Any law or practice that limits this right, for example by deeming certain children "ineducable" or by entitling them to "health treatment" rather than "education", breaches articles 2 and 28. Moreover, the education of disabled children should be provided "in a manner conducive to the child's achieving the fullest possible social integration" (article 23(3)) which means that disabled children should, wherever possible, be educated in mainstream schools alongside children without disabilities. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities addresses this issue: "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.

"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 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 6; see also article 23, page 319)

Children in forms of detention

These children are also often denied rights to education or to appropriate education. Rules 13 and 38 to 47 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty specify in great detail high standards of education for these children, including the provision of higher, vocational, special and physical education (see article 37, page 553).

“(a) Make primary education compulsory and available free to all”

During the drafting of the Convention on the Rights of the Child there was some discussion about the word “free” (which had already appeared in other related treaties). Objections were made that cost-free education is an illusion since someone always pays, either directly or indirectly through taxes. A representative from Japan proposed that the word “free” should be interpreted to mean that education “could be made accessible to all children and not to mean that free education was a measure which States Parties were obliged to adopt” (E/CN.4/1989/48, pp. 79-84; Detrick, p. 393).

Subparagraph (a) does, however, clearly state that “free” education at the primary stage is a measure that States Parties are obliged to secure for all children, not just low-income children or other categories of children. Three countries entered reservations to this subparagraph – Samoa, Singapore and Swaziland. The Committee has yet to consider reports from these States (January 2002).

Samoa’s reservation states: “The Government of Western Samoa whilst recognizing the importance of providing free primary education as specified under article 28(1)(a) of the Convention on the Rights of the Child, and being mindful of the fact that the greater proportion of schools within Western Samoa that provide primary level education are controlled by bodies outside the control of the Government ... the Government of Western Samoa thus reserves the right to allocate resources to the primary sector of education in Western Samoa in contrast to the requirement of article 28(1)(a) to provide free primary education.” (CRC/C/2/Rev.8, p. 36) This reservation suggests a misunderstanding of the requirements of subparagraph (a), which does not refer to States “providing” free primary

education but to them “making” it free, that is, ensuring that the provision is made but not necessarily providing it themselves. Thus, if the Samoan Government is satisfied that the “bodies outside the control of the Government” which provide primary education are providing it free of charge to all (and that the education provided is in conformity with the rest of the Convention) then the Government is not obliged to duplicate this funding.

The reservation of Swaziland is also questionable in its necessity: “The Convention on the Rights of the Child being a point of departure to guarantee child rights; taking into consideration the progressive character of the implementation of certain social, economic and cultural rights as recognized in article 4 of the Convention, the Government of the Kingdom of Swaziland would undertake the implementation of the right to free primary education to the maximum extent of available resources and expects to obtain the cooperation of the international community for its full satisfaction as soon as possible.” (CRC/C/2/Rev.8, p. 38) Even if Swaziland was not able to secure free primary education for all, so long as it did genuinely deploy its available resources to the maximum extent to this end and had adopted a strategic plan for the progressive implementation of article 28, it need not enter such a reservation.

However, Singapore’s reservation clearly seeks to abrogate its duty to secure free compulsory primary education for all children within the jurisdiction, and as such may fall foul of article 51(2) (which does not permit reservations “incompatible with the object and purpose of the present Convention”):

“With respect to article 28.1(a), the Republic of Singapore:

- (a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and
- (b) reserves the right to provide primary education free only to children who are citizens of Singapore.” (CRC/C/2/Rev.8, p. 37)

General Comment 11 of the Committee on Economic, Social and Cultural Rights on plans of action for primary education, states in relation to the right to primary education “free of charge”:

“The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without

charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category.” (Committee on Economic, Social and Cultural Rights, General Comment 11, 1999, HRI/GEN/1/Rev.5, p. 65)

The Special Rapporteur on the right to education has entered into discussions with the World Bank over the question of free primary education. She writes of potential conflict within the World Bank “... with one part advocating the abolition of school fees in primary education in order to combat poverty and another tolerating, if not encouraging them, so as to decrease governmental budgetary allocations, and thus fiscal deficits, through cost-sharing. One example is Zambia, where ‘reducing cost barriers for the ultra-poor’ through bursaries has been emphasized as a method for coping with school fees in primary education. Alongside the absence of a commitment to making primary education free, and uncertainties as to which children will be classified as poor (or ultra-poor) to merit bursaries, this model also raises concerns about the administrative costs of collecting school fees (necessarily minuscule in poor rural Zambia) and administering the bursaries (also minuscule). It provides, in the Special Rapporteur’s view, excellent evidence as to why primary education was designed to be free.” (E/CN.4/2001/52, para. 35)

The right to compulsory free primary education is so clearly stated in the Convention that any failure to meet this standard is a major source of concern to the Committee. It expressed “deep concern” that Nepal did not make primary education compulsory for all (Nepal IRCO, Add.57, para. 18). Côte d’Ivoire, the Democratic Republic of the Congo, Guatemala, Jordan, Paraguay, Senegal, Yugoslavia and Zimbabwe have also been singled out for failures to provide free universal primary education. The Committee has also registered concern at the affordability of education, even if it is nominally “free”; the *Guidelines for Periodic Reports*, for example, requests information regarding “the real cost to the family of the child’s education” and “incentives provided to encourage school entrance, reg-

ular school attendance and school retention” (paras. 106 and 107).

Nor is it enough to ensure that primary education is free, it should also be compulsory – the Committee therefore expressed regret that, though primary education had been made free in Ethiopia, it was not yet compulsory (Ethiopia IRCO, Add.67, para. 7). It should perhaps be noted that it is not necessary to make attendance at school compulsory in order to fulfil this obligation under the Convention. Education and school are not synonymous – children can be educated without schools, though this is unusual, and, sadly, attendance at school does not necessarily mean the child is being educated.

“(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need”

The wording of the right to secondary education is less absolute, and less clear, than that relating to primary education. The weaker phrasing does not reflect any doubt about the usefulness of secondary education to children but rather acknowledges that free compulsory secondary education for all is at present beyond the resources of a number of countries.

The phrase “take appropriate measures such as the introduction of free education and offering financial assistance in case of need” suggests that the availability and accessibility of education could be means-tested so that richer families pay while poor children attend free of charge or are awarded scholarships. However, such an approach can too easily lead to situations where secondary education is not “available and accessible to every child”.

The Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to education which defines “available and accessible” in article 13 of the Covenant requiring secondary education to be “made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”. The definition is as follows:



“Accessibility – educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:

- Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds...;
- Physical accessibility – education has to be within safe physical reach, either by attendance at some reasonably convenient geographical location (e.g. a neighbourhood school) or via modern technology (e.g. access to a ‘distance learning’ programme);
- Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13(2) in relation to primary, secondary and higher education; whereas primary education shall be available ‘free to all’, States Parties are required to progressively introduce free secondary and higher education;

“... The phrase ‘generally available’ signifies, firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all... The phrase ‘every appropriate means’ reinforces the point that States Parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.” (Committee on Economic, Social and Cultural Rights, General Comment 13, 1999, HRI/GEN/1/Rev.5, pp. 76-78)

The Committee on the Rights of the Child has raised concerns about the expense of secondary education:

“The Committee takes note that concern is expressed that costs of children’s education may be growing beyond the reach of certain families.” (Federal Republic of Yugoslavia IRCO, Add.49, para. 18)

“The Committee is ... concerned that insufficient resources are allocated to human development projects and the emerging gaps developing between those who can afford private education ... and those who cannot ... In relation with the growing role of private educational ... institutions, the Committee recommends that a stronger emphasis be placed on public education ... by the Government with a view to ensuring that all children subject to the jurisdiction of the State Party enjoy these fundamental rights, as well as to prevent any risk of discrimination.” (Lebanon IRCO, Add.54, paras. 12 and 30)

“The cost to families of secondary education are leading to an increasing drop-out rate for girls, particularly in rural areas. The Committee notes with concern the growing disparity within the education system owing to the parallel systems of private and public schools which results ultimately in racial segregation at school on the basis of the economic status of parents.” (Zimbabwe IRCO, Add.55, para. 19)

“Offering financial assistance in case of need” can also be interpreted to mean giving grants to families who would otherwise depend on their children’s labour as a source of income, thus withdrawing them from school. The Committee commended China’s “Project Hope” scheme which is particularly targeted at children who miss schooling because of domestic poverty and which aims, by the end of the century, to make secondary education compulsory for all Chinese children (China IR, paras.181-6; China IRCO, Add.56, para. 6).

Subparagraph (b) refers to “different forms of secondary education, including general and vocational education”. Education is about the development of children’s fullest potential (see article 29) and the Convention recognizes that there is no set blueprint for achieving this. On the contrary there are likely to be a variety of forms of education once the basic skills of literacy and numeracy have been acquired at the primary stage. The Convention singles out vocational education for obvious reasons. Education must have relevance to the child’s current and future life; vocational and work-related training is both educational in its own right and provides a strong inducement for the child to stay in school (see “preventing drop-out” below, page 420). But the Committee has also encouraged States to develop “alternative educational programmes” (for example, Slovenia IRCO, Add.65, paras. 15 and 23; Bulgaria IRCO, Add.66, para. 17; Jordan 2RCO, Add.124, para. 29; United Kingdom – Isle of Man IRCO, Add.134, para. 33) which suggests that countries must have flexible curricula and delivery systems to respond to the needs of the child within his or her social setting. Burundi was particularly encouraged to ensure that children with disabilities had access to vocational opportunities (Burundi IRCO, Add.133, para. 65).

A secondary education with too narrow a range of options or outcomes will certainly be discriminatory; for example, the Committee informed Myanmar that:

“Of particular concern is the fact that children considered poor are channelled towards monastic Buddhist schools and are offered no alternative educational opportunity.” (Myanmar IRCO, Add.69, para. 16)

The Dakar Framework for Action: goals and National Plans of Action

“We hereby collectively commit ourselves to the attainment of the following goals:

- (i) expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children;
- (ii) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality;
- (iii) ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes;
- (iv) achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults;
- (v) eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in basic education of good quality;
- (vi) improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

“...Countries will prepare comprehensive National EFA Plans by 2002 at the latest. For those countries with significant challenges, such as complex crises or natural disasters, special technical support will be provided by the international community. Each National EFA Plan will:

- (a) be developed by government leadership in direct and systematic consultation with national civil society;
- (b) attract co-ordinated support of all development partners;
- (c) specify reforms addressing the six EFA goals;
- (d) establish a sustainable financial framework;
- (e) be time-bound and action-oriented;
- (f) include mid-term performance indicators; and
- (g) achieve a synergy of all human development efforts, through its inclusion within the national development planning framework and process.”

(*The Dakar Framework for Action, Education for All: Meeting our Collective Commitments*, 2000, ED-2000/CONF/211/1 paras. 7 and 16)



Although filtering children by their academic ability may become necessary at the later stages of higher education, the Committee was concerned if selection occurred when children are still young:

“The Committee ... is ... concerned about the determination of the child’s academic ability at the early age of 11 The Committee recommends that the State Party increase its efforts in educational reform, including through careful study of the impact of secondary school entrance exams at the age of 11 ...” (Barbados IRCO, Add.103, para. 27)

At what point secondary education begins and ends is unclear; ages vary from country to country (for example “primary” education ends at age 16 under Namibian and Icelandic legislations (Namibia IR, para. 343; Iceland IR, para. 312)). The Committee has tentatively suggested that basic schooling, primary and secondary together, should last for nine years:

“It is also suggested that the Government consider extending the provision of compulsory education to nine years of schooling, thereby ensuring at the same time that the age of completion of compulsory education would be harmonized with the minimum age of employment...” (Nicaragua IRCO, Add.36, para. 38)

A common age of entry to primary education is 6 years old, which implies compulsory secondary school would normally end at the age of 15. This accords with provisions relating to the minimum age for employment. Under article 2 of the ILO Minimum Age Convention, 1973 (No.138) this minimum age: “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years”.

Failure to synchronize school-leaving age and the minimum age for employment is a frequent



cause of concern. For example the Committee expressed concern over:

"...The legislative reforms setting the age of completion of education at 12 years, and the minimum age for employment at 14 years, rendering children between the ages of 12 and 14 vulnerable to the risk of economic exploitation." (Nicaragua IRCO, Add.36, para. 14)

"... the legislative discrepancy between the age for completion of mandatory education and the minimum age for admission to employment may lead to encourage adolescents to drop out from the school system." (Tunisia IRCO, Add.39, para. 9)

"...the failure to provide for an age for the completion of compulsory education as required by the Constitution of Guatemala as well as by article 2 of ILO Convention No. 138 is a matter of considerable concern to the Committee ...

The Committee ... recommends that the State Party set the age for completion of compulsory schooling at 15 and consider raising the minimum age of employment to 15."

(Guatemala IRCO, Add.58, paras. 15 and 26)

"The Committee notes that education is compulsory for children between the ages of 7 and 12 years and that the legal minimum age for employment is 14 years. The Committee is concerned that insufficient legal and other measures have been taken to protect adequately the rights of children between the ages of 12 and 14 years, who are beyond the age of compulsory education but too young to be legally employed.

"The Committee recommends that the State Party raise the legal maximum age of compulsory education from 12 to at least 14 years to protect the rights of those children between the ages of 12 and 14 years, who are beyond the age of compulsory education but too young to be legally employed." (Suriname IRCO, Add.130, paras. 23 and 24. See also article 32, page 488)

"(c) Make higher education accessible to all on the basis of capacity by every appropriate means"

Although, by and large, higher education is pursued after the age of 18, the Convention correctly includes access to higher education as an integral part of children's rights, albeit one exercisable "on the basis of capacity." The Committee has not spent time considering how countries have implemented their obligations under article 28(1)(c) but has asked for detailed information under the *Guidelines for Periodic Reports*. In order to meet higher education obligations under the Conven-

tion States should at the least introduce measures enabling poor children to take entrance examinations to higher education courses and to be awarded grants or scholarships if they succeed, on the basis of equality of opportunity.

The phrase "on the basis of capacity" should not be focused solely on success in examinations, arguably a teachable skill that can lead to a distortion in favour of high-income families and private education, but should include measures of more practical and relevant capacities. It may be noted that higher education for girls may have the secondary effect of postponing early marriage and early motherhood.

"(d) Make educational and vocational information and guidance available and accessible to all children"

Again, the Committee has not focused on this right directly and, to an extent, it could be assumed that if all children are to have access to education and vocational training then they will be informed and guided as to what is available. Nonetheless, it is not something that should be taken for granted. Schools, communities and families may be fixed in narrow expectations about what children will do in their future lives or be poorly informed about changing opportunities and requirements in terms of vocations. Children can only develop their potential if a range of opportunities are available and they know how to obtain information about them.

"(e) Take measures to ensure regular attendance at schools and the reduction of drop-out rates"

The phenomenon of children dropping out of school is worldwide. Poverty may be the driving motivation in many societies – the child may need to work or the expense of education may be the disincentive. But even in developing countries, children drop out of school for other reasons, for example, because the curriculum is too dull, difficult or irrelevant; because the teaching is poor or not delivered in the child's first language; because school discipline is over-punitive and disrespectful of dignity; because learning disabilities have not been identified and helped. Compelling children to repeat years has been found to be both extraordinarily wasteful of resources and likely to cause children to drop out of school.

Subparagraph (e) is, therefore, extremely important because it extends the State's responsibilities beyond simply channelling sufficient resources into schools and passing laws compelling children to attend those schools – States must also take steps to ensure that what happens in school is sufficiently useful and attractive to keep children there.

The Committee has taken a keen interest in States' implementation of this obligation, not least because the children with the highest rates of school drop-out tend to come from the groups generally discriminated against in education – namely girls, children from rural areas, children from minority groups, children in difficult circumstances and children with disabilities. The Committee has encouraged countries to give priority to a variety of measures combating school drop-out, including comprehensive policy reviews – for example recommending that Germany initiate an analysis of child poverty:

"Such an analysis should be undertaken from a holistic perspective, taking into account the possible linkages between such matters as... support in school, and the risk of dropping out of school." (Germany IRCO, Add.43, para. 31)

One crucial factor is, of course, the ability of teachers to inspire children to learn. The Committee is concerned about the quality of teaching, and teachers' conditions, in both rich and poor countries:

"The Committee ... encourages the State Party to continue its efforts to shelter the education system from the impact of the economic crisis and, in particular, to give further attention to the conditions of service of teachers." (Russian Federation 2RCO, Add.110, para. 50)

"With a view to assuring a better quality of education, the Committee further urges the State Party to encourage trained teachers who have left the State Party to return, to strengthen teacher training courses so as to increase the number and standard of teachers, and to invest sufficient resources in the education system to provide adequate school facilities, materials and salaries for teachers. The Committee urges the State Party to ensure that education is entirely free for all students, including through the provision of assistance to purchase uniforms and school books. The Committee also recommends that the State Party seek assistance from international agencies, such as UNICEF." (Sierra Leone IRCO, Add.116, para. 66)

"The Committee joins the State party in expressing concern at limitations, and the lack of specialization, in the educational background of some teachers and notes that

Rights to vocational education in Georgia

"An individual who has not received basic education has the right, until the age of 18, to receive one complete course of vocational education at the State's expense. Primary-level vocational education can be received together with general secondary education or without it. A person who has received basic education has the right until the age of 18 to receive at the State's expense one course of vocational training necessary for the performance of skilled work." (Georgia IR, para. 256)

such limitations have a negative impact on education and pupils and are a consequence of numerous factors, including teachers' low salaries." (Norway 2RCO, Add.126, para. 44)

"The Committee recommends ... that the State Party continue to take measures to improve its education system by increasing budget allocations for the education sector; providing training to upgrade teachers' skills; making the school curricula more relevant to children's needs; expanding opportunities for vocational training and non-formal education, including at pre-school and secondary levels; and establishing an evaluation system to measure the effectiveness of the education system." (Cambodia IRCO, Add.128, para. 55)

Flexibility in Colombian education

Education in Colombia now provides for a "national evaluation system" which involves continuous and flexible promotion of school students: "promotion which may take place within the same grade or from one grade to another at the end of the year and which can be 'early' or 'late', so that traditional ideas of 'losing a year', 'passing' and 'repeating' become meaningless... [This] requires a greater commitment by education officials (administrators, teachers, students and parents), who are responsible for guaranteeing the quality of education. It is not a mechanically applied formula, but does have the advantage of reversing the trend towards expelling students and of making use of various types of aids and opportunities for supplementary efforts." (Colombia 2R, para. 181)





"The Committee joins the State Party in expressing concern at the lay-off of teachers in some municipalities due to economic factors, which may have an adverse effect on teaching and on the quality of education.

"The Committee recommends that the State Party implement the revised school legislation in order to ensure equality between the different regions of the country and between the various schools and educational establishments." (Finland 2RCO, Add. 132, paras. 49 and 50. See also, for example, Lao People's Democratic Republic IRCO, Add.78, para. 48; Barbados IRCO, Add. 103, para. 27; Georgia IRCO, Add.124, para. 53; Suriname IRCO, Add.130, para. 52)

Measures to combat school drop-out rates include recognizing the financial circumstances of the children. For example, the Committee commented to Honduras in relation to its "high incidence of school drop out":

"...In this regard, the Committee takes note of the suggestion of the Government which has not yet been implemented to organize the school year around the agricultural seasons with a view to organizing school vacations at sowing and harvesting periods. Equally, the Committee would like to suggest that the State Party give consideration to the provision of meals and to complement the provision of health care through the schools." (Honduras IRCO, Add.24, para. 31)

Guatemala was encouraged to:

"...implement the 'Food for Education Programme' as an incentive for children to attend school." (Guatemala IRCO, Add.58, para. 36)

The Committee has suggested improvements to schooling to reduce drop-out rates, especially to the "appropriateness" of education:

"...greater efforts should be directed to developing low-cost but effective strategies to increase substantially the enrolment and appropriateness of education. The introduction of such measures would assist in further signalling the commitment which exists to attracting children to attend school as well as to convincing families of the value of education." (Nicaragua IRCO, Add.36, para. 38)

"...it is also suggested that an adequate adjustment of the contents of school curricula so as to incorporate vocational education, in the light of article 28 of the Convention, might contribute to reducing the drop-out rate and prevent the entry of children into the illegal labour market or even their involvement in criminal activities." (Italy IRCO, Add.41, para. 21)

Making school more attractive is often seen in terms of better vocational education (for

example, see Philippines IRCO, Add.29, para. 15; Slovenia IRCO, Add.65, paras. 15 and 23; Hungary IRCO, Add.87, para. 34; Jordan 2RCO, Add.124, para. 29; Burundi IRCO, Add.133, para. 65; United Kingdom – Isle of Man IRCO, Add.134, para. 33 and above page...). The Committee "notes with interest" Namibia's proposed initiative to establish more vocational training centres under a Vocational Training Bill. The Namibian Government also proposed making general secondary education more vocational: "the new junior secondary curriculum which is being introduced will include required courses from the domestic, commercial, agricultural, art or technical fields as a way to introduce students to vocational topics at this level." (Namibia IRCO, Add.14, para. 4; IR, para. 371) However the Committee noted that some alternative forms of education were not of the best quality, and might prevent the social inclusion of children, for example recommending to India:

"The Committee recommends that the State Party undertake studies on, and develop measures to ... ensure that the quality of non-formal education schemes is monitored and guaranteed and that working and other children who participate in such schemes are integrated into mainstream education." (India IRCO, Add.115, para. 58)

Where high drop-out rates are found within minority groups, solutions may need to be found through, for example, Canada's 'Education Equity' programme focused on Aboriginal Students in Saskatchewan which recruited more Aboriginal teachers, involved parents, added culturally meaningful studies to the curriculum and provided cross-cultural training for teachers and other staff (Canada IR, paras. 582 and 583), or the programme of mobile schools for children of nomads in Mongolia (Mongolia SR.265, para. 14). Respect for minority and indigenous cultures and languages also encourages pupils' self-esteem and thus their motivation:

"In light of articles 28, 29 and other related articles of the Convention, the Committee recommends that the State Party continue with its efforts to strengthen its educational policies and system in order to improve ongoing retention programmes and vocational training for drop-outs; to extend school coverage and to improve school quality, making schools more responsive to geographical and cultural diversity; and to improve the relevance of bilingual education programmes for children belonging to indigenous groups. The Committee encourages the State Party to consider seeking technical assistance in this area, inter alia from UNICEF and UNESCO." (Peru 2RCO, Add.120, para. 25.

See also Georgia IRCO, Add.124, para. 53; Colombia 2RCO, Add.137, para. 53)

The drop-out rates of Roma children in a number of European States has concerned the Committee, for example in Norway and Finland:

"The Committee is concerned that many Roma children, and the children of other itinerant groups, in the State Party do not complete the required years of obligatory education.

"The Committee recommends that the State Party explore means of making formal education more accessible to children who travel for a part of the year, such as through the use of mobile communications facilities and distance learning programmes." (Norway 2RCO, Add.126, paras. 46 and 47)

"The Committee reiterates its concern at the high rates of school drop-outs among Roma children (see Finland IRCO, Add.53, para. 18).

"The Committee notes the measures undertaken by the State Party to develop special education and prevent social exclusion, such as strengthening the status of the Roma language in school teaching, developing teaching material in the Roma language and training teachers, and recommends they be implemented. It requests the State Party to continue its efforts in this area and to provide information on the impact of these measures on Roma children in the next periodic report to the Committee." (Finland 2RCO, Add.132, paras. 59 and 60. See also, for example, United Kingdom IRCO Add.34, para. 46; Hungary IRCO, Add.87, para. 34)

One strategy encouraged by the Committee was the involvement of ethnic minorities in education administration:

"... the Committee recommends the State Party to promote the participation of parents and communities, especially ethnic minorities, in school governance, to improve enrolment rates and monitor the quality of education." (Tajikistan IRCO, Add.136, para. 43. See also Kyrgyzstan IRCO, Add.127, para. 52)

As discussed above, girls often drop out of school for discriminatory reasons. The Committee has also noted the negative effect on education of teenage pregnancy:

"The Committee is concerned about the high rate of early pregnancy, which has negative effects on the health of the mothers and the babies, and on the mothers' enjoyment of their right to education, hampering the school attendance of the girls concerned and causing high numbers of school drop-outs..."
"With regard to the high rate of early pregnancy prevailing in Uruguay, the Committee recommends that measures be

adopted to provide appropriate family education and services for young people within the school and health programmes implemented in the country." (Uruguay IRCO, Add.62, paras. 12 and 22)

The Committee was concerned that teenage mothers were not able to re-enter the educational system in one of the islands of Saint Kitts and Nevis. It also raised the issue of boys' drop-out rates :

"While recognizing the efforts made by the State Party in the area of education, the Committee remains concerned at the high drop-out rate for males in the upper grades of primary school, the poor reading ability of primary school males, the high incidence of truancy, lack of relevant learning material, insufficient numbers of trained and qualified teachers, and the tendency towards teaching methods that are almost exclusively exam oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance ... The Committee further recommends that the State Party seek to implement additional measures to encourage children, especially boys, to stay in school, particularly during the period of compulsory education." (Saint Kitts and Nevis IRCO, Add.104, para. 28. See also page 413)

The Committee also identified the active participation of children in their schooling as a strategy to reduce high drop-out rates:

"...further steps should be taken to develop guidelines for the participation of all children in the life of the school." (Nigeria IRCO, Add.61, para. 38).

"The Committee ... is ... concerned that children do not have the right to participate in the evaluation of their school achievements. The Committee recommends that education in the State party be directed towards the development, with the active participation of the child, of the child's personality, talents and mental and physical abilities to their fullest potential, in accordance with article 29 of the Convention." (Slovakia IRCO, Add.140, paras. 45 and 46. See also Argentina IRCO, Add.35, para. 21; Sri Lanka IRCO, Add.40, paras. 15 and 31)

As discussed under article 12 (page 173), the consideration of children's views on their education is, in any event, an obligation under the Convention, but it is also an effective method of reducing pupil disaffection. Above all, as the Committee encouraged Georgia, schools should be "child-friendly" (Georgia IRCO, Add.124, para. 53)





Positive school discipline in Namibia

The Namibian Educational Code of Conduct forbids corporal punishment, and protects students from verbal abuse and unjust or excessive punishment. Serious or repeated violations of school rules are dealt with by a democratically elected school board comprising parent, teacher and student (at secondary school level) representatives. The board can issue warnings, transfers, suspensions and expulsions. The Ministry of Education supports “discipline from within” and emphasizes that threats, violence and abuse of others’ rights or property will not be tolerated: “as the letter and spirit of the Constitution protects the rights of all persons – teachers, students and principals – to learn and teach in safety and dignity. However, this ideal is now being approached by inviting the participation of the entire school community in formulating rules and regulations which will have widespread support. The emphasis will be on cooperation and positive incentives, but where punishment is unavoidable, it must be specific, proportionate to the offence and understood by the offender.” A Committee Member congratulated Namibia on this approach: “... she hoped that, by voicing their opinions, children themselves would help to change attitudes and to enforce the new legislation against corporal punishment.” (Namibia IR, paras. 373-375 and SR.109, para. 45)

The right to school discipline “consistent with the child’s human dignity and in conformity with the present Convention”

Paragraph (2) of article 28 does not have precedent in other treaties relating to education, although of course there are provisions preventing degrading and inhuman treatment generally – principally in 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.”

The Committee on the Rights of the Child has made clear that all forms of corporal punishment, whether excessive or not, are unacceptable forms of discipline in schools or elsewhere (see discussion under article 19, page 269). The phrase in article 28 that discipline must be “in conformity with the present Convention” underlines the fact that the obligation in article 19 to protect the child from “all forms of physical or mental violence, injury or abuse” applies to schools and other educational establishments as well as the family home and child care institutions.

In addition, among the agreed aims of education under article 29 are respect for others and education “in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples” (article 29(1)(d)). The Committee’s first General Comment, on the aims of education, provides:

“...education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also

be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, pp. 256 and 257)

In its 1999 General Comment on the right to education, the Committee on Economic, Social and Cultural Rights also confirmed: “In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law... A State Party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some State Parties which actively encourage schools to introduce ‘positive’, non-violent approaches to school discipline.” (Committee on Economic, Social and Cultural Rights, General Comment 13, 1999, HRI/GEN/1/Rev.5, p. 83)

The Human Rights Committee also states in a General Comment: “The prohibition in article 7

relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions." (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139)

In July 1995, for example, in comments on the fourth periodic report from the United Kingdom, the Human Rights Committee expressed concern at the continued legality of corporal punishment for some pupils in United Kingdom private schools, and formally recommended that abolition should be extended to cover all pupils (CCPR/C/79/Add.55, 27 July 1995).

Countries that do not ensure that corporal punishment is banned in all schools are thus likely to have the matter raised by the Committee. For example in Canada:

"Further measures seem to be needed to effectively prevent and combat all forms of corporal punishment and ill-treatment of children in schools or in institutions where children may be placed ... The Committee suggests that the State Party examine the possibility of reviewing the penal legislation allowing corporal punishment of children by parents, in schools and in institutions where children may be placed." (Canada IRCO, Add.37, paras. 14 and 25)

Guatemala was recommended to adopt "a campaign against corporal punishment" in schools and elsewhere (Guatemala IRCO, Add.58, para. 33). Similar concerns were raised with Nigeria (Nigeria IRCO, Add.61, para. 18) and Sri Lanka (Sri Lanka IRCO, Add.40, para. 15). Zimbabwe was informed that:

"the Committee stresses the incompatibility of corporal punishment with the provisions of ... article ... 28 paragraph 2".

The Committee recommended that Zimbabwe *...adopt appropriate legislative measures to forbid the use of any form of corporal punishment within the family and in school."* (Zimbabwe IRCO, Add.55, paras. 18 and 31)

The prohibition of corporal punishment does not just relate to public state-funded schools – the practice must be banned in private schools as well. The Committee raised concerns that in the United Kingdom:

"privately funded and managed schools are permitted to administer corporal punishment

to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2".

The Committee recommended that legislation be introduced to ban its use in private schools, a Committee member commenting: "...the British authorities should pay more attention to the provisions of articles 28 and 37 of the Convention. The right not to receive corporal punishment was a fundamental right, and one could not therefore lay down a different regime according to whether the school was public or private, all the more so as that would give rise to the question of discrimination and the application of article 2 of the Convention to the education system, since whether a child was sent to a State or private school was generally linked to the family's standard of living." (United Kingdom IRCO, Add.34, para. 16 and SR.206, para. 5)

Nor is it enough to legislate against corporal punishment – measures should be taken to make sure it does not occur even when against the law, as in the Syrian Arab Republic

"The Committee ... notes with concern that disciplinary measures in schools, although it is prohibited by law, often consist of corporal punishment." (Syrian Arab Republic IRCO, Add.70, para. 17)

Pupils, as well as teachers, must refrain from violence :

"The Committee is concerned at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures have been insufficient to prevent school violence.

"...the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying." (Japan IRCO, Add.90, paras. 24 and 45)

Other aspects of school discipline may not be consistent with the child's human dignity, such as their public humiliation. Nor should any form of discipline breach other rights under the Convention. For example, punishments that stop children's access to their parents or friends, that deny children rest or leisure or that interfere with their right to enjoy their language or culture would be in breach of rights under the Convention and of article 28(2). The Committee reminded the Holy See that:





"... teaching methods used in schools should reflect the spirit and philosophy of the Convention." (Holy See IRCO, Add.46, para. 12)

The Committee on Economic, Social and Cultural Rights confirms this in its General Comment on the right to education after condemning corporal punishment: "Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food." (Committee on Economic, Social and Cultural Rights, General Comment 11, 1999, HRI/GEN/1/Rev.5, p. 83)

The ultimate sanction used by schools against troublesome pupils is their expulsion. The procedures for doing so must conform to the principles of natural justice and, particularly, must not discriminate. The Russian Federation was encouraged to study the situation of expelled children (Russian Federation 2RCO, Add.110, para. 50) and the Committee raised the matter with Ireland:

"The Committee is concerned about the situation of children who are excluded from schools because of sanctions imposed by teachers and the adverse effect generated which may sometimes impact on drop-out rates and school attendance." (Ireland IRCO, Add.85, para. 22)

Discipline should also reflect the principles of article 12, including the child's right to complaints procedures:

"The Committee also wishes to recommend that greater priority be accorded to the participation of children in school life, in the spirit of article 12 of the Convention, including in discussions about disciplinary measures ..." (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 32)

"It is recommended that the State Party encourage child participation within the school environment, including in disciplinary matters." (Suriname IRCO, Add.130, para. 52)

"The Committee further encourages the Isle of Man to establish a complaints procedure within the school system for students, at all levels, whose rights have been violated." (United Kingdom – Isle of Man IRCO, Add.134, para. 35)

Some countries have reported on positive rights in discipline systems, which respect children's other

rights under the Convention – for example Belarus, which gives boarding pupils explicit rights to humane treatment, contact with families and their own privacy (Belarus IR, paras. 50 and 52); and Costa Rica, which provides school children with opportunities for participating in decisions relating to discipline, in line with article 12 (Costa Rica IR, para. 90). Perhaps none has been as active on this issue as Namibia, which was congratulated by a Committee member for its approach (see box, page 424).

The promotion of international cooperation in education, particularly taking account of the needs of developing countries

Education has been shown to be one of the key components of development, both for individual children and for countries as a whole. Educational advances bring benefits to all, with positive correlations shown between educational progress and improvements to children's life chances, national economic performance, agricultural productivity and birth rates. Both UNICEF and UNESCO have invested extensive expertise, resources and energy in education: "Education requires a greater commitment than any other development activity because it is not a one-time injection but a continuous, labour-intensive process. It requires skilled, highly trained staff to dedicate year after year of patient toil. It requires quality curricula and plenty of books, slates and chalk. It requires buildings and benches." (*The Progress of Nations 1997*, UNICEF, p. 33)

A significant proportion of development aid should, therefore, be directed at assisting education programmes. In addition, countries should learn from each other how best to educate children, including the scientific know-how and modern teaching methods mentioned in paragraph 3 of article 28. The *Manual on Human Rights Reporting*, 1997, advises that "programmes of international technical cooperation should therefore include in their agenda the training of teachers, their acquisition of modern pedagogic skills and the improvement of their competence. They may in fact play an instrumental role in fostering the role of education." (*Manual*, p. 465)

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 28, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 28 is relevant to the **departments of education and labour**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 28 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 28 likely to include the training of **teachers, education administrators and vocational guidance personnel**)?

● Specific issues in implementing article 28

- ☐ Do budget allocations aim for a progressive increase in education provision and a progressive development of the quality of education?
- ☐ Does education policy ensure progress towards maximum take-up of educational opportunities by all children (up to the age of 18)?
- ☐ Is there an established time-frame for achieving this policy?
- ☐ Has the State adopted mechanisms to measure the effectiveness of its education provision in terms of take-up and outcomes for all children within the jurisdiction?

Are active measures taken to ensure that all children have equal educational opportunities, including all

- ☐ girls?
 - ☐ children from rural areas?
 - ☐ children from minority cultures and indigenous groups?
 - ☐ disabled children?
 - ☐ sick, including hospitalized, children?
 - ☐ immigrant and refugee children?
 - ☐ children living away from their families?
 - ☐ nomadic or gypsy children or children in temporary accommodation?
 - ☐ children excluded from school?
 - ☐ children in all forms of detention?
 - ☐ Is primary education compulsory?
 - ☐ If not, is there a national plan for ensuring that all children receive free and compulsory primary education?
 - ☐ Is primary education free to all children?
 - ☐ Are all aspects of this education free (for example books, equipment or uniform (if any))?
 - ☐ Are different forms of secondary education, including vocational and general education, available to every child?
 - ☐ Are these free?
 - ☐ If not, are measures being taken to develop the accessibility of secondary education to every child, for example by offering financial assistance to those in need?
 - ☐ Are the legal ages for completion of compulsory education and admission to employment the same?
 - ☐ Where this age is below 15, are steps being taken to raise this age?
 - ☐ Is higher education accessible to all children on the basis of capacity?
 - ☐ Is educational and vocational information and guidance made available and accessible to all children?
 - ☐ What measures have been adopted to encourage school attendance and prevent school drop-out?
- Do these measures take into account
- ☐ the child's home circumstances (such as a need to secure an income, to do domestic chores or to work at harvest time)?

How to use the checklists, *see page XVII*



- ☐ the appropriate geographical location of schools and their hours and times of opening?
 - ☐ the relevance of the curriculum to the child's life and the provision of vocational education?
 - ☐ the appropriateness of the curriculum to the child's intellectual development?
 - ☐ the child's first language?
 - ☐ any special needs of the child (such as disability, sickness or pregnancy)?
 - ☐ respect for cultural or religious traditions and gender difference?
 - ☐ respect for the child's views?
 - ☐ respect for the child's dignity?
 - ☐ identification of learning difficulties and help provided to avoid exam failure or forced repetition of grade years or classes?
 - ☐ the need to involve the local community in the delivery of education and the need to involve schools in the life of the community?
 - ☐ the effectiveness of teacher recruitment and training in preventing school disaffection?
 - ☐ Have all appropriate measures been taken to ensure that all forms of school discipline are consistent with the child's human dignity?
 - ☐ Is corporal punishment prohibited by law in all schools?
 - ☐ Have all appropriate measures been taken to ensure that corporal punishment is never used?
- Do all forms of school discipline conform with the Convention, including the child's right
- ☐ not to be discriminated against?
 - ☐ to be treated in a manner consistent with his or her evolving capacities?
 - ☐ to maintain direct contact with both parents on a regular basis (save where contrary to best interests)?
 - ☐ to freedom of expression, thought, conscience and religion?
 - ☐ to freedom of association (save where it is necessary to protect others)?
 - ☐ to privacy?
 - ☐ to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation?
 - ☐ to his or her identity, culture and language?
 - ☐ to rest and leisure?

How to use the checklists, see page XVII



- ☐ to social inclusion and reintegration?
- ☐ Is an appropriate level of development aid sought for, or directed at, educational programmes?

Do programmes of international technical cooperation include

- ☐ teacher training methods?
- ☐ access to scientific and technical knowledge?
- ☐ the effective delivery of primary and secondary education?

Reminder: The Convention is indivisible and its articles are interdependent. Article 28 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 28 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 15: freedom of association

Article 16: protection of privacy

Article 17: access to information and role of media

Article 19: protection from all forms of violence

Article 23: disabled children

Article 24: health (including health education)

Article 29: aims of education

Article 30: children of minorities or of indigenous peoples

Article 31: rest, leisure, play, recreation and culture

Article 32: child labour

The aims of education



Text of Article 29

1. *States Parties agree that the education of the child shall be directed to:*
 - (a) *The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
 - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
 - (d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
 - (e) *The development of respect for the natural environment.*
2. *No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Article 29 (1) reflects a consensus of world opinion about the fundamental purposes of education and is the subject of the Committee's first General Comment (see box, page 434). It does not detail the tools of learning (literacy, numer-

acy, factual knowledge, problem solving and so on) but addresses learning's basic aims: "to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is

Summary



to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 2)

Article 29 (2) also explicitly preserves the rights of individuals and groups to arrange their own forms of education, so long as these fulfil the aims of education as set out in the article and any official minimum standards

Article 26 of the Universal Declaration of Human Rights provides that: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

Those words were adapted in the International Covenant on Economic, Social and Cultural Rights, with the italicized additions: “[States Parties] agree that education shall be directed to the full development of the human personality *and the sense of its dignity*, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that *education*

shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, *ethnic* or religious groups, and further the activities of the United Nations for the maintenance of peace” (article 13(1)).

The Convention on the Rights of the Child uses this international agreement as a starting point and significantly develops it, as discussed below. In early drafts, the aims of education were originally conceived as “the aims of education and upbringing” but this was discarded as too broad and ill-defined a concept. Several countries were concerned about the absence of explicit reference to parents’ rights to choose their children’s school and to ensure children’s education is in conformity with the parents’ religious and moral convictions, a principle set out in article 13(3) of the Covenant on Economic, Social and Cultural Rights and article 18(4) of the Covenant on Civil and Political Rights (E/CN.4/1985/64, pp.15-19; Detrick, p. 399; E/CN.4/1989/48, pp. 84-87; Detrick, pp. 405-407). As discussed in article 28 (see page 409) these rights are recognized elsewhere within the Convention (articles 5, 18 and 30) but operate within the framework of the child’s own rights and freedoms. ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Education, leisure and cultural activities

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:

(b) Aims of education (art. 29)...

... States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section.”

(CRC/C/5, paras. 21 and 22)

Guidelines for Periodic Reports

"VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

B. Aims of education (art. 29)

Please indicate the legislative, administrative, educational and other measures adopted to ensure that the aims of education established in the State Party are consistent with the provisions of this article, in particular with regard to:

The development of respect for the child's personality, talents and mental and physical abilities to their fullest potential;

The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations, indicating whether the subject of human rights in general, and children's rights in particular, has been incorporated in the school curricula for all children and promoted in school life;

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 originates and for civilizations different from his or her own;

The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

The development of respect for the natural environment.

Reports should also indicate:

The training provided to teachers to prepare them to direct their teaching towards these aims;

The revision of school policies and school curricula to reflect the aims identified in article 29 at the various levels of education;

Relevant programmes and material used;

Any peer education and peer counselling promoted;

Efforts made to bring school organization in line with the Convention's principles, for example mechanisms created within schools to improve the participation of children in all decisions affecting their education and well-being.

Please indicate the measures adopted pursuant to article 29, paragraph 2, to ensure respect for the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions conforms to such minimum standards as are laid down by the State.

Reports should also provide information on the appropriate mechanisms developed to:

Ascertain that the aims of education identified by the Convention are respected by such institutions;

Ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent;

Ensure that all such institutions are conducted in conformity with standards established by competent authorities, particularly in the areas of safety, health, number and suitability of staff, as well as of competent supervision.

Reports should further provide information on the progress achieved in the implementation of this article, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 112-116. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 22, 43, 44, 57, 60, 92, 95, 109, 111 and 156; for full text of *Guidelines*, see Appendix 3, page 674.)



Committee on the Rights of the Child

General Comment 1 (2001)

The aims of education

Article 29(1), Convention on the Rights of the Child

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.*

General Comment 1 (2001): The aims of education

The significance of article 29 (1)

1. Article 29, paragraph 1, of the Convention on the Rights of the Child is of far-reaching importance. The aims of education that it sets out, which have been agreed to by all States Parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five subparagraphs of article 29 (1), are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).
2. Article 29 (1) not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.
3. The child's right to education is not only a matter of access (art. 28) but also of content. An education with its contents firmly rooted in the values of article 29 (1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between, inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material. And yet, in the national and international programmes and policies on education that really count, the elements embodied in article 29 (1) seem all too often to be either largely missing or present only as a cosmetic afterthought.
4. Article 29 (1) states that the States Parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse



values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

The functions of article 29 (1)

5. Article 29 (1) is much more than an inventory or listing of different objectives which education should seek to achieve. Within the overall context of the Convention it serves to highlight, *inter alia*, the following dimensions.

6. First, it emphasizes the indispensable interconnected nature of the Convention's provisions. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. In addition to the general principles of the Convention - non-discrimination (art. 2), the best interest of the child (art. 3), the right to life, survival and development (art. 6) and the right to express views and have them taken into account (art. 12) - many other provisions may be mentioned, such as but not limited to the rights and responsibilities of parents (arts. 5 and 18), freedom of expression (art. 13), freedom of thought (art. 14), the right to information (art. 17), the rights of children with disabilities (art. 23), the right to education for health (art. 24), the right to education (art. 28), and the linguistic and cultural rights of children belonging to minority groups (art. 30).

7. Children's rights are not detached or isolated values devoid of context, but exist within a broader ethical framework which is partly described in article 29 (1) and in the preamble to the Convention. Many of the criticisms that have been made of the Convention are specifically answered by this provision. Thus, for example, this article underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework and of the fact that most children's rights, far from being externally imposed, are embedded within the values of local communities.

8. Second, the article attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

9. Third, while article 28 focuses upon the obligations of State Parties in relation to the establishment of educational systems and in ensuring access thereto, article 29 (1) underlies the individual and subjective right to a specific quality of education. Consistent with the Convention's emphasis on the importance of acting in the best interests of the child, this article emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs. Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.

10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home. Children with HIV/AIDS are also heavily discriminated against in both settings. All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

11. The Committee also wishes to highlight the links between article 29 (1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and





challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically, and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by “others”. It is therefore important to focus on the child’s own community when teaching human and children’s rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.

12. Fourth, article 29 (1) insists upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child’s ability and opportunity to participate fully and responsibly in a free society. It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents. Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.

13. Fifth, it emphasizes the need for education to be designed and provided in such a way that it promotes and reinforces the range of specific ethical values enshrined in the Convention, including education for peace, tolerance, and respect for the natural environment, in an integrated and holistic manner. This may require a multidisciplinary approach. The promotion and reinforcement of the values of article 29 (1) are not only necessary because of problems elsewhere, but must also focus on problems within the child’s own community. Education in this regard should take place within the family, but schools and communities must also play an important role. For example, for the development of respect for the natural environment, education must link issues of environmental and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.

14. Sixth, it reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child’s capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article.

Human rights education

15. Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights, held in Vienna in 1993, and promoted by international agencies. Nevertheless, the rights of the child have not always been given the prominence they require in the context of such activities. 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.

16. 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. Education about international humanitarian law also constitutes an important, but all too often neglected, dimension of efforts to give effect to article 29 (1).

Implementation, monitoring and review

17. The aims and values reflected in this article are stated in quite general terms and their implications are potentially very wide-ranging. This seems to have led many States Parties to assume that it is unnecessary, or even inappropriate, to ensure that the relevant principles are reflected in legislation or in administrative directives. This assumption is unwarranted. In the absence of any specific formal endorsement in national law or policy, it seems unlikely that the relevant principles are or will be used to genuinely inform educational policies. The Committee therefore calls upon all States Parties to take the necessary steps to formally incorporate these principles into their education policies and legislation at all levels.

The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1).

19. In addition, the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1). The term “human rights education” is too often used in a way which greatly oversimplifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.

20. In general terms, the various initiatives that States Parties are required to take pursuant to their Convention obligations will be insufficiently grounded in the absence of widespread dissemination of the text of the Convention itself, in accordance with the provisions of article 42. This will also facilitate the role of children as promoters and defenders of children’s rights in their daily lives. In order to facilitate broader dissemination, States Parties should report on the measures they have taken to achieve this objective and the Office of the High Commissioner for Human Rights should develop a comprehensive database of the language versions of the Convention that have been produced.

21. The media, broadly defined, also have a central role to play, both in promoting the values and aims reflected in article 29 (1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17 (a), to take all appropriate steps to “encourage the mass media to disseminate information and material of social and cultural benefit to the child”.

22. The Committee calls upon States Parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time in relation to article 29 (1). Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs. The Committee notes the importance of surveys that may provide an opportunity to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.

23. The Committee calls upon States Parties to develop a comprehensive national plan of action to promote and monitor realization of the objectives listed in article 29 (1). If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29 (1) and does so from a child-rights perspective. The Committee urges that the United Nations and other international bodies concerned with educational policy and human rights education seek better coordination so as to enhance the effectiveness of the implementation of article 29 (1).

24. The design and implementation of programmes to promote the values reflected in this article should become part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred. Thus, for example, where major incidents of racism, racial discrimination, xenophobia and related intolerance occur which involve those under 18, it can reasonably be presumed that the Government has not done all that is should to promote the values reflected in the Convention generally, and in article 29 (1) in particular. Appropriate additional measures under article 29 (1) should therefore be adopted which include research on and adoption of whatever educational techniques might have a positive impact in achieving the rights recognized in the Convention.

25. States Parties should also consider establishing a review procedure which responds to complaints that existing policies or practices are not consistent with article 29 (1). Such review procedures need not necessarily entail the creation of new legal, administrative, or educational bodies. They might also be entrusted to national human rights institutions or to existing administrative bodies. The Committee requests each State Party when reporting on this article to identify the genuine possibilities that exist at the national or local level to obtain a review of existing approaches which are claimed to be incompatible with the Convention. Information should be provided as to how such reviews can be initiated and how many such review procedures have been undertaken within the reporting period.

26. In order to better focus the process of examining States Parties’ reports dealing with article 29 (1), and in accordance with the requirement in article 44 that reports shall indicate factors and difficulties, the Committee requests each State Party to provide a detailed indication in its periodic reports of what it considers to be the most important priorities within its jurisdiction which call for a more concerted effort to promote the values reflected in this provision and to outline the programme of activities which it proposes to take over the succeeding five years in order to address the problems identified.

27. The Committee calls upon United Nations bodies and agencies and other competent bodies whose role is underscored in article 45 of the Convention to contribute more actively and systematically to the Committee’s work in relation to article 29 (1).

28. Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will require human and financial resources which should be available to the maximum extent possible, in accordance with article 4. Therefore, the Committee considers that resource constraints cannot provide a justification for a State Party’s failure to take any, or enough, of the measures that are required. In this context, and in light of the obligations upon States Parties to promote and encourage international cooperation both in general terms (articles 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States Parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1).

(HRI/GEN/1/Rev.5, pp. 255-262)



International agreement on the aims of education

The governing phrase or *chapeau* of article 29(1) on the aims of education starts, uniquely: “States Parties agree...”. Textually, this can, of course, be traced to the article’s source in the International Covenant on Economic, Social and Cultural Rights, but it is significant that the phrase was retained for this Convention. The wording emphasizes that there is international consensus as to the aims of education which surmounts the often hostile boundaries of religion, nation and culture erected across so many parts of the world.

Three countries submitted reservations to article 29. Indonesia: “With reference to the provisions of articles... 29... the Government of the Republic of Indonesia declares that it will apply these articles in conformity with its Constitution.” (CRC/C/2/Rev.5, p. 21) When Indonesia was asked to explain this reservation to the Committee, the Government representative said that there were difficulties in implementing the article in view of existing legislation (Indonesia applies a national curriculum), but that it was hoped the reservation could be withdrawn with new legislation currently in draft. The reservation has not yet been withdrawn. (Indonesia SR.79, para. 36; Indonesia IRCO, Add.25, para. 5)

Turkey: “The Republic of Turkey reserves the right to interpret and to apply the provisions of articles 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923.” (CRC/C/2/Rev.5, p. 33)

The Committee commented that this reservation *“may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin”*

and urged Turkey to withdraw the reservation. (Turkey IRCO, Add.152, paras. 11 and 12)

Thailand: “The application of articles 7, 22 and 29 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.” (CRC/C/2/Rev.8, p. 40) Thailand states it has withdrawn its reservation to article 29 of the Convention. (Thailand IRCO, Add.97, para. 8)

There are also those countries that have entered reservations to article 14, concerning the child’s right to “freedom of thought, conscience and religion”, which may be exercised under the direction of parents in a manner consistent with the

child’s evolving capacities – Algeria, Bangladesh, Belgium, Brunei Darussalam, Holy See, Indonesia, Jordan, Kiribati, Malaysia, Maldives, Morocco, the Netherlands, Poland, Singapore and the Syrian Arab Republic. Some (for example Belgium and the Netherlands) are concerned with putting emphasis on the child’s rights, but others are concerned with either parental authority to determine the child’s religious upbringing and education or with the fact that a State religion governs the education curriculum (see article 14, page 193).

However, none of these reservations necessarily leads to a breach of the principles of article 29, which in its drafting reflected agreement by countries practising all the main world religions.

“The development of the child’s personality, talents and mental and physical abilities to their fullest potential”

The degree to which the education systems of States develop all children’s potential depends in part upon the access and availability of education to all children on the basis of equality of opportunity, discussed under article 28 (see page 411) and the degree to which it inspires and motivates the individual child (see also article 28, in relation to school drop-out, page 420). It also vitally concerns the adequacy of special educational provision for children with disabilities and learning difficulties, discussed under article 23 (see page 319).

In order to implement article 29(1) the Committee calls on States Parties to develop a “comprehensive national plan of action”, adding:

“If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29(1) and does so from a child-rights perspective.”

This is because:

“The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless

those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, paras. 23 and 18)

Article 29(1)(a) expands on the role of education, taking it beyond just the development of children’s mental abilities, traditionally perceived as the responsibility of schools. Education should also embrace children’s “talents”, including talents in the creative and performing arts, crafts, sports and vocational skills; their “physical abilities”, ranging from basic motor coordination skills to physical activities such as swimming, gymnastics, bicycling and ball-control; and development of their “personality”. This is perhaps the greatest challenge to schools and educators. How does one teach children to be kind and generous, for example, as well as literate and numerate?

The Committee points out that article 29:

“emphasizes the message of child-centred education: that the key goal of education is the development of the individual child’s personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 9)

Not surprisingly, the Committee has rarely been able to examine how countries fulfil these aims of education, except in terms of statistical measures such as how many children are enrolled in schools, drop out or repeat classes. Current international research on comparable standards in, for example, mathematics or science shows striking variations which do not correspond to the countries’ wealth or economic investment in education. Similar comparisons could be sought on the less academic aspects of education, for example the values endorsed by article 29.

The General Comment 1 also points out that schools can be overly academic and competitive:

“It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents.” (Committee on the Rights

of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 12)

On occasion the Committee has raised such concerns with reporting States. For example:

“The highly competitive nature of the education system risks hampering the development of the child to the fullest potential of his or her abilities and talents and the child’s preparation for responsible life in a free society.” (Republic of Korea IRCO, Add.51, para. 16)

“While noting the importance given to education by the State Party, as illustrated by a very high literacy rate, the Committee is concerned that children are exposed to developmental disorders due to the stress of a highly competitive educational system and the consequent lack of time for leisure, physical activities and rest, in light of the principles and provisions of the Convention, especially its articles 3, 6, 12, 29 and 31. The Committee is further concerned about the significant number of cases of school phobia.” (Japan IRCO, Add.90, para. 22)

“The State Party should undertake a process of curriculum reform which stresses the importance of critical thinking and the development of problem-solving skills.” (Jordan 2RCO, Add.125, para. 54)

“The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations”

The second aim of education under subparagraph (b) includes, alongside human rights and fundamental freedoms, “the principles enshrined in the Charter of the United Nations” (see box, page 440).

The United Nations Decade for Human Rights Education, 1995-2004, was established under General Assembly resolutions 48/127, 49/184 and 50/177. Governments and non-governmental educational agencies are being urged to establish programmes of human rights education. Human rights include rights under the Convention on the Rights of the Child and those of the general declarations and covenants, as well as those focusing on the human rights of specific population groups, such as disabled people, women and ethnic minorities. All include children in their scope.

In 1995, the United Nations Educational, Scientific and Cultural Organization (UNESCO) endorsed a Declaration and Integrated



Charter of the United Nations

The text of the Preamble and Chapter 1, dealing with Purposes and Principles, of the United Nations Charter reads as follows:

Preamble

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter 1

PURPOSES AND PRINCIPLES

Article 1

The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends...

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

(Charter of the United Nations, June 26, 1945)



Framework of Action on Education for Peace, Human Rights and Democracy (see box on page 442). The Framework sets out policies, objectives and action strategies to combat discrimination, violence and xenophobia, and to develop students' self-esteem, stressing the last as "essential to social integration...The reduction of failure must be a priority" (Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy, UNESCO, 1995, para. 22).

The Committee has particularly focused its attention on whether educational curricula include the teaching of the Convention on the Rights of the Child, for example observing to Austria:

"Noting that in the school curriculum 'civic education' incorporates, inter alia, human rights and children's rights, but does not appear to refer specifically to the Convention, the Committee encourages the State Party to include specific information on the provisions of the Convention in its school curriculum." (Austria IRCO, Add.98, para. 25)

A great many countries coming before the Committee have been recommended to include children's rights under the Convention in their school curricula – Armenia, Austria, Azerbaijan, Burundi, Belgium, Colombia, Costa Rica, Finland, Guatemala, the Holy See (in relation to Catholic schools), Iceland, India, Italy, the Islamic Republic of Iran, Japan, the Republic of Korea, Lebanon, Nicaragua, Nigeria, Norway, Portugal, Ukraine, the United Kingdom and Yemen among them. The Committee has argued that the General Assembly resolutions 48/127 and 49/184 (United Nations Decade for Human Rights Education) provide the momentum for taking this action, together with article 42 of the Convention, which requires States to "make the

principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike".

Inclusion of the Convention in curricula means that knowledge of rights is a continuous process for succeeding generations of children, not just a once-only dissemination triggered by article 42, as the Committee noted to Costa Rica:

"The Committee ... recommends that the State Party conduct continuous training programmes for teachers on human rights, including children's rights. The Committee encourages the State Party to consider seeking technical assistance in this area, inter alia from UNESCO and UNICEF." (Costa Rica 2RCO, Add.117, para 24)

"Education" goes beyond school curricula, too, as the Committee suggested to Portugal:

"In the framework of the United Nations Decade for Human Rights Education the Committee recommends that the State Party launch a permanent information campaign, both for children and adults, on the Convention." (Portugal IRCO, Add.45, para. 20)

Nor is the curriculum the only way in which values are transmitted in schools. The aim is not simply to teach children "human rights", in terms of the content of human rights treaties, the aim is "the development of respect for human rights". There is a hidden curriculum in the messages transmitted by the way pupils and teachers behave towards each other. Children cannot be taught respect for rights unless members of the school community practise what is preached. As the Committee puts it:

"Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also

Education for Peace, Human Rights and Democracy

At the International Conference on Education in 1994, the following Objectives were adopted in a Declaration of the International Conference on Education for Peace, Human Rights and Democracy (endorsed by UNESCO in the following year):

“We, the Ministers of Education meeting at the 44th session of the International Conference on Education...

Strive resolutely:

- to base education on principles and methods that contribute to the development of the personality of pupils, students and adults who are respectful of their fellow human beings and determined to promote peace, human rights and democracy;
- to take suitable steps to establish in educational institutions an atmosphere contributing to the success of education for international understanding, so that they become ideal places for the exercise of tolerance, respect for human rights, the practice of democracy and learning about the diversity and wealth of cultural identities;
- to take action to eliminate all direct and indirect discrimination against girls and women in education systems and to take specific measures to ensure that they achieve their full potential;
- to pay special attention to improving curricula, the content of textbooks, and other educational materials including new technologies, with a view to educating caring and responsible citizens, open to other cultures, able to appreciate the value of freedom, respectful of human dignity and differences, and able to prevent conflicts or resolve them by non-violent means;
- to adopt measures to enhance the role and status of educators in formal and non-formal education and to give priority to pre-service and in-service training as well as the retraining of educational personnel, including planners and managers, oriented notably towards professional ethics, civic and moral education, cultural diversity, national codes and internationally recognized standards of human rights and fundamental freedoms;
- to encourage the development of innovative strategies adapted to the new challenges of educating responsible citizens committed to peace, human rights, democracy and sustainable development, and to apply appropriate measures of evaluation and assessment of these strategies;
- to prepare, as quickly as possible and taking into account the constitutional structures of each State, programmes of action for the implementation of this Declaration.”

(Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy, article 2, 44th session of the International Conference on Education (Geneva, 1994), endorsed by the General Conference of UNESCO at its 28th session (Paris, 1995))

the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 8)

The administrative systems, behaviour codes and teaching methods of schools should, therefore, also reflect the principles of the Convention; children’s attitudes and behaviour in the school should be appraised as carefully outside the classroom as in it.

“The development of respect for the child’s parents...”

Little comment has been passed on this particular right. Allegations are sometimes made that the Convention does not support parents’ rights and that it encourages children to be disrespectful of parents, so it may be useful to draw this right to the attention of those who are suspicious of the Convention.

Children should, of course, be taught to respect everyone, including other children. Throughout history, all cultures have asserted that children are disrespectful of their parents, which is perhaps why parents are accorded special mention here. It is also true that teachers can sometimes be dismissive or scornful of parents, particularly if the parents are poorly educated or come from a minority culture. Children’s identity is inevitably closely bound up with their parents’, and an

education which is disrespectful about pupils' parents is likely to be damaging to the children's own self-esteem.

“The development of respect for the child’s ... own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own”

Many education systems actively promote patriotism in school children, sometimes at the expense of inculcating respect for different cultures, particularly minority and indigenous cultures living within the country. Occasionally, concern is expressed in some countries that teaching respect for national values has been abandoned as old-fashioned. The importance of the wording of this subparagraph is that equal weight is given to the value systems both of the ratifying State and of other States or cultures, with a particular focus on school children who are immigrants or of a minority culture. The Committee points out that although there is potential for conflict between values:

“... in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.”
(Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 4)

It should be noted that the word “respect” implies more than just tolerance and understanding. It means acknowledging the equal worth of peoples of all cultures, without condescension.

Education on values should permeate the whole of schooling, as the Committee commented to Lebanon:

“...the teaching of values is an important dimension that should be incorporated in the curricula at all levels of schooling. School curricula materials should be revised accordingly.” (Lebanon IRCO, Add.54, para. 33)

The following subparagraph sets out some of the principles underlying the teaching of values: “the spirit of understanding, peace, tolerance ... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous

origin”. Article 30 also protects the rights of minorities and indigenous peoples “to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language” (see page 453).

“The preparation of the child for responsible life in a free society...”

This is a vital aim of education, in that it emphasizes the importance of teaching the less “academic” subjects such as health and sex education, politics, budgeting, citizenship and social relationships. Above all, students must feel that their education is not divorced from real life – a sure path to disaffection, failure and high drop-out rates (see article 28, page 420). The Committee has raised such concerns, for example with Grenada:

“...the Committee remains concerned with the high incidence of truancy (in particular for boys), limited access to secondary education, lack of relevant learning material, insufficient numbers of trained qualified teachers, and the tendency towards the use of teaching methods that are almost exclusively examination oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance and ensuring that students are taught an adequate mix of academic subjects and life skills, including communication, decision-making and conflict resolution skills.”
(Grenada IRCO, Add.121, para. 25. See also Saint Kitts and Nevis IRCO, Add.104, para. 28)

Mauritius was urged to include sex education in its school curricula (Mauritius IRCO, Add.64, para. 29) and Lebanon was advised that in relation to school curricula

“Specific needs appear to exist in the fields of health education...” (Lebanon IRCO, Add.54, para. 18)

The Committee expressed concern to the United Kingdom about the fact that:

“...parents in England and Wales have the possibility of withdrawing their children from parts of the sex education programmes in schools”

commenting that this gave insufficient attention to the child's own rights to have his or her opinions given due weight under article 12 (United Kingdom IRCO, Add.34, para. 14). In discussions with El Salvador, a Committee member commented: “As far as sex education was concerned, while welcoming the fact that some sex education was provided, the Committee found it regrettable that girls could not take the



Education on children's rights in Argentina

The Argentine Ministry of Culture and Education has implemented the National Programme for the Educational Rights of the Child, the goal of which is the “training of educators and elaboration of educational strategies designed to help children and young people obtain knowledge, exercise the rights to which they are entitled and fulfil the responsibilities incumbent upon them”. The Programme includes setting up a network of “Schools for the Rights of the Child” based on a “participation model” and teacher-training in basic concepts of human rights (Argentina IR, para. 18).



initiative and request the necessary information.” (El Salvador SR.86, para. 61)

Another important part of children's health education relates to HIV/AIDS. Failure by schools to provide factual information on this subject can be literally fatal to children; failure to challenge discriminatory and ill-informed social attitudes can lead to the ostracizing of children who are affected by HIV/AIDS. The Committee formulated recommendations following its General Discussion on “Children living in a world with AIDS” (5 October 1998), which included the following, relevant to education systems:

*“...The proven effectiveness of peer education strategies, in particular, should be recognized and taken into account for its potential contribution to the mitigation of the impact of the HIV/AIDS epidemic. The key objective of HIV/AIDS policies should be to empower children to protect themselves;
“ Access to information as a fundamental right of the child should become the key*

element in HIV/AIDS prevention strategies. States should review existing law or enact new legislation to guarantee the right of children to have access to HIV/AIDS related information..;

“Information on HIV/AIDS should be adapted to the social, cultural and economic context, and it should be made available through age-appropriate media and channels of dissemination. In the selection of target groups, attention should be given to the special needs of children who experience discrimination or who are in need of special protection. Information strategies should be evaluated for their effectiveness in leading to changes of attitude.” (Report on the nineteenth session, September/October 1998, CRC/C/80, para. 243. For full text of recommendations following General Discussion, see article 24, page 360.)

As discussed under article 12 (page 173), “responsible life in a free society...”, implies the teaching of social responsibility and active participation in the processes of democracy. This is

Health education: Recommendations of the International Conference on Population and Development

“Youth should be actively involved in the planning, implementation and evaluation of development activities that have a direct impact on their daily lives. This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse ...

“To be most effective, education about population issues must begin in primary school and continue through all levels of formal and non-formal education, taking into account the rights and responsibilities of parents and the needs of children and adolescents. Where such programmes already exist, curricula should be reviewed, updated and broadened with a view to ensuring adequate coverage of such important concerns as gender sensitivity, reproductive choices and responsibilities, and sexually transmitted diseases, including HIV/AIDS ...”

(International Conference on Population and Development, Cairo, 1994, A/CONF/171/13, paras. 6.15 and 11.9)

not easily taught to children if it is not practised at the same time. As a Committee member commented to representatives from China: "... the Convention's advocacy of the right of children to participate in all aspects of society and express their views demanded not just that children should be trained to act in such a way, but that adults and professionals working with children should be trained to develop participatory attitudes in children" (China SR.299, para. 33).

The Committee suggested to France that *"further consideration be given to ways of encouraging the expression of views by children and those views being given due weight in the decision-making processes affecting their lives, in particular within school and the local community"*. (France IRCO, Add.20, para. 23)

"...in the spirit of understanding ... tolerance... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin"

The Committee comments:

"Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. ... Racist behaviour is not something engaged in only by 'others'. It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance."
(Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 10)

Confronted with countries scarred by civil conflicts and racial tensions, and with the rise in xenophobic and racist attitudes in some industrialized countries, the Committee has urged States Parties to take action under this provision. For example:

"The Committee would also like to suggest that measures to teach about children's and

Practising democracy in Spanish schools

In Spain, the Fundamental Act on the Right to Education stipulates that it is one purpose of pupils' associations: "... to express the pupils' views on everything affecting their situation in the schools". The Fundamental Law on the Organization of the Educational System lays down as principles of that system: "the development of the spirit of criticism" and "the encouragement of habits of democratic behaviour." (Spain IR, para. 117)

human rights could be used as a tool to advocate further the purposes of the European Youth Campaign, and the parallel Nordic campaign to combat racism, xenophobia, anti-Semitism and intolerance. It is also the view of the Committee that it is equally important that the teaching methods used in schools should reflect the spirit and philosophy of the Convention and the aims of education laid down in its article 29." (Denmark IRCO, Add.33, para. 29)

"The Committee suggests further that the curricula in all schools should include a greater focus on the personal development and vocational training of students and on inter-ethnic tolerance. The Committee recommends that the State Party seek technical assistance from UNICEF in this regard." (The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 45)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) reflects the Committee's views in its Declaration and Programme of Action. It underlines the importance of human rights education, urging States "to introduce and, as applicable, to reinforce anti-discrimination and anti-racism components in human rights programmes in school curricula, to develop and improve relevant educational material, including history and other textbooks, and to ensure that all teachers are effectively trained and adequately motivated to shape attitudes and behavioural patterns, based on the principles of non-discrimination, mutual respect and tolerance." The Programme of Action calls upon States "to undertake and facilitate activities aimed at educating young people in human rights and democratic citizenship and instilling values of solidarity, respect and appreciation of diversity, including respect for different groups. A special effort to inform and sensitize young people to respect democratic values and human rights should be undertaken or developed



Combating sex discrimination in German schools

The German Commission for Educational Planning and the Promotion of Research of the Federation and the Länder is now focusing on comprehensive measures to eliminate sex discrimination mechanisms and outright or latent violence against girls in schools. Measures include the recognition and alteration of sexually discriminatory forms of interaction on the part of teachers; elimination of restrictive or discriminatory traditional roles in subject matter, teaching methods and teaching materials; greater acknowledgement of girls' interests, orientations and ways of learning in subject matter and teaching methods; promotion of greater self-confidence and self-determination on the part of girls; encouragement of a wider range of interests on the part of boys, especially in regard to a dual orientation toward professional work and housework. These measures are directed at teachers and parents, as well as towards boys and girls.
(Germany IR, para. 219)

to fight against ideologies based on the fallacious theory of racial superiority.” (Programme of Action, A/CONF.189/12, paras. 129 and 130)

The Final Document of the International Consultative Conference on School Education in relation with Freedom of Religion and Belief, Tolerance and Non-Discrimination (held in Madrid, Spain, in November 2001) affirmed the need for education systems simultaneously to respect religious belief (including atheism and the right not to have any religion) and to encourage tolerance and respect for other beliefs, and proposes steps that States can take to achieve this.

“... in the spirit of ... equality of sexes”

As discussed under article 28, there is global concern about discrimination against girls in terms of access to schooling and high drop-out rates (see also article 2, page 27). The causes of this phenomenon mostly relate to social and family demands on girl children, but school life and curricula can also act as a disincentive. Once in school, it is important that the curriculum be as relevant to female life as to male life; that girls are encouraged in traditionally “male” subjects of maths, science, engineering and computing; that schools do not act in a sexist or discriminatory manner; and that the particular needs of girls are met.

The Committee’s General Discussion on “The girl child” concluded that, as regards strategies for encouraging gender equality:

“Education was of essential importance. It allows for the harmonious and informed development of children, and gives them the necessary confidence and skills to make free choices in their lives and to act in a context of gender partnership – both at the professional and at the family level.” (Report on the eighth session, January 1995, CRC/C/38, p. 50)

The Committee’s General Comment corroborates this view:

“gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation.”

(Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 10)

As the Platform for Action of the 1995 Beijing Fourth World Conference on Women observes: “Gender-biased educational processes, including curricula, educational materials and practices, teachers’ attitudes and classroom interaction, reinforce existing gender inequalities” (para. 261). Strategic actions recommended for government include: “Develop and adopt curricula, teaching materials and textbooks to improve the self-image, lives and work opportunities of girls, particularly in areas where women have traditionally been underrepresented, such as mathematics, science and technology ...

“Encourage educational institutions and the media to adopt and project balanced and non-stereotyped images of girls and boys ...

“Promote human rights education in educational programmes and include in human rights education the fact that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights ...

“Develop training programmes and materials for teachers and educators, raising awareness about their own role in the educational process, with a view to providing them with effective strategies for gender-sensitive teaching ...

“Provide education and skills training to increase girls’ opportunity for employment and access to decision-making processes ...

“Provide education to increase girls’ knowledge and skills related to the functioning of economic, financial and political systems ...

“Promote the full and equal participation of girls in extracurricular activities, such as sports, drama and cultural activities...” (Platform for Action, paras. 276-277 and 279-280)

The General Assembly special session “Beijing plus five” in 2000 noted some progress in education for girls, but still discrimination at all levels (twenty-third special session of the General Assembly, A/RES/S-23/3).

The Committee has recommended that

“the inclusion of children’s rights in the school curricula be pursued as a measure to ... combat paternalistic and discriminatory attitudes which, as recognized by the State Party, continue to prevail in society.” (Guatemala IRCO, Add.58, para. 30)

“Measures should be taken to prevent a rise in discriminatory attitudes or prejudice towards girl children and children belonging to minority groups ... It recommends that comprehensive studies be initiated on these important issues to provide better understanding of these phenomena and facilitate the elaboration of policies and programmes to combat them effectively.” (Mauritius IRCO, Add.64, para. 29)

“in the spirit of ... peace”

An education delivered in the spirit of peace clearly supports the principle of non-violent methods of school discipline, as discussed under articles 19 and 28 (pages 265 and 424). Chile, for example, in 1992 established a Commission known as the School for Peace, which examined violence and ill treatment in schools (Chile SR.148, para. 21). Education also plays a part in the objectives of articles 38 and 39, on armed conflict and rehabilitation of child victims (see pages 563 and 579).

Children are often violent towards each other, and States are just beginning to wake up to their obligations to identify and prevent bullying in schools. The United Kingdom, for example, was commended by the Committee for its anti-bullying initiatives (United Kingdom IRCO, Add.34, para. 4). Educating children in non-violence includes teaching specific skills in conflict resolution. The Province of Ontario (Canada) has introduced a “Self and Society” programme, making teachers responsible for ensuring students are able to resolve conflicts in a cooperative and non-violent manner (Canada IR, para. 818). The Committee has recommended pro-

grammes, for example to Algeria and Sierra Leone:

“The Committee recommends that appropriate measures be adopted with a view to preventing to the maximum possible extent the negative impact of prevailing violence, through education and information campaigns in schools on peaceful cohabitation and peaceful resolution of conflicts.” (Algeria IRCO, Add.76, para. 41)

“The Committee encourages the State Party in its efforts to integrate peace education, civil education and human rights into its teacher training programmes and school curricula, and recommends that the State Party continue this process, expanding it to include child rights, and ensure that every child receives such education.” (Sierra Leone IRCO, Add.116, para. 67. See also, for example, Burundi IRCO, Add.133, para. 66)

The Report of the Committee’s General Discussion on “Children in armed conflicts” includes the following:

“General measures designed to prevent the occurrence of conflicts were discussed. Emphasis was put on the role which education can play:

- (a) Education in a spirit of understanding, solidarity and peace, as reflected in article 29 of the Convention on the Rights of the Child;*
- (b) Education and training for the military and for groups working with and for children;*
- (c) Education and dissemination of information specifically for children.*

Attention was also drawn to the need for creating awareness of the political grounds for the existence of conflicts; such an attitude may contribute to the consideration of solutions of mediation or conciliation designed to prevent the conflict or attenuate its effects.” (Report on the second session, September/October 1992, CRC/C/10, para. 70)

“The development of respect for the natural environment”

This provision is unique to the Convention on the Rights of the Child and reflects the growing urgency of concern about the environment. The 1992 Rio Declaration on Environment and Development (Agenda 21) stresses that all people, including children, should be made aware of the need for sustainable development and care for the natural environment. Principle 10 provides: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level”, and Principle 21: “The creativity, ideals and courage of the youth of the world should be mobilized to forge a



Making learning joyful

“Even a slightly different paradigm of learning can make childhood more joyful. If the classroom becomes more participative and interactive the burden of learning will disappear. Children who are currently outside the school system can be brought within it and retained if learning becomes easy, relevant and joyful. It may be possible to provide education and leisure in the same space. The high drop-out rates which have been observed amongst the children of the rural poor, tribal children and girl children are largely due to the uninspiring and completely alien pedagogy which is followed. If the learning process can be made fun, then a child may well consider stepping into school, in her leisure time.

“Some recommendations of the National Advisory Committee on improving the quality of learning while reducing the burden on school students (Yash Pal Committee) include: encouraging group achievement, decentralization of curriculum framing, and experimentation with pedagogical innovations. These are being attended to at the national and state levels. Early childhood educational institutions should not perpetrate violence on young children in the form of formal teaching of reading, writing and numbers. The burden of the heavy bags of books should be reduced.”

(India IR, paras. 249 and 250)

global partnership in order to achieve sustainable development and ensure a better future for all.”

Agenda 21 recommendations reflect the aims of the Convention on the Rights of the Child: “Relevant authorities should ensure that every school is assisted in designing environmental activity work plans, with the participation of students and staff. Schools should involve schoolchildren in local and regional studies on environmental health, including safe drinking water, sanitation and food and ecosystems and in relevant activities, linking these studies with services and research in national parks, wildlife reserves, ecological heritage sites etc.” (Chapter 36, p. 223). Agenda 21 also states: “Governments, according to their strategies, should take measures to ... establish procedures allowing for consultation and possible participation of youth of both genders, by 1993, in decision-making processes with regard to the environment, involving youth at the local, national and regional levels ... and ... establish task forces that include youth and youth non-governmental organizations to develop educational and awareness programmes specifically targeted to the youth population on critical issues pertaining to youth. These task forces should use formal and non-formal educational methods to reach a maximum audience.” (Chapter 25, pp. 193-194)

The Committee emphasizes that environmental education must not be solely theoretical:

“Education must link issues of environmental and sustainable development with socio-

economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.” (Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, para. 13)

The Committee recommended that Lebanon introduce teaching about the environment in schools (Lebanon IRCO, Add.54, para. 18).

Freedom to establish schools outside the State system that conform to the aims of education under the Convention and any minimum standards laid down by the State

This right repeats, more or less word for word, article 13(4) of the International Covenant on Economic, Social and Cultural Rights. Despite the Committee’s concern about the discriminatory impact private education may have on state education and on poor families (see article 28, page 405), the right to opt out of state education is an important one, not only to protect individual freedoms, but also, particularly because there is no blueprint for “good education”, and education systems should allow for diversity and flexibility.

The two conditions in article 29(2) are essential fetters on this freedom – that private education should conform to the aims of education as set out in article 29(1) and that it should conform with any minimum mandatory standards. They prevent, for example, the existence of religious schooling focusing only on doctrinal texts, or schools that fail to equip children for “responsible life” by not teaching them basic skills. The Committee on Economic, Social and Cultural Rights comments: “... minimum standards may relate to issues such as admission, curricula and the recognition of certificates... these standards must be consistent with the education objectives set out [in the Covenant]”. It also remarks that: “Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty... does not lead to extreme disparities of educational opportunity for some groups in society.” (Committee on Economic, Social and Cultural Rights, General Comment 13, 1999, HRI/GEN/1/Rev.5, p. 81)

The paragraph is formulated as a right of individuals rather than as an obligation of the State Party. The State Party is not required, under this article, to lay down “minimum standards”. However, article 3(3) provides “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with 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.” This means that States do have to ensure that private schools meet such standards.

The fact that private schools are obliged to conform to the aims of education as set out in article 29(1) also implies that States have an obligation to check that they meet this obligation. The Committee told Mauritius, for example, that it was *“worried about the absence of supervision of private schools”*

which suggests a duty to inspect private schools (Mauritius IRCO, Add.64, para. 15).



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 29, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 29 is relevant to the **departments of education, health and the environment**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 29 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 29 likely to include the training of **teachers, education administrators, vocational guidance personnel**)?

● Specific issues in implementing article 29

- ☐ Have the aims of education been reviewed in the light of the Committee's General Comment (2001)?

Do all forms of education provided for children within the country aim to

- ☐ develop their personalities to their fullest potential?
- ☐ develop their talents to their fullest potential?
- ☐ develop their mental abilities to their fullest potential?
- ☐ develop their physical abilities to their fullest potential?
- ☐ Is the Convention on the Rights of the Child incorporated in school curricula?

How to use the checklists, *see page XVII*



- ☐ Are children taught about other human rights principles?
- ☐ Do administrative systems in schools conform with the principles of the Convention?
- ☐ Do teaching methods conform with the principles of the Convention?

Do education institutions, materials and services and educational curricula develop children's respect for

- ☐ their parents?
- ☐ their own cultural or national identity, language and values?
- ☐ the national values of the ratifying country?
- ☐ the national values of the country from which they originated?
- ☐ the national values of other civilizations?
- ☐ Do all forms of education aim to prepare children for responsible life in a free society?
- ☐ Do schools practise democratic procedures?
- ☐ Are children given responsibilities and opportunities to practise choice, decision-making and independence?

Are children educated about

- ☐ health promotion?
- ☐ sexuality and reproductive health?
- ☐ social relationships, including mediation and negotiation skills and non-violent conflict resolution?
- ☐ money management and budgeting?
- ☐ the law?
- ☐ responsibilities of community life and citizenship?
- ☐ Does education encourage understanding, tolerance and friendship among all people?

Are measures taken to combat sex discrimination in

- ☐ the curriculum?
- ☐ educational materials?
- ☐ teaching attitudes?
- ☐ school ethos?
- ☐ Are the children taught non-violent values in the spirit of peace?
- ☐ Do educational institutions prevent all expressions of violence, whether by pupils or teachers?
- ☐ Are measures adopted to combat bullying?
- ☐ Do all forms of education include strategies to develop children's respect for the natural environment?

How to use the checklists, see page XVII



- ☐ Are private schools permitted?

Do minimum standards require that private schools

- ☐ do not discriminate?
 - ☐ develop their pupils' abilities to their fullest potential?
 - ☐ teach and practise the values laid out in article 29(1)?
 - ☐ respect the rights of the child under the Convention?
 - ☐ have sufficient and appropriately skilled staff and comply with health and safety requirements?
- ☐ Are measures, such as inspection and regulation procedures, adopted to ensure that the education in all private schools conforms with these standards?

Reminder: The Convention is indivisible and its articles are interdependent. Article 29 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 29 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 15: freedom of association

Article 16: protection of privacy

Article 17: access to information and role of media

Article 24: health (including health education)

Article 28: right to education

Article 30: children of minorities or of indigenous peoples

Article 31: rest, leisure, play, recreation and culture

Article 33: protection from drug abuse

Article 38: children and armed conflict

Children of minorities or of indigenous peoples



Text of Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 30 protects the rights of children from minority or indigenous groups to enjoy their culture, practise their religion and use their language together with other members of their group.

It might be asked: Why is article 30 necessary? Articles 7 and 9 prevent unreasonable separation from parents; article 8 secures the right of the child “to preserve his or her identity”; article 14 safeguards children’s freedom of religion with direct reference to their parents’ role in this respect; article 16 prevents arbitrary or unlawful interference with the child’s family; article 20 ensures that where the child is deprived of his or her family environment “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; article 21 reaffirms this in respect of intercountry adoption; article 29 includes respect for the child’s own culture, language and values in the aims of education and upholds the child’s right to be educated outside the state system; and article 40 requires the use of interpreters if the child cannot under-

stand the language used in the administration of juvenile justice. In addition articles 10 and 22 require special measures regarding immigrant and refugee children. Overarching all, is article 2, securing all the rights of the Convention without discrimination of any kind “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, ... language, religion, ... national, ethnic or social origin ... or other status”.

In the light of this, the provisions of article 30 might seem redundant. However, the overwhelming evidence of serious and continuing discrimination against minority and indigenous populations justifies mention of their rights in a separate article.

The Convention lays proper stress on the right of children to be protected from the harmful practices of their parents, families and communities. It is equally important for the Convention to stress the right of peaceful enjoyment of practices and faiths that are not harmful, no matter how strange or alien they may seem to others. Article 30 affirms the rich diversities of cultures that are practised within a framework of human rights. ■





Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force, factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...*(d) Children belonging to a minority or indigenous group (art. 30)*

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by [the previous] paragraph ...”

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

“VIII. SPECIAL PROTECTION MEASURES

D. Children belonging to a minority or an indigenous group (art. 30)

Please provide information on the measures adopted, including at the legislative, administrative, educational, budgetary and social levels, to ensure that a child belonging to an ethnic, religious or linguistic minority or who is indigenous is not denied the right, in community with other members of his or her group:

To enjoy his or her culture;

To profess and practise his or her own religion;

To use his or her own language.

In this regard, reports should also indicate inter alia:

The ethnic, religious or linguistic minorities or indigenous groups existing within the State Party's jurisdiction;

The measures adopted to ensure the preservation of the identity of the minority or indigenous group to which the child belongs;

The measures adopted to recognize and ensure the enjoyment of the rights set forth in the Convention by children belonging to a minority or who are indigenous;

The measures adopted to prevent any form of discrimination and combat prejudice against those children, as well as those designed to ensure that they benefit from equal opportunities, including in relation to health care and education;

The measures adopted to ensure respect for the general principles of the Convention, namely the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible, as well as non-discrimination;

The measures adopted to ensure that in the implementation of the rights recognized in article 30 due consideration is taken of other provisions of the Convention, including in the areas of civil rights, particularly in relation to the preservation of the child's identity, family environment and alternative care (for example art. 20, para. 3 and art. 21), education and the administration of juvenile justice;

Relevant disaggregated data on the children concerned, including by age, gender, language, religion, and social and ethnic origin;

The progress achieved and the difficulties encountered in the implementation of this article, as well as any targets set for the future.”

(CRC/C/58, paras. 165 and 166. The following paragraphs of the Guidelines for Periodic Reports are also relevant to reporting under this article: 22, 30, 57, 60, 81 and 106; for full text of Guidelines, see Appendix 3, page 674.)

Background

Article 27 of the International Covenant on Civil and Political Rights states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Article 30 of the Convention on the Rights of the Child thus repeats, with special reference to children, more or less word for word, the Covenant on Civil and Political Rights, save for the addition of “persons of indigenous origin”. Article 30 emanated from a proposal by a non-governmental organization called the Four Directions Council, supported by Mexico, to dedicate an article of the Convention to the rights of indigenous children. The drafting Working Group quickly agreed that this should embrace the rights of all minority children and concluded that it would not be helpful to introduce wording which departed from that of the International Covenant on Civil and Political Rights (E/CN.4/1986/39, p.13; Detrick, p. 408).

The *Manual on Human Rights Reporting*, 1997, also points out that “by replacing the plural used in the Covenant ‘**persons** belonging to such minorities’ by a reference to the **child**, it has emphasized the individual nature of the rights recognized in this article, even if they are to be enjoyed ‘in community with other members’ of the child’s group”. (*Manual*, p. 489)

These are clearly improvements that do not detract from the principles of the Covenant. In addition, it should perhaps be noted that in some countries majority populations have been denied rights (for example in South Africa during apartheid) and that there are some minority groups which cannot claim to be “ethnic, religious or linguistic” (for example some “traveler” communities in western Europe) but whose rights to enjoy their culture have been unreasonably denied.

General Comment 23 by the Human Rights Committee, on article 27 of the International Covenant on Civil and Political Rights, makes the following points:

- this is a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant;
- it is not a collective right of self-determination and does not prejudice the sovereignty

and territorial integrity of a State Party. At the same time the right to enjoy culture may consist of “a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority”, including “such traditional activities as fishing or hunting or the right to live in reserves”;

- international or domestic obligations not to discriminate, and to treat everyone equally, do not mean that minorities cannot be recognized;
- the right applies to everyone within the territory, not just citizens or people with permanent residence;
- the right to use a minority language is to be distinguished from freedom of expression and the right of accused people to an interpreter: it upholds the rights of minorities to use that language amongst themselves;
- the formulation of the right in negative terms “not to be denied the right...” nevertheless does recognize the existence of a right. This obliges the State Party to take positive measures both in terms of its own actions and against the acts of other persons in the country, in order to protect the minority group’s cultural identity, language or religion;
- such positive measures must not thereby discriminate against any other group or individual or breach any other article of the Covenant;
- the aim is to ensure the survival and continual development of minorities “thus enriching the fabric of society as a whole”.

(Human Rights Committee, General Comment 23, 1994, HRI/GEN/1/Rev.5, pp. 147-150)

The negative formulation of the phrase “shall not be denied the right ...” in article 27 of the Covenant (repeated in article 30 of the Convention on the Rights of the Child) was not repeated in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992. In this text the rights of persons belonging to minorities is stated in positive rather than negative terms (for example, “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories...”) and the obligation of States to implement these rights is also clearly stated (“... and shall encourage conditions for the promotion of that identity... States shall adopt appropriate legislative and other measures to achieve those ends”) (article 1).





The Committee on the Elimination of Racial Discrimination has, in addition, adopted a General Recommendation on the rights of indigenous peoples, calling on States Parties to “recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation”, especially in terms of recognizing their rights to land and to provide them with “conditions allowing for a sustainable economic and social development compatible with their cultural characteristics”. (Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, 1997, HRI/GEN/1/Rev.5, pp. 192 and 193)

Because countries sometimes distinguish between the rights of citizens and those residing in the country, the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 is also important. This Convention protects the rights of migrant workers to manifest their religion (article 12); States Parties “shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin” (article 31) and secure policies for teaching children both the local languages and their mother tongue (article 45).

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration reiterates the text of article 30 (Declaration, para. 73). The Programme of Action urges States “to adopt, where applicable, appropriate measures to ensure that persons belonging to national or ethnic, religious and linguistic minorities have access to education without discrimination of any kind and, where possible, have an opportunity to learn their own language in order to protect them from any form of racism, racial discrimination, xenophobia and related intolerance that they may be subjected to.” (Programme of Action, A/CONF.189/12, para. 124; the Programme of Action also contains detailed recommendations relating to indigenous people.)

Reservations

Turkey and France have entered reservations in respect of article 30.

Turkey states: “The Republic of Turkey reserves the right to interpret and to apply the provisions of [articles] 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923.” (CRC/C/2/Rev.5, p. 33)

The Committee noted that this reservation

“may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin”

and encouraged its withdrawal (Turkey IRCO, Add.152, para. 11).

France states: “The Government of the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 30 is not applicable in so far as the Republic is concerned.” (CRC/C/2/Rev.5, p. 18) France’s explanation of this in its Initial Report does not take the matter much further: “France entered one reservation and two interpretative declarations. The reservation concerns article 30. Having regard to article 2 of the Constitution of the French Republic (‘France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion. It shall respect all beliefs...’), France considers that article 30 [13 in text] is not applicable in so far as the Republic is concerned. Indeed, on the basis of these principles of equality and non-discrimination, the existence of minorities cannot be recognized in France in the sense of groups enjoying a special status. France made a similar reservation in respect of article 27 of the International Covenant on Civil and Political Rights.” (France IR, Add.15, para. 47)

The Committee noted the reservation

“with concern. The Committee wishes to emphasize that the Convention on the Rights of the Child seeks to protect and guarantee the individual rights of children, including the rights of children belonging to minorities.” (France IRCO, Add.20, para. 11)

France’s explanation is difficult to understand since article 30 does not accord minority groups “special status”, it simply protects their civil rights as does the French Constitution. The General Comment by the Human Rights Committee on article 27 of the Covenant addresses the French position: “The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2(1) and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the

States. It governs the exercise of all rights, whether protected under the Covenant or not, which the State Party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States Parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.” (Human Rights Committee, General Comment 23, 1994, HRI/GEN/1/Rev.5, p. 147)

In addition, two other countries, Canada and Venezuela, have made declarations relevant to article 30 of the Convention on the Rights of the Child.

Canada declared: “It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfilment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practise their religion and to use their own language.” (CRC/C/2/Rev.8, p.16) Canada also entered a specific reservation to article 21 in relation to article 30, in so far as it allows aboriginal practices in adoption which might not be compatible with article 21, which the Committee “noted with concern” (Canada IRCO, Add.37, para. 10). If the declaration means that Canada might give article 30 a superior status to other rights under the Convention, this would be contrary to the “indivisibility” of these rights; but if it is simply, as it were, a reminder to the Canadian Government to pay particular attention to the provisions of article 30, then the declaration is not in conflict with the principles of the Convention.

Venezuela states: “The Government of Venezuela takes the position that article 30 must be interpreted as a case in which article 2 of the Convention applies.” (CRC/C/2/Rev.8, p. 44) The Committee did not comment on this declaration when responding to Venezuela’s Initial Report, but the General Comment by the Human Rights Committee, quoted in regard to France’s reservation, is relevant.

“a child belonging to ... a minority or who is indigenous shall not be denied the right,

in community with other members of his or her group, to enjoy his or her culture”

Article 30 is not about the fact that a great many minority and indigenous groups suffer from discrimination in terms of education, health and employment opportunities and from social prejudice or outright harassment. It is about cultural, religious and linguistic rights rather than about economic or political rights. Nonetheless, the entitlement “not to be denied the right ... to enjoy [their] own culture” is often disturbed by social, economic or political forms of persecution. For example:

“The Committee suggests that the Government develop public campaigns on the rights of the child with a view to effectively addressing the problem of persisting discriminatory attitudes and practices against particular groups of children such as girl children, children belonging to a minority or indigenous group and poor children. It also suggests that further proactive measures be developed to improve the status of these groups of children.”

(Nicaragua IRCO, Add.36, para. 31)

“The Committee recommends that further steps be taken to ensure that nomadic children have access to education and health-care services through a system of specifically targeted education and health-care schemes which will allow these children to enjoy their right, in community with other members of their group, to their own culture, as stipulated in article 30 of the Convention.” (Algeria IRCO, Add.76, para. 37)

What is more, the economic plight of minority and indigenous groups often leads to an erosion of their culture – across the world aboriginal or indigenous peoples, particularly, have been reduced to pitiful states as the incoming culture has dominated, corrupted and exploited these groups’ culture and traditional activities.

As the Human Rights Committee and the Committee on the Elimination of Racial Discrimination pointed out (pages 455 and 456), cultural rights are often bound up with survival rights of territory, fishing and hunting. Special measures may have to be taken by the State Party to ensure that health and education services are supplied without interfering with cultural practices. Costa Rica reported to the Committee, for example, that the infant mortality rate for indigenous minorities is almost three times the national average, in part because their lack of identity cards caused difficulty in claiming services of all kinds, which the Costa Rican Government is attempting to remedy (Costa Rica IR, paras. 356-359).





The Committee frequently mentions indigenous children as a group which, alongside girls and rural children, are discriminated against in relation to most articles of the Convention. Sometimes specific minority groups are singled out. For example the *talibés* of Senegal or the *Batwa* of Burundi:

"The Committee is seriously worried at the difficult living conditions faced by a great number of talibés, who are deprived of the enjoyment of their fundamental rights under the law..."

"The Committee recommends that in the implementation process of the Convention the State Party pay special attention to the situation of talibés. Further measures should be adopted to ensure the effective enjoyment of their fundamental rights and that they are protected against any form of discrimination. Efforts should be made to ensure an effective monitoring system of their situation by the State Party, in close cooperation with religious and community leaders." (Senegal IRCO, Add.44, paras. 15 and 29)

"The Committee is deeply concerned about the poor situation of Batwa children and the lack of respect for almost all of their rights, including the rights to health care, to education, to survival and development, to a culture and to be protected from discrimination."

"The Committee urges the State Party urgently to gather additional information on the Batwa people, to strengthen the representation of Batwa in national policy-making and to elaborate a plan of action to protect the rights of Batwa children, including those rights related to minority populations and indigenous peoples." (Burundi IRCO, Add.133, paras. 77 and 78)

The circumstances of Roma children in a number of European countries has aroused the Committee's concern:

"The Committee is concerned about the situation of children of minorities, especially within the context of articles 2, 29, 29 and 30 of the Convention. The low school attendance of the Roma (gypsy) group of children is a serious problem. In more general terms, the Committee finds that there is a need for more effective measures to combat prejudices against this minority ..."

"The Government should adopt an active non-discrimination policy with respect to children of minorities. This would also, particularly in relation to the Roma (gypsy) population, require proactive measures to encourage participation and break a vicious circle of widespread prejudices resulting in hostility or neglect. The problem of low school attendance among children from the Roma

minority should be urgently addressed." (Romania IRCO, Add.16, paras. 10 and 21)

"Further measures should also be taken to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children such as children living in poverty, children from the southern region, Roma children and foreign children. The Government should consider adopting a more active stand and coherent policy with respect to the treatment of these children and to create an environment favourable to their fullest possible integration into Italian society." (Italy IRCO, Add.41, para. 17)

"While acknowledging the steps taken to ensure the rights of children belonging to minorities, and in particular the projects providing school assistance and linguistic and cultural support to children belonging to the Roma group, the Committee remains concerned about social and other discrimination faced by children belonging to the Roma and other minorities, and in particular by those belonging to groups that do not enjoy the constitutional status of 'ethnic groups'... The Committee recommends that the State Party take all appropriate measures to protect and ensure the rights of Roma, Sinti and other minority children, including protection from all types of discrimination, in accordance with articles 2 and 30 of the Convention." (Austria IRCO, Add.98, para. 30)

"The Committee notes with concern that most Roma children attend special schools because of real or perceived language and cultural differences between the Roma and the majority; that the School Act does not offer instruction in the Roma language; and the negative, stereotypical description of the Roma and their children in general, but especially in the initial report."

"The Committee recommends that the State Party design further measures aimed at ensuring that Roma children have equal access to and opportunities to attend regular school with supportive education, if necessary. The Committee further recommends that the State Party examine to what extent the current situation of the Roma language in the education system, with respect to both law and practice, meets the demands of the Roma population and their children and consider, as appropriate, further measures aimed at ensuring education or instruction in the Roma language, with reference to article 29 of the Convention. Teacher training in this language should be strengthened. The Committee recommends that the State Party, in accordance with article 29 (c) of the Convention, ensure that the education system and the media in particular foster positive

attitudes towards minorities and intercultural dialogue between the minorities and the majority, including children.” (Slovakia IRCO, Add.140, paras. 47 and 48)

The Committee has also encouraged general initiatives against prejudice and racism. For example, it commended Germany:

“The Committee acknowledges the determination of the State Party to prevent and combat xenophobic tendencies and manifestations of racism. The Government is to be commended for the extensive efforts undertaken to ensure the involvement of and effective cooperation between the Federal, Lander and local authorities in the implementation of a countrywide campaign to prevent and combat such phenomenon and to promote ethnic and racial harmony, in the general framework of the Youth Campaign launched by the Council of Europe.” (Germany IRCO, Add.43, para. 6)

A similar campaign was proposed to Nicaragua:

“The Committee suggests that the Government develop public campaigns on the rights of the child with a view to effectively addressing the problem of persisting discriminatory attitudes and practices against particular groups of children such as girl children, children belonging to a minority or indigenous group and poor children. It is also suggested that further proactive measures be developed to improve the status of these groups of children.” (Nicaragua IRCO, Add.36, para. 31)

And the Committee suggested enforceable legislation to Mexico (where there are 56 officially recorded indigenous groups and the indigenous child population is identified as one of the most vulnerable):

“Principles relating to ... the prohibition of discrimination in relation to children should be incorporated into domestic law, and it should be possible to invoke them before the courts.” (Mexico IRCO, Add.13, para. 15)

In responding to Mexico’s Second Report, the Committee acknowledged that some progress had been made on behalf of indigenous children but reiterated its recommendation that more effective measures must be taken (Mexico 2RCO, Add.112, paras. 18 and 29).

In its General Discussion on “Children in armed conflicts”, the Committee stressed

“... the need to preserve the children’s cultural environment.” (Report on the second session, September/October 1992, CRC/C/10, p. 23)

This may be difficult when a State is receiving refugee children from a different culture to its own. However, children suffering the trauma of

war and displacement particularly need the reassurance of familiar cultural practices. Securing their rights under article 30 is therefore of paramount importance.

“...to profess and practise his or her own religion”

Many minority groups are able to practise their religion without interference, but unfortunately religious freedom is not always respected. In the case of Tibet, where interference has occurred, the Committee, naturally, expressed deep concern:

“In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population ... The Committee recommends that the State Party seek a constructive response to [these] concerns.” (China IRCO, Add.56, paras. 20 and 41)

In the case of Indonesia, which “officially recognizes” five religions (Islamic, Catholic, Christian, Hindu and Buddhist), the Committee expressed its concern that

“...limiting official recognition to certain religions may give rise to practices of discrimination”. (Indonesia IRCO, Add.25, para. 13)

“... to use his or her own language”

This right is about being able to speak a minority language without interference. Children’s right to “use” their own language does not necessarily entitle them to be taught entirely in that language, though initially this may be necessary for refugee or immigrant children; the right may also involve positive measures to ensure that children are taught to speak their mother tongue in schools. UNICEF reports that schooling in children’s mother tongue “is the norm in most high-achieving countries. Contrast this with the situation in most Lusophone and Francophone African countries where instruction in the earliest grades is not in the mother tongue: these are the very countries with the lowest enrolment rates in the world.” (S. Mehrotra, J. Vandemoortele, E. Delamonica, *Basic services for all?*, UNICEF, Innocenti Research Centre, 2000, p. 27). Equally, measures may be needed to





ensure that children who speak a minority language are not impeded by ignorance of the majority language.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families spells out such distinctions, in article 45:

“(2) States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

(3) States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate wherever appropriate.

(4) States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.”

Thus, under this Convention, the State must take measures to integrate the children by teaching them the local language and must (if necessary) teach them their own language. In addition, it may teach them in their own language.

The Committee on the Rights of the Child has suggested States teach in minority languages:

“In the light of article 30, the Committee is concerned at the lack of measures taken to provide school education in all the existing languages and dialects.” (Morocco IRCO, Add.60, para. 14)

“The Committee ... recommends that the State Party allocate resources to translate school materials into minority languages with the objective to encourage, in the appropriate regions, schools and teachers to provide education in minority languages.” (Myanmar IRCO, Add.69, para. 39)

“The Committee ... welcomes the provision in the 1992 Constitution that in the early years of schooling teaching shall be in the student's native language, the provision of instruction in both Spanish and Guaraní...

“The Committee is concerned that adequate measures have not yet been taken to fully guarantee in practice the right of indigenous students to education in their native language, Guaraní...

“The Committee recommends that the authorities take all appropriate measures to guarantee the full implementation of the right of the child to be educated in his/her language.” (Paraguay IRCO, Add.75, paras. 3, 24 and 46)

It has also suggested the teaching of a minority language:

“The Committee also suggests that the State Party provide further support to the teaching of the Irish language in schools in Northern Ireland ...” (United Kingdom IRCO, Add.34, para. 33)

However, sometimes teaching children solely in their mother tongue may not be to their advantage. For example, the Committee raised concerns with China

“...about reports that school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that the quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may disadvantage Tibetan and other minority pupils applying to secondary and higher level schools ...”

The Committee suggested

“... that a review be undertaken of measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing.” (China IRCO, Add.56, paras. 19 and 40)

Similarly, the Committee was concerned that non-Macedonian speaking children were being put to a disadvantage within The Former Yugoslav Republic of Macedonia:

“...with a view ... to increasing the numbers of children from minorities who follow higher education, the Committee recommends that the State Party review the allocation of financial and other resources to all primary and secondary schools, with particular attention to raising the quality of education in minority language schools. The Committee recommends, in addition, that the State Party consider increasing the numbers of hours of teaching of the Macedonian language in minority language schools, on a voluntary basis, with a view to ensuring that children who are minority language speakers are able to participate on a more equal level with Macedonian-speaking children at higher education levels at which entrance examinations and teaching are conducted primarily in the Macedonian language.” (The Former Yugoslav Republic of Macedonia IRCO, Add.118, para. 45)

Whichever course is adopted, teachers must be appropriately trained:

"In the light of article 30 of the Convention, [the Committee] is also worried about the insufficient number of teachers capable of working with minority children ... and encourages the relevant authorities to undertake all appropriate measures to ensure that sufficient teachers for minority children are available in all regions of the country." (Finland IRCO, Add.53, paras. 18 and 28)

Children's use of their own language is not confined to schools. The Committee noted the severe discrimination against Albanian-speaking children in Yugoslavia and recommended, amongst other things:

"...that measures should be taken to improve the activities of the mass media in imparting information for children in their own language, including Albanian." (Federal Republic of Yugoslavia IRCO, Add.49, para. 28)

The Committee has taken particular pains to recommend that the provisions of the Convention are translated into all minority languages, for example:

"In view of the State Party's willingness to develop a culture of human rights and to change attitudes towards children in general and the indigenous population in particular, the Committee recommends that information and education about children's rights be

disseminated among children and adults alike. It is also recommended that consideration be given to the translation of such information into the main indigenous languages and that appropriate measures be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy. In the light of the considerable experience of the United Nations Children's Fund and other organizations in responding to such challenges, it is recommended that international cooperation be sought in this regard."

(Guatemala IRCO, Add.58, para. 29. See also Bolivia IRCO, Add.1, para. 18; Belgium IRCO, Add.38, para. 17; Portugal IRCO, Add.45, para. 21; and Finland IRCO, Add.53, para. 14)

The Committee has also recommended the translation of the State's Initial Report and the Committee reports (which of course include important statements relating to specific minority groups). For example:

"The Committee recommends that the report of the State Party, the records of the dialogue held between itself and the State delegation and the Concluding Observations adopted by the Committee be widely disseminated throughout the nation in all minority languages as well as in Croatian..." (Croatia IRCO, Add.52, para. 28)



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 30, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 30 is relevant to the **departments of education, home affairs, social welfare, health, media and communications**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 30 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 30 likely to include the training of **teachers, social workers and police**)?

● Specific issues in implementing article 30

- ☐ Are measures taken to identify population groups of children belonging to an ethnic, religious or linguistic minority or who are of indigenous origin?
- ☐ Are measures taken to ensure that such children are not denied the right to enjoy their own culture in community with members of their group?
- ☐ Are measures taken to ensure that such children are not denied the right to profess or practise their own religion in community with members of their own group?
- ☐ Are measures taken to ensure that such children are not denied the right to use their own language in community with members of their group?

Do these measures include action taken

- ☐ in school?
- ☐ in the mass media?
- ☐ when children are separated for any reason from their parents, family or community?
- ☐ in legal proceedings?

How to use the checklists, *see page XVII*



- ☐ Where such children are taught in their mother tongue, are they also taught the majority language?
- ☐ Where such children are, for whatever reason, not fluent in the language used by their minority group, are measures available for teaching them this language?
- ☐ Are the provisions of the Convention, the Initial and Periodic Reports and all proceedings of and with the Committee on the Rights of the Child translated into all minority languages?
- ☐ Are children's rights against interference in their culture, religion and language under this article protected and enforceable in law?
- ☐ Are Government-sponsored campaigns initiated, where necessary, to combat prejudice against minorities or indigenous groups?
- ☐ Have children from these groups been asked whether the measures taken under this article are appropriate or sufficient?

Reminder: The Convention is indivisible and its articles are interdependent.
Article 30 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 30 include:

Article 5: respect for responsibilities of extended family or community for the child

Article 8: right to preserve identity

Article 16: protection from arbitrary interference in family and home

Article 20: continuity of ethnic, religious, cultural and linguistic background if placed away from family

Article 21: intercountry adoption only to be considered if the child cannot be cared for in his or her own country

Article 22: special protection for refugee children

Article 24: protection from traditional practices prejudicial to health

Article 28: education to be provided on the basis of equal opportunity

Article 29: education to be directed to development of respect for all cultures and friendship between all peoples

Article 40: right to an interpreter in the juvenile justice system



Child's right to leisure, play and culture



Text of Article 31

- 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
- 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.*

Article 31 concerns the child's rights to rest, leisure, play and recreational activities and to participate in cultural and artistic life.

The words "rest", "leisure", "play" and "recreational activities" appear on one level to be synonymous, because they are all about not working. But although not working is a unifying factor, the four words contain important differences. "Rest" includes the basic necessities of physical or mental relaxation and sleep, "leisure" is a wider term implying having the time and freedom to do as one pleases, "recreational activities" embrace the whole range of activities undertaken by choice for the purposes of pleasure (including a number which can simultaneously be termed work, such as sports, creative and performing arts, crafts and scientific, agricultural or technical pursuits) and "play" is arguably the most interesting in terms of childhood, in that it includes activities of children

which are not controlled by adults and which do not necessarily conform to any rules.

Children's right to play is sometimes referred to as the "forgotten right", perhaps because it appears to the adult world as a luxury rather than a necessity of life, and because children always find ways and means of playing, even in the direst circumstances. But play is also an essential part of development and children who are unable to play, for whatever reason, may lack important social and personal skills.

Children's cultural rights include both their right of access to developmentally appropriate cultural and artistic events, and their right to undertake such activities themselves – both to join with adults in cultural and artistic pursuits and to enjoy their own. (The word "culture" in the rest of the Convention is used to refer to communities' traditions and customs; in this article the word "cultural" is used more in its artistic sense). ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Education, leisure and cultural activities

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; the institutional infrastructure for implementing policy in this area, particularly monitoring strategies and mechanisms; and factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention, in respect of:...

(c) Leisure, recreation and cultural activities (art. 31)

... States Parties are requested to specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as institutions of social workers, concerning the implementation of this area of the Convention. States Parties are encouraged to provide additional relevant statistical information and indicators relating to children covered in this section."

(CRC/C/5, paras. 21 and 22)

Guidelines for Periodic Reports

"VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

C. Leisure, recreation and cultural activities (art. 31)

Please provide information on the measures adopted, including of a legislative nature, to recognize and ensure the right of the child to:

Rest and leisure;

Engage in play and recreational activities appropriate to the age of the child;

Participate freely in cultural life and the arts.

In this regard, reports should also indicate:

The proportion of the relevant overall budget allocated (at the central, regional, local and where relevant at the federal and provincial levels) for children;

The cultural, artistic, recreational and leisure activities, programmes or campaigns developed and provided at the national, regional or local, and where appropriate at the federal and provincial levels, to ensure the enjoyment of this right including in the family, in the school and in the community;

The enjoyment of the rights recognized by article 31 in relation to other rights recognized by the Convention, including the right to education;

The respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent;

Relevant data on the children concerned, including by age, gender, region, rural/urban area, and national, social and ethnic origin;

Progress achieved in the implementation of article 31, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 117-118. Paragraph 92 of the *Guidelines for Periodic Reports* is also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)

Background

Principle 7 of the 1959 Declaration of the Rights of the Child states: “The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.” (The “purposes of education” under the Declaration are to “promote [the child’s] 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” (also principle 7)). Article 31 of the Convention on the Rights of the Child noticeably does not prescribe the purpose of play and recreation. Children are just as entitled as adults to forms of play and recreation which appear purposeless to others, though adults do have responsibilities to prevent them from engaging in leisure pursuits which are actively harmful.

The *Manual on Human Rights Reporting*, 1997, comments that the Convention’s article 31 “should also be considered in combination with other relevant articles of the Convention, which will lead to recognition that the right to play and recreation should be taken into account in the framework of the right to education, thus contributing to the development of the child’s abilities to their fullest potential. Similarly, in those specific circumstances, activities and ages under which children below 18 may work, in the light of article 32, the right to rest and leisure should be equally and necessarily ensured. In situations covered by article 39 relating to the recovery and social reintegration of the child victim of any form of neglect, exploitation and abuse, torture or armed conflicts, the engagement in play and recreational activities may further gain an instrumental and healing role by promoting the child’s self-esteem and trust and his or her growing participation in life.” The *Manual* also points out that sports activities and competitions in leisure pursuits “which may seem to be primarily designed to promote the child’s well-being” should not damage the child’s physical or psychological development (*Manual*, p. 468; see also article 36, page 535).

Children’s right to “rest and leisure”

Rest is almost as important to children’s development as the basics of nutrition, housing, health care and education. Indeed, over-tired children are often unable to learn and are more susceptible to illness. A primary responsibility of ratify-

ing States is, therefore, to ensure that children who work have adequate time for sleep and relaxation. The ILO Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79) and the ILO Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90) protect children from working at night. The ideal principle set out in these provisions is that children under the age of 14 or in full-time education should have a consecutive period of 14 hours to rest including the period between eight o’clock in the evening and eight o’clock in the morning (article 2(1) of ILO Convention No.79); that all children under the age of 16 should have 12 hours’ rest (article 3 of Convention No.79 and article 2 of Convention No.90), and 16- to 18-year-olds at least seven hours (article 2 of Convention No.90).

However, these are heavily qualified safeguards. For example, children in domestic service and children working in non-hazardous occupations with their families may be exempted entirely from these Conventions; and yet millions of children across the world work long hours in conditions of near slavery as domestic workers, and many more are forced by their family circumstances to work in family enterprises without adequate rest or education throughout most of their childhood.

The right to leisure encompasses more than just having sufficient time to sleep at night. Discussion under articles 29 and 32 explores the problems engendered by children’s need to work and the complex relationship between children’s work and education. Article 31 is necessary as a reminder that, in addition, children need some space for themselves between work and education (article 16, the right to privacy, also addresses this need).

In the drafting sessions Canada proposed an amendment requiring “parents, States Parties, educational institutions and others caring for children” to make “reasonable limitations on school and working hours” (E/CN.4/1983/62, Annex II; Detrick, p. 415). Countries have very different legal interpretations of how many hours compulsory education should take up in a year and very different practices relating to homework (school work done at home). Some countries have customs and laws reserving one day of the week and additional religious festivals as free from work; others have regulations which ensure that children are only permitted to work for remuneration on one day of each weekend and only a portion of school holidays; others ensure that the school day has frequent rest periods. Children in compulsory schooling are, after all,





State support for outdoor play in Norway

“... As of 31 December 1996, 1,347 State-supported areas had been set aside for outdoor recreation. About 30 per cent of these were purchased directly by the State; the remaining 70 per cent were purchased by municipalities or intermunicipal outdoor recreation committees receiving State grants. Most of the areas set aside for outdoor recreation are close to densely populated areas or in popular recreation areas. Along the south coast some 275 areas are specially protected as coastal paths.

“Outdoor recreation provides a sound foundation for better health and a better quality of life. There are reports from day-care facilities that increasing numbers of children have poor motor development, probably due to lack of outdoor play and physical activity. Experts hold that playing in natural surroundings will benefit the motor, intellectual and social development of the child. The health authorities have implemented a national programme to increase awareness among parents, health workers, teachers and politicians of the importance of giving children sufficient time and opportunity to play out of doors.”

(Norway 2R, paras. 319 and 320)

already working full-time if homework is taken into account – indeed, often being forced into overtime in adult terms. If they undertake paid work in addition to schooling, they may rarely have a minute off for months on end.

During discussion of El Salvador’s Initial Report, a Committee member stated: “As far as the employment of children was concerned, while legislation appeared to draw a balance between work and school, access to education did not only mean school attendance. It also meant ensuring that a child had the time to think about what he was learning, to do homework, and also to have the time to play and be a child.” (El Salvador SR.86, para. 62)

The Committee raised this concern formally with Micronesia and Japan:

“The insufficient leisure opportunities are also a matter of concern...”

“In the light of article 31 of the Convention, the Committee recommends that the State Party develop cultural, artistic, recreational and leisure activities at schools” (Federated States of Micronesia IRCO, Add.86, paras. 20 and 38)

“...the Committee is concerned that children are exposed to developmental disorders due to the stress of a highly competitive educational system and the consequent lack of time for leisure, physical activities and rest, in light of the principles and provisions of the Convention, especially its articles 3, 6, 12, 29 and 31.” (Japan IRCO, Add.90 para. 22)

Right to “engage in play and recreational activities appropriate to the age of the child”

As discussed above, play and recreational activities can be distinguished from each other in so far as play is unstructured and free from adult direction (although it may be facilitated and overseen by adults), whereas recreational activities include most aspects of a school curriculum – sports, performing and creative arts, science and technology and so forth – as well as games and spectator activities. A defining characteristic of both play and recreation is that they are not compulsory.

Few countries give adequate priority to children’s right to “play”. The haphazard, anarchic nature of play contributes nothing to the nation’s economy or international profile. However, play does contribute a great deal to children’s physical and psychological health. Many social skills, such as negotiation, sharing and self-control, are gained through unsupervised play with other children. In terms of physical development, it is essential that children spend time exercising their bodies.

Although the range of children’s play is enormous and ever-changing (see, for example, the box opposite describing Madagascar’s range of play activities), children’s basic play needs are relatively simple. All that is required is safe, accessible space for the children’s use, preferably containing possibilities for creating or changing things. Surprisingly, these are difficult to achieve in today’s world .

The Committee has therefore encouraged Government initiatives to promote children’s play:

“The Committee believes that opportunities for the cultural development of children are critical and recommends that measures be taken to give children access to child literature and media. The need for playgrounds and child-friendly parks should be considered in city planning.” (Lebanon IRCO, Add.54, para. 36.)

“... in the light of article 31 of the Convention, the Committee is concerned at the lack of appropriate playgrounds.”

Declaration of the Child's Right to Play

The International Association for the Child's Right to Play (IPA, given consultative status with UNESCO and UNICEF) has adopted a *Declaration of the Child's Right to Play*, which states a deep concern about:

“a number of alarming trends and their negative impact on children's development:

- Society's indifference to the importance of play.
- Over-emphasis on theoretical and academic studies in schools.
- Increasing numbers of children living with inadequate provisions for survival and development.
- Inadequate environmental planning, which results in a lack of basic amenities, inappropriate housing forms, and poor traffic management.
- Increasing commercial exploitation of children, and the deterioration of cultural traditions.
- Lack of access for third world women to basic training in child care and development.
- Inadequate preparation of children to cope with life in a rapidly changing community.
- Increasing segregation of children in the community.
- The increasing numbers of working children, and their unacceptable working conditions.
- Constant exposure of children to war, violence, exploitation and destruction.
- Over-emphasis on unhealthy competition and ‘winning at all costs’ in children's sports.”

The Declaration calls for action by five government departments: health; education, welfare, leisure and planning, for more play-oriented professionals and for fewer commercial or violent games and toys.



“... the State Party is encouraged to provide more appropriate playgrounds for children.”
(Togo IRCO, Add.83, paras. 25 and 49. See also, for example, United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 32; Bangladesh IRCO, Add.74, para. 25; Central African Republic IRCO, Add.138, para. 73; Marshall Islands IRCO, Add.139, paras. 52 and 53)

Children's recreational activities tend to be similar to adult recreational pursuits – sports, games, films, crafts and so forth. The questions to be asked here are: do children have equal access to recreational facilities? Are resources for recreational activities equitably distributed between children and adults?

Traditional and modern recreational activities in Madagascar

“Madagascar has a complex sociocultural range of traditional games. Old traditions of children's games and songs are still found in the remotest rural areas. Older boys play games that tend to be violent, while older girls' games imitate family life. As they approach maturity, and without giving up games that provide physical exercise (balls made of rags, wrestling for boys, training of oxen, boat races, etc.) children engage in traditional games with riddles, proverbs, etc. helping to develop a knowledge of popular literature (stories, legends, traditional theatre, improvised choir singing). This tradition of games and leisure activities originating in ancient customs still exists. It should not be abandoned for more ‘modern’ leisure activities, but should be integrated with the changes that are a result of the intense traffic passing through Madagascar: toys, imported games, collective performances by artistic groups. Such a symbiosis may be achieved within traditional communities and also through youth associations (churches, the scout movement, extracurricular and postschool activities)... However, very definite reservations have to be made about activities considered as leisure that may endanger the child's moral health and harmonious mental development: (a) In the traditional field: betting on fights between small animals (such as drugged chameleons) or cock fights ending in the death of one of the animals; (b) In the ‘modern’ field: pin-table football, video films shown without discernment or dances held on official occasions or for popular festivals that unfortunately degenerate into drinking bouts or brawls.” (Madagascar IR, paras. 233-236)



One may also ask: are some children's activities genuinely recreational? Children can be coerced into activities called recreation but which they would not choose to do if left to themselves, and give them little pleasure. Modern agricultural methods, spiralling traffic demands and poor city planning are all the enemy of children's play. Television and computer games, though providing culture and entertainment, must also be seen as sometimes inimical to play and recreation "appropriate to the age of the child". Medical organizations in the developed world are reporting with alarm the "coronary time bomb" arising from the new phenomenon of children spending most of their time inside schools, homes and cars, in front of televisions and computers.

Children's right "to participate freely in cultural life and the arts"

This right encompasses both the right of children to join with adults in their cultural and artistic

pursuits and the right to child-centred culture and arts; it also includes the right of children to be both consumers and producers of arts and culture. Thus, children should not be barred from adult events or performances without good reason (for example because the child might be psychologically harmed or because young infants might disrupt a performance). In addition, children should be given opportunities to participate in all forms of cultural and artistic activity as well as enjoy performances and exhibitions designed specifically for their pleasure.

This right obviously relates to children's rights under article 13 (freedom of expression), article 15 (freedom of association), article 17 (access to the media and to children's books) and article 30 (enjoyment of minority cultures). And given the essentially voluntary and pleasurable nature of the right, the principles of article 12 (taking account of children's views) should be given high priority.

It should be noted that children's views of what they want in recreational pursuits are often ener-

Recreational opportunities cut back for Mongolian children

"We could say that before 1990 there existed a complex system of activities for children to be involved in during their leisure time. But with the political and economic reform, the change in the administrative units of Mongolia and the reorganization of public organizations, certain changes have transpired with regard to their functions, structure and activities. With privatization, many of the cultural clubs, libraries, cinema houses, sport halls and museums were closed down over the last three years; many of the establishments designed to conduct children's activities have changed their orientation. As a result, the number of children attending leisure-time activities has necessarily been decreased. The decline in the number of children participating in these activities is closely linked to the introduction of fees for all these courses and activities. There is a new demand to conduct activities linked with production of marketable goods..." (Mongolia IR, para. 200)

Cultural opportunities opened in Mexico, Denmark, Norway, Italy and Bulgaria

Mexico described a programme initiated over a decade ago for stimulating children's access to culture, which includes drama, art, poetry and writing workshops operating in public institutions in many localities; travelling art collections and non-commercial film performances; a national exhibition of children's paintings, international cultural exchanges and a special cultural journal for children *Tiempo de Niños* (Mexico IR, paras. 221-226). The Danish Ministry of Culture has set up a special Working Group on Children and Culture to encourage initiatives such as the 'Try your own' scheme, and an experiment to open up established cultural institutions to children. The Youth and Adult Education Act 1991 gives special priority to children including the allocation of financial resources for leisure-time activities (Denmark IR, paras. 273-276). The Norwegian Council of Culture has also implemented an experimental programme called 'Try it yourself', in which children are allowed to initiate and organize their own cultural activities with a grant from the central authorities (Norway IR, para. 405). Italy reported to the Committee about a new statute requiring all local authorities to make facilities available to children for their physical exercise (Italy IR, para. 185). Bulgaria described its "National Palace for Children", offering 45 different courses in arts, sports, science and technology, for children to use in their leisure time. Four thousand children have voluntarily attended these courses. The Palace is half-funded by the State, collecting the other half from small fees, sponsorships and donations. (Bulgaria IR, para. 218)

getically sought by the commercial world for marketing purpose; these views do, indeed, determine what children get, but, unfortunately, often in terms of the lowest common denominator. However, children's more creative and stimulating participation is sought by those engaged in planning cultural activity – for example the National Canadian Children's Museum has a Children's Advisory Committee composed of children to provide it with ideas on the development and enhancement of programmes and exhibitions (Canada IR, para. 299).

States Parties' obligations to promote and encourage opportunities for children's participation in cultural, artistic, recreational and leisure activities

Because children lack both money and power, they are dependent on the adult world, including the Government, for their access to recreational, sporting and cultural opportunities. Mongolia painted a bleak picture to the Committee of the leisure activities of children in its post-communist period, which highlights the need for active State measures. Other countries, however, reported exciting initiatives under article 31 (see box opposite). Analysis of government spending on culture, sports and the arts often reveals an unjustifiably small proportion of resources being used for children's benefit.

Equal opportunities

Along with many of the Convention's provisions, certain categories of children need more attention and resources in order to enjoy their rights under article 31. Poor children are not necessarily deprived of leisure and culture – children from the poorest communities of the world have some of the richest lives in these terms. But poverty of environments, particularly in urban ghettos, the cost of many modern recreational activities and the need to work are obvious obstacles to the exercise of article 31 rights. State measures in this area may, therefore, have to be targeted on poorer children, as in Germany which the Committee commended for its *"... commitment to undertake measures to improve poorer children's access to out-of-school activities, including leisure activities."* (Germany IRCO, Add.43, para. 31)

Other countries were encouraged to make greater efforts to combat discrimination in this area:

"Though the Committee is aware that the reform of the primary education curricula has

included measures to fulfil the rights of the child to leisure and recreational and cultural activities, it remains concerned about the insufficiency of these measures, in particular for children living in urban-poor and rural areas. In the light of article 31 of the Convention, the Committee recommends that the State Party strengthen its measures to improve children's access to leisure and to recreational and cultural activities, especially for the most vulnerable groups of children." (Ecuador IRCO, Add.93, para. 27)

"The Committee notes with concern that many children, especially in Black communities, do not enjoy the right to leisure, recreation and cultural activities... In light of article 31, the Committee recommends that the State Party take effective measures to ensure that children, especially those in Black communities, enjoy the right to leisure, recreation and cultural activities." (South Africa IRCO, Add.122, para. 34)

Resources should be directed towards children of all ages. Infants and children of primary school age are as much in need of the stimulation and enjoyment of recreation as are older children, as was pointed out to Belize :

"The Committee expresses its concern at the lack of policies and programmes aimed at mother and child interaction activities within the home to promote leisure and creative play for children, particularly those under the age of two years. The Committee notes that such activities have a crucial bearing on the development of the child's cognitive abilities and their social and emotional development. In light of article 31 of the Convention, the Committee recommends that the State Party undertake studies on play involving mother and child interaction with a view to developing adequate programmes and policies in this regard." (Belize IRCO, Add.99, para. 23)

In addition, children with disabilities need particular assistance in gaining access to or using recreational facilities, and particular stress needs to be given to inclusive forms of recreation. Disabled children may receive special education separately from their peers, so recreation may be the only opportunity for integrated activities and is thus particularly important (see box on page 472).

Children in closed institutions, such as hospitals or forms of detention, will also require special measures. The Committee told Hong Kong that it:

"notes with appreciation the initiatives taken to make hospitals more baby and child friendly, including the measures being taken to improve paediatric ward facilities in hospitals and also to provide play areas for children in



Culture, recreation, sport and disability

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides:

“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 theatres 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.”

paediatric wards and areas for parents to stay with their children in hospital” (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 7)

As regards children whose liberty has been restricted, the Committee raised the matter with the Russian Federation and expressed

“its concern as to the compatibility of juvenile justice and penitentiary institutions with article 37 of the Convention and how the rights of the child to leisure and contacts with the family and the best interests of the child are protected in such situations”. (Russian Federation IRCO, Add.4, para. 14)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty is quite clear on these rights:

“18(c). Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice...

“47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in

the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.”

Finally, although not specifically raised by the Committee, the discrimination against girls in this area should be mentioned, since it is an almost universal phenomenon that domestic chores give girls less time to play than boys, and that where play space is available boys take up an unequal amount. Adults cooperating with children can usually remedy this, but measures are needed.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 31, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 31 is relevant to the **departments of culture and sport, education, labour, health, welfare and planning**)
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 31 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 31 likely to include the training of **play workers, town and environment planners, employment inspectors, administrators of art and culture, artists, teachers and social workers**)?

● Specific issues in implementing article 31

- ☐ Are necessary measures taken to secure the right of the child to rest and leisure?
- ☐ Do such measures include prohibitions on children working at night or working throughout all school holiday periods?
- ☐ Have ILO Conventions Nos. 79 and 90 been ratified?
- ☐ Do compulsory school hours and homework regimes allow for rest and leisure periods?
- ☐ Does environmental planning take into account the play needs of children?
- ☐ Does this planning take account of children's views of what is needed?
- ☐ Are play and recreational opportunities appropriate to all ages of children (including preschoolers and teenagers) available without discrimination?
- ☐ Are resources allocated for sports, culture and the arts divided fairly between adults and children?

How to use the checklists, see page XVII



- ☐ Do all children have reasonable access to all cultural and artistic events?
- ☐ Are there any limitations on the participation of all children in cultural life and the arts?
- ☐ Are cultural and artistic events organized specially for children?
- ☐ Are children given access to cultural and artistic events through financial concessions or discounts?
- ☐ Do disabled children have access to integrated recreational, cultural and artistic activities?
- ☐ Do children in hospital have opportunities for play and recreational activities?
- ☐ Do children in institutions have opportunities for play, sports and recreational, artistic and cultural activities?
- ☐ Do children whose liberty has been restricted have opportunities for physical exercise, recreation and artistic or cultural activities?
- ☐ Are measures taken to ensure that girls have as equal an opportunity as boys for rest, leisure, play and recreation and to enjoy cultural and artistic activities?

Reminder: The Convention is indivisible and its articles are interdependent.
Article 31 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 31 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 15: freedom of association

Article 16: protection of privacy

Article 17: access to information, role of the media

Article 28: aims of education

Article 30: respect for minority or indigenous culture

Article 32: child labour

Article 36: protection from exploitation

Child labour



Text of Article 32

1. *States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*
2. *States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*
 - (a) *Provide for a minimum age or minimum ages for admission to employment;*
 - (b) *Provide for appropriate regulation of the hours and conditions of employment;*
 - (c) *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Article 32 recognizes the right of the child to be protected from economic exploitation; and from any work that is likely

- to be hazardous, or
- to interfere with the child's education, or
- to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The article requires States Parties to take legislative, administrative, social and educational measures to ensure implementation, and in particular to provide:

- a minimum age or ages for admission to employment;
- appropriate regulation of the hours and conditions of employment; and

- appropriate penalties or other sanctions to ensure effective enforcement.

States Parties must have regard "to the relevant provisions of other international instruments": the most relevant are International Labour Office Conventions and Recommendations. Most recently, in 1999, the General Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention, 1999 (No.182) (see Appendix 4, page 744). Of previous ILO Conventions, the Committee on the Rights of the Child has identified the Minimum Age Convention, 1973 (No.138) as of key importance and it consistently encourages States Parties to ratify this and the new Convention. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(c) Children in situations of exploitation including physical and psychological recovery and social reintegration (art. 39)

(i) Economic exploitation, including child labour (art. 32);

...".

(CRC/C/5, para. 23)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES

....

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

1. Economic exploitation of children, including child labour (art. 32).

Please provide information on the measures taken, including of a legislative, administrative, social and educational nature, to recognize and ensure the right of the child to be protected from:

Economic exploitation;

Performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In this regard, reports should in particular indicate:

Whether legislation has included a prohibition, as well as a definition, of hazardous and harmful work, and/or of the activities considered to be hazardous, harmful to the child's health or development or to interfere with the child's education;

Any preventive and remedial action undertaken, including information and awareness campaigns, as well as education, in particular compulsory education, and vocational training programmes, to address the situation of child labour both in the formal and informal sector, including as domestic servants, in agriculture or within private family activities;

The measures adopted to ensure respect for the general principles of the Convention, particularly non-discrimination, the best interests of the child, the right to life, and survival and development to the maximum extent possible.

Please also indicate the appropriate measures adopted pursuant to article 32, paragraph 2, and having regard to the relevant provisions of other international instruments, including measures at the legislative and administrative levels, to provide in particular for:

A minimum age or minimum ages for admission to employment;

Appropriate regulation of the hours and conditions of employment;

Appropriate penalties or other sanctions to ensure the effective enforcement of this article, and any mechanism of inspection and system of complaint procedures available to the child, either directly or through a representative.

In this regard, reports should also provide information on the international conventions and other relevant instruments to which the State may be a party, including in the framework of the International Labour Organization, as well as on:

Any national policy and multidisciplinary strategy developed to prevent and combat situations of children's economic exploitation and labour;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used;

Relevant programmes of technical cooperation and international assistance developed;

The progress achieved in the implementation of this article, benchmarks set up as well as difficulties encountered;

Relevant disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin, as well as on infringements observed by inspectors and sanctions applied."

(CRC/C/58, paras. 151-154. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 107, and 161; for full text of *Guidelines*, see Appendix 3, page 674.)



International instruments and standards concerning child labour

The International Labour Organization (ILO)

According to the International Labour Organization's Bureau of Statistics, there are at least 120 million children between the ages of 5 and 14 working full time (and about 250 million if those who are combining work and schooling are included). These estimates do not cover children who are engaged in regular non-economic activities, including those who provide services of a domestic nature on a full-time basis in their parents' or guardians' households. While a majority are in developing countries, there are pockets of child labour in industrialized countries. Data suggests that more boys than girls work. But the ILO notes that statistical surveys often underestimate numbers of working girls by not taking account of unpaid economic activity carried out in and around the household (also more girls than boys perform full-time housework of a non-economic nature). The ILO has developed the Statistical Information and Monitoring Programme (SIMPOC) to assist individual States in generating comprehensive quantitative and qualitative data on child labour (see www.ilo.org/public/english/standards/ipecc/sim-poc/index.htm).

The International Labour Organization states that numerous children are still trapped in slav-

ery in many parts of the world. "Some bondage practices are virtually indistinguishable from chattel slavery of 200 years ago, except that the markets are not so open. Children are sold outright for a sum of money. Sometimes landlords buy child workers from their tenants or, in a variant of the system, labour 'contractors' pay an advance sum to rural families in order to take their children away to work in carpet-weaving, in glass-manufacture, in prostitution... One of the most common forms of bondage is family bondage, where children work to help pay off a loan or other obligation incurred by the family... Perhaps most widespread of all are informal bondage arrangements under which impoverished parents surrender their children to outsiders simply to work in exchange for their upkeep, on the assumption that they will be better provided for as unremunerated servants in an affluent household than they could be in their own families."

Commercial sexual exploitation is a contemporary form of slavery involving millions of children – including many bought and sold across national borders by organized networks (*Child labour: Targeting the intolerable*, ILO, 1996, pp. 15 and 16. See also article 34, page 505, article 35, page 521 and Optional Protocol on the sale of children, child prostitution and child pornography, page 647).

The ILO sees priorities as the targeting of scarce resources on the most intolerable forms of child labour such as slavery, debt bondage, child prostitution and work in hazardous occupations

“The single most important source of child exploitation and child abuse in the world today...”

“Numerous children work in occupations and industries which are plainly dangerous and hazardous. They are found in mines, in factories making glass bangles, matches and fireworks, in deep-sea fishing, in commercial agriculture and so on:

- Working children suffer significant growth deficits compared with children in school: they grow up shorter and lighter, and their body size continues to be small even in adulthood.
- Both anecdotal evidence and statistical surveys indicate that far too many working children are exposed to hazardous conditions which expose them to chemical and biological hazards. For example, according to one large-scale ILO national survey in the Philippines, more than 60 per cent of working children are exposed to such hazards and, of these, 40 per cent experience serious injuries or illnesses including amputations and loss of body parts.
- Large numbers of working children work under conditions which expose them to substances with long latency periods – for example, asbestos – which increases the risk of contracting chronic occupational diseases such as asbestosis or lung cancer in young adulthood...
- In rural areas, more children are believed to die of exposure to pesticide than from the most common childhood diseases put together, according to a study on occupational health in developing countries.
- Children in certain occupations are especially vulnerable to particular types of abuse. For example, many studies confirm that child domestic workers are victims of verbal and sexual abuse, beating or punishment by starvation.

Child labour is simply the single most important source of child exploitation and child abuse in the world today”.

(Extracts from *Child labour: Targeting the intolerable*, ILO, 1996, pp. 3 and 4)

and industries, and on the very young: “This approach has the additional advantage that policies designed to reach the children in most need are likely to benefit other working children and that focusing on the most socially repugnant examples can help maintain the necessary social commitment and consensus.”

The ILO emphasizes in particular “the invisibility of endangered children. One reason why modern societies and governments have not been more active in curbing the most harmful forms of child labour is that working children are often not readily visible. It is a matter of ‘out of sight, out of mind’.” (*Child labour: Targeting the intolerable*, p. 20).

International labour conventions

Since 1919, the International Labour Organization has adopted a number of international conventions concerning child labour, which are supplemented by recommendations. The Minimum Age (Industry) Convention, 1919 (No.5) prohibits children under the age of 14 from working in industrial establishments. Subsequently, nine other sectoral Conventions on the minimum age of admission to employment were adopted, applying to industry, agriculture, trimmers and stokers, maritime work, non-industrial employ-

ment, fishing and underground work. Many other ILO standards contain provisions setting minimum ages for various activities. Furthermore, general international labour Conventions regarding freedom of association, discrimination, wages and safety and health apply to all workers regardless of age. And such problems as exploitation of children through debt bondage and other “contemporary forms of slavery”, such as child prostitution, are examined in the framework of the Forced Labour Convention, 1930 (No.29) (applying to all “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”); by 2001, the Convention had been ratified by 158 countries.

ILO Minimum Age Convention (No.138) and Recommendation (No.146)

The most comprehensive ILO instruments on child labour are the Minimum Age Convention, 1973 (No.138) and Recommendation (No.146). Convention No.138, in particular, has been upheld by the Committee on the Rights of the Child as a relevant standard, and States Parties that have not already ratified it have been urged to do so by the Committee (see below, page 489). The Minimum Age Convention is a consolidation of principles

that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether the children are employed for wages or not (for details, see “ages” below, page 488). According to the ILO: “The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives. Recommendation No.146, which supplements Convention No.138, provides the broad framework and essential policy measures for both the prevention of child labour and its elimination.” (*Child labour: Targeting the intolerable*, p. 24)

By January 2002, 116 States had ratified Convention No.138.

The 1999 Worst Forms of Child Labour Convention (No.182)

On 17 June 1999, the Worst Forms of Child Labour Convention (No.182) was adopted by the General Conference of the ILO. The Conference also adopted the Worst Forms of Child Labour Recommendation (No.190), supplementing the Convention.

The new Convention (see Appendix 4, page 744) requires Member States which ratify it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (article 1).

The “worst forms of child labour” are defined in article 3 (see box). The definition includes work “likely to harm the health, safety or morals of children”. It is left to States to determine what types of work fall within this definition, in consultation with employers’ and workers’ organizations and taking into account international standards. Member States must design and implement programmes of action to eliminate the worst forms of child labour as a priority, design appropriate mechanisms for monitoring implementation, take time-bound measures for prevention, provide support for the removal of children from the worst forms of child labour and for their rehabilitation and access to free basic education or vocational training. It calls for international cooperation or assistance with implementation, including support for economic development, poverty eradication and education.

The supplementing Recommendation (No.190) offers a wide range of guidelines for action for implementation, including on international cooperation, wide social mobilization (including consulting with the children directly affected by the worst forms of child labour) and enforcement (see box, page 480).

The Convention came into force on 19 November 2000. By January 2002, it had been ratified by 115 countries. Under the provisions of the ILO Constitution, each Member State has to make an annual report on the application of the conventions to which it is a party. The Constitution also provides for representations alleging non-observance to be made by workers’ or employers’ organizations (national or international) to a commission established by the Governing Body of ILO. Also complaints may be made by a State alleging non-observance by



Defining the worst forms of child labour

For the purposes of this Convention, the term “the worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

(Article 3, ILO Convention on the Worst Forms of Child Labour, 1999 (No.182). For full text see Appendix 4, page 744)

ILO Recommendation on the Worst Forms of Child Labour

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as “the Convention”), and should be applied in conjunction with them.

I. Programmes of action

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, *inter alia*:
 - (a) identifying and denouncing the worst forms of child labour;
 - (b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;
 - (c) giving special attention to:
 - (i) younger children;
 - (ii) the girl child;
 - (iii) the problem of hidden work situations, in which girls are at special risk;
 - (iv) other groups of children with special vulnerabilities or needs;
 - (d) identifying, reaching out to and working with communities where children are at special risk;
 - (e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, *inter alia*, to:
 - (a) work which exposes children to physical, psychological or sexual abuse;
 - (b) work underground, under water, at dangerous heights or in confined spaces;
 - (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
 - (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
 - (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.
4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers’ and employers’ organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

III. Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.
 - (2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.
 - (3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.
7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.
8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.
9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.
10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.
11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:
 - (a) gathering and exchanging information concerning criminal offences, including those involving international networks;
 - (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;
 - (c) registering perpetrators of such offences.
12. Members should provide that the following worst forms of child labour are criminal offences:
 - (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
 - (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and
 - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.
13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.
14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.
15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:
 - (a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;
 - (b) involving and training employers' and workers' organizations and civic organizations;
 - (c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;
 - (d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;
 - (e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;
 - (f) encouraging the development of policies by undertakings to promote the aims of the Convention;
 - (g) monitoring and giving publicity to best practices on the elimination of child labour;
 - (h) giving publicity to legal or other provisions on child labour in the different languages or dialects;
 - (i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;
 - (j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;



- (k) as far as possible, taking into account in national programmes of action:
 - (i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and
 - (ii) the need for sensitizing parents to the problem of children working in such conditions.
- 16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:
 - (a) mobilizing resources for national or international programmes;
 - (b) mutual legal assistance;
 - (c) technical assistance including the exchange of information;
 - (d) support for social and economic development, poverty eradication programmes and universal education.

(Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No. 190), adopted on 17 June 1999)

another State (where both are parties to the Convention).

At its 86th Session in June 1998 the International Labour Conference adopted the Declaration on fundamental principles and rights at work, which declares that all Members, even if they have not ratified specific conventions, have an obligation to respect, to promote and to realize the fundamental rights which are the subject of the conventions, including the elimination of all forms of forced or compulsory labour and the effective abolition of child labour.

ILO's International Programme on the Elimination of Child Labour

ILO's International Programme on the Elimination of Child Labour (IPEC) is now operational in more than 60 countries. Initiated in 1992, it assists countries in elaborating and implementing comprehensive policies and targeted programmes and projects. Participating countries sign a "Memorandum of Understanding" with the ILO, under which national steering committees are established. (For details see www.ilo.org/childlabour).

The ILO suggests that a national policy and programme of action needs to contain at least the following elements:

- a definition of national objectives regarding child labour;
- a description of the nature and context of the problem;
- identification of the priority target groups;
- a description of the priority target groups;
- a description of the intervention approaches to be used;
- designation of the institutional actors to be involved.

(Child labour: Targeting the intolerable, p. 100; see also The State of the World's Children 1997, UNICEF, p. 19)

New Optional Protocol to the Convention on the Rights of the Child

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted by the United Nations General Assembly on 25 May 2000 (for full commentary, see page 641). Its Preamble refers to ILO Convention No.182. It requires States which ratify the Optional Protocol to ensure, as a minimum, that various acts and activities are fully covered under their criminal or penal law, "whether these offences are committed domestically or transnationally or on an individual or organized basis". These acts and activities include: "offering, obtaining, procuring or providing a child for child prostitution" (defined as "the use of a child in sexual activities for remuneration or any other form of consideration"); and "producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography" (defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose"). Among the acts and activities related to sale of children is "the offering, delivering, or accepting by whatever means a child for the purpose of ... engagement of the child in forced labour" (article 3(1)).

International Bill of Human Rights and child labour

The International Bill of Human Rights – the Universal Declaration of Human Rights and the two International Covenants, on Economic, Social and Cultural Rights and on Civil and Political Rights – includes various provisions relevant to child labour.

The Universal Declaration of Human Rights asserts: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (article 4). Article 8 of the International Covenant on Civil and Political Rights expands on this:

“1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term ‘forced or compulsory labour’ shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.”

Article 23 of the Universal Declaration of Human Rights asserts the right to work:

“1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.”

The International Covenant on Economic, Social and Cultural Rights also asserts in more detail the right to work and to just and favourable conditions of work (articles 6 and 7). Paragraph 3 of

ILO Conventions particularly relating to children

Minimum Age (Industry) Convention, 1919 (No.5);

Night Work of Young Persons (Industry) Convention, 1919 (No.6);

Minimum Age (Sea) Convention, 1920 (No.7);

Minimum Age (Agriculture) Convention, 1921 (No.10);

Minimum Age (Trimmers and Stokers) Convention, 1921 (No.15);

Forced Labour Convention, 1930 (No.29);

Minimum Age (Non-Industrial Employment) Convention, 1932 (No.33);

Minimum Age (Sea) Convention (Revised), 1936 (No.58);

Minimum Age (Industry) Convention (Revised), 1937 (No.59);

Minimum Age (Non-industrial Employment) Convention (Revised), 1937 (No.60);

Medical Examination of Young Persons (Industry) Convention, 1946 (No.77);

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.78);

Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79);

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90);

Minimum Age (Fishermen) Convention, 1959 (No.112);

Minimum Age (Underground Work) Convention, 1965 (No.123);

Medical Examination of Young Persons (Underground Work) Convention, 1965 (No.124);

Minimum Age Convention, 1973 (No.138).

Worst Forms of Child Labour Convention, 1999 (No.182).



article 10 of the Covenant requires “special measures of protection and assistance” for all children and young persons: “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

In a General Comment on the right to education, the Committee on Economic, Social and Cultural Rights emphasizes: “States Parties have an obligation to ensure that communities and families are not dependent on child labour.

Constraints on preventing child labour

Nepal's Initial Report records: "It is difficult to control and prevent child labour as the problem is rooted in poverty. Child labour is even more prevalent in the unorganized sector of the economy, and in households, where children usually work as servants. Children supplement labour in the fields and at home from an early age. Children between the ages of six and nine work about three hours a day, while children between the ages of 10 and 14 work five to six hours, with girls putting in nearly twice as many hours as boys. The girl child helps to fetch water and collect fuel and fodder.

"Activities against child labour are centred in urban areas, while the bulk of the population lives in the villages. Legislative provisions alone are not sufficient to safeguard the interests of working children. Unless there is genuine commitment of concerned agencies and individuals as well, child labour cannot be abolished.

"The growing incidence of child labour in the country is a reflection of the existing socio-economic realities... According to Child Workers in Nepal the percentage distribution of child labourers is 86 per cent in agriculture and household work, 6 per cent in services, 3 per cent in business and cottage industries, 2.4 per cent in factories, 0.6 per cent in construction, and 2 per cent in other sectors...

"Children have long been a source of income for the family. As long as families do not have alternative sources of income, child labour in one form or another will continue to be a reality. Hence, certain protective measures are to be undertaken, such as fixing basic minimum wages, providing opportunities for non-formal education and job-oriented training, basing work on the age, sex, and the physical and mental capacity of the children, and reducing working hours..." (Nepal IR, paras. 359-363 and 366)

The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7(2) of the Worst Forms of Child Labour Convention, 1999 (Convention No.182)". (Committee on Economic, Social and Cultural Rights, General Comment 13, 1999, HRI/GEN/1/Rev.5, p. 85)

In relation to traffic in children and child prostitution, in addition to other articles of the Convention on the Rights of the Child (in particular article 33, page 495 and article 34, page 505) and the Optional Protocol on the sale of children, child prostitution and child pornography (page 670), there are various other-relevant conventions, including in particular:

- International Convention for the Suppression of the Traffic in Women and Children, 1921, as amended by Protocol approved by General Assembly of United Nations, 1947;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 (entered into force in 1951) requires (article 1) States to agree to punish "any person who, to gratify the passions of another: 1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; 2. Exploits the prostitution

of another person, even with the consent of that person";

- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956 (entered into force in 1957), article 1(d): "Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour."
- United Nations Convention against Transnational Organized Crime, 2000, with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (see article 35, page 523 and Appendix 4, page 746).

World Summit for Children Declaration and Plan of Action

In 1990, world leaders committed themselves to "work for special protection of the working child and for the abolition of illegal child labour..." (Declaration, para. 20(7)). Progress since the World Summit for Children will be reviewed at the United Nations General Assembly special session on children, to be held 8-10 May 2002, when new goals will be set.

Commission on Human Rights' Programme of Action

In 1993, the Commission on Human Rights adopted a Programme of Action for the Elimination of the Exploitation of Child Labour, submitted to it by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission invited the Committee on the Rights of the Child to bear the Programme of Action in mind when examining States Parties' reports and its other activities. The Programme stresses: "High priority should be given to the elimination of the most odious or degrading forms of child exploitation, in particular child prostitution, pornography, the sale of children, the employment of children in dangerous occupations or for enforced begging and debt bondage... The international community should place particular emphasis on the new phenomena of the exploitation of child labour, such as the use of children for illegal, clandestine or criminal purposes, including their implication in the narcotic drugs traffic or in armed conflicts or military activities... Action should be directed, first, towards the most dangerous forms of child labour and the elimination of work by children under 10 years of age, with a view to the total elimination of child labour as prohibited by the provisions of the relevant international instruments." (Commission on Human Rights, Programme of Action for the Elimination of the Exploitation of Child Labour, 1993/79)

The United Nations Working Group on Contemporary Forms of Slavery has classified the sale and sexual exploitation of children as contemporary forms of slavery (see also article 34, page 505 and article 35, page 521).

The Global Compact

At the World Economic Forum in 1999, the United Nations Secretary-General challenged world business leaders to "embrace and enact" the Global Compact. Among its nine principles are the elimination of all forms of forced or compulsory labour and the effective abolition of child labour. (www.unglobalcompact.org)

Girls and economic exploitation

The Platform for Action of the Fourth World Conference on Women (Beijing, 1995) highlights the particular discriminatory forms of child labour affecting girls. It cites child labour as one of the reasons why, of the 130 million children who in 1990 had no access to primary education, 81 million were girls. Its strategic objective L.6 – "Eliminate the economic exploitation of child labour and protect young girls at work" – promotes the standards in the Convention on the Rights of the Child and ILO

Conventions (Platform for Action, paras. 263 and 282).

The report of the United Nations General Assembly's special session in 2000, following up on the Fourth World Conference on Women, refers to child labour and the heavy burden of domestic responsibilities on girls which has contributed to a lack of opportunities and possibilities for girls to become confident and self-reliant and independent adults (A/RES/S-23/3, para. 33).

Children whose liberty is restricted

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that juveniles under arrest or awaiting trial "should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention" (rule 18(b)). In addition, under rule 44: "All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty." Rules 45 and 46 require that juveniles deprived of their liberty should, whenever possible, be provided with the opportunity to perform remunerated work and have the right to an "equitable remuneration".

Reservations and declarations relating to article 32

Few States Parties have made reservations or declarations in relation to article 32. India made a declaration justifying progressive implementation of the article: "While fully subscribing to the objectives and purposes of the Convention, realizing that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a





State Party.” (CRC/C/2/Rev.8, p. 25) When it examined India’s Initial Report, the Committee encouraged the State to withdraw its declaration as unnecessary (see below, pag 487).

New Zealand noted that it considered the rights of the child, provided for in article 32(1), “are adequately protected by its existing law. It therefore reserves the right not to legislate further or to take additional measures as may be envisaged in article 32 (2)” (CRC/C/2/Rev.8, p. 34). When it examined New Zealand’s Initial Report, the Committee expressed concern at

“the broad nature of the reservations made by the State Party”. (New Zealand IRCO, Add.71, para. 8)

The right of the child to protection from economic exploitation

As noted in the summary to this section, the first paragraph of article 32 requires States to recognize the right of the child to be protected from economic exploitation and from performing any work which is likely to be hazardous, interfere with the child’s education, or be harmful to health or physical, mental, spiritual, moral or social development.

The Committee on the Rights of the Child held a General Discussion on the “Economic exploitation of the child” in October 1993.

At the conclusion of the General Discussion, the Committee made a public statement and, subsequently, through a working group of its members, framed a set of recommendations (see below). The statement invited financial institutions, including the World Bank and the International Monetary Fund, to a discussion about the need to protect the rights of the child in economic reform programmes.

Second, the Committee recommended that UNESCO take the lead in an international effort to make school education

“a real and effective alternative to exploitative child labour, including child prostitution”.

And, third, it recommended that all Governments *“ratify promptly the International Labour Organization standards on minimum age and on conditions of employment. These international norms should also be incorporated into national legislation – and be enforced.*

“The laws in many countries do not give protection against economic exploitation of children. In other cases, the legislation is consistent with international standards but is not enforced. A system for inspection of work

places is needed in each country. Also, the informal sector of the economy should be systematically controlled.

“The cynicism which has made large-scale exploitation of children possible must now be effectively countered. Violations of the rights of working children should be penalized.

Child prostitution must be severely criminalized; intermediaries, accomplices and ‘clients’ should be penalized. Child pornography should be banned.” (Report on the fourth session, September/October 1993, CRC/C/20, Annex VI, pp. 57 and 58)

The Committee adopted “Recommendations concerning economic exploitation of children” at its fifth session in January 1994. These emphasized that the holistic approach to the human rights of children, stressed in the Convention on the Rights of the Child and in particular in the general principles of the Convention (articles 2, 3, 6 and 12), should be used as a general framework in which to consider situations of economic exploitation of children. It called for “an adequate legal framework and necessary mechanisms of implementation”, as well as periodic assessment and evaluation of progress. The Committee recommended the establishment of a national mechanism for coordinating policies and monitoring the implementation of the Convention, having specific competence in the area of protection from economic exploitation.

Specifically in the area of the protection of the child from economic exploitation, the Committee

“considers the child as a person who should be given the benefit of respect and solidarity within the family and society;

(i) In the case of sexual exploitation or exploitation through work, the Committee considers the child as a victim who should be given the benefit of special protection in terms of health, education and development.

(ii) In any event, the following must be strictly forbidden:

Activities jeopardizing the development of the child or contrary to human values and dignity;

Activities involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude;

Activities that are dangerous or harmful to the child’s harmonious physical, mental and spiritual development or are liable to jeopardize the future education and training of the child;

Activities involving discrimination, particularly with regard to vulnerable and marginalized social groups;

All activities under the minimum ages

referred to in article 32, paragraph 2, of the Convention on the Rights of the Child and in particular those recommended by ILO;

All activities using the child for legally punishable criminal acts, such as trafficking in drugs or prohibited goods.

(iii) In accordance with article 32 of the Convention on the Rights of the Child, every child has the right to be protected from economic exploitation. Taking into consideration the best interests of the child, States Parties must formulate standards or revise legislation in force with a view to ensuring the legal protection of the child from any form of exploitation. States Parties are invited to take all legislative, administrative and other measures aimed at ensuring the protection of the child, taking account of all forms of employment, including employment within the family and in the agricultural sector and informal employment.

(iv) States Parties must also take measures to ensure the rehabilitation of children who, as a result of economic exploitation, are exposed to serious physical and moral danger. It is essential to provide these children with the necessary social and medical assistance and to envisage social reintegration programmes for them in the light of article 39 of the Convention on the Rights of the Child." (Report on the fifth session, January 1994, CRC/C/24, pp. 38-43)

The Committee has reflected these general recommendations in its Concluding Observations on States Parties' reports. In cases where there are allegations of forced labour, the Committee has indicated the most serious concern.

(See also comments on sexual exploitation, another form of forced labour: article 34, page 505.)

In many cases, the Committee has expressed more general concern and made a variety of recommendations, referring to ILO Convention No.138, and more recently to the new Convention No.182, and to the possibility of States Parties seeking technical assistance from the ILO. For example in a particularly detailed observation on India's Initial Report:

"The Committee notes that India was the first country to sign a Memorandum of Understanding with the ILO in 1992 to implement the ILO-IPEC programme. The Committee further notes the amendments to schedules A and B of the 1986 Child Labour (Prohibition and Regulation) Act. Nevertheless, the Committee remains concerned at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants,

and in agriculture, many of whom are working in hazardous conditions. The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

"The Committee encourages the State Party to withdraw its declaration with respect to article 32 of the Convention, as it is unnecessary in the light of the efforts the State Party is making to address child labour. The Committee recommends that the State Party ensure the full implementation of the 1986 Child Labour (Prohibition and Regulation) Act, the 1976 Bonded Labour (System Abolition) Act and the 1993 Employment of Manual Scavengers Act.

"The Committee recommends that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and coverage is expanded to include agriculture and other informal sectors. The Factories Act should be amended to cover all factories or workshops employing child labour. The Beedi Act should be amended so that exemptions for household-based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.

"The Committee recommends that the State Party ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (M.C. Mehta vs. The State of Tamil Nadu and M.C. Mehta vs. Union of India). The Committee recommends that court procedures be simplified, so that responses are appropriate, timely and child-friendly; and to vigorously pursue enforcement of minimum-age standards.

"The Committee recommends that the State Party encourage states and districts to establish and oversee child labour vigilance committees, and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations, and to file First Information Reports.

"The Committee recommends that the State Party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends





that the State Party continue its efforts to carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers', workers' and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals. "The Committee calls upon the State Party to ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes; and that present cooperation between the State Party and relevant United Nations agencies, such as ILO and UNICEF, and NGOs be expanded. The Committee recommends that the State Party ratify ILO Convention No.138 concerning the Minimum Age for Admission to Employment, and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour." (India IRCO, Add.115, paras. 65-71)

The Committee's recommendations cover the need for detailed studies and monitoring, legislative reform, information campaigns, complaints procedures, enforcement, and rehabilitation of child workers. It has often highlighted particular sectors or types of employment, for example the informal labour market:

"The Committee... further suggests that the authorities adopt explicit legislation and measures to protect children from exploitation through child labour in the informal sector." (Ghana IRCO, Add.73, para. 45)

Providing "a minimum age or minimum ages for admission to employment"

Article 32(2)(a) of the Convention requires that a minimum age, or minimum ages, for employment must be set; it does not prescribe any particular ages. But the Committee has indicated that such ages should be established in the light of other international instruments, and in particular ILO Convention No.138 (see full text in Appendix 4, page 709).

Basically, the ILO Convention requires:

- a commitment "to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons" (article 1);

- a minimum age for any employment not less than the age of completion of compulsory schooling and in any event not less than 15 (article 2); and
- a minimum age of 18 "for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons" (article 3).

But in relation to these minimum ages, the Convention allows certain limited exceptions. In relation to the minimum age for any employment or work:

- where the economy and educational facilities are insufficiently developed, a member State may, provided it has consulted with organizations of workers and employers concerned, initially specify a minimum age of 14 years (article 2);
- members that ratify may also list, after consultation, limited categories of work or employment – not hazardous – "in respect of which special and substantial problems of application arise", which are excluded from application of the Convention (article 4);
- members may initially limit the overall application of the Convention, specifying in a declaration branches of economic activity or types of undertakings to which it will be applied. The Convention must be applied as a minimum to: "mining and quarrying, manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers" (article 5);
- excluded from the Convention is work done in schools or other training institutions for general, vocational or technical education, or by persons at least 14 years of age in undertakings under specified conditions (article 6);
- national laws or regulations may permit light work by 13 to 15-year-olds (or 12 to 14 initially), which is not likely to be harmful to their health or development, and does not prejudice their attendance at school or in vocational or training programmes, "or their capacity to benefit from the instruction received" (article 7);
- national laws or regulations may permit employment or work by young people who are at least 15 (or 14 initially) but have not completed their compulsory schooling, provided they meet the above conditions, and the hours

and conditions of employment or work are specified (article 7);

- also after consultation, the competent authority may, by permits granted in individual cases, allow exceptions “for such purposes as participation in artistic performances”; the permits must limit hours and prescribe conditions (article 8).

In relation to hazardous work, members may initially, after consultation, set a minimum age of 16 “on condition that the health and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity” (article 3).

The Committee on the Rights of the Child has consistently referred to the standards set by ILO Convention No.138 in relation to minimum ages for employment, and also on occasion to the proposals in ILO Recommendation No.146 (which calls on States to take as their objective the progressive raising to 16 of the minimum age of employment) and to other ILO Conventions. It has congratulated States which have already ratified Convention No.138 and urged many others to do so. It has emphasized the importance of proof of age being required. For example:

“The Committee recommends that the State Party ensure that the minimum age for admission to employment is enforced. Employers should be required to have and produce on demand proof of age of all children working on their premises. A national mechanism to monitor the implementation of standards at State and local levels should be established and empowered to receive and address complaints of violations.” (Armenia IRCO, Add.119, para. 51. See also Kyrgyzstan IRCO, Add.127, para. 56; Egypt 2RCO, Add.145, para. 50)

To many other States the Committee has urged conformity with the standards of the Convention and ILO Conventions.

Work and education

Paragraph 1 of article 32 requires protection of the child from performing any work that is likely to “interfere with the child’s education”. As indicated above, in its general recommendations on economic exploitation, the Committee has highlighted the inter-connection between the right to education, guaranteed by article 28 (see page 405), and exploitation in child labour. In addition, article 28 requires States to “Take measures to encourage regular attendance at schools and the reduction of drop-out rates” – for example by introducing more relevant curricula or providing grants to poor families (see article 28, page 420). The Worst Forms of Child Labour

Convention, 1999 (No.182) notes the importance of free basic education in its Preamble and requires ratifying States to ensure access to free basic education for all children removed from the worst forms of child labour.

During discussion of El Salvador’s Initial Report, a Committee member stated: “As far as the employment of children was concerned, while legislation appeared to draw a balance between work and school, access to education did not only mean school attendance. It also meant ensuring that a child had the time to think about what he was learning, to do homework, and also to have the time to play and to be a child...” (El Salvador SR.86, para. 62)

The Committee has indicated that some flexibility is permitted regarding “seasonal” work. During discussions with Egyptian Government representatives, a Committee member said: “It was not an intention of the Convention or the ILO Conventions to prevent children from supporting their families by doing domestic chores or helping with the harvest. But two clear aims were to ensure that all children received at least primary education and were not required to do physically or mentally hazardous work.” (Egypt SR.68, para. 44)

In its examination of States Parties’ reports, the Committee has highlighted any differences between the age for the completion of compulsory schooling and the age for admission to employment, and has proposed that they should be equalized (the *Guidelines for Periodic Reports* asks for information on the ages set for these purposes under article 1, definition of the child, see page 9).

Providing “appropriate regulation of the hours and conditions of employment”

Article 32 requires detailed regulation in those instances in which children are permitted to work – above the minimum ages and where the work is not likely to be hazardous, interfere with the child’s education or be harmful to the child’s health or physical, mental, spiritual, moral or social development. ILO Convention No.138 indicates the exceptions permitted and also requires that hours of work and conditions be prescribed. There are also various ILO Conventions protecting children from working at night (see box, page 483; see also child’s right to rest and leisure, article 31, page 467). In some cases the Committee has expressed concern at the lack of “adequate protection”.





One important issue not dealt with explicitly in the Convention on the Rights of the Child is that of medical examinations for working children. ILO Conventions Nos.77, 78 and 124 provide for a thorough medical examination to determine fitness for employment prior to engagement and also continued medical supervision until the age of 18; such examinations “shall not involve the child or young person, or his parents, in any expense”.

Providing “appropriate penalties or other sanctions to ensure the effective enforcement of the present article”

The Committee has proposed various components of “effective enforcement” as required by article 32(2)(c), including a labour inspectorate, complaints procedure (see also article 12, page 171), and adequate penalties in cases of non-compliance. These should cover all forms of employment and work, including in the informal sector. For example:

“The Committee recommends that the Labour Law be amended to ensure that children working in family enterprises, agricultural activities and as domestic labour are protected and that inspections extend to these areas. Employers should be required, to have, and produce on demand, proof of age of all children working on their premises and the State Party should vigorously pursue enforcement of minimum-age standards.”
(Jordan 2RCO, Add.125, para. 58)

ILO Convention No.138 requires that “all necessary measures, including the provision of appropriate penalties” must be taken by the competent authority to ensure effective enforcement. National laws or regulations or a competent authority must also define who is responsible for compliance with the Convention, and what registers or other documents must be kept, recording names and dates of birth (“duly certified wherever possible”) of all under-18-year-olds employed or in work (article 9).

The Committee has indicated that it expects to see protection from economic exploitation reflected in detail in national legislation.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 32, including:

- ☐ identification and coordination of the responsible departments and agencies at all levels of government (article 32 is particularly relevant to **departments of employment, industry, agriculture, social welfare, education**)?
- ☐ identification of relevant non-governmental organizations/civil society partners?
- ☐ a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- ☐ budgetary analysis and allocation of necessary resources?
- ☐ development of mechanisms for monitoring and evaluation?
- ☐ making the implications of article 32 widely known to adults and children?
- ☐ development of appropriate training and awareness-raising (in relation to article 32 likely to include the training of **all those responsible for inspection and enforcing employment legislation, teachers and social workers, and parenting education**)?

● Specific issues in implementing article 32

Has the State launched or promoted information campaigns

- ☐ for children themselves on the measures of protection they can benefit from and the risks involved in situations of economic exploitation?
- ☐ for the public, including training activities for professional groups working with or for children, to help achieve effective protection of children against economic exploitation?
- ☐ for employers and potential employers?

Does legislation, policy and practice in the State protect children from

- ☐ economic exploitation?
performing any work which
 - ☐ is hazardous?
 - ☐ interferes with the child's education?
 - ☐ is harmful to the child's health or physical, mental, spiritual, moral or social development?

- ☐ involves cruel, inhuman or degrading treatment, the sale of children or servitude?
- ☐ involves activities in which the child is used for legally punishable criminal acts, such as trafficking in drugs or prohibited goods?
- ☐ is incompatible with the realization of other rights in the Convention?

Has the State

- ☐ ratified the ILO's Worst Forms of Child Labour Convention, 1999 (No.182)?
- ☐ ratified the ILO's Minimum Age Convention, 1973 (No.138)?
- ☐ ratified the ILO's Forced Labour Convention, 1930 (No.29)?
- ☐ considered the implications for law, policy and practice of ILO's Minimum Age Recommendation (No.146)?
- ☐ If not, is the State considering these actions?
- ☐ Has the State defined in legislation a minimum age for employment that is equal to the age of completion of compulsory education and not less than 15?
- ☐ Has the State considered adjusting the periods of compulsory education with any seasonal patterns of work for families?
- ☐ Has the State defined in legislation 18 as the minimum age for admission to any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons?
- ☐ Has the State defined in legislation or by the decision of a competent authority the types of employment or work to which this minimum age of 18 applies?

Has the State defined in legislation limited exemptions

- ☐ prescribing the conditions under which children are allowed to do work in schools or other training institutions for general, vocational or technical education?
- ☐ enabling those aged 14 and over to do work as an integral part of a course of education or training (consistent with the conditions set out in article 6 of ILO Convention No.138)?
- ☐ defining any forms of "light work" which 13- to 15-year-olds are permitted to perform, which are not likely to be harmful to health or development or prejudice their education?
- ☐ defining hours and conditions for employment or work, if permitted, for those who are at least 15 but have not completed compulsory schooling?
- ☐ allowing limited employment or work for such purposes as participation in artistic performances, through a system of permits granted in individual cases (as set out in article 8 of ILO Convention No.138)?
- ☐ defining hours and conditions for employment of children in all cases in which employment or work is permitted?
- ☐ Has the State ensured adequate arrangements for medical examinations in connection with child employment?

How to use the checklists, *see page XVII*



In relation to effective enforcement of its legislation on child labour, has the State ensured through legislation and otherwise

- ☐ adequate inspection of situations of work or employment?
- ☐ that employers are required to have and produce on demand proof of age of all children working for them?
- ☐ adequate access for children to effective complaints procedures?
- ☐ appropriate penalties or other sanctions for non-compliance?
- ☐ adequate record-keeping and reporting in relation to any employment of children?
- ☐ the collection of adequate disaggregated data?
- ☐ that the persons responsible for compliance with provisions concerning child labour are defined?
- ☐ Are appropriate measures taken to reintegrate and rehabilitate victims of harmful or exploitative child labour?

Reminder: The Convention is indivisible and its articles are interdependent. Article 32 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is related to that of article 32 include:

Article 15: freedom of association (trade unions)

Article 27: adequate standard of living

Article 28: right to education

Article 31: right to leisure, play and recreation

Article 33: illicit production and trafficking in drugs

Article 34: sexual exploitation

Article 35: sale, trafficking and abduction

Article 36: other forms of harmful exploitation

Article 39: rehabilitative care for child victims

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

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

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 drugs and 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:

- opium, morphine and opium alkaloids and synthetic morphine (for example heroin);
- coca leaves and cocaine;
- cannabis products (marijuana);
- any 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, stimulants such as amphetamines and hallucinogens such as LSD).

There are also 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 (such as glue) 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 must be read in the context of the whole Convention. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

... (ii) Drug abuse (art. 33)

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by [the previous] paragraph."

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration...

2. Drug abuse (art. 33)

Please indicate all appropriate measures adopted, including legislative, administrative, social and educational measures, to:

Protect children from the illicit use of narcotic drugs and psychotropic substances, as defined in relevant international treaties;

Prevent the use of children in the illicit production and trafficking of such substances.

Reports should also indicate:

The relevant international conventions, including at the regional and bilateral levels, to which the State is a party;

Any arrangements made and structures developed to raise awareness in the general population and amongst children, including through the school system and whenever appropriate by the consideration of this topic by the school curricula;

Any measures undertaken to assist children and their families, including through counselling, advice and helplines, where appropriate of a confidential nature, and policies and strategies designed to ensure the physical and psychological recovery and social reintegration of children concerned;

Any measures designed to monitor the incidence of drug abuse on children, as well as their involvement in the illicit production and trafficking of narcotic and psychotropic substances, progress achieved, difficulties encountered and targets set for the future;

Any relevant disaggregated data, including by age, gender, region, rural/urban area and social and ethnic origin.

In addition, please also provide information on legislative and other measures taken to prevent the use by children of alcohol, tobacco and other substances which may be prejudicial to their health and which may be available with or without restrictions to adults, and on any evaluation made of the effectiveness of such measures, together with relevant disaggregated data on the use by children of such substances."

(CRC/C/58, paras. 155-157. Paragraphs 24 and 159 of the *Guidelines for Periodic Reports* are also relevant to reporting under this article; for full text of *Guidelines*, see Appendix 3, page 674.)

The threat to children

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, rising rates of drug abuse by children and young people are causing alarm worldwide, threatening both the child's development and nations' economic prosperity and social order. The issue is now high on most political agendas and was identified at the World Summit for Children (1990) as needing special attention.

The 1990 World Summit Declaration stated: "We will do our best to ensure that children are not drawn into becoming victims of the scourge of illicit drugs" and the World Summit's Plan of Action said: "Drug abuse has emerged as a global menace to very large numbers of young people and, increasingly, children – including permanent damage incurred in the prenatal stages of life. Concerted action is needed by Governments and intergovernmental agencies to combat illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances to counter this tragedy. Equally important is community action and education, which are vitally needed to curb both the supply of and the demand for illicit drugs. Tobacco and alcohol abuse are also problems requiring action, especially preventive measures and education among young people." (World Summit Declaration, para. 20(7) and Plan of Action, para. 24)

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" (A/RES/S-20/2, para. 6).

The Declaration on the Guiding Principles of Drug Demand Reduction (A/RES/S-20/3) 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. The General Assembly, at its fifty-third session (1998), subsequently emphasized the importance of young people's participation by "continuing to contribute their experiences and to participate in the decision-making processes, in particular in relation to the elaboration of the action plan for the implementation of the

Declaration of the Guiding Principles of Drug Demand Reduction" (resolution A/RES/53/115). The Commission on Narcotic Drugs submitted a more detailed analysis of the phenomenon of drug abuse among young people to the United Nations Economic and Social Council in 2001 which gives regional statistics and reiterates the recommended strategies of the United Nations Drug Control Programme (UNDCP), in the box on page 500. (World situation with regard to drug abuse, with particular reference to children and youth: E/CN.7/2001/4.)

Article 6 of the Convention on the Rights of the Child (children's right to life and optimum development), article 24 (children's rights to health services and health promotion) and article 29 (education to prepare children for responsible life) are also clearly relevant to this issue.

The main international treaties on drugs are the Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, and the Convention on Psychotropic Substances (1971) (see summary above for details of the drugs included in these treaties). In its *Guidelines for Periodic Reports* regarding this article, the Committee asks ratifying States to report on the relevant Conventions to which they are parties.

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. Amphetamine-type stimulants such as ecstasy are also increasingly popular with young people in Europe, North America and certain countries in East Asia and South-East Asia, partly because these drugs are not associated with social exclusion or addiction. In addition, 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 almost all, even though they can be extremely prejudicial to health and addictive. Children's growing bodies and minds are especially vulnerable to damage from all mind- or body-altering substances and States should take all appropriate measures to protect children from their use.

Solvents are widely perceived as being the drug of childhood. 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. 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.





Drug use in the adult population is damaging enough; but when children take drugs they may irreversibly harm their mental or physical growth. 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 744).

Links with other forms of exploitation are also pointed out by the Committee, for example to Poland and Nepal:

“The Committee notes with concern the growing use and involvement of children in criminal activities and the vulnerability of children to sexual abuse, drug abuse, alcoholism, as well as torture and ill-treatment.” (Poland IRCO, Add.31, para. 20)

“The Committee further recommends that firm measures be taken to ensure the right of survival of all children in Nepal, including those who live and/or work in the streets. Such measures should aim at the effective protection of children against any form of exploitation, particularly child labour, prostitution, drug-related activities and child trafficking and sale.” (Nepal IRCO, Add.57, para. 35)

Article 33 obliges States to “protect children from the illicit use of drugs...”, which also includes protecting children from the effects of drug misuse by adults. Parents dependent on drugs may, for example, have babies with consequent physical or intellectual disabilities or have babies born with a drug addiction. In this respect, the Declaration of the Rights of the Child and the Preamble to the Convention on the Rights of the Child both provide that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. Drug abuse by parents or other family members may also result in children being neglected or harmed.

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 Drug Control Programme and other international organizations, for example to India:

“In the light of article 33, the Committee is concerned about the increasing use and traffic in illicit drugs ... and the growing use of tobacco among persons under 18 years, especially girls.

“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 encourages the State Party to continue its efforts to provide children with accurate and objective information about substance use, including tobacco use, and to protect children from harmful misinformation through comprehensive restrictions on tobacco advertising. The Committee recommends cooperation with and assistance from WHO and UNICEF. The Committee further recommends that the State Party develop rehabilitation services for children who are victims of substance abuse.” (India IRCO, Add.115, paras. 72 and 73. See also, for example, Belarus IRCO, Add.17, para. 10; United Kingdom IRCO, Add.34, para. 38; Ghana IRCO, Add.73, para. 46; Russian Federation IRCO, Add.110, paras. 61 and 62; Sierra Leone IRCO, Add.116, para 84; Armenia IRCO, Add.119, paras. 52 and 53; South Africa IRCO, Add.122, para. 38; Georgia IRCO, Add.124, para. 65; Kyrgyzstan IRCO, Add.127, para. 58; Suriname IRCO, Add.130, para. 56; Djibouti IRCO, Add.131, para. 56; Colombia IRCO, Add.137, para. 66; Central African Republic IRCO, Add.138, para. 81)

Understanding drug misuse

The problem of drug misuse 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 it illegal is clearly not enough.

Nothing can be done about the problem without understanding it, and clearly drug misuse 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 to the United Nations International Drug Control Programme (UNDCP) on activities undertaken in the field of drug abuse prevention. The UNDCP 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. 1.1.a))

The criminal aspects of the issue should not obscure the fact that those involved are children,

often very vulnerable children. Bolivia’s Initial Report commented that one of the consequences of drug abuse was “poor self-respect”, but this can equally be identified as one of the causes. The Committee allied the high rates of drug abuse and suicide in its response to Finland’s Initial Report, suggesting

“...additional research be undertaken in the areas of suicide and drug abuse to improve the understanding of those phenomena and generate appropriate measures to deal efficiently with them.” (Finland IRCO, Add.53, para. 27)

The UNDCP 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 in relation to socially excluded groups, such as those in internally displaced people’s camps (for example, in Sierra Leone) or school drop-outs (for example, in Djibouti).



Young people’s participation in drug abuse prevention

“Young people are in many situations considered a target population and a problem, instead of a resource in the prevention of drug abuse. Raising the awareness of young people with essential, accurate and credible information is the first step to mobilize their interest. Furthermore, it is fundamental that their voices are heard in the attempt to raise awareness among policy makers and the public at large and that the suggestions from young people on actions to be undertaken are seriously considered. One example of this is the participation of young delegates from the Drug Abuse Prevention Forum *Youth Vision Jeunesse* to the 20th Special Session of the United Nations General Assembly on the World Drug Problem. The five young delegates took part in two important UN activities: a meeting of the Committee of the Whole, and a panel discussion entitled ‘Children, Young People and Drugs’. They also presented a document, called ‘The Vision from Banff’, containing their view on the issue of drug abuse to the Secretary-General Kofi Annan. Another document, a ‘Youth Charter for a 21st Century Free of Drugs’, was also presented to Mr. Annan. The Charter was developed by young people at a meeting sponsored by UNESCO and the UNDCP in Paris in February, 1998.

“Following the Special Session of the General Assembly, Mr. Annan sent ‘The Vision from Banff’ and the ‘Youth Charter’ to the heads of all member states with a letter supporting the work of the young people and calling on world leaders to ‘match the seriousness of their commitment and not throw in the towel’. In his letter, the Secretary-General drew particular attention to Section 10 of the Vision: ‘... all of us felt that the problems we young people face with respect to drugs are very similar the world over. We want our leaders to join together with us in taking action to prevent drug abuse among young people.’ Many world leaders have since written back to Mr. Annan assuring their commitment to a future in which young people are free from drugs.

“A follow-up to this participation of young people in the policy discussion on drug abuse has been the establishment of the Global Youth Network for the Prevention of Drug Abuse.”

(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. 1.1.e))

Essential elements to be taken into consideration when designing drug prevention 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) Multiple strategies are probably the best way to approach the complexity of the drug abuse problem and the greatest chances of success are likely to come from a combination of different approaches. Ideally, that combination should combine the knowledge/attitude/behaviour approach with health promotion, and the building of self-esteem and resistance skills;

(c) Prevention strategies should try to foster and enhance individual strengths and to develop resilience factors that protect individuals in stressful situations and environments, and should try to give youth a set of specific skills for resisting peer pressure to use drugs, to strengthen personal commitment against drug use and to increase social competency (e.g., in communications or relationships with peers). It is also important to offer young people accessible and low-cost opportunities to meet, cultivate an appreciation for the arts, play sports and take part in other challenging activities that develop self-confidence.

(d) 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.

(e) Prevention 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.

(f) There is an openness among youth to information, if it is factual and does not contrast too sharply with their personal experience of drugs. Scare tactics used in some information material do not serve the purpose for which they are intended, but rather significantly reduce the trust that youth may have in the advice of adults and in some case even encourage risky behaviours.

(g) Prevention programmes should include the family and the community at large in order to reinforce the information that is communicated to the young people in the context of prevention activities.

(h) Substance abuse behaviours usually change very slowly. Thus prevention programmes need to be sustained over a long period of time to be effective.”

(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. 3.3)

“Legislative and administrative” measures against drugs

The Commission on Human Rights Programme of Action for the Elimination of the Exploitation of Child Labour asks countries to ensure the absolute legal prohibition of children employed in work concerned with the trafficking in and production of illicit drugs (1993/79, paras. 20 and 21); this is endorsed by the Worst Forms of Child Labour Convention (see above, page 498). As this work is usually already illegal, countries could, perhaps, be expected to increase sentences on convicted adults if children are engaged in drug trafficking or production. Similarly, criminal codes could ensure that the selling or distribution of drugs to children is treated

as a more serious offence. Canada, for example, reported that it was proposing to introduce legislation that would treat drug dealing in and around schools or involving children as an “aggravating factor” in the commission of drug offences (Canada IR, para. 363). Legal measures are also needed in respect of solvent abuse, in order to fetter 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, or making it an offence to supply solvents to children who are likely to abuse them.

Tobacco use by children, though not strictly covered by this article, is also an area where the State can take legislative measures, for example by banning cigarette advertising or the sale of

cigarettes to children. The Committee pursued this issue with Slovakia:

“The Committee encourages the State Party to provide children with accurate and objective information about substance abuse, including tobacco use; and to protect them from harmful misinformation through comprehensive restrictions on tobacco advertising.” (Slovakia IRCO, Add.140, para. 42)

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 IR, para. 252).

However, it should 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 a deeply ineffective form of protection. The custodial experience may (but does not necessarily) remove children from temptation, but cannot teach them how to cope with the temptation 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 vest legal powers to intervene in cases of child drug abuse in the welfare offices rather than in the criminal justice offices of government.

“Social and educational” measures

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

Not all children have drug education on 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 drug education a high priority (for example Canada, which makes drug education a mandatory part of the school curriculum from grade one and is piloting intensive drug education and counselling for any drug-related incidents (Canada IR, para. 841)), but most importantly anti-drug strategies should take account of the views of children themselves (see box page 499). The Committee encourages “youth-friendly” strategies (for example, Luxembourg IRCO, Add.92, para. 37) and youth peer counselling (for example, Federated States of Micronesia IRCO, Add.86, paras. 19 and 34).

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 services also need to be oriented to drug misuse by children. In many countries the paediatric systems are not competent to handle drug abuse by children and adult treatment centres do not accept under-age clients or patients. Therapeutic rehabilitative services specifically tailored for children and young people are urgently needed, as, for example, the Committee recommended to Finland:

“The Committee ... encourages the State Party to empower positive cultural changes and to pursue its awareness-raising and preventive measures, including drug education in schools. It further recommends that the State Party allocate more resources to the child welfare service system for treatment therapies and rehabilitation services specifically tailored for children.” (Finland 2RCO, Add.132, para. 56. See also Ghana IRCO, Add.73, para. 46)



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?

- ☐ Does the law 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?
- ☐ Does the law prevent the sale of solvents to children without appropriate authorization from parents or other adults?
- ☐ Does the law set a minimum age for the purchase of alcohol and tobacco?
- ☐ Have any surveys been undertaken to assess the scale of drug misuse among children?

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

- ☐ identify risk factors?
- ☐ identify preventive strategies?
- ☐ identify rehabilitative 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 therapies and rehabilitative services, specifically tailored for children who abuse drugs, available in the health or social welfare sectors?
- ☐ Are rehabilitative interventions, based on the best interests of the children concerned, available to parents and other family members who abuse drugs?
- ☐ Are the views of children taken into account when anti-drug policies and strategies are devised and implemented?
- ☐ Do legal interventions aim at 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 other adults informed about the early symptoms of drug abuse in children and about sources of help?



Reminder: The Convention is indivisible and its articles are interdependent.
Article 33 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 article 33 include:

Article 17: mass media, dissemination of information

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

Article 24: health and health services

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

Article 32: protection from hazardous or exploitative work

Article 37: protection for children deprived of liberty

Article 39: rehabilitative care

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

Sexual exploitation of children



Text of Article 34

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 provides obligations to protect children from “all forms of sexual exploitation and sexual abuse”, requiring national, bilateral and multilateral measures to protect children from three particular (and often linked) forms of exploitation 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 257). The exploitative use of children in prostitution and pornography, which States Parties are required to take all appropriate measures to prevent, is linked to the sale of and traffic in children (see article 35, page 521).

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 World Congress against Commercial Sexual Exploitation of Children, held in Stockholm, Sweden, in 1996. The Second World Congress was held in Yokohama, Japan, in December 2001 (See Yokohama Global Commitment, page 516).

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 670). ■





Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(c) Children in situations of exploitation, including physical and psychological recovery and social reintegration (art. 39)

...

(iii) Sexual exploitation and sexual abuse (art. 34);

...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23."

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES

....

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration;

...

3. Sexual exploitation and sexual abuse (art. 34).

Please indicate the measures adopted, including of a legislative, educational and social nature, to protect the child from all forms of sexual exploitation and sexual abuse. Reports should in particular provide information on all national, bilateral and multilateral measures taken 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.*

Reports should also indicate, inter alia:

Information, awareness and education campaigns to prevent any form of sexual exploitation or abuse of the child, including campaigns undertaken in cooperation with the media;

Any national and multidisciplinary strategy developed to ensure protection of children below the age of 18 against all forms of sexual exploitation and abuse, including within the family;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used;

Legislation developed to ensure effective protection of child victims, including through access to legal and other appropriate assistance and support services;

Whether sexual exploitation and abuse of children, child prostitution and child pornography, including the possession of child pornography, and the use of children in other unlawful sexual practices are considered criminal offences;

Whether the principle of extraterritoriality has been incorporated in the legislation to criminalize the sexual exploitation of children by nationals and residents of the State Party when committed in other countries;

Whether special units of law enforcement officials and police liaison officers have been appointed to deal with children who have been sexually exploited or abused, and whether appropriate training has been provided to them;

Relevant bilateral, regional and multilateral agreements concluded or to which the State Party may have acceded to foster the prevention of all forms of sexual abuse and exploitation and to ensure the effective protection of child victims, including in the areas of judicial cooperation and cooperation among law enforcement officials;

Relevant programmes of technical cooperation and international assistance developed with United Nations bodies and other international organizations, as well as with other competent bodies, including INTERPOL, and non-governmental organizations;

Relevant activities and programmes developed, including of a multidisciplinary nature, to ensure the recovery and reintegration of the child victim of sexual exploitation or abuse, in the light of article 39 of the Convention;

The measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible;

Relevant disaggregated data on the children concerned by the implementation of article 34, including by age, gender, region, rural/urban area, and national, social and ethnic origin. Such data should include ... the number of cases of commercial sexual exploitation, sexual abuse... reported during this period;

The progress achieved in the implementation of article 34, difficulties encountered and targets set."

(CRC/C/58, paras. 158-159. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 88-89 and 161; for full text of *Guidelines*, see Appendix 3, page 674.)



Background to adoption of the Optional Protocol

In 1994, the Committee on the Rights of the Child noted the adoption by the Commission on Human Rights of a resolution on the 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), and the decision of the Commission 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. During its sixth session (April 1994) 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". (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 also

"sets 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."

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". (Report on the eleventh session, January 1996, 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 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."

(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 United Nations General Assembly adopted the Optional Protocol. By February 2002 it had been ratified by 16 States Parties (see page 670 for full discussion).

Other international instruments and standards

In its "Human Rights Studies Series", the Centre for Human Rights published in 1996 *Sexual exploitation of children* (by Vitit Muntarbhorn, former Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography), which summarizes United Nations' and other international initiatives.

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 483). 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 17, 1989, HRI/GEN/1/Rev.5, p. 132).

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", *inter alia*, "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 19, 1991, HRI/GEN/1/Rev.5, p. 218)

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 744).

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 (for further discussion see article 35, page 523). 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 746.)

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. On occasion, the Committee has noted a lack of information and has stressed the importance of establishing a monitoring mechanism.

The Committee’s *Guidelines for Periodic Reports* seeks detailed information on implementation, including disaggregated data (para. 159). The Committee has proposed the study of the “root causes” and has suggested that Governments should work closely with NGOs, including children’s groups. It consistently urges States to take into consideration the recommendations adopted at the 1996 First World Congress against Commercial Sexual Exploitation of Children (see page 510). For example:

“In light of article 34 and other related articles of the Convention, the Committee recommends that the State Party reinforce its legislative framework to fully protect children from all forms of sexual abuse or exploitation, including within the family. It also recommends that the State Party engage in studies with a view to designing and implementing appropriate policies and measures, including

in the area of rehabilitation, to combat this phenomenon comprehensively and effectively. The Committee wishes in this regard to draw the attention of the State Party to the recommendations formulated in the Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996.” (Ghana IRCO, Add.73, para. 47)

Often, the Committee simply notes the occurrence of the problem, sometimes linked to other forms of exploitation, and the lack of sufficient measures to prevent sexual exploitation. For example:

“With regard to sexual exploitation of children, the Committee expresses its concern at the existence of child prostitution in the State Party and at the involvement of children in international prostitution networks. It is further concerned that it is not illegal for children above 16 to get involved in prostitution.” (Luxembourg IRCO, Add.92, para. 21)

More recently, the Committee has adopted much more detailed recommendations. For example to India:

“The Committee recommends that the State Party ensure that legislation criminalizes the sexual exploitation of children and penalizes all the offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalized. While noting that Devadasi, or ritual prostitution, is prohibited under the law, the Committee recommends that the State Party take all necessary measures to eradicate this practice. In order to combat trafficking in children, including for commercial sexual purposes, the Penal Code should contain provisions against kidnapping and abduction. The Committee recommends that the State Party ensure that laws concerning the sexual exploitation of children are gender neutral; provide civil remedies in the event of violations; ensure that procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; include provisions to protect from discrimination and reprisals those who expose violations; and vigorously pursue enforcement.

“The Committee recommends that a national mechanism to monitor implementation should be established, as well as complaints procedures and helplines. Rehabilitation programmes and shelters should be established for child victims of sexual abuse and exploitation.

“The Committee recommends that the State Party undertake a national study on the nature and extent of sexual abuse and sexual exploitation of children, and that disaggregated data be compiled and kept up to date to serve as a basis for designing



Stockholm World Congress Declaration

The First World Congress against Commercial Sexual Exploitation of Children (Stockholm, 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 inter-governmental 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 Yokohama Global Commitment, page 516.

measures and evaluating progress. The Committee recommends that the State Party continue its efforts to carry out extensive campaigns to combat harmful traditional practices, such as child marriages and ritual prostitution; and inform, sensitize and mobilize the general public on the child's right to physical and mental integrity, and safety from sexual exploitation.

“The Committee recommends that bilateral and regional cooperation be reinforced, involving cooperation with border police forces from neighbouring countries, especially along the eastern frontier areas in the states of West Bengal, Orissa and Andhra Pradesh. The State Party should ensure that the competent authorities cooperate and coordinate their activities; and that present cooperation between the State Party, and, inter alia, UNICEF, be expanded.” (India IRCO, Add.115, paras. 75-78)

The Committee is particularly concerned now that, while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized. “Child-friendly” and sensitive procedures are required; those who expose violations must be protected from reprisals and there must be adequate rehabilitation programmes for survivors. For example:

“The Committee recommends that the State Party review its legislation and ensure that it criminalizes the sexual abuse and exploitation of children and penalizes all offenders, whether local or foreign, while ensuring that the child victims of these practices are not penalized. The Committee recommends that the State Party ensure that domestic laws concerning the sexual exploitation of children are gender neutral; provide civil remedies in the event of violations; ensure that procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims;

include provisions to protect from discrimination and reprisals those who expose violations; and vigorously pursue enforcement.” (Armenia IRCO, Add.119, para. 55. See also, for example, Jordan 2RCO, Add.125, para. 62)

Groups particularly vulnerable to sexual exploitation

The Committee has identified certain groups of children as being at particular risk:

“Vulnerable groups of children, including girl children, indigenous children and children living in poverty, are particularly disadvantaged in their access to adequate health and educational facilities and are the primary victims of such abuses as sale and trafficking, child labour and sexual and other forms of exploitation...” (Bolivia IRCO, Add.1, para. 9)

“The Committee is concerned by the increasing phenomenon of child prostitution that affects in particular children belonging to the lower castes. It is worried about the absence of measures to combat this phenomenon and the lack of rehabilitation measures...” (Nepal IRCO, Add.57, para. 23)

Girls

The Platform for Action of the Fourth World Conference on Women notes: “Sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children’s health, and girls are more vulnerable than boys to the consequences of unprotected and premature sexual relations. 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, stated that “Despite advances in legal protection, there is increased sexual abuse and sexual exploitation of the girl child.” The Report 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...” (A/RES/S-23/3, paras. 33 and 70(a))

Child domestic workers are particularly prone to sexual exploitation. *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).

Disabled children

Difficulties of communication and the institutionalization of many disabled children may make them particularly prone to sexual exploitation and abuse (see article 23, page 328). The 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))

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*, A/51/306, paras. 91 et seq., and 110).

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).



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*, A/51/306, para. 110)

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 IRCO, Add.116, paras. 87 and 88)

Refugees

The Office of the United Nations High Commissioner for Refugees points out that refugees, in particular unaccompanied children, are especially vulnerable to sexual exploitation and abuse. 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)

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* requests information on “legislative, educational and social” measures to protect the child from all forms of sexual exploitation and sexual abuse. The Committee has noted the need for specific legislation, and the *Guidelines* asks in particular “whether sexual exploitation and abuse of children, child prostitution and child pornography, including the possession of child pornography, and the use of children in other unlawful sexual practices are considered criminal offences” (para. 158). The *Guidelines* also asks about criminalizing sexual exploitation by nationals in other countries (see below, page 514). In addition, it seeks information on the legal minimum age for sexual consent (para. 24; see below, page 462 and article 1, page 9).

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

“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 IRCO, Add.53, paras. 19 and 29)

When it examined Finland’s Second Report, the Committee welcomed legal reforms:

“The Committee welcomes the recent adoption of new laws, as well amendments to domestic legislation to bring it into conformity with the principles and provisions of the Convention. It takes note in particular of the government law on criminalization of the purchase of sexual services from minors and possession of child pornographic material,

and the amendment to the Penal Code regarding sex tourism which criminalizes offences of sexual abuse committed abroad by Finnish citizens, as recommended in the Committee’s previous Concluding Observations...” (Finland 2RCO, Add.132, para. 4)

Age of sexual consent

The Committee’s *Guidelines* for both Initial and Periodic Reports seek information on the age of sexual consent (under “Definition of the child”; see article 1, page 9). Most countries define the age at which children are to be judged as able to consent to sexual activity; it varies widely, between the ages of 12 and 18. The *Guidelines* also seeks information on the age for marriage, and 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 they appeared willing or even initiating partners. In most societies, sexual interference or assault 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 societies).

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. 15-24; Detrick, p. 434).

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. Sexual exploitation of children may well continue beyond any set age for consent, and the protection of article 34 exists up to the age of 18.





The Committee has not proposed a particular age for consent, but it has in the case of some States Parties proposed that the age should be raised.

From the Philippines' Initial Report it appears that the age of consent is 12 (Philippines IR, para. 30). The Committee recommended:

"Serious consideration should be given to raising the age limit for sexual consent..."
(Philippines IRCO, Add.29, para. 18)

The Committee has pointed out inadequate definition:

"...The Committee also expresses its concern that the age of sexual maturity has not been fixed, which threatens the protection of children from possible exploitation in the use of pornographic materials..."

"...The Committee suggests that the Government should reassess the effectiveness of present regulations regarding the exploitation of children in pornographic materials." (Sweden IRCO, Add.2, paras. 8 and 11)

When it examined Sweden's Second Report, the Committee observed:

"While noting that measures are being taken and discussed, the Committee remains concerned about the protection of children from access to pornographic materials. The Committee encourages the State Party to continue taking all appropriate measures, bearing in mind the provisions of articles 13, 17 and 18 of the Convention."

"...the Committee remains concerned about the need to increase protection from sexual exploitation, particularly for children aged between 15 and 18 years." (Sweden 2RCO, Add.101, paras. 14 and 22)

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). Thus for example, Canada's Initial Report states: "According to the Criminal Code it is a criminal offence to have sex with someone under the age of 14 years, with an exception where the younger partner is at least 12 years of age, where the age difference between the two partners is less than two years, and where the older youth is not in a position of trust or authority over the younger one, nor is the latter his or her dependant." (Canada IR, para. 45)

In some countries, there are different ages of consent for girls and for boys, and for different forms of sexuality – heterosexuality and homosexuality. These differences, like the common gender differences in minimum age for

marriage, breach article 2 of the Convention. 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 IRCO, Add.134, paras. 22 and 23. See also United Kingdom – Overseas Territories IRCO, Add.135, paras. 25 and 26)

Sex tourism – the principle of "extraterritoriality"

The Committee has expressed concern about countries where "sex tourism" involving children has been identified. It has also noted that children working as domestic servants are particularly at risk of sexual exploitation. For example:

"The Committee expresses its grave concern about the substantial number of children working as domestic servants and who are often subjected to sexual abuse. It is also deeply worried about the increasing number of children exploited sexually, especially young boys forced into prostitution, both locally and in international sex tourism."

"The Committee expresses its deep concern about the development of sexual exploitation of children, especially of boys, through sex tourism. The Committee suggests that the authorities engage a prevention campaign on the HIV virus and strengthen its procedures to supervise tourist areas where the problem prevails." (Sri Lanka IRCO, Add.40, paras. 23 and 42)

"The Committee encourages the State Party to take all appropriate measures to prevent and combat ... sexual exploitation of children, including victims of sexual tourism." (Mauritius IRCO, Add.64, para. 31)

The *Guidelines for Periodic Reports* asks for information on legal developments in this area: "whether the principle of extraterritoriality has been incorporated in the legislation to criminalize the sexual exploitation of children by nationals and residents of the State Party when committed in other countries" (para. 159). Equally important is enforcement of legislation in the country in which the sexual exploitation takes place (see also Optional Protocol on the sale of

children, child prostitution and child pornography, page 670).

In 1985, the World Tourism Organization adopted a Tourism Bill of Rights and Tourist Code that reminds States of the need to prevent any possibility of using tourism to exploit others for prostitution purposes, asks those involved in organizing tourism to refrain from encouraging the use of tourism for all forms of exploitation and asks tourists themselves to “refrain from exploiting others for prostitution purposes” (see E/CN.4/Sub.2/1993/31, para. 81).

Complaints procedures

In the report of its General Discussion on “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 171, and article 19, page 273). Children in institutions are especially vulnerable, often isolated from independent adults; disabled children may also be particularly 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.

Other measures

Many other rights guaranteed in the Convention are relevant to the prevention of sexual exploitation. The Agenda for Action of the Stockholm World Congress against Commercial Sexual Exploitation of Children (see page 510) highlights, 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 579) 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. The Committee has emphasized the importance of adopting a non-punitive approach to child victims of sexual exploitation (see above, page 510). 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.

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 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.”

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)

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.

Commission on Human Rights’ 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 Commission; 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 521, and Optional Protocol, page 670.)

The successive reports of the Rapporteurs provide detailed discussion and recommendations for action.

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, which 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. A Second World Congress was held in Yokohama, Japan, in December 2001 and adopted a Global Commitment (see box opposite).



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?

How to use the checklists, *see page XVII*



- ☐ 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?
- ☐ 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

- ☐ disabled children?
- ☐ 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?

How to use the checklists, see page XVII



- ☐ 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 are 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 jurisdiction without discrimination on any ground

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

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

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

Closely related articles

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

Article 18: parental responsibilities

Article 19: protection from all forms of violence

Article 20: alternative care

Article 22: refugee children

Article 23: disabled children

Article 24: health and health care

Article 27: adequate standard of living

Article 28: right to education

Article 32: child labour

Article 33: drug abuse

Article 35: sale, trafficking and abduction

Article 38: armed conflict

Article 39: rehabilitative care for child victims

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

Prevention of abduction, sale and trafficking



Text of Article 35

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

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

protects children against exploitative or harmful work; article 33, from involvement in drug trafficking; article 34 from their use in the sex trade; and article 36 from all other forms of exploitation. Article 35 is a safety net to ensure that children are safe from being abducted or procured for these purposes or for any other purpose. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of: ...

(v) Sale, trafficking and abduction (art. 35)...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by [the previous] paragraph."

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration ...

4. Sale, trafficking and abduction (art. 35)

Please provide information on all measures adopted, including of a legislative, administrative, educational and budgetary nature, at the national, bilateral and multilateral levels, to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

In this regard, reports should indicate inter alia:

The legislation adopted to ensure effective protection of children against abduction, sale and trafficking, including through the consideration of these acts as criminal offences;

Awareness and information campaigns to prevent their occurrence, including campaigns undertaken in cooperation with the media;

The allocation of appropriate resources for the development and implementation of relevant policies and programmes;

Any national strategy developed to prevent and suppress such acts;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used;

Whether special units have been created among law enforcement officials to deal with these acts;

Relevant training activities provided to the competent authorities;

*Structures and programmes developed to provide support services to the children concerned and to promote their physical and psychological recovery and social reintegration, in the light of **article 39**;*

The measures adopted to ensure that in the implementation of article 35 due consideration is taken of other provisions of the Convention, including in the areas of civil rights, particularly in relation to the preservation of the identity of the child, adoption and prevention of any form of exploitation of children, including child labour and sexual exploitation;

The measures adopted to ensure respect for the general principles of the Convention, including non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

Reports should also indicate the relevant bilateral and multilateral agreements concluded by the State Party, or to which it may have acceded, to prevent the sale and abduction of and trafficking in children, including in the areas of international cooperation between judicial authorities and law enforcement officials, inter alia on any existing system of collection and exchange of information on perpetrators of such acts as well as on the child victims. Relevant disaggregated information should also be provided on the children concerned by the implementation

of article 35, including by age, gender, region, rural/urban area, and social and ethnic origin, as well as on the progress achieved in the implementation of this article, the difficulties encountered and the targets set for the future.”

(CRC/C/58, paras. 160-162. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 154, 155, 159 and 164; for full text of *Guidelines*, see Appendix 3, page 674.)

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 prostitution and child pornography (E/CN.4/1987/25, pp. 15-24; Detrick, p. 429).

How does the “abduction of, the sale of or traffic in children” manifest itself? Children can be unlawfully abducted by their natural parents or relatives in disputes over custody. Article 11 addresses such incidents where children are taken across borders (see page 153), 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. Article 32 protects children from economic exploitation (see page 475). In conditions of war, children can be forced to become soldiers or servants to armed forces (see article 38, page 563). 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 505). Children, particularly babies, are a desirable commodity for adoption: article 21 requires measures to ensure that inter-country adoption “does not result in improper financial gain for those involved in it” (see page 293). There is also a strong suspicion that children’s bodies are being used to provide organs for transplants, in breach of article 6.

Thus, with article 35, the Convention 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 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. In addition, there are 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. In recent years these have been augmented by conventions and protocols specific to children, principally the 1999 ILO Worst Forms of Child Labour Convention; 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 Appendix 4 on pages 670, 744 and 746, and discussion on pages 647 and 479).

“Trafficking in persons” is defined in article 3 of the last-mentioned 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.”

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. The Programme of Action urges States “to devise, enforce and strengthen effective measures at the national, regional and international levels to prevent, combat and eliminate all forms of trafficking in women and children, in particular girls, through comprehensive anti-trafficking strategies which include legislative measures, prevention campaigns and information exchange”. It also urges States to allocate resources, as appropriate, to provide comprehensive programmes designed to provide assistance to, protection for, healing, reintegration into society and rehabilitation of victims. States shall provide or strengthen training for law enforcement, immigration and other relevant officials who deal with victims of trafficking (Declaration, para. 30; Programme of Action, para. 64 (A/CONF.189/12)).

Trafficking and child labour

The Committee has raised concern about the trafficking of children for the purposes of labour:

“The Committee is seriously alarmed at the reports of the forced labour of children, the exploitation of child labour in the informal and agriculture sectors and the trafficking of children which has been brought to its attention.” (Pakistan IRCO, Add.18, para. 21)

“In view of the scale of the problem of sale and trafficking of children, especially girls, the Committee is deeply concerned about the absence of a specific law and policy to combat this phenomenon.

“The Committee further recommends that firm measures be taken to ensure the right of survival of all children in Nepal, including

those who live and/or work in the streets. Such measures should aim at the effective protection of children against any form of exploitation, particularly child labour, prostitution, drug-related activities and child trafficking and sale.

“In order to effectively combat intercountry trafficking and sale of children, the Committee strongly suggests that Nepal take all appropriate measures, including legislative and administrative ones, and encourages the State Party to consider adopting bilateral measures to prevent and eliminate such phenomena.

Awareness campaigns should be developed at the community level and a thorough monitoring system should be established.” (Nepal IRCO, Add.57, paras. 22, 35 and 37)

The eighteenth session of the Working Group on Contemporary Forms of Slavery under the Commission on Human Rights heard evidence of bonded labour in Nepal under the system of *kamaiyas*, a one year contract whereby the whole family is the labour unit, estimated to be as many as 100,000 families in bondage; and in Pakistan where children were effectively enslaved in certain industries – carpet and textiles, coal mining, brick-making and camel racing – although the Commission was also informed of recent Pakistani legislation freeing all bonded labourers and penalizing the practice (E/CN.4/Sub.2/1993/30, paras. 51-59).

These are only two 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, for example the exporting of children from the Indian subcontinent to Mecca.

The Programme of Action for the Elimination of the Exploitation of Child Labour focuses on remedying underlying causes of child labour but also calls for “energetic repressive action” in relation to the trafficking of children, citing in particular serfdom, bond service, fake adoption, abandonment, child prostitution, enforced begging, trafficking in child pornography and children for immoral purposes and under-age maidservants in a position of servitude. Where bonded labour is concerned, legislation is needed that nullifies the debts and obligations owed by the family as well as which prohibits such bondage. (Commission on Human Rights, 1993/79, paras. 3 and 14)

This focus led in 1999 to the adoption by the International Labour Organization of 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.

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 in normal circumstances the number of hopeful adoptive couples tend 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 curtail them to cases of abandoned or institutionalized children only.

The Federal Republic of Yugoslavia's measures against trafficking through adoption

“In order to avoid the possibility of trafficking in children separated from their parents or war orphans in the former Yugoslavia through adoption, the stand has been taken that until the end of the war international adoptions shall not be permitted. However, within the framework of cooperation with the International Social Service, cases have been reported of mothers going abroad to give birth to their children in foreign hospitals and authorizing the adoption of their newborns, which gives rise to suspicions of child trafficking. This practice calls for greater bilateral cooperation within the framework of the Convention Concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Infants, irrespective of the fact that the Federal Republic of Yugoslavia has not yet signed this Convention.”

(Federal Republic of Yugoslavia IR, para. 420)

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 through adoption with countries, for example:

“The Committee is worried by the high rate of abandonment of children, especially newborn babies, and the lack of a comprehensive strategy to assist vulnerable families. This situation can lead to illegal intercountry adoption or other forms of trafficking and sale of children. In this context the Committee is also concerned about the absence of any law prohibiting the sale and trafficking of children, and the fact that the right of the child to have his/her identity preserved is not guaranteed by the law ...

“With regard to the sale and trafficking of children, the Committee encourages the Government to clearly prohibit this illegal activity and to ensure that the right of the child to have his/her identity preserved is fully endorsed ...” (Ukraine IRCO, Add.42, paras. 11 and 28)



Assistance to Nepalese girls who have been the victims of trafficking

“UNICEF, in coordination with local NGOs, is preparing a national-level campaign to promote awareness of the trafficking of girls from Nepal to India. Activities will include advocacy at the ministerial level to strengthen the laws regarding human trafficking, and working with the police to generate commitment to stronger enforcement of laws. The programme intends to generate microlevel interventions in the districts most affected by girl child trafficking. Since poverty is one of the major causes that have forced girls into prostitution, a major focus will be on income-generating skills. Literacy will be another focus. In a study of some 400-500 Nepalese prostitutes in Bombay, an NGO, the Women’s Rehabilitation Centre (WOREC), found that most were illiterate...” (Nepal IR, para. 390)

“The Committee ... is gravely concerned at alleged trafficking in children in violation of the provisions and principles of the Convention...”

“The Committee recommends that the State Party take adequate measures, including through awareness-raising campaigns, to prevent the abandonment of children and to protect poor single mothers from illegal networks of child traffickers.” (Paraguay IRCO, Add.75, paras. 20 and 43)

The Committee commended Sri Lanka for having *“...enacted new legislation on international adoption which ensures safeguards against the sale and trafficking of children.” (Sri Lanka IRCO, Add.40, para. 17)*

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 (see page 505). Both of these activities have commercial motives as well as sexual ones: child prostitution and child pornography are increasingly profitable businesses in many parts of the world. Naturally this is a concern of the Committee, for example:

“The Committee shares the State Party’s concern that there has been an upsurge in recent years of kidnapping and abduction of children. In this connection, the Committee wishes to express its serious concern about the apparent inadequacy of measures taken to

prevent and combat the problems of the sale, trafficking and sexual exploitation of children. “The State Party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.” (China IRCO, Add.56, paras. 23 and 36).

“... In order to prevent trafficking in children, including for commercial sexual purposes, the Penal Code should contain provisions against kidnapping and abduction...”

“The Committee recommends that bilateral and regional cooperation be reinforced, involving cooperation with border police forces from neighbouring countries...” (India IRCO, Add.115, paras. 75 and 78)

The Commission on Human Rights, in its 1992 Programmes of Action for the prevention of the sale of children, child prostitution and child pornography, tackles 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. As well as legislative reform, the Programmes recommend practical forms of cooperation between law enforcement agencies: “States should establish their own data bases, improve their reporting at all levels, exchange information and report to the International Criminal Police Organization to enable a special data bank on suspects involved in cross-border trafficking, sale or sexual exploitation of children to be set up. The experience gained in international police cooperation in combating drug traffic should be used to prevent international traffic in and sexual exploitation of children.” The Programmes also recommend the establishment of special inter-governmental task forces to promote measures in alliance with appropriate non-governmental organizations (Commission on Human Rights, 1992/74, paras. 35 and 36. See also Interim Report to the General Assembly, Sale of children, child prostitution and child pornography, A/51/456, October 1996, para. 88).

Also 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. In her 1998 report she noted that the three concerns – sale, prostitution and pornography – tend to be inextricably intertwined within the framework of commercial sexual exploitation (A/53/311). The culmination of much of this activity was the adoption of the Optional Protocol to the Convention on the

Rights of the Child on the sale of children, child prostitution and child pornography which reflects many of the recommendations of the Programmes of Action, the Special Rapporteur and the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996).

The issue of sex tourism received intensive scrutiny at the Stockholm World Congress, which called for States:

- “to develop or strengthen and implement laws to criminalize the acts of the nationals of the countries of origin when committed against children in the countries of destination (‘extraterritorial criminal laws’);
- to promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country (‘the destination country’) is prosecuted either in the country of origin or the destination country;
- to strengthen laws and law enforcement, including confiscation and seizure of assets and profits, and other sanctions, against those who commit sexual crimes against children in destination countries;
- to share relevant data.”

(Declaration and Agenda For Action, First World Congress against Commercial Sexual Exploitation of Children, 1996, A/51/385, para. 4(d))

Trafficking and organ transplants

Evidence of the trafficking of children’s organs for medical purposes appears to be largely anecdotal. A systematic investigation of the alleged cases around the world has not yet been undertaken. But 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 such a trade must be high.

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)

A representative of the International Association of Democratic Lawyers made a statement to the fourth meeting of the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Contemporary Forms of Slavery (18th session) that: “it appeared that the traffic [in human organs], particularly involving children, was worsening. It was thought to be thriving in Argentina, Colombia, Honduras, Mexico and Peru, while there was considered to be evidence of traffic in children’s organs in Albania, Greece and Italy. She underlined that children, victims of that traffic, were usually killed by the traffickers.” (E/CN.4/Sub.2/1993/30, para. 65)

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.

Trafficking and armed conflict

Article 38 of the Convention on the Rights of the Child covers armed conflict and children (page 563). While some of the world’s “child soldiers” are volunteers, many are reluctant or forced recruits, a serious form of abduction. Such acts may be perpetrated by guerrilla forces, in which case the ratifying State can do little to intervene. Sometimes the Government compulsorily conscripts children, in which case a clear breach of article 35 occurs since such an act constitutes an abduction, even if the child is above the minimum age for recruitment set at 15 by article 38. 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, which is open for ratification, 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 641).

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 579).

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.

The Committee has encouraged both prevention and rehabilitation in this area:

“While the Committee takes note of the State Party’s efforts to combat the trafficking and sale of children, it remains concerned about the lack of preventive measures in this area. Concerning the trafficking of boys and girls into neighbouring countries for work, including prostitution, the Committee recommends that measures be taken on an urgent basis, such as a comprehensive programme of prevention, including an awareness-raising campaign and educational programmes, in particular in the rural areas and for concerned governmental officials, and of rehabilitation of the victims. Cooperation with neighbouring countries is strongly encouraged.” (Ecuador IRCO, Add.93, para. 30)

“...In the light of article 35 and other related provisions of the Convention, the Committee recommends that the State Party take effective measures to strengthen law enforcement, and intensify efforts to raise awareness in communities about the sale, trafficking and abduction of children. The Committee further recommends that the State Party seek to establish bilateral agreements with neighbouring countries to prevent the sale, trafficking and abduction of children and to facilitate their protection and safe return to their families.” (South Africa IRCO, Add.123, para. 40. See also, for example, Georgia IRCO, Add.124, para. 34, and Colombia 2RCO, Add.137, paras. 70 and 71)

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)?

How to use the checklists, *see page XVII*



- ☐ 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)?
- ☐ 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 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 are interdependent. Article 35 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 article 35 include:

Article 8: preservation of child's identity

Article 11: protection from illicit transfer and non-return

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

Article 20: children without families

Article 21: adoption

Article 32: child labour

Article 33: drug abuse and trafficking

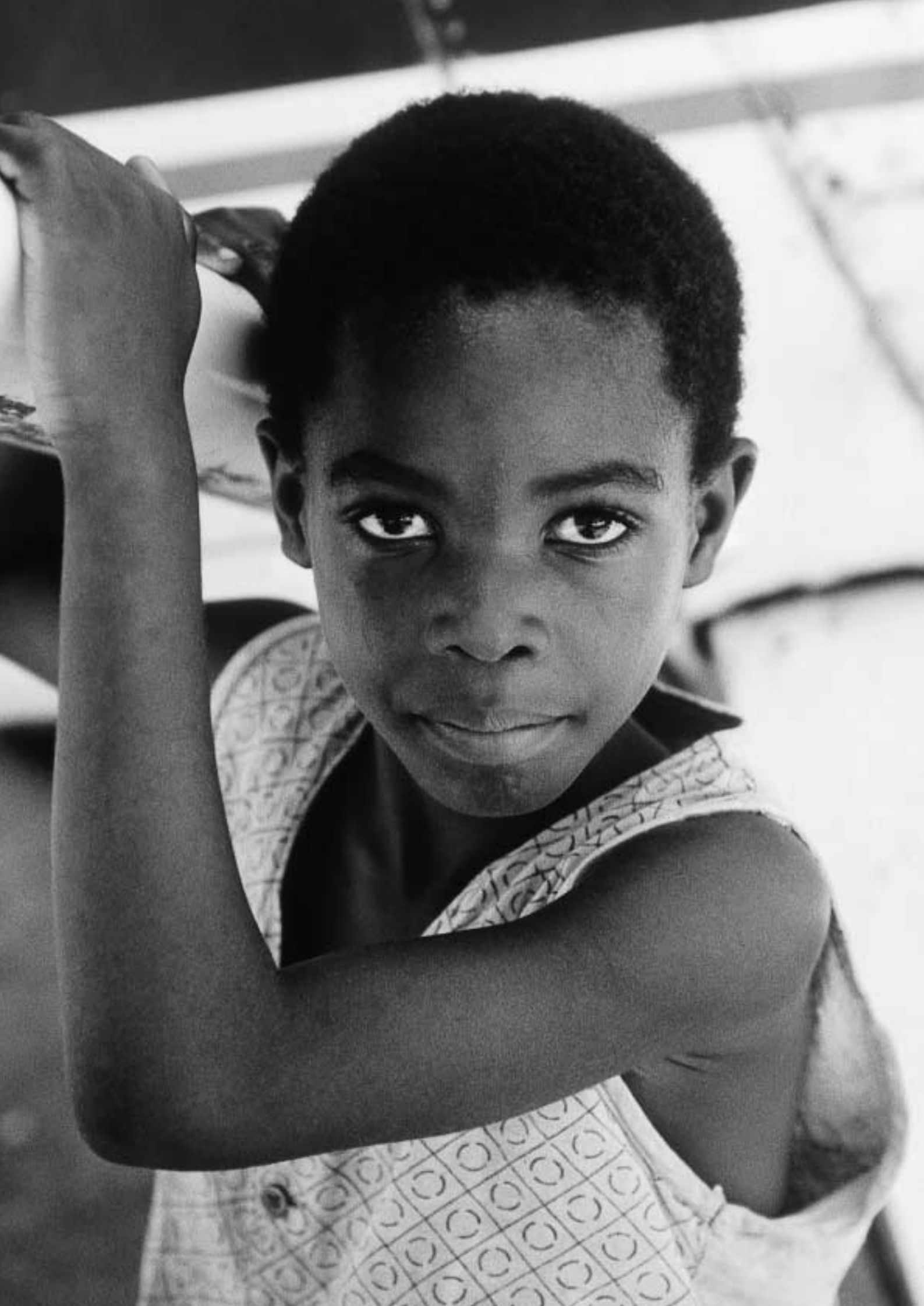
Article 34: sexual exploitation

Article 36: other forms of exploitation

Article 39: rehabilitative care

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

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



Protection from other forms of exploitation



Text of Article 36

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

In drafting the Convention, article 36 was introduced to ensure that the “social” exploitation of children was recognized, along with their sexual and economic exploitation, but examples of what was meant by social exploitation were not given (E/CN.4/1987/25, pp. 15-24; Detrick, p. 452).

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, the exploitation of children by the media and the exploitation of children by researchers or for the purposes of medical or scientific experimentation. ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:...

... (c) Children in situations of exploitation ...

...(iv) Other forms of exploitation (art. 36)...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by [the previous] paragraph..."

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

5. Other forms of exploitation (art. 36)

Please provide information on all measures adopted, including of a legislative, administrative, educational, budgetary and social nature, to protect the child against all forms of exploitation prejudicial to any aspects of his or her welfare.

Reports should also indicate, inter alia:

The prevalence of any form of exploitation prejudicial to the child's welfare;

Awareness and information campaigns launched, including for children, families and the public at large, as well as the involvement of the media;

Training activities developed for professional groups working with and for children;

Any national strategy developed to ensure protection to the child and the targets set for the future;

Any mechanism established to monitor the situation of the child, the progress achieved in the implementation of this article and any difficulties encountered;

The relevant indicators used;

Measures adopted to ensure the physical and psychological recovery, as well as the social reintegration, of the child victim of exploitation prejudicial to any aspects of his or her welfare;

Relevant measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life and survival and development to the maximum extent possible;

The measures adopted to ensure that the implementation of this article takes into due consideration other relevant provisions of the Convention;

Relevant disaggregated data on the children concerned by the implementation of this article, including by age, gender, region, rural/urban area, and national, social and ethnic origin."

(CRC/C/58, paras. 163 and 164)

Examples of “other forms of exploitation”

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 a safety net protection to cover “all other forms of exploitation”, including social exploitation.

Gifted children

For example, 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 217) and 17 (page 237), 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 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.” (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 544) 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 20, 1992, HRI/GEN/1/Rev.5, p. 140).

The Convention 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, in any event, 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”. The Committee asks States to report on any minimum legal age for “medical counselling”, and for “medical treatment or surgery without parental consent” (*Guidelines for Periodic Reports*, para. 24). 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.

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



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?

How to use the checklists, *see page XVII*



- ☐ 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 are interdependent.

Article 36 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 article 36 include:

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

Article 17: responsibilities of the media

Article 32: child labour

Article 34: sexual exploitation of children

Article 35: abduction, sale and trafficking of children

Article 39: rehabilitative care

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

Torture, degrading treatment and deprivation of liberty



Text of Article 37

States Parties shall ensure that:

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

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

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

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

Article 37 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.

Article 37, together with article 40 (administration of juvenile justice) and article 39 (rehabilita-

tion and reintegration), are the Convention's specific provisions relating to children in trouble with the law. The Committee continues to advocate comprehensive reform of the juvenile justice system to most States whose reports it examines, citing these articles and the United Nations rules and guidelines on juvenile justice. But 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 579). ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Civil rights and freedoms

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

....

(h) The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (article 37(a)).

...

Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

...

(b) Children in conflict with the law...

(ii) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (article 37(b), (c) and (d));

(iii) The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment (article 37(a));

...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23."

(CRC/C/5, paras. 15, 23-24)

Guidelines for Periodic Reports

"IV. CIVIL RIGHTS AND FREEDOMS (arts. 7, 8, 13-17 and 37(a))

Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13-17 and 37(a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

...

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37(a))

Please indicate whether torture or other cruel, inhuman or degrading treatment or punishment of children is punished by the criminal law, and whether complaint procedures have been established and remedies made available to the child. Please also provide information on:

Awareness campaigns launched to prevent torture or other cruel, inhuman or degrading treatment or punishment of children;

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;

Any cases where children have been victims of any such acts;

Measures adopted to prevent the impunity of perpetrators, including by investigating such cases and punishing those found responsible;

Measures adopted to ensure the physical and psychological recovery and reintegration of children who have been tortured or otherwise ill-treated;

Any independent monitoring system established. ...

VIII. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36)

...

B. Children involved with the system of administration of juvenile justice

...

2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37(b)-(d))

*Please indicate the legislative and other measures adopted pursuant to **article 37(b)** to ensure that:*

No child is deprived of his or her liberty unlawfully or arbitrarily (note: According to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 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 (rule 11(b)).

The arrest detention or imprisonment of a child is in conformity with the law and is used only as a measure of last resort and for the shortest appropriate period of time;

The general principles of the Convention are respected, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

Reports should also indicate the existing alternatives to deprivation of liberty, the frequency with which they are used and the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin.

Information should also be given on the measures and mechanisms established to:

Prevent the deprivation of liberty of children, including through arrest, detention and imprisonment, inter alia in relation to asylum seekers and refugees;





Prevent the imposition of indeterminate sentences, including through their legal prohibition;

Monitor the situation of the children concerned, including through an independent mechanism;

Monitor progress, identify difficulties and set goals for the future.

In this regard, information should further be provided on the number of children deprived of liberty unlawfully, arbitrarily and within the law, as well as on the period of deprivation of liberty, including data disaggregated by gender, age, region, rural/urban area, and national, social and ethnic origin, and the reasons for such deprivation of liberty.

*Please indicate the legislative and other measures adopted pursuant to **article 37(c)** to ensure that any child deprived of liberty is treated:*

With humanity and respect for the inherent humanity of the human person;

In a manner which takes into account the needs of persons of his or her age.

Reports should also provide information on the measures adopted and arrangements made to ensure that:

The child deprived of liberty is separated from adults unless it is considered in the best interests of the child not to do so;

The child has the right to maintain contact with his or her family through correspondence and visits (indicating the number of such contacts), save in exceptional circumstances, those circumstances being specified in the report;

The conditions in institutions in which children are placed are supervised and monitored, including by an independent mechanism;

Complaint procedures are made available to the child;

A periodic review is made of the situation of the child and of the circumstances relevant to his/her placement;

Education and health services are provided to the child;

The general principles of the Convention are respected, namely non-discrimination, the best interests of the child, respect for the views of the child, right to life, and survival and development to the maximum extent possible.

*Please indicate the measures adopted pursuant to **article 37 (d)** to ensure that every child deprived of liberty has the right to:*

Prompt access to legal and other appropriate assistance, indicating inter alia whether there is any legal time-limit for such access to assistance and what other appropriate assistance may be made available to the child;

Challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority;

A prompt decision on any such action, indicating inter alia whether there is any legal time-limit for such a decision to be taken.

Information should also be provided on the overall situation, as well as on the percentage of cases where legal or other assistance has been provided, and where the legality of the deprivation of liberty has been confirmed, including disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin.

Reports should also indicate the progress achieved in the implementation of article 37 (b) to (d), difficulties encountered and targets set for the future.

3. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37(a))

Please provide information on the measures adopted, at the legislative and other levels, to ensure that neither capital punishment nor life imprisonment without possibility of release is imposed for offences committed by persons below 18 years of age.

Please also indicate the progress achieved in the implementation of article 37(a), difficulties encountered and targets set for the future."

*(CRC/C/58, paras. 48, 61, 138-148; The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 35, 43, 59, 86-87, 109 and 149-150; for full text of *Guidelines*, see Appendix 3, page 674.)*

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"; 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 Convention called for the implementation of the most conducive provisions for the realization of the rights of the child, and had therefore to be considered in conjunction with other relevant instruments, namely the Beijing Rules, the Riyadh Guidelines and the Rules for the Protection of Juveniles Deprived of their Liberty. Those instruments complemented and provided guidance for the implementation of the rights recognized by the Convention and confirmed that there was no possible conflict between human rights and juvenile justice." (Report on the tenth session, October/November 1995, CRC/C/46, para. 214)

The Committee has stated that the Convention, and these rules and guidelines taken together *"call for the adoption of a child-oriented system, that recognizes the child as a subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration."* (Report on the ninth session, May/June 1995, CRC/C/43, Annex VIII, p. 64)

The Committee has also referred more recently 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).

"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. As the *Manual on Human Rights Reporting*, 1997, states: "By presenting it as a general and absolute right, the Convention (on the Rights of the Child) shows that any of the forms of treatment or punishment covered by this article should be prevented and combated at all moments and in all circumstances, including within family life or in the school system." (*Manual*, p. 440)

In 1975, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), 9 December 1975, Annex). The provisions of the Declaration formed the basis for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46, 10 December 1984). It defines torture, for its purposes, as meaning "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (article 1).

The Convention established the Committee against Torture, which oversees implementation of the Convention, and seeks to resolve cases of alleged torture (and other cruel, inhuman or degrading treatment) brought to its notice. In addition, the Commission on Human Rights has appointed a Special Rapporteur on Torture, who acts in individual cases and reports to the Commission. In a recent report to the General Assembly, the Special Rapporteur commented on the significant number of reports he receives of child victims of torture in various settings (A/55/290, pp. 3-5).

The Human Rights Committee has made two General Comments on article 7 of the International Covenant on Civil and Political





Rights: first in 1982 (Human Rights Committee, General Comment 7, 1982, HRI/GEN/1/Rev.5, pp. 116 and 117) and then in 1992, a Comment that “replaces General Comment 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 566.)

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*. States Parties should indicate in their reports what measures they have adopted to that end.” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, pp.139 and 140)

Article 7 of the International Covenant on Civil and Political Rights has an additional provision,

not repeated in article 37, which expressly prohibits medical or scientific experimentation without free consent, and the Human Rights Committee in its General Comment notes that reports of States Parties generally give little information on this point: “More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.” (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 140) 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 533).

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 of 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.

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. In its *Guidelines for Periodic Reports*, the Committee requests information on “whether torture or other cruel, inhuman or degrading treatment or punishment of children is punished by the criminal law” (para. 61).

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 2RCO, Add.117, para. 18)

The Committee proposes accession to the Convention against Torture. And it has referred on occasions to the observations of the Committee against Torture:

“The Committee concurs with the contents of the observations adopted by the Committee against Torture where the points raised are relevant to the situation of children below the age of 18.” (China IRCO, Add.56, para. 42)

“The Committee is concerned at numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, torture and abduction... Like the Committee against Torture (CAT/C/23/6), the Committee expresses concern at the absence of a definition of torture in the 1998 Criminal Code and appropriate penalties, and the apparent failure to provide prompt, impartial and full investigation into allegations of torture, as well as the failure to prosecute alleged perpetrators.

“In light of article 37 of the Convention, and recalling the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the State Party should take all necessary and effective steps to prevent incidents of ill-treatment from occurring. The Committee recommends that the State Party implement the recommendations made by the Committee against Torture (CAT/C/23/6)...” (Kyrgyzstan IRCO, Add.127, paras. 33 and 34)

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 IRCO, Add.116, paras. 44 and 45)

The Rome Statute of the International Criminal Court, adopted in 1998, includes in its definition

of both war crimes and crimes against humanity “torture” (defined in article 7 as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions”). (See also article 38, page 574)

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:

“With respect to article 37 (a) of the Convention, the Committee is concerned by numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials.

“The Committee recommends that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee encourages the State Party to amend sections 53 and 54 of the Code of Criminal Procedure so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals.” (India IRCO, Add.115, paras. 38 and 39)

“In the light of its recommendation (see CRC/C/15/Add.30, para. 17) concerning the need to conduct special investigations in cases of gross violations of human rights involving children, the Committee regrets the lack of follow-up information on this issue and reiterates its concern about alleged cases of street children tortured and ill-treated by members of the police and/or paramilitary groups.

“The Committee urges the State Party to undertake effective measures to ensure that such acts receive an appropriate response through the judicial process, in order to avoid impunity for the perpetrators. The Committee further recommends that the State Party establish care and rehabilitation programmes for child victims of torture and ill-treatment.” (Colombia 2RCO, Add.137, paras. 38 and 39)

“The Committee is deeply concerned that children are regularly the victims of cruel, inhuman or degrading treatment, sometimes constituting torture, committed by, among





others, the police, the military, teachers and in the family, and affirms that these acts are violations of children's rights.

"The Committee strongly urges the State Party to strengthen its efforts to address the causes and incidence of torture and cruel, inhuman or degrading treatment of children by, among others, the police, the military, teachers and in the family, to end and prevent these violations of children's rights and to ensure that the persons responsible for these acts are brought to justice. The Committee recommends in addition that the State Party consider the possibility of compensation for the victims of torture and other acts."

(Democratic Republic of the Congo IRCO, Add.153, paras. 32 and 33. See also, for example, South Africa IRCO, Add.122, para. 21; Dominican Republic IRCO, Add.150, paras. 28 and 29)

The Committee has stressed the importance of complaints procedures (see *Guidelines for Periodic Reports*, para. 61; see also article 12, page 171), in particular for children in institutions. The Committee adopted detailed recommendations concerning children's access to complaints procedures following its first General Discussion on "Violence against children". (Report on the twenty-fifth session, September/October 2000, CRC/C/100, p. 134; see article 19, page 261)

In the report of its General Discussion on "Administration of juvenile justice", the Committee on the Rights of the Child noted the importance of periodic visits and independent monitoring of institutions, and also noted the current efforts of the Commission on Human Rights aimed at introducing a system of periodic visits to places of detention through an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (Report on the tenth session, October/November 1995, CRC/C/46, para. 229)

Forms of inhuman or degrading punishment

In its General Comment on article 7 of the International Covenant on Civil and Political Rights, the Human Rights Committee indicates that the prohibition on torture and cruel, inhuman or degrading treatment or punishment extends to corporal punishment: "The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in

teaching and medical institutions." (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139)

The Committee on the Rights of the Child has gone beyond condemnation of "excessive" chastisement, and noted 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.

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' Initial 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 (for full discussion, see article 19, page 265).

The Committee's examination of States Parties' Initial Reports has found that amputation and stoning as well as corporal punishment – including 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 "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".

The Committee stated in recommendations adopted following its General Discussion on "Violence against children":

"The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures) for punishment or disciplining within the child justice system, or in any other context." (Report on the twenty-fifth session, September/October 2000, CRC/C/100, p. 131. For text of recommendations adopted following General Discussion days in 2000 and 2001, see page 261.)

Examples of the Committee's comments follow:

"In 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 IRCO, Add.123, paras. 37 and 38. See also, for example, Sudan IRCO, Add.10, para. 17; Pakistan IRCO, Add.18, paras. 12 and 23; Zimbabwe IRCO, Add.55, para. 21; Ethiopia IRCO, Add.67, para. 20 (and Ethiopia 2RCO, Add.144, paras. 38 and 39); Grenada IRCO, Add.121, para. 28; Saudi Arabia IRCO, Add.148, paras. 33 and 34)

The Committee against Torture, which oversees the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has also noted that corporal punishment "could constitute in itself a violation of the Convention". (See, for example, Report of the Committee against Torture, General Assembly Official Records, fiftieth session, Supplement No.44, (A/50/44), paras. 169 and 177). In 2001, the Commission on Human Rights, in a resolution on torture and other cruel, inhuman or degrading treatment or punishment, reminded Governments "that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture" (E/CN.4/RES/2001/62, para. 5).

In his 2000 report to the General Assembly on the question of torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on Torture referred to conditions of detention of children: "Severe overcrowding, unsanitary conditions and inadequate and/or insufficient food and clothing are often exacerbated by a shortage or absence of adequately trained professionals. The resulting lack of attention to the medical, emotional, educational, rehabilitative and recreational needs of detained children can result in conditions that amount to cruel or inhuman treatment." The Special Rapporteur also refers to foster care systems and residential institutions caring for children which "are in some cases alleged to permit inhuman forms of discipline or extreme forms of neglect". (A/55/290, paras. 10 and 11)

Solitary confinement or isolation of children

The Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights, notes that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7" (Human Rights Committee, General Comment 20, 1992, HRI/GEN/1/Rev.5, p. 139). Thus, 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 involved.

"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. As noted under article 6 (page 99) 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 to the Commission on Human Rights, the Special Rapporteur notes with concern the situation in the United States “where around 70 persons are currently under death sentence for crimes committed when they were under the age of 18. It is reported that 13 such juvenile offenders have been executed in the United States since 1990. According to information provided by the Government of the United States, in the last two years 10 persons have been sentenced to death and six executed for crimes committed when the accused were under the age of 18”. The Special Rapporteur reports 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 the Democratic Republic of the Congo, Afghanistan, the Islamic Republic of Iran and the United States. The Special Rapporteur notes that at least 75 countries and territories have abolished capital punishment for all crimes, and around 30 of them did so in the last 10 years. (Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2001/9 paras. 79, 80 and 91)

In recommendations adopted following its General Discussion on “Violence against children” (September 2000), the Committee

“...urges States Parties to repeal, as a matter of urgency, any legislation that allows the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18, contrary to article 37(a) of the Convention.” (Report on the twenty-fifth session, September/October 2000, CRC/C/100, p. 130)

The Committee on the Rights of the Child has raised the issue with a number of States Parties and emphasized that it is not enough that the death penalty is not applied to children. Its prohibition must be confirmed in legislation. In addition paragraph (a) 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:

“The Committee is concerned at the present system of juvenile justice, including the lack of a clear legal prohibition of capital

punishment, life imprisonment without possibility of release and indeterminate sentencing...” (Zimbabwe IRCO, Add.55, para. 21)

The Committee has often found both capital punishment and life imprisonment without possibility of release in a State Party’s system applying to juveniles:

“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 IRCO, Add.56, para. 21)

“In 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 IRCO, Add.123, paras. 29 and 30. See also Guatemala IRCO, Add.58, para. 15; Nigeria IRCO, Add.61, para. 20; Democratic Republic of the Congo IRCO, Add.153, para. 75)

Extrajudicial executions

The Committee has expressed concern at “extrajudicial executions”:

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

A 1989 resolution of the Economic and Social Committee of the United Nations 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 her mandate. In her 2001 report to the Commission on Human Rights she 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 prac-

tice” (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”.

When the Committee examined the Initial Report of Turkey in 2001, it noted:

“The Committee is deeply concerned about the violation of the right to life with reference to the practice of ‘honour killings’, prevailing in particular in the eastern and south-eastern regions and among recent immigrants to cities, whereby immediate family members kill women who are suspected of being unchaste, and notes that often both victims and perpetrators are minors.

“In the light of article 2 (non-discrimination), article 3 (best interests of the child), article 6 (right to life) and article 19 (protection from all forms of violence) of the Convention and in line with Commission on Human Rights resolution 2001/45, with the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2001/9, paras. 38-41) and with concluding observations of the Committee on the Elimination of Discrimination against Women (A/52/38/Rev.1, paras. 179 and 195), the Committee strongly recommends that the State Party review rapidly legislation with a view to addressing these crimes in an effective way and to eliminating all provisions allowing reductions of sentence if the crime is committed for honour purposes. It also recommends the development and effective implementation of an awareness raising and education campaign, involving also religious and community leaders, to combat effectively discriminatory attitudes and harmful traditions affecting girls, in particular in the eastern and south-eastern regions, by demonstrating that such practices are socially and morally unacceptable. The State Party should also provide special training and resources to law enforcement personnel with a view to protecting in a more effective way girls who are in danger of ‘honour killing’ and to prosecuting such cases in an effective way.” (Turkey IRCO, Add.152, paras. 31 and 32)

“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”

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 *Guidelines for Periodic Reports*, para. 137, note).

Paragraph (1) of article 9 of the International Covenant on Civil and Political Rights states: “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 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 8, 1982, HRI/GEN/1/Rev.5, p. 117)

During its examination of States Parties’ Initial 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.

Paragraph 4 of article 9 of the International Covenant on Civil and Political Rights states: “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.”

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 supported by 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”.

During discussion of Nigeria’s Initial Report, a Committee member “pointed out that the expression ‘as a last resort’ in article 37 of the Convention was often misunderstood as referring to children guilty of serious crimes; in fact, it meant that prison could be resorted to only if there was no other way of giving the child the protection it needed. The phrase ‘for the shortest appropriate period of time’ implied that other measures than prison sentences should be sought...” (Nigeria SR.323, para. 56)

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 589).

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...”

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. In its *Guidelines for Periodic Reports*, the Committee seeks information under article 1 (definition of the child) on any legal minimum age defined in national legislation for the deprivation of liberty, “including by arrest, detention and imprisonment, *inter alia* in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions” (para. 24).

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”.

In some cases, its concern has been general:

“...Deprivation of liberty should always be envisaged as the very last resort, and particular attention should be paid to rehabilitation measures, psychological recovery and social reintegration...” (Egypt IRCO, Add.5, para. 14)

“Particular attention should be paid to deprivation of liberty only as a measure of last resort and for the shortest possible period of time...” (Myanmar IRCO, Add.69, para. 46. See also Bulgaria IRCO, Add.66, para. 19)

Arrest, pre-trial detention

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 Com-

mittee goes on to state that “pre-trial detention should be an exception and as short as possible.” (Human Rights Committee, General Comment 8, 1982, HRI/GEN/1/Rev.5, p. 117)

The “Beijing Rules” notes (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)

The Committee on the Rights of the Child has frequently expressed concern at the length of pre-trial detention permitted in States Parties. In relation to Bolivia, it noted its concern that

“... a child may remain in custody for the excessively long period of 45 days before the legality of his or her detention is decided upon.” (Bolivia IRCO, Add.1, para. 11. See also Belgium IRCO, Add.38, para. 11; Madagascar IRCO, Add.26, para. 16; Jamaica IRCO, Add.32, para. 17; Slovenia IRCO, Add.65, paras. 19 and 27)

It has expressed particular concern at instances in which children have been held incommunicado (see, for example, Turkey IRCO, Add.152, paras. 39, 40, 65 and 66).

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 IRCO, Add.34, para. 10)

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 long periods of imprisonment for delinquent children set forth in national penal legislation are not in conformity with the provisions of article 37 of the Convention...” (Viet Nam IRCO, Add.3, para. 6)

“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 IRCO, Add.19, para. 11)

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 IRCO, Add.34, para. 36)

“...The Committee is also concerned that the provisions of national legislation by which a child may be detained ‘at Her Majesty’s Pleasure’ may permit the indiscriminate sentencing of children for indeterminate periods...”

“...Finally, the Committee wishes to emphasize that the Convention requires that detention be a measure of last resort and for the shortest appropriate period of time. The institutionalization and detention of children must be avoided as much as possible and alternatives to such practices must be developed and implemented...” (Nigeria IRCO, Add.61, paras. 21 and 40)





Detention outside the juvenile justice system

As illustrated above (page 549), 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-seekers and refugee children. The limitations on restriction of liberty in paragraph (b) and the safeguards in paragraphs (c) and (d) must be applied equally, as must the standards set out in the relevant United Nations rules and guidelines.

Detention of children in relation to asylum-seeking and immigration. The policy 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 (*Guidelines*, pp. 86-88). (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 from detention (UNHCR Policy on Refugee Children, UNHCR Executive Committee, 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 IRCO, Add.98, para. 27)

“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 IRCO, Add.133, paras. 38 and 39)

Deprivation of liberty for 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 (Chile IR, paras. 54-55). 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 IR, para. 237). 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 SR.148, paras. 34-35 and 38)

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 IRCO, Add.57, para. 38)

The Special Rapporteur on Torture, 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.

The Committee has noted the importance of registering all children deprived of their liberty, and the *Guidelines for Periodic Reports* asks for detailed information on the numbers of children deprived of liberty “unlawfully, arbitrarily and within the law”, the reasons and periods of deprivation of liberty, and that data should be disaggregated (para. 141).

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 with standards established by competent authorities (see page 47).

“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 9, 1982, HRI/GEN/1/Rev.5, p. 119)

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 (see, for example, United Kingdom IRCO, Add.34, para. 7; Canada IRCO, Add.37, para. 10; Iceland IRCO, Add.50, para. 4; New Zealand IRCO, Add.71, para. 8).

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.

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. The Committee *“...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 IRCO, Add.21, para. 16).

“The Committee ... is also concerned that in at least one major detention centre, persons who have been convicted and those awaiting trial are not housed separately.” (Paraguay IRCO, Add.75, para. 28)

“...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 expresses its concern as to the compatibility of juvenile justice and penitentiary institutions with article 37 of the Convention and how the rights of the child to leisure and contact with the family and the best interests of the child are protected in such situations.” (Russian Federation IRCO, Add.4, para. 14)

“Moreover, the Committee is seriously concerned about the conditions in place of detention for children, especially with regard to children’s access to their parents...” (Nigeria IRCO, Add.61, para. 23)

“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 589).

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”. In 1992, a Commission of Human Rights resolution (1992/35) urged States that had not already done so to establish such procedures.

The Committee on the Rights of the Child has commented on the lack of appropriate legal assistance. Under article 1 (definition of the child), the Committee seeks information on any legal age defined in legislation for “legal ... counselling without parental consent” (*Guidelines for Periodic Reports*, para. 24).

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 General Discussion on “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.” (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 171) and has highlighted the particular need for complaints procedures for children whose liberty is restricted.

The report on the Committee’s General Discussion on “Administration of juvenile justice” notes that children involved with the juvenile justice system

“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...” (Report on the tenth session, October/November 1995, CRC/C/46, para. 220)

As noted above, the Committee adopted detailed recommendations concerning children’s access to complaints procedures following its General





Discussion on “Violence against children” (Report on the twenty-fifth session, September/October 2000, CRC/C/100, p. 134).

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 guidelines.

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?

How to use the checklists, *see page XVII*



- ☐ 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?

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 including 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?

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?

How to use the checklists, *see page XVII*



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?
- ☐ 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?
- ☐ 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?



Reminder: The Convention is indivisible and its articles are 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 jurisdiction without discrimination on any ground

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

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

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

Closely related articles

Articles whose implementation is related to that of article 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

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?

Protection of children affected by armed conflict



Text of Article 38

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

Under article 38, 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 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 that the effects of armed conflict on children should be considered in the framework of all the articles of the Convention on the Rights of the Child; 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. In particular, 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.

Summary



In May 2000, the United Nations General Assembly adopted an Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict that requires States which ratify it 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. It requires that States Parties to the Protocol should raise “in years” the minimum age for voluntary recruitment (see page 641). By the end of January 2002, the Optional Protocol had been signed by 77 States and ratified by 14. It entered into force on 12 February 2002, three months after the deposit of the tenth instrument of ratification or accession (article 9).

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 into national armed forces 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 has been appointed and the Security Council has adopted resolutions condemning in strong terms the involvement of children in armed conflict.

In its examination of States Parties’ reports, the Committee has expressed grave concern to many States at the effects of armed conflict on children. ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Special protection measures

Under this section States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(a) Children in situations of emergency

...

(ii) Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39);...”

(CRC/C/5, para. 23)

Guidelines for Periodic Reports

“VIII. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37(b) - (d), 32-36)

A. Children in situations of emergency

2. Children in armed conflicts (art. 38) including physical and psychological recovery and social reintegration (art. 39)

*Please provide information on the measures adopted pursuant to **article 38**, including of a legislative, administrative and educational nature, to respect and ensure respect for the rules of international humanitarian law applicable to the State in armed conflicts which are relevant to the child. In this regard, reports should identify the relevant international conventions, instruments and other rules of humanitarian law applicable to the State and the measures adopted to enforce them, as well as to ensure their effective dissemination and appropriate training for professionals concerned.*

Please indicate all the measures taken pursuant to article 38, paragraph 2, including of a legislative, administrative or other nature, to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. In this regard, reports should also indicate the measures adopted to ensure and protect the rights of the child during hostilities. Information should also be provided on any mechanism established to monitor this situation. When relevant, indication should also be given of the proportion of children participating in hostilities, including by age, gender and social and ethnic origin.

Please indicate the measures adopted pursuant to article 38, paragraph 3, including of a legislative and administrative nature, to ensure that no person who has not attained the age of 15 years is recruited into the armed forces, as well as to ensure that, in recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority is given to those who are oldest. In this regard, reports should also indicate any mechanisms established to monitor this situation, as well as the proportion of children being recruited or voluntarily enlisted into armed forces, including by age, gender, and social and ethnic origin.

Please provide information on all the measures adopted pursuant to article 38, paragraph 4, and in accordance with the State's obligations under international humanitarian law to protect the civilian population in armed conflicts, including measures of a legislative, administrative, budgetary and other nature, to ensure the protection and care of children who are affected by an armed conflict.

In this regard, please indicate the relevant international humanitarian law applicable to the State, the criteria used to assess the feasibility of the measures adopted, the steps taken to identify and address the specific situation of children within the civilian population and to ensure respect for and protection of their rights, the measures adopted to ensure that humanitarian assistance and relief programmes are promoted and put in place, including through the negotiation of special arrangements such as corridors of peace and days of tranquillity, as well as any relevant disaggregated data on the children concerned, including by age, gender, and national, social and ethnic origin. Where relevant, please also indicate the number of child casualties due to armed conflict, as well as the number of children displaced because of armed conflict.

When providing information on the implementation of article 38, please further indicate the respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, development and survival to the maximum extent.

*Please indicate all measures adopted pursuant to **article 39** to:*

Promote physical and psychological recovery and social reintegration of child victims of armed conflicts;

Ensure that such recovery and reintegration takes place in an environment which fosters the health, self-respect and dignity of the child.

In this regard, reports should provide information inter alia on:

The policies and programmes developed, including at the family and community levels, to address the physical and psychological effects of conflicts on children and to promote their reintegration in society;

The steps taken to ensure the demobilization of child soldiers and to prepare them to participate actively and responsibly in society;

The role played by education and vocational training;

The surveys and research undertaken;

The budget allocated for them (at the national, regional, local and where appropriate at the federal and provincial levels);

The number of children who received physical and/or psychological treatment as a consequence of armed conflict.

Information should also be provided on the progress achieved on the implementation of articles 38 and 39, on any difficulties encountered and targets set for the future."

(CRC/C/58, paras. 123-131. The following paragraphs of the Guidelines for Periodic Reports are also relevant to reporting under this article: 24, 119-122; for full text of Guidelines, see Appendix 3, page 674.)





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 two 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. Mention was also made of other United Nations standards, such as the International Covenant on Civil and Political Rights, and General Comment 17, adopted by the Human Rights Committee on article 24 of that Covenant, which recognizes the right of children to necessary protection. In its General Comment, the Human Rights Committee emphasizes that “as individuals, children benefit from all of the civil rights enunciated in the Covenant”. It also “wishes to draw the attention of States Parties to the need to include in their reports information on measures adopted to ensure that children do not take a direct part in armed conflicts”. It goes on to note that while the Covenant does not set an age at which a child attains majority, “... a State Party cannot absolve itself from its obligations under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law.” (Human Rights Committee, General Comment 17, 1989, HRI/GEN/1/Rev.5, pp. 132 and 133)

During the drafting of the Convention on the Rights of the Child, there was a strong move both to ensure that its provisions did not in any way undermine existing standards in international humanitarian law (in line with General Assembly resolution 41/120, which urges Member States, in developing new international standards, to give due consideration to the established international legal framework) and to extend protection up to the age of 18. The final version of article 38 was a compromise, and several representatives in the Working Group indicated that they could not join the consensus in adopting it because, while it was consistent with Additional Protocol I to the Geneva Conventions, it failed to extend to children in internal conflicts a level of protection equal to that recognized in Additional Protocol II (see opposite) and might thus be said to undermine existing standards of humanitarian law. But the chairman ruled that the text had been adopted by consensus (E/CN.4/1989/48, pp. 110-116; Detrick, p. 515; also E/CN.4/1989/48, pp. 5-8; Detrick, p. 630).

The study on the *Impact of Armed Conflict on Children* (see below, page 570) notes that the International Committee of the Red Cross, the International Federation of the 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 report 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 Protocol of 1967 (see article 22, page 305) 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 222-225).

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. The Geneva Conventions have been ratified, almost as universally as the Convention on the Rights of the Child, by 189 States.

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 (ratified by 159 states by December 2001), 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, but two articles also offer 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 (ratified by 151 states by December 2001), which applies to non-international – that is internal – armed conflicts, includes a paragraph on protection of children, which requires 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.”





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...” it called 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.

Committee's General Discussion on “Children in armed conflicts”

At its first session, September/October 1991, the Committee on the Rights of the Child decided to hold its first General Discussion on “Children in armed conflicts”, 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. In the Report on its second session, following the General Discussion, the Committee drew attention to the fact that

“in recent years, a growing number of conflicts are occurring (more than 150 since the Second World War) using more sophisticated and brutal weapons and fighting methods, affecting a growing number of civilians, particularly children”.

The Committee went on to stress

“the need to underline the complexity of the question of children in armed conflicts, which should not be simply reduced to the consideration of a single provision of the Convention, namely article 38”,

and

“the need to ensure an effective protection of children in a period of armed conflict, in the overall framework of the realization of all the rights of the child, inherent to his or her dignity and essential to the full and harmonious development of his or her personality”. (Report on the second session, September/October 1992, CRC/C/10, pp. 20 and 21)

The Committee noted the various provisions that make up international humanitarian law relating to children in armed conflicts and the need always to apply norms most conducive to the realization of the rights of the child.

The report went on to review general measures to prevent conflict, emphasizing education:

“... (a) Education in a spirit of understanding, solidarity and peace, as a general and continuous process, as reflected in article 29 of the Convention on the Rights of the Child; (b) Education and training for the military and for groups working with and for children; (c) Education and dissemination of information specifically for children.

“Attention was also drawn to the need for creating awareness of the political grounds for the existence of conflicts; such an attitude may contribute to the consideration of solutions of mediation or conciliation designed to prevent the conflict or attenuate its effects.

“Importance was also given to the question of arms expenditure, the sale of arms and the advisability of considering an adequate monitoring mechanism of this reality. As a general preventive measure, reference was also made to the prevention of child abuse and neglect, which could contribute to the prevention of future use of violence.

“Specific preventive measures designed to prevent the involvement of children in armed conflicts were also discussed: mention was made of the interdiction of recruitment into the armed forces under a certain age, as well as of the adoption of measures ensuring that children will not take part in hostilities or suffer their effects.”

In relation to effective protection for children in situations of armed conflict, the report recalls the overall framework of the realization of the rights of the child, which should be ensured. Special reference was made in the Discussion to

“protecting the family environment; ensuring the provision of essential care and assistance; ensuring access to health, food and education; prohibiting torture, abuse or neglect; prohibiting the death penalty; and the need to preserve the children’s cultural environment, as well as the need of protection in situations of deprivation of liberty. Particular emphasis was also put on the need to ensure humanitarian assistance and relief and humanitarian access to children in situations of armed conflict. In this respect, special attention was paid to important measures, such as days of tranquillity and corridors of peace.”

The Committee proposed, in examining States Parties’ reports, that it could:

- 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.

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

Results of armed conflict

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 concerned that the situation in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, have seriously affected children, especially their right to life, survival and development (art. 6 of the Convention). In the light of articles 38 and 39, the Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts. Moreover, it is concerned at reports of involvement of the security forces in disappearances of children in these conflict areas.

“The Committee recommends that the State Party at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict. 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. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries into alleged abuses committed by members of the security forces to be conducted by the National Commission on Human Rights. In line with the recommendations of the Human Rights Committee (CCPR/C/79/Add.81), the Committee recommends that the requirement of governmental permission for criminal prosecutions or civil proceedings against members of the security forces be abolished.” (India IRCO, Add.115, paras. 63 and 64)

“The Committee expresses its extremely deep consternation at the very high numbers of children who have been forcibly recruited into armed forces, including children as young as five years old, and who have often been forced to commit atrocities against other people, including other children and members of their community. The Committee expresses its great concern at the horrifying amputation of hands, arms and legs, and at the many other atrocities and acts of violence and cruelty committed by armed persons against children, including, in some cases, against very young children.

“The Committee is deeply saddened by the direct effects of the armed conflict on all child victims, including child combatants, and is concerned at the tragic loss of life and severe psychological trauma inflicted upon them. The Committee is also concerned by the very high number of children who have been internally displaced within the country or who have been forced to leave as refugees including, in particular, those who have been separated from their parents.

“The Committee is further concerned at the indirect effects of the armed conflict – the destruction of educational and health infrastructures, of water collection, purification and distribution systems, of the national economy, of agricultural production, of communication infrastructure – all of which have contributed to a massive and continuing violation for a majority of children in the State Party of many of the rights provided for in the Convention.

“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. The Committee further recommends that the State Party establish and strictly enforce legislation prohibiting the future recruitment, by any armed force or group, of children under the age of 18, in accordance with the African Charter on the Rights and Welfare of the Child.

"The Committee also urges the State Party to 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 child amputees, and 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 and reintegration. "The Committee further urges the State Party to make every effort to assist children who have been displaced from their homes to return as soon as possible, including through assistance in the reconstruction of homes and other essential infrastructure, within the framework of international cooperation."

(Sierra Leone IRCO, Add.116, paras. 70-75. See also, for example, Sudan Prelim. Obs., Add.6, para. 9 and Sudan IRCO, Add.10, para. 8; Peru IRCO, Add.8, paras. 5 and 7; El Salvador IRCO, Add.9, paras. 11 and 16; Philippines IRCO, Add.29, para. 6; Sri Lanka IRCO, Add.40, paras. 6, 24 and 44; Federal Republic of Yugoslavia IRCO, Add.49, paras. 3 and 5; Croatia IRCO, Add.52, para. 11; Lebanon IRCO, Add.54, para. 45; Guatemala IRCO, Add.58, para. 7)

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* (see opposite) 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, paras. 63-66). Article 22 of the Convention covers the particular rights of refugee children (see page 305).

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 511). The Rome Statute of the International Criminal Court (see below, page 574) includes rape, sexual slavery, enforced prostitution and other grave forms of sexual violence within its definition of crimes against humanity (article 7).

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.

On the recommendation of the General Assembly, in September 1997 the Secretary-General appointed as his Special Representative for children and armed conflict Mr. Olara Otunnu. He 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.

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;

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 continue to die from disease and malnutrition in flight from conflict or in camps for displaced persons. 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 full text of the report is available at <http://www.unifem.undp.org/machelrep.html>



- 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)

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 (see box, page 571).

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. This has been reflected in comments to many States Parties, severely condemning any recruitment of child soldiers. For example:

"The Committee is concerned about the participation of children in the State Party's armed forces, either as soldiers, or as helpers in camps or in the obtaining of information. The Committee is also concerned about reports of widespread recruitment of children by opposition armed forces..."

"The Committee urges the State Party to end the use of children as soldiers or in any other way related to the armed conflict and to demand, in the context of peace negotiations, that opposition armed forces also cease to use children as soldiers. The Committee recommends that the State Party ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict at the earliest opportunity." (Burundi IRCO, Add.133, paras. 71 and 72. See also, for example, Belize IRCO, Add.99, para. 14; Sierra Leone IRCO, Add.116, paras. 26 and 27; Democratic Republic of the Congo IRCO, Add.153, paras. 64 and 65)

As indicated previously (page 566), 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., in the terms of the Convention, all under-18-year-olds) to join armed forces amounts to a breach of article 35 (abduction) and article 32 (forced labour).

A number of States Parties made declarations on ratifying 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. 12-43)

The Committee has welcomed such declarations:

"The Committee notes with satisfaction the declaration made by Spain at the time of its ratification of the Convention with regard to the provisions of paragraphs 2 and 3 of article 38 and the commitment of the State Party not to permit the recruitment and participation in armed conflict of persons below the age of 18 years." (Spain IRCO, Add.28, para. 3. See also, for example, Argentina IRCO, Add.35, para. 3; Germany IRCO, Add.43, para. 4; Uruguay IRCO, Add.62, para. 3)

The *Guidelines for Periodic Reports* asks for information on "The steps taken to ensure the demobilization of child soldiers and to prepare them to participate actively and responsibly in society" (para. 130; see article 39, page 585).

The study on the *Impact of Armed Conflict on Children* notes that adults are increasingly recruiting children as soldiers. Children also serve armies 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." (paras. 34-35. The report provides a detailed commentary and proposals to end recruitment of child soldiers.)

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

Proposals for the prevention of child recruitment

The following proposals arose from a 1997 seminar in Cape Town:

“Recruitment encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group.

1. Establish 18 as the minimum age for any participation in hostilities and for all forms of recruitment into all armed forces and armed groups.
2. Governments should adopt and ratify the Optional Protocol to the Convention on the Rights of the Child, raising the minimum age from 15 to 18.
3. Governments should ratify and implement pertinent regional and international treaties and incorporate them into national law.
4. Governments should adopt national legislation on voluntary and compulsory recruitment with a minimum age of 18 years and should establish proper recruitment procedures and the means to enforce them. Those responsible for illegally recruiting children should be brought to justice.
5. A permanent International Criminal Court should be established whose jurisdiction would cover, *inter alia*, the illegal recruitment of children.
6. Written agreements between or with all parties to the conflict which include a commitment on the minimum age of recruitment should be concluded.
7. Monitoring, documentation and advocacy are fundamental to eliminating child recruitment and to informing programmes to this end. Community efforts to prevent recruitment should be developed and supported.
8. Programmes to prevent recruitment of children should be developed in response to the expressed needs and aspirations of the children.
9. In programmes for children, particular attention should be paid to those most at risk of recruitment: children in conflict zones, children (especially adolescents) separated from or without families, including children in institutions; other marginalized groups (e.g. street children, certain minorities, refugees and the internally displaced); economically and socially deprived children.
10. All efforts should be made to keep or reunite children with their families or to place them within a family structure.
11. Ensure birth registration, including for refugees and internally displaced children, and the provision of identity documents to all children, particularly those most at risk of recruitment.
12. Access to education, including secondary education and vocational training, should be promoted for *all* children, including refugee and internally displaced children.
13. Special protection measures are needed to prevent recruitment of children in camps for refugees and internally displaced persons.
14. The international community should recognize that children who leave their country of origin to avoid illegal recruitment or participation in hostilities are in need of international protection. Children who are not nationals of the country in which they are fighting are also in need of international protection.
15. Controls should be imposed on the manufacture and transfer of arms, especially small arms. No arms should be supplied to parties to an armed conflict who are recruiting children or allowing them to take part in hostilities.”

A further section of the Principles covers “Demobilization” and “Return to family and community life”.

Cape Town Principles on the prevention of recruitment of children into the armed forces and demobilization and social reintegration of child soldiers in Africa, adopted by participants in the Symposium organized by UNICEF in cooperation with the NGO Subgroup of the NGO Working Group on the Convention on the Rights of the Child, Cape Town, 30 April 1997.





“Cape Town Principles”, adopted by participants in a seminar organized by UNICEF and the NGO Subgroup of the NGO Working Group on the Convention on the Rights of the Child). These propose (see box on page 573) 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 641) should be supported and ratified.

Optional Protocol on the involvement of children in armed conflict

The Optional Protocol, adopted unanimously by the United Nations General Assembly on 25 May 2000, 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 667). 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 641 and for reporting guidelines, see page 689.)

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).

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, to be situated at the Hague, has jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression, which are defined in detail in the Statute, with various references to children. For example, “genocide” is defined as various acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”. These acts include “imposing measures intended to prevent births within the group” and “forcibly transferring children of the group to another group” (article 6). Other elements of the definitions intended to reinforce protection of civilians are particularly relevant to children.

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).

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 (S/RES/1261(1999)). It asked the United Nations Secretary-General to submit a report to it on implementation by July 2000. The resulting report emphasizes the disproportionate impact of armed conflict on children (see box). The Security Council issued a further resolution in 2000 (S/RES/1314(2000)).

Anti-personnel mines

The Committee and other bodies have noted the devastating effects that anti-personnel landmines have had on children, and congratulated 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);
- an exception for the continued use of anti-vehicle mines equipped with anti-handling devices;
- an exception for the continued use and stockpiling of APMs for training in mine clearance and related activities;
- 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.;

Secretary-General's report to Security Council, 2000

"In the internecine conflicts of recent years, children have increasingly been victimized as both the targets and the perpetrators of violence. Almost one half of the world's 21 million refugees are children, while it is estimated that another 13 million children have been displaced within the borders of their own countries. The number of children under the age of 18 who have been coerced or induced to take up arms as child soldiers is generally thought to be in the range of 300,000. Each year between 8,000 and 10,000 children are the victims of landmines... UNICEF data indicate that, during the decade between 1986 and 1996, armed conflicts killed 2 million children, injured 6 million, traumatized over 10 million and left more than 1 million orphaned.

"Beyond these cold numbers are the haunting images, from place after place, of adolescent victims of rape, which has become as much a weapon of warfare as bullets and machetes, of child soldiers barely the height of the automatic weapons they carry, and of children separated from their families in conditions of extreme deprivation. Armed conflicts also increasingly serve as vectors for the HIV/AIDS pandemic, which follows closely on the heels of armed troops and in the corridors of conflict. Fed by a booming illicit trade in arms and natural resources, these conflicts are threatening to erode the public values and the legal and social structures needed to nurture and protect our youth.

"The statistics and images tell the same story: children are disproportionately affected by armed conflict and their needs merit our concerted attention, as both the Security Council and the General Assembly have affirmed..."

Report of the United Nations Secretary-General to the Security Council, 19 July 2000 (A/55/163 – S/2000/712, paras. 2-4)

- 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 mis-





sions in cases of suspected violations of the Convention.

The Committee on the Rights of the Child encourages States Parties to become parties to the new Convention:

"The Committee strongly encourages the State Party to seek long-term external financial assistance in order to build national capacity with regard to Unexploded Ordnance (UXO), to establish a sustainable clearing process in each area, to provide continual community awareness programmes, through schools, pagodas and local organizations, and to develop rehabilitation programmes."

(Lao People's Democratic Republic IRCO, Add.78, para. 49)

"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 IRCO, 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 IRCO, Add.124, paras. 58 and 59. See also Cambodia IRCO, Add.128, paras. 58-60; United Kingdom – Overseas Territories IRCO, Add.135, paras. 47 and 48)*

World Summit for Children

World leaders at the World Summit for Children (New York, 1990) committed themselves to "...work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future. We will promote the values of peace, understanding and dialogue in the education of children. The essential needs of children must be protected even in times of war and in violence-ridden areas. We ask that periods of tranquillity and special relief corridors be observed for the benefit of children, where war and violence are still taking place." (The World Summit Declaration, para. 20(8)) The United Nations General Assembly special session on children, in May 2002, will be reviewing progress since the World Summit and setting goals for the next decade.

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?
- ☐ 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?

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?

How to use the checklists, see page XVII



- ☐ 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?
- ☐ Has the State ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction?
- ☐ Has the State ratified the Optional Protocol to the Convention on the involvement of children in armed conflict?

Reminder: The Convention is indivisible and its articles are 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 jurisdiction without discrimination on any ground

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

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

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

Closely related articles

Articles whose implementation is related to that of article 38 include:

Article 19: protection from all forms of violence

Article 22: refugee children

Article 29: aims of education

Article 34: protection from sexual exploitation

Article 35: abduction and trafficking

Article 37: protection from torture, cruel, inhuman or degrading treatment or punishment

Article 39: rehabilitative care for victims of armed conflict

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

Rehabilitation of child victims



Text of Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 39 requires measures to help child victims of:

- any form of violence, neglect, exploitation or abuse (for example, as detailed in articles 19, 32, 33, 34, 35, 36);
- torture or any other form of cruel, inhuman or degrading treatment or punishment (article 37);
- armed conflicts (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, including 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.

In Concluding Observations on States Parties' reports, the Committee has frequently grouped article 39 with articles 37 and 40. It 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.

In its comments on States Parties’ Initial Reports, 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), drug abuse and trafficking (article 33), family conflict and the sale and trafficking of children (article 35), and children involved in the system of juvenile justice (articles 37 and 40). ■

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

“Special protection measures

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

(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.

...

(iv) Physical and psychological recovery and social integration (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).

...

Additionally, States Parties are encouraged to provide specific statistical information and indicators relevant to the children covered by paragraph 23.”

(CRC/C/5, paras. 23 and 24)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37(b)-(d), 32-36)

4. Physical and psychological recovery and social reintegration of the child (art. 39)

Please provide information on all measures taken pursuant to article 39 and in the light of article 40, paragraph 1, to promote the physical and psychological recovery and social reintegration of the child involved with the system of the administration of juvenile justice, and to ensure that such recovery and reintegration take place in an environment which fosters the health, self-respect and dignity of the child.

Reports should also identify, inter alia, the mechanisms established and the programmes and activities developed for that purpose, as well as the education and vocational training provided, and indicate relevant disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin. They should further indicate the progress achieved in the implementation of article 39, difficulties encountered and targets set for the future."

(CRC/C/58, paras. 149 and 150. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 61, 86-87, 90, 129-131, 156, 159, 161 and 164; for full text of *Guidelines*, see Appendix 3, page 674.)



Rehabilitating child victims

The Committee on the Rights of the Child has frequently commented on the lack of adequate measures to rehabilitate child victims. For example:

"In light of article 39 of the Convention, the Committee recommends that the State Party undertake further efforts to establish rehabilitation centres for child victims of ill-treatment, sexual abuse and economic exploitation." (Fiji IRCO, Add.89, para. 45. See also, for example, Poland IRCO, Add.31, para. 30; Denmark IRCO, Add.33, para. 32; United Kingdom IRCO, Add.34, para. 39; Ukraine IRCO, Add.42, para. 29; Nigeria IRCO, Add.61, para. 43; Bulgaria IRCO, Add.66, para. 30; Myanmar IRCO, Add.69, para. 45)

The Committee has emphasized that there should be no discrimination in the provision of rehabilitative services to child victims:

"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 IRCO, Add.98, para. 21)

Following its 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).

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. The purpose of article 39 is to require appropriate action for those who still fall victim.

This is further emphasized in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (see page 647). 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, see box page 582).

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 p. 583).

The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted by the Commission on Human Rights, proposes:

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 670. For commentary, see page 647)

“34. Rehabilitation and reintegration programmes using an interdisciplinary approach should be established to assist children who have been victims of trafficking, sale or sexual exploitation and their families. Agencies implementing such programmes, whether public or non-governmental, should be established, or strengthened by being provided with the necessary support and funding. They should be encouraged to request technical assistance, evaluational assistance, information on new methods of self-funding schemes, etc., from United Nations bodies and

from public or private, national or international sources with relevant competence.” (Commission on Human Rights, resolution 1992/74, 5 March 1992, Annex)

The Agenda for Action adopted by the First World Congress against Commercial Sexual Exploitation of Children (Stockholm, Sweden, 1996) 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:



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 746)



- 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).

The Agenda for Action was reviewed at the Second World Congress in Yokohama, Japan, in December 2001.

In relation to drug abuse, a need for rehabilitative services tailored specifically for children exists in many countries where there are inadequate services for adults or children (see article 33, page 495).

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 213 and article 17, page 227).

Child victims of economic exploitation

Following its 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 inter-related 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 475):

"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." (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 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 chil-

dren with their families. In such cases, support has to be extended to the families as well. Comprehensive rehabilitation measures are badly needed and should be provided even if their cost is very high." The ILO also highlights the severe short- and long-term physical and psychological effects of child labour, including in particular hazardous work and forms of forced labour, among them commercial sexual exploitation, requiring specialist and long-term support and rehabilitation (*Child labour: Targeting the intolerable*, pp. 9 et seq., 107).

Children involved with system of juvenile justice

The *Guidelines for Periodic Reports* asks for information on "all measures taken pursuant to article 39 and paragraph 1 of article 40 to promote the physical and psychological recovery and social reintegration of the child involved with the system of the administration of juvenile justice, and to ensure that such recovery and reintegration takes place in an environment which fosters the health, self-respect and dignity of the child" (para. 149). This underlines that such children should be recognized as victims, as well as perpetrators of offences.

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 articles 37, 39 and 40, 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 IRCO, Add.118, paras. 48 and 49)

The Riyadh Guidelines for the Prevention of Juvenile Delinquency proposes that comprehens-

ive 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 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

The occurrence of practices breaching the prohibition in article 37 on torture and other forms of cruel, inhuman or degrading treatment and punishment was raised in the Committee’s General Discussion on “Administration of juvenile justice”, and 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.” (Report on the tenth session, October/November 1995, CRC/C/46, para. 221)

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 has raised the issue of compensation of child victims:

“The Committee urges that the State Party take all necessary measures to prevent disappearances, torture, ill-treatment, and illegal or arbitrary detention of minors; that all such cases be systematically investigated in order to bring those suspected of having committed such acts before the courts; and that those found guilty be punished and that the victims be compensated.” (Indonesia IRCO, Add.25, para. 24. See also, for example, Chad IRCO, Add.107, para. 35)

In the case of various States Parties, the Committee has expressed concern about child victims of torture and other inhuman or degrading treatment or punishment (see also article 37, page 543).

Child victims of armed conflict

Following its General Discussion on “Children in armed conflicts”, 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.” (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 566).

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 641).

The Committee makes recommendations to States which have experienced or are experiencing armed conflict, often proposing the development of comprehensive programmes of action. For example:

“The Committee ... urges the State Party to 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 child amputees, and 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 and reintegration.” (Sierra Leone IRCO, Add.116, para. 74)

“The Committee urges the State Party to take effective measures to have all child abductees and combatants released and demobilized and to rehabilitate and reintegrate them into society. The Committee further recommends that the State Party establish and strictly enforce its legislation prohibiting the future recruitment of children by any group. “The Committee also urges the State Party to take all effective measures, in cooperation

with United Nations agencies and bodies such as UNICEF, to address the physical needs of child victims of the armed conflict, in particular child amputees, and the psychological needs of all children affected directly or indirectly by the traumatic experiences of war. In this regard, the State Party is recommended to develop as quickly as possible a long-term and comprehensive programme of assistance, care, rehabilitation and reintegration.” (Colombia 2RCO, Add.137, paras. 56 and 57)

“... the Committee expresses its concern at ... the lack of adequate rehabilitation services for the children affected by the armed conflict. “The Committee urges the State Party to take every feasible measure, including through international mediation, to have all child abductees and combatants released and demobilized and to rehabilitate and reintegrate them in society. Moreover, it urges the State Party to take all necessary measures in cooperation with national and international NGOs and United Nations bodies, such as UNICEF, to address the physical needs of child victims of the armed conflict, in particular child amputees, and the psychological needs of all children affected directly or indirectly by the traumatic experiences of the war...” (Comoros IRCO, Add.141, paras. 45 and 46. See also, for example, Federal Republic of Yugoslavia IRCO, Add.49, paras. 37 and 41; Lebanon IRCO, Add.54, para. 42; Guatemala IRCO, Add.58, para. 39; Chad IRCO, Add.107, para. 35; South Africa IRCO, Add.122, para. 36)

The Committee often emphasizes the particular need for psycho-social assistance:

“The Committee is concerned that the State Party has insufficient capacity to provide psycho-social assistance to the many children who have suffered forms of psychological trauma.

“The Committee urges the State Party to make every effort to strengthen available psycho-social assistance and to recruit more mental health workers. The Committee recommends, in addition, that the State Party seek technical assistance in this domain.” (Sierra Leone IRCO, Add.116, paras. 63 and 64)

The Committee has suggested that refugee children should be regarded as victims for the purpose of article 39.

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

- | | |
|---|---|
| <input type="checkbox"/> any form of neglect? | <input type="checkbox"/> sale or trafficking? |
| <input type="checkbox"/> violence or abuse? | <input type="checkbox"/> torture? |
| <input type="checkbox"/> sexual abuse? | <input type="checkbox"/> any other form of cruel, inhuman or degrading treatment or punishment? |
| <input type="checkbox"/> sexual exploitation? | <input type="checkbox"/> armed conflicts? |
| <input type="checkbox"/> drug abuse? | |
| <input type="checkbox"/> 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 checklists, see page XVII



- ☐ 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 are 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 jurisdiction without discrimination on any ground

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

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

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

Closely related articles

Articles whose implementation is related to that of article 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 of the Convention on the Rights of the Child 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 or the age of majority) with 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, 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 579). Also, to be noted, is that 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 the outline for its 1995 General Discussion on the “Administration of juvenile justice”, the Committee stated that the Convention, together with the United Nations rules and guidelines on juvenile justice, “call for the adoption of a child-oriented system”.

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"Special protection measures

Under this section, States Parties are requested to provide relevant information, including the principal legislative, judicial, administrative or other measures in force; factors and difficulties encountered and progress achieved in implementing the relevant provisions of the Convention; and implementation priorities and specific goals for the future in respect of:

- ...
(b) Children in conflict with the law
(i) The administration of juvenile justice (art. 40)
...."
(CRC/C/5, para. 23)

Guidelines for Periodic Reports

"VIII. SPECIAL PROTECTION MEASURES (arts. 22, 38, 39, 40, 37(b)-(d), 32-36)

B. Children involved with the system of administration of juvenile justice

1. The administration of juvenile justice (art. 40)

Please provide information on the legislative and other measures taken to recognize and ensure the right of every child involved with the system of the administration of juvenile justice (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;

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;

Which ensures respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent.

With respect to article 40, paragraph 2, please indicate the relevant international instruments applicable in the area of the administration of juvenile justice, including at the multilateral, regional or bilateral levels, as well as legislative and other appropriate measures adopted to ensure in particular that:

No child shall be alleged as, 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;

Every child alleged as or accused of having infringed the penal law has at least the following guarantees, indicating, where relevant, additional guarantees provided to the child:

To be presumed innocent until proven guilty according to law;

To be informed promptly (indicating any time-limit fixed by law) and directly of the charges against him or her and, if appropriate, through his or her legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; in this regard, please indicate what other appropriate assistance may be made available to the child;

To have the matter determined without delay (indicating any time-limit fixed by law) 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 (indicating what other appropriate assistance may be made available to the child) and, unless it is considered not to be in the best interests of the child, in particular taking into account his or her age or situation, in the presence of his or her parents or legal guardians;





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;

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;

To have the free assistance of an interpreter if the child cannot understand or speak the language used;

To have his or her privacy respected at all stages of the proceedings.

Please indicate the measures adopted pursuant to article 40, paragraph 3, to promote the establishment of laws, procedures, authorities and institutions specially applicable to children alleged as, accused of, or recognized as having infringed the penal law, providing information inter alia on the areas addressed by legislation and procedures, as well as the functions, number and distribution throughout the country. Reports should in particular indicate the measures adopted to ensure a child-orientated system, including:

The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law:

Measures taken for dealing with such children without resorting to judicial proceedings, and to ensure that in such cases human rights and legal safeguards are fully respected, indicating the situations in which such a system applies and relevant procedures established for that purpose.

Please indicate the variety of dispositions made available pursuant to article 40, paragraph 4, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care, to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Reports should further indicate the training activities developed 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 other relevant international instruments in the field of juvenile justice, including the 'Beijing Rules', the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Relevant information should also be provided on the progress achieved in the implementation of article 40, any difficulties encountered and targets set for the future, as well as disaggregated data on the children concerned, inter alia by age, gender, region, rural/urban area, national, social and ethnic origin, offence and disposition made available."

(CRC/C/58, paras. 132-137. The following paragraphs of the *Guidelines for Periodic Reports* are also relevant to reporting under this article: 24, 35, 43, 46, 59, 86-87, 88, 138-150 and 166; for full text of *Guidelines*, see Appendix 3, page 674.)

United Nations rules and guidelines on juvenile justice

The Committee, in its examination of States Parties' reports and in other comments, has indicated 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 (see Appendix 4, page 636, for full text).

The Committee has also referred more recently 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).

Following its General Discussion on "State violence against children" it adopted recommendations, including:

"The Committee recommends that States Parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any

special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40). It also recommends that States Parties consider incorporating into all relevant domestic laws and regulations (including, where appropriate, those dealing with children in care) the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, adopted by General Assembly resolution 40/33 of 29 November 1985), of the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990), of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990), and of the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In particular, the Committee recommends that penal legislation applicable to juveniles be reviewed so as to ensure that courts are not restricted to custodial sentences disproportionate to the offence." (Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 688.7)

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 17, 1989, HRI/GEN/1/Rev.5, p. 133). 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.

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, public drunkenness, etc.)."

General concerns of the Committee

As noted in the summary above, the Committee has stated that the Convention and the United Nations rules and guidelines together

"call for the adoption of a child-oriented system, that recognizes the child as a subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration." (Report on the ninth session, May/June 1995, CRC/C/43, Annex VIII, p. 64)

This call for "a child-oriented system" has been repeated in Concluding Observations on States Parties' reports (for example, see United Kingdom IRCO, Add.34, para. 35; Senegal IRCO, Add.44, para. 26).

In the report of its General Discussion on "Administration of juvenile justice", the Committee noted that States Parties' reports

"were usually limited to a general description of legal provisions, rarely addressing social factors leading to the involvement of juveniles with the system of administration of justice or the social consequences of the decisions taken in that context..." (Report on the tenth session, October/November 1995, CRC/C/46, para. 217)

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 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).

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. In some cases, it picks up specific issues within the overall system. 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 601); and to the importance of training focused on children’s rights (see page 596).

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:

“Concern is expressed at the increasing number of children in conflict with law and the limited measures taken by the State Party to address their concerns. In particular, the Committee notes:

- (a) The absence of adequate legislation on juvenile justice, as well as the inconsistency of the juvenile justice system with the Convention and other relevant United Nations standards;*
- (b) The poor conditions of juvenile detention facilities, including the lack of adequate food, clothing, heating, educational opportunities and leisure activities for child detainees;*
- (c) The inadequate facilities for children in conflict with the law; the insufficient numbers of trained personnel to work with children in this regard; and the lack of a complaint mechanism for children whose rights have been violated.*

“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 IRCO, Add.124, paras. 68 and 69)*

During its twenty-second session, the Committee adopted a recommendation on the administration of juvenile justice. This notes that

“since the beginning of its work, the administration of juvenile justice has received consistent and systematic attention from the Committee in the form of concrete recommendations in the Concluding Observations adopted in relation to States Parties’ reports.”

The Committee notes that the review of reports had shown that in all regions of the world and in relation to all legal systems, the provisions of the Convention relating to juvenile justice are in many instances not reflected in national legislation or practice, giving cause for serious concern. It welcomes the establishment of the Coordination Panel on Technical Advice and Assistance in Juvenile Justice, recommended in the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, adopted by ECOSOC resolution 1997/30). The recommendation calls on States

“to give urgent attention to undertaking all appropriate legislative, administrative and other measures for the full implementation of the provisions of the Convention and existing international standards relating to the administration of juvenile justice”.

It also stresses the importance of understanding the “legal, social, financial and other obstacles” preventing full implementation, and of designing ways and means of overcoming these obstacles.

The Committee's recommendation requests the High Commissioner for Human Rights to give priority to these issues and to encourage

"all appropriate United Nations bodies and agencies to enhance their work in the area of the administration of juvenile justice and to use the Convention on the Rights of the Child as their main tool to achieve this objective, and to facilitate their work in that regard".

(Report on the twenty-second session, September/October 1999, CRC/C/90, pp. 3 and 4)

The Committee's *Guidelines for Periodic Reports* seeks information on legislative and other measures taken to ensure the right of every child involved with the juvenile justice system to be treated in a manner "which ensures respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent" (para. 132).

Non-discrimination

In relation to non-discrimination, the report of the General Discussion states:

"...particular concern was expressed about instances where criteria of a subjective and arbitrary nature (such as with regard to the attainment of puberty, the age of discernment or the personality of the child) still prevailed in the assessment of the criminal responsibility of children and in deciding upon the measures applicable to them..." *(Report on the tenth session, October/November 1995, CRC/C/46, para. 218)*

The Committee has noted, for example, discrimination or potential discrimination against economically and socially disadvantaged children:

"The Committee recommends 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 IRCO, Add.1, para. 16)*

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))

Best interests

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))

The Committee stated in the report of its General Discussion:

"The principle of the best interests of the child was reaffirmed by the Convention in the context of the administration of juvenile justice, particularly when it stressed that the child should be treated in a manner consistent with the promotion of his or her sense of dignity and worth which reinforced respect for the child's human rights and fundamental freedoms and took into account the child's age and special needs. However, reports revealed that special juvenile justice systems were often non-existent, that judges, lawyers, social workers or personnel in institutions were not given any special training and that information on fundamental rights and legal safeguards were not provided to children..."

(Report on the tenth session, October/November 1995, CRC/C/46, para. 219)

A Committee member stated 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 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 165). 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 37 specifically provides children with the right to appropriate legal and other assistance and to challenge any deprivation of liberty before a court or similar body. Article 40 requires that the child is informed promptly and directly of the charges against him or her,



Public perceptions of teenage offenders

During discussion of Spain's Initial Report, a government representative commented on the public alarm caused by juvenile offending: "The social perception that minors were responsible for a large proportion of offences seemed to some extent to derive from the impression given by teenage behaviour, which could be regarded as arrogant and in some cases destructive. The media gave very widespread coverage to offences committed by minors, and that tended to distort and exaggerate the problem. There were in fact no more than three or four cases a year of manslaughter by children under the age of 13, for example, and the situation was not therefore as dramatic as was sometimes portrayed. To offset such a trend facts must be publicized to show the true situation. It was important to avoid exaggeration by the media and to make every effort to ensure that young people found their place in society and on the labour market." (Spain SR.173, para. 50)

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, page 598). 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)

The report of the Committee's General Discussion on "Administration of juvenile justice" indicated that

"Similarly, in relation to the right of the child to participate in proceedings affecting him or her, States Parties' reports had indicated that children were seldom made sufficiently aware of their rights, including the right to assistance from a legal counsel or of the circumstances surrounding the case or of the measures decided." (Report on the tenth session, October/November 1995, CRC/C/46, para. 220)

Effect of public opinion on juvenile justice

The Committee also noted in the report of its General Discussion that

"...the increasing trend for juvenile justice to become the subject of social and emotional pressure was a matter of particular concern, since it created opportunities to undermine respect for the best interests of the child." (Report on the tenth session, October/November 1995, CRC/C/46, para. 220)

This was borne out during discussions between the Committee and Chilean Government representatives, one of whom stated that criminal legislation was the most difficult area in which to introduce new legislation respecting children's rights:

"Since 1991, there had been a growing feeling, not in fact borne out by the relevant statistics among the general public in Chile that there had been a sharp increase in delinquency. The present climate of public opinion was therefore not conducive to the adoption of laws guaranteeing protection to offenders." (Chile SR.146, para. 33)

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))

Training for juvenile justice

The Committee has consistently recommended that all those involved with children in the juven-

ile 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.

It adopted the following recommendation after its General Discussion on “State violence against children” (September 2000):

“The Committee recommends that States Parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline, promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those from minority groups, children with disabilities, etc.).”

The Committee also recommended the setting of standards for those working in the system:

“The Committee recommends that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.”

(Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688.15 and 688.16)

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.

“...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 595). The paragraph links to the provisions in paragraphs 3 and 4 of the same article, which stress the importance of at least 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 603). It also echoes the aims of education set out in article 29 (see page 431), 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.”

In recommendations adopted following its General Discussion on “State violence against children”, the Committee proposed that States should

“review all relevant legislation to ensure that children under 18, who are in need of protection, are not considered as offenders (including legislation dealing with abandonment, vagrancy, prostitution, migrant status, ‘truancy’, runaways, etc.) but dealt with under child protection mechanisms.”

It also recommended that States should

“review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets).” (Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688.9 and 688.10)

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 2RCO, Add.145, paras. 53 and 54)

“(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ...”

Thus, 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 “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 IRCO, Add.34, paras. 20 and 34)

“(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)).

On ratification of the Convention on the Rights of the Child, Germany made a reservation reflecting one made in relation to the International Covenant on Civil and Political Rights, in respect of article 40(2)(b)(ii) and (v), stating that “these provisions shall be applied in such a way that, in the case of minor infringement of the penal law, there shall not in each and every case exist:

- (a) A right to have ‘legal or other appropriate assistance’ in the preparation and presentation of the defence, and/or
- (b) An obligation to have a sentence not calling for imprisonment reviewed by a higher competent authority or judicial body.” (CRC/C/2/Rev.8, p. 23)

When it examined Germany’s Initial Report, the Committee commented:

“With regard to matters relating to juvenile justice, the Committee expresses its concern about the declaration [in fact, a reservation] made by the State Party to article 40(2)(b)(ii) which appears to limit the child’s rights to access to justice and to a fair hearing as well as the right to legal assistance and defence... “Note is taken of the Government’s intention to reform the system of juvenile justice, including with regard to considering strengthening the services and the development of child-friendly proceedings for dealing with child victims and witnesses ... Additionally within this framework, the Committee expresses the hope that the declarations made by the State Party to article 40(2)(b)(ii) and (v) will be reviewed with a view to their possible withdrawal.” (Germany IRCO, Add.43, paras. 20 and 34)

“(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”

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 that 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 549 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”

See the Universal Declaration of Human Rights, article 11, and the International Covenant on Civil and Political Rights, article 14, which requires 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 598.)

“(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. Norway also made a reservation, but withdrew it in 1995: CRC/C/2/Rev.8, pp. 4 and 35.) 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 IRCO, Add.33, paras. 8 and 16)

(See also Committee’s comments on Germany’s reservation to this subparagraph, discussed under article 40(2)(b)(ii) above, page 599.)

“(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 disabled children.

“(vii) To have his or her privacy fully respected at all stages of the proceedings”

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.”

In line with the Rules, in the report of its General Discussion on “Administration of juvenile justice, the Committee stated:

“The privacy of the child should be fully respected in all stages of the proceedings, including in relation to criminal records and possible reporting by the media.” (Report on

the tenth session, October/November 1995, CRC/C/46, para. 227. See also article 16, the child's right to privacy, page 213; and article 17, the role of the mass media, page 227)

"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)

The Committee has consistently proposed a distinct system of juvenile justice for all under-18-year-olds. 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 has made various relevant specific recommendations. For example, the Committee

"... notes with particular concern that in the majority of departments in the State Party juvenile judges have not been appointed and that there is a lack of training programmes for juvenile judges..." (Honduras IRCO, Add.24, para. 18)

"The Committee also recommends that juvenile courts be set up in all provinces." (Argentina IRCO, Add.35, para. 18)

"... specialized courts should be established as a priority matter..." (Bulgaria IRCO, Add.66, para. 34)

Furthermore, it has welcomed the introduction of specific legislation:

"The Committee welcomes the recent adoption and entry into force of the new juvenile code, which represents significant progress towards harmonizing legislation and policy with the provisions of the Convention and thereby providing a legal framework for its implementation." (Bolivia IRCO, Add.1, para. 4)

The Committee frequently expresses concern at provisions which result in children being dealt with by adult courts. For example:

"...special provisions for juvenile delinquents do not apply to children over 16 years of age, who are dealt with by adult criminal courts and are grouped with prisoners up to the age of 23. The Committee recommends that the State Party consider raising the existing age limit from 16 to 18..." (Barbados IRCO, Add.103, para. 29)

Concern has been expressed when provisions are not in the "spirit" of article 40(3):

"The Committee suggests that the State Party consider reviewing its juvenile justice system in order to ensure that proceedings against persons under 18 years of age are fully compatible with the spirit of article 40, paragraph 3, of the Convention." (Norway IRCO, Add.23, para. 25)

"(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law"

The Committee's *Guidelines for Periodic Reports* asks under article 1 (definition of the child) for information on the minimum legal age defined in legislation for criminal responsibility (para. 24). Under article 40 the *Guidelines* requests information on "The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law" (para. 134). 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."

The Committee has expressed particular concern when it appears no age has been fixed in law:





"...The lack of a minimum age below which children are presumed not to have the capacity to infringe penal law is also noted with concern." (Senegal IRCO, Add.44, para. 11. See also Guatemala IRCO, Add.58, paras. 15 and 26; Panama IRCO, Add.68, para. 21)

Some States Parties' reports have indicated confusion over the definition of the age of criminal responsibility, in some cases setting a different, and lower, age for serious offences. For example, in Belarus, criminal responsibility commences at 16, except that it may commence at 14 "when a particularly serious crime has been committed: attempted murder of a militia officer in the execution of his duty; rape; deliberate acts which may cause a train crash; robbery with violence; robbery or threat of violence, whether or not endangering human life; theft of weapons, ammunition or narcotic substances; and some other offences" (Belarus IR, para. 105). The Committee stated that the situation in relation to the administration of juvenile justice was a matter of general concern (Belarus IRCO, Add.17, para. 10).

The Committee has frequently expressed concern when the age is set too low, but does not prescribe a particular age. During discussions on the Initial Report of United Kingdom dependent territory: Hong Kong, a Committee member stated that in his view the age of criminal responsibility set by Hong Kong (seven) was too low. "Although it was stated that, for children between 7 and 11, there would be an assessment of whether the crime committed was understood by the child to be seriously wrong, that was an unsatisfactory solution. The mere fact of having to go through such an assessment procedure was burdensome for a child of such a young age. Even cases where the child was aware that its action was wrong might well reflect the fact that it was not in full control of its situation. Very young child offenders should be seen more as victims than as culprits, since statistics showed that almost all came from difficult family backgrounds. It was misleading to speak of a 'voluntary intention' to commit crime in a child of that age. The overwhelming majority of countries had set the age of criminal responsibility much higher, and even 14 was considered low..." (United Kingdom dependent territory: Hong Kong, SR.329, para. 79).

Similar comments have been made to other States:

"...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 IRCO, Add.79, paras. 11 and 29)

"The Committee expresses concern regarding the low legal age for criminal responsibility (7 years). The Committee recommends that the State Party raise the legal age for criminal responsibility to a more internationally acceptable age, by reviewing its legislation in this regard." (Grenada IRCO, Add.121, para. 12)

"...concern is expressed at the low age of criminal responsibility (9 years); at the assumption, contained in the State Party's legislation, that a child aged between 9 and 14 years could act with 'mischievous intent'; and at the exclusion of children aged between 16 and 18 years from the juvenile justice system.

"In light of articles 37, 40 and 39 of the Convention and other relevant international standards 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, the Committee recommends that the State Party undertake legislative reform to raise the minimum age of criminal responsibility; to eliminate the assumption that a child aged between 9 and 14 years could act with 'mischievous intent'; and to ensure that the juvenile justice system covers all children under the age of 18." (Malta IRCO, Add.129, paras. 49 and 50)

"The Committee expresses concern regarding the low legal age of criminal responsibility (10 years).

"The Committee recommends that the State Party raise the legal age of criminal responsibility to a more internationally acceptable age by amending its legislation in this regard." (Suriname IRCO, Add.130, paras. 19 and 20. See also, for example, United Kingdom IRCO, Add.34, para. 36; Sri Lanka IRCO, Add.40, paras. 22 and 40; Yemen IRCO, Add.47, para. 14; Cyprus IRCO, Add.59, para. 10; Nigeria IRCO, Add.61, para. 22; United Kingdom dependent territory: Hong Kong IRCO, Add.63, paras. 19 and 34; Ethiopia IRCO, Add.67, para. 20)

There must be no discrimination in the age, for example between girls and boys, or between different regions of the country. A Committee member said in discussions with Mexico: "It appeared that the minimum legal age for criminal responsibility was generally 18 years but lower in some parts of Mexico. It was difficult to see how children could be treated equally if their status in that respect depended on their

place of residence. Article 40, paragraph 3(a), of the Convention clearly did not allow for different ages of criminal responsibility..." (Mexico SR.106, para. 37)

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 IRCO, 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 "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. 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'.

"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. 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 539).

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 539.)

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?

How to use the checklists, *see page XVII*



- ☐ 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?
- ☐ 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,

How to use the checklists, *see page XVII*



- ☐ 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?
- ☐ representatives of the press?
- ☐ 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?
- ☐ 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?

How to use the checklists, see page XVII



- ☐ 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?

Reminder: The Convention is indivisible and its articles are 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 jurisdiction without discrimination on any ground

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

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

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

Closely related articles

Articles whose implementation is related to that of article 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



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 a State Party's law or in international law in force in a particular State. ■

Summary

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Periodic Reports

"I. GENERAL MEASURES OF IMPLEMENTATION (arts. 4, 42, and 44, paragraph 6)

...

In the light of article 41 of the Convention, please indicate any provisions of the national legislation which are more conducive to the realization of the rights of the child..."

(CRC/C/58, para. 14)

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. 116-119, 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 General Discussion on “Children in armed conflicts”, when it reminded States 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.” (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 (see also article 38, page 563, for further discussion: there was a dispute during the drafting of article 38 that it undermined existing standards of protection).

Each of the Optional Protocols to the Convention on the Rights of the Child includes articles similar to article 41. For example, 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 670).



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 individuals unless individuals are aware of them. Article 42 confirms the obligation States Parties assume 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 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 641 and 647). ■

Summary



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"General measures of implementation

...

In addition, States Parties are requested to 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, by appropriate and active means, to adults and children alike."

(CRC/C/5, para. 10)

Guidelines for Periodic Reports

"I. GENERAL MEASURES OF IMPLEMENTATION

*...In addition, States are requested to 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, by appropriate and active means, to adults and children alike. In this regard, reports should also indicate:*

The extent to which the Convention has been translated into the national, local, minority or indigenous languages. In this connection, an indication should be given of the number of languages into which the Convention has been translated and the number of copies translated into the minority languages during the reporting period;

Whether the Convention has been translated and has been made available in the languages spoken by the larger refugee and immigrant groups in the country concerned;

The measures adopted to publicize the Convention and create widespread awareness of its principles and provisions. In this connection, an indication should be given of the number of meetings (such as parliamentary or governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio or television and the number of publications issued explaining the Convention on the Rights of the Child during the reporting period;

The specific steps taken to make the Convention widely known to children and the extent to which it has been reflected in the school curricula and considered in parents' education campaigns. An indication should be given of the number of copies of the Convention distributed in the educational system and to the public at large during the reporting period;

The measures adopted 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 incorporated in professional training curricula and codes of conduct or regulations;

The steps taken to promote understanding of the principles and provisions of the Convention by the mass media and by information and publishing agencies;

The involvement of non-governmental organizations in awareness and advocacy campaigns on the Convention, as well as any support provided to them. In this connection, an indication should be given of the number of non-governmental organizations who participated in such events during the reporting period;

The participation of children in any of these activities."

(CRC/C/58, para. 22. In addition, there are many references in the *Guidelines for Periodic Reports* to training activities related to the Convention: see box, page 614.)

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 635).

In its comments on Initial and Second 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 has stressed in various comments the need for a “comprehensive strategy” for dissemination, an “ongoing and systematic approach”, a “permanent information campaign”, and “systematic and continuous steps”. In others, it has encouraged recourse to international cooperation and the help of bodies such as the Office of the High Commissioner for Human Rights and UNICEF.

In 1999, the Committee, together with the Office of the High Commissioner for Human Rights, held a two-day workshop on the theme: “Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges”, on 30 September and 1 October 1999. In its report adopted following the workshop (for full details, see article 4, page 58), the Committee noted:

“The Committee recalls 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

“Get to know children”

Spain’s Initial Report describes a campaign launched through the mass media: “The main object of the initiative in its first phase is to put over the idea of the importance for society of overall and specific knowledge of the world of childhood and the fact that the child is a developing being inside a society undergoing continuous change. The campaign is centred basically on the needs of the child in two main directions: the need for protection and, in turn, the need for autonomy: the need for protection is determined by the level of development of the child and the need for autonomy is understood as a need to assign the child an active, participatory and creative role in the milieu in which he or she is developing, as an essential condition for growth... Video copies have been made of the television publicity spot used in the campaign and these have been disseminated free of charge for use in public places and training activities. The central slogan of the whole campaign can be summarized in the words: ‘Listen to them!’. The complementary message is ‘You don’t know what you’re losing by not listening to your children’.” (Spain IR, paras. 23, 24 and 26)



rights to the maximum extent of their evolving capacities.” (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291 (k))

The Committee has proposed that the text of the Convention should be widely circulated, as well as information on, and explanations of, the Convention. It should be available in all languages, and the Committee has emphasized the importance of ensuring it reaches the general public and the entire population, including for instance those living in remote rural areas.

The Committee has urged the use of the media for dissemination (see also article 17, page 227). The *Guidelines for Periodic Reports* also asks for information on steps taken to promote understanding of the principles and provisions of the Convention by the mass media and by information and publishing agencies (para. 22). The Committee strongly encourages the involvement of civil society, including NGOs and children’s groups, as well as close cooperation with community and religious leaders. The final sentence in the relevant section of the *Guidelines for Periodic Reports* asks for information on “the participation of children in any of these activities” (para. 22).



Training proposed in the Committee's Guidelines for Periodic Reports

The *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 disabled children, 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)

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 SR.337, para. 20)

The Committee has proposed that the Convention should be incorporated into school and university curricula.

The Committee perceives this process as an appropriate response to the United Nations Decade for Human Rights Education (see also article 29, page 439). The *Guidelines for Periodic Reports* also asks whether the Convention has been incorporated into the education of parents (para. 22).

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* refers to incorporating the Convention in "professional training curricula, codes of conduct or regulations".

In the report of its 1999 workshop (see page 613, above), the Committee noted:

"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." (Report on the twenty-second session, September/October 1999, CRC/C/90, para. 291(l))

In examining Initial and Second Reports from States Parties, the Committee has persisted in highlighting dissemination of information on children's rights and training as key strategies for implementation, requiring comprehensive and innovative approaches. For example:

"...the Committee recommends publicizing the Convention in innovative ways, taking into consideration the specific needs of indigenous and ethnic groups." (Honduras 2RCO, Add.105, para. 15)

"The Committee encourages the State Party to introduce human rights, including children's rights, into the school curricula as an independent subject." (Russian Federation 2RCO, Add.110, para. 50)

"The Committee recommends that the State Party develop more creative methods to promote the Convention, including through visual aids such as picture books and posters. Additionally, the Committee recommends the use of traditional methods of communication in promoting the principles and provisions of the Convention." (Vanuatu IRCO, Add.111, para. 12)



Making the Convention widely known in Nepal: the letterhead campaign

Nepal describes in its Initial Report: "Essay, poetry and poster competitions have been organized regularly by NGOs and by the Government. On the international organization side, UNICEF has played a significant role in advocating the rights of the child. Brochures, music tapes, photo panels and radio and TV shows have been produced to promote the Convention. The most recent and unique effort has been the letterhead campaign, in which NGOs, different professional groups and even commercial companies have been requested by UNICEF to print an article from the Convention at the bottom of their letterheads. It is estimated that more than a million such copies have already been printed. Some commercial companies have also decided to print Convention messages on their products. Furthermore, some post offices have agreed to stamp the Convention's articles on all incoming and outgoing mail..." (Nepal IR, para. 46)



"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 IRCO, Add.115, para. 25)

"The Committee recommends that greater efforts be made to ensure that the provisions of the Convention are widely known and understood by adults and children alike. The Committee further recommends the reinforcement of adequate and systematic training and/or sensitization of professional groups working with and for children, such as judges, lawyers, law enforcement personnel, teachers and school administrators, especially outside of the capital; health personnel, including psychologists, and social workers; and personnel of childcare institutions. It further suggests that the State Party seek to ensure that the Convention is fully integrated into the curricula in all regions of the State Party and at all levels of the educational system. In this regard, the Committee encourages the State Party to continue its technical cooperation programmes with OHCHR and UNICEF, among others." (Georgia IRCO, Add.124, para. 21)

"The Committee recommends that the State Party develop more creative methods to promote the Convention, including through visual aids such as picture books and posters, along with traditional methods of communication... The State Party is encouraged to fully integrate the Convention into the curricula at all levels of the educational system." (Marshall Islands IRCO, Add.139, para. 21)

To Ethiopia, the Committee proposed

"...that the State Party make further efforts to disseminate the Convention, inter alia through the media, in schools, through public information campaigns and through the use of traditional methods and structures at the Woreda level, giving particular attention to persons with low literacy skills and those who do not have access to radios." (Ethiopia 2RCO, Add.144, para. 25)

The Committee has also proposed surveys to review the degree of awareness of sectors of the population about the Convention and its implications (for example, United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 23).

Human Rights Committee General Comment

The Human Rights Committee, in a General Comment on implementation at the national level of the International Covenant on Civil and Political Rights, states: "... it is very important that individuals should know what their rights under the Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State Party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State Party's cooperation with the Committee." (Human Rights Committee, General Comment 3, 1981, HRI/GEN/1/Rev.5, pp. 112 and 113)

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 disabled children and adults?

Has the Convention and information about its implications been incorporated into the curriculum of

- ☐ all schools?

How to use the checklists, see page XVII



- ☐ all other educational institutions?

training courses – both initial and in-service – for those working with or for children, including

- ☐ judges?
- ☐ lawyers?
- ☐ law enforcement officials?
- ☐ 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 are 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



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 10 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.

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.



The Committee in 2002

The members of the Committee, as at May 2002, with their terms of office, are as follows:

Name of member	Nominating State	First elected	Current term of office
Mr. Jacob Egbert Doek, Chair	Netherlands	1999	1999-2003
Ms. Saisuree Chutikul, Vice Chair	Thailand	2001	2001-2005
Ms. Awa N'Deye Ouedraogo, Vice Chair	Burkina Faso	1997	1999-2003
Ms. Marilia Sardenberg, Vice Chair	Brazil	1997	2001-2005
Ms. Judith Karp, Rapporteur	Israel	1995	1999-2003
Mr. Abdul Aziz Al-Sheddi	Saudi Arabia	2001	2001-2005
Ms. Ghalia Mohd Bin Hamad Al-Thani	Qatar	2001	2001-2005
Mr. Luigi Citarella	Italy	2001	2001-2005
Ms. Moushira Khattab	Egypt	2001	2001-2005
Ms. Elisabeth Tigerstedt-Tähtelä	Finland	1999	1999-2003

Article 43 sets out the monitoring role of the Committee on the Rights of

the Child, the procedures for electing its members and for its meetings. ■

Summary

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 10 “experts of high moral standing and recognized competence in the field covered by this Convention”. 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)).

A proposal to increase the size of the Committee from 10 to 18 members, initiated by Costa Rica, was adopted by consensus at a conference of States Parties on 12 December 1995, and endorsed by the General Assembly (resolution 50/155, 21 December 1995). It requires formal acceptance by two thirds of States Parties before it will come into force. By May 2002, 119 States Parties had notified their acceptance; 128 acceptances are required for the proposal to come into

force. In January 2000 the Committee held an informal meeting with Permanent Missions of States Parties to the Convention which had not notified their acceptance of the proposal (which amends article 43(3)), to encourage them to do so.

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.”
(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 22nd meeting (first session) on 15 October 1991 (CRC/C/4) the officers to be elected are a chairperson, three vice-chairpersons and a rapporteur.

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). In September 1999 the Committee indicated that it would increase the number of reports considered at each session from six to nine, in an attempt to reduce the considerable backlog of unexamined reports. Now, the Committee normally devotes two three-hour periods over one day to the public examination of each Initial or Periodic Report. At the end of the session it prepares "Concluding Observations" on each State Party report (for details of the reporting process, see article 44, page 625).

In addition, in its early years, the Committee 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.

Pre-sessional Working Group

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. The Committee has emphasized in particular the crucial role that non-governmental organizations (NGOs) from the State concerned play in providing expert advice to it during the meetings of the Pre-sessional Working Group; these increasingly include young-people-led organizations. Other United Nations agencies, including UNICEF, ILO, WHO, UNHCR and UNESCO, and sometimes national human rights institutions, international NGOs and individual experts brief the Committee (for further details, see article 44, page 632).

General Discussions

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. At its first session it agreed that the first General Discussion should be on the topic "Children in armed conflicts" (held on 5 October 1992).

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.

Other General Discussions have been held on:

- 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)

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". In February 2001 the Committee adopted its first General Comment on the aims of education (see article 29, page 434). It 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).

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'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). They are available electronically: <http://www.unhchr.ch>

Also from the Distribution and Sales Section, Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland.





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



Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

For text of *Guidelines* on paragraph 6 of article 44, see below, page 634.

Guidelines for Initial Reports

"Introduction

Article 44, paragraph 1, of the Convention on the Rights of the Child provides that '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 therein and on the progress made in 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.'*

Article 44 of the Convention further provides, in paragraph 2, that reports submitted to the Committee on the Rights of the Child shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations under the Convention and shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

The Committee believes that the process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonize national law and policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention. Additionally, the process should be one that encourages and facilitates popular participation and public scrutiny of government policies.

The Committee considers that the reporting process entails an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the rights set forth in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the States Parties and the Committee.

The general part of States Parties' reports, relating to matters that are of interest to monitoring bodies under various human rights instruments, should be prepared in accordance with the 'Consolidated guidelines for the initial part of the reports of States Parties', as contained in document HRI/1991/1. The present guidelines, which were adopted by the Committee on the Rights of the Child at its 22nd meeting (first session), held on 15 October 1991, should be followed in the preparation of the Initial Reports of States Parties relating to the implementation of the Convention on the Rights of the Child.

The Committee intends to formulate guidelines for the preparation of periodic reports that are to be submitted pursuant to article 44, paragraph 1(b), of the Convention in due course. Reports should be accompanied by copies of the principal legislative and other texts as well as detailed statistical information and indicators referred to therein, which will be made available to members of the Committee. It should be noted, however, that for reasons of economy they will not be translated or reproduced for general distribution. It is desirable, therefore, that when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to those texts.

The provisions of the Convention have been grouped under different sections, equal importance being attached to all the rights recognized by the Convention."

(CRC/C/5, paras. 1-8)

Guidelines for Periodic Reports

(The Guidelines for Periodic Reports contain similar introductory paragraphs to those in the Guidelines for Initial Reports. For full text, see Appendix 3, page 674.)

"Introduction

...

Periodic reports on the implementation of the Convention should provide information with respect to the period covered by the report on:

The measures adopted by the State Party, including the conclusion of and accession to bilateral and multilateral agreements in the field of children's rights, and changes which have occurred in legislation and practice at the national, regional and local levels, and where appropriate at the federal and provincial levels, such as:

Mechanisms and structures to coordinate and monitor efforts to implement the Convention;

Overall or sectoral policies, programmes and services developed to implement the Convention.

The progress achieved in the enjoyment of children's rights;

The factors and difficulties encountered in the full implementation of the rights set forth in the Convention and on steps taken to overcome them;

The plans envisaged to improve further the realization of the rights of the child.

Periodic reports should include information on the consideration given to the Concluding Observations adopted by the Committee in relation to the previous report, including on:

The areas of concern identified by the Committee, as well as difficulties which may have affected the realization of such suggestions and recommendations;

The measures adopted as a follow-up to the suggestions and recommendations addressed by the Committee to the State Party upon examination of its previous report. Steps taken to implement should be identified in relation to each suggestion and recommendation and all relevant action taken should be specified including in relation to legislation, policy, mechanisms, structures and allocation of resources;

The difficulties which may have affected the realization of such suggestions and recommendations;

The steps taken to widely disseminate the previous report, as well as the Concluding Observations adopted by the Committee.

Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed statistical information, indicators referred to therein and relevant research. This accompanying material will be made available to the members of the Committee. Quantitative information should indicate variations between various areas of the country and within areas and between groups of children and include:

Changes in the status of children;

Variations by age, gender, region, rural/urban area, and social and ethnic group;

Changes in community systems serving children;

Changes in budget allocation and expenditure for sectors serving children;

Changes in the extent of international cooperation received or contributed for the realization of children's rights.

It should be noted, however, that for reasons of economy, these documents will not be translated or reproduced for general distribution. It is desirable, therefore, 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.

IN THE LIGHT OF 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 BASIC INFORMATION IN ITS SUBSEQUENT REPORTS. IT SHOULD, HOWEVER, CLEARLY REFERENCE THE INFORMATION PREVIOUSLY TRANSMITTED, AND INDICATE THE CHANGES THAT HAVE OCCURRED DURING THE REPORTING PERIOD.

In the present guidelines the provisions of the Convention have been grouped in clusters with a view to assisting States Parties in the preparation of their reports. This approach reflects the Convention's holistic perspective of children's rights: that they are indivisible and inter-related, and that equal importance should be attached to each and every right recognized therein.

Information provided in States Parties' reports on the various sections identified by the Committee should closely follow the present guidelines with regard to content."

(CRC/C/58, paras. 5-10)



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; 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. But during its twenty-ninth session (January/February 2002) the Committee on the Rights of the Child adopted a recommendation which acknowledges the delays occurring in submission of second periodic reports and delays in examination of reports. The Committee expresses the need to support States Parties in an effort to ensure compliance with the strict timeframe established by the Convention (article 44(1)).

The Committee notes that it will inform States Parties in the related Concluding Observations adopted by the Committee 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:

- i) when the second periodic report is due within a year after 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.
- ii) 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.

The Committee's recommendation stresses that these rules apply only on the basis of an excep-

tional 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 twenty-ninth session, January/February 2002, CRC/C/114).

Reports should cover measures adopted to give effect to the rights recognized in the Convention, "and on the progress made on the enjoyment of those rights". Reports must indicate factors and difficulties affecting implementation: "Reports should also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned." (para. 2)

The Committee can request States Parties to provide further information "relevant to the implementation of the Convention." (article 44(4)) Where a State Party has submitted a comprehensive Initial Report, in subsequent Periodic Reports it need not repeat basic information already provided.

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. 54-58; Report on the fourth session, September/October 1993, CRC/C/20, paras. 155-6). It appears that the Committee has initiated urgent actions in only a small number of cases.

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 this Handbook, relevant extracts from the *Guidelines* are quoted under each article. The full text of the *Guidelines for Periodic Reports* is in Appendix 3, page 674. In the *Guidelines*, the Committee has grouped the provisions of the Convention in clusters, to assist States Parties in the preparation of their reports. "This approach reflects the Convention's holistic perspective of children's rights: that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein." (CRC/C/58, para. 9; see box for details of clusters)



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 Convention’s holistic perspective of children’s rights: that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.” (CRC/C/58, para. 9).

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 *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 disabled children; 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 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 633)

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."

(CRC/C/34)





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 50 international 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 1998). 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

c/o Defence for Children International (DCI)
P.O. Box 88, 1211 Geneva 20, Switzerland
ph. (41) 22 734 0558; fax (41) 22 740 1145
e-mail: ngo-crc@tiscalinet.ch

NGO reports

Reports submitted to the Committee by NGOs for consideration by the Pre-sessional Working Group are now available on-line at www.crin.org, unless NGOs have indicated they are confidential.

In addition, States Parties are sent the *Consolidated Guidelines for the initial part of the reports of States Parties* (HRI/1991/1). This was agreed on by the various supervisory bodies established under the United Nations human rights treaties, to avoid duplication of general reporting obligations by States Parties to the various Covenants and Conventions.

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 630 for extracts).

Pre-sessional Working Group meetings

As noted under article 43 (page 622), 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 637). "Other competent bodies" includes non-governmental organizations (NGOs). 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" (see box opposite). 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 a member of the Committee is designated as rapporteur for each report to be examined. The rapporteur's 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;

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.”

(CRC/C/90, Annex VIII, p. 111)



- 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. These are now in three 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 a brief update on the information in the report which is to be examined on new legislation, institutions and policies; part III 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

Extracts from Committee on the Rights of the Child Guidelines for Reports to be submitted by States Parties under the Convention

For full text of *Guidelines for Periodic Reports*, see Appendix 3, page 674.

Guidelines for Initial Reports

"General measures of implementation

...

States parties are also requested to describe those measures undertaken or foreseen, pursuant to article 44, paragraph 6 of the Convention, to make their reports widely available to the public at large in their own countries."

(CRC/C/5, para. 11)

Guidelines for Periodic Reports

"I. GENERAL MEASURES OF IMPLEMENTATION

...

*States are also requested to 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. In this regard, please indicate:*

The process of preparation of the present report, in particular the extent to which governmental departments, at the central, regional and local levels, and where appropriate, at the federal and provincial levels, participated, and non-governmental organizations were involved. An indication should also be given of the number of non-governmental organizations which participated in the preparation of the report;

The steps taken to publicize the report, to translate and disseminate it in the national, local, minority or indigenous languages. An indication should be given of the number of meetings (such as parliamentary and governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio or television, the number of publications issued explaining the report and the number of non-governmental organizations which participated in such events during the reporting period;

The measures adopted or foreseen to ensure wide dissemination and consideration of the summary records and the Concluding Observations adopted by the Committee in relation to the State Party's report, including any parliamentary hearing or media coverage. Please indicate the events undertaken to publicize the Concluding Observations and summary records of the previous report, including the number of meetings (such as parliamentary or governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio and television, the number of publications issued explaining the Concluding Observations and summary records, and the number of non-governmental organizations which participated in such events during the reporting period".

(CRC/C/58, para. 23)

other issues may be raised in the course of the dialogue. The Committee also asks States Parties to send it any translations of the Convention that have been prepared; it is building up a collection of different language versions.

Examination of States Parties' reports

The large number of States Parties to the Convention (191 by March 2002) has led to a backlog of reports awaiting examination by the

Committee. In order to try to reduce the backlog the Committee resolved in 1999 that it would increase the number of reports to be examined at each session to nine.

At the end of each session, the Committee issues Concluding Observations, summarizing its comments and recommendations. From its nineteenth session, the Committee has altered the structure of its Concluding Observations, linking identified "subjects of concern" with the relevant



“recommendations” into a single section (this structure was first applied in the Committee’s Concluding Observations on the Initial Report of Ecuador in September 1998 (Ecuador IRCO, Add.93)).

On occasions the Committee requests States Parties to submit specific follow-up information. It has asked the Secretariat to record details of these requests and lists are published periodically (see, for example, CRC/C/27/Rev.11).

Optional Protocols

For details of reporting arrangements under the two Optional Protocols to the Convention on the Rights of the Child, see pages 644 and 649.

Reports of the Committee

Under article 44(5), the Committee is required to submit reports on its activities to the 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 623.

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.



Implementation Checklist



● article 44(6)

Has the State made widely available

- ☐ its Initial Report, and any Periodic Reports?
- ☐ any additional information submitted to the Committee on the Rights of the Child?
- ☐ the summary records of discussions of the Initial and Periodic Reports?
- ☐ the Committee’s Concluding Observations on the Initial Report and Periodic Reports?

Have these reports

- ☐ been translated and disseminated in national, local, minority or indigenous languages?
- ☐ been debated in Parliament?
- ☐ been the subject of discussion and debate with appropriate non-governmental organizations?



Cooperation with United Nations agencies and other bodies



Text of Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.



Article 45 sets out arrangements intended to foster effective implementation of the Convention and to encourage international cooperation. It outlines the role for specialized agencies, UNICEF and other United Nations organs; they are entitled to be represented when implementation of aspects of the Convention which come within their mandate are being considered. The Committee can invite these bodies, and “other competent bodies” (interpreted as including appropriate non-governmental organizations) to provide expert advice and to submit reports (article 45(a); a brief directory of United Nations and United Nations-related agencies is given in Appendix 1, page 654. For details of the involvement of these bodies in the reporting process under the Convention, see article 44, page 632.

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. 139-145). The Committee’s Secretariat prepares and keeps updated a table indicating areas in which the need for technical advice and advisory services has been identified in the light of Concluding Observations adopted by the Committee (see, for example, CRC/C/40/Rev.20, 13 November 2001).

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. It was, for example, a proposal from the Committee which led to the major study on the *Impact of Armed Conflict on Children* by Ms. Graça Machel (CRC/C/16, p. 4; see also article 38, page 570).

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 665 and 666)

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.



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* the Committee on the Rights of the Child notes that the World Conference on Human Rights encourages States to consider reviewing any reservation with a view to withdrawing it (A/CONF.157/23, II, paras. 5 and 46).

The *Guidelines* asks for information on whether “the Government considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.” (para. 11)

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 Appendix 2, page 667
and for reporting guidelines, see Appendix 3, page 689)*

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict requires States which ratify it to ensure that nobody under the age of 18 is recruited compulsorily into their armed forces and to “take all feasible measures” to ensure that under-18 year-old members of their armed forces do not take a direct part in hostilities. Also, States must take all feasible measures to prevent recruitment and use in hostilities of children under 18 years by armed groups. States Parties to

the Optional Protocol must raise “in years” the minimum age for voluntary recruitment, set at 15 in the Convention. 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”. The Preamble to the Protocol notes that in order 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”. ■

Summary

Background

The Optional Protocol was adopted by the United Nations General Assembly resolution 54/263 on 25 May 2000. By March 2001 the Optional Protocol had been signed by 77 States and ratified by 14. It entered into force on 12 February 2002, three months after the deposit of the tenth instrument of ratification or accession (article 10).

During the drafting of the Convention on the Rights of the Child there was concern that article 38 undermined certain existing standards in international humanitarian law (for discussion, see article 38, page 566). The proposal for an optional protocol to the Convention arose from the first General Discussion held by the Committee on the Rights of the Child, on “Children in armed conflicts” (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)

The Convention’s standards

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 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 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 Discussion on “Children in armed conflicts” (see article 38, page 568) 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 on the Rights of the Child; 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.

The Optional Protocol’s provisions

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.

Article 1 requires States Parties to the 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. Article 2 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. As noted above, article 38(3) requires States to 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. Article 3 of the Protocol requires States Parties to take account

Declarations on ratifying the Optional Protocol

States Parties to the Optional Protocol to the Convention are required to make a declaration on the minimum age for voluntary recruitment and on the safeguards implemented to ensure that recruitment is voluntary. **Bangladesh** made the first such declaration:

“In accordance with Article 3(2) of [the Optional Protocol], the Government of the People’s Republic of Bangladesh declares that the minimum age at which it permits voluntary recruitment into its national Armed Forces is sixteen years for non-commissioned soldiers and seventeen years for commissioned officers, with informed consent of parents or legal guardian, without any exception.

The Government of the People’s Republic of Bangladesh further provides hereunder a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced:

The process of recruitment in the national Armed Forces is initiated through advertisement in the national press and the media for officers and other ranks without exception.

The first induction of new recruits is conducted invariably in a public place such as a national park, school ground or a similar place. Public participation is welcomed in such programmes.

Before a recruit presents himself he has to submit a written declaration from his parents or legal guardians consenting to his recruitment. If the parent or legal guardian is illiterate the declaration is verified and counter signed by the Chairman of the Union Parishad.

The recruit is required to present birth certificate, matriculation certificate and full school records.

All recruits whether officers or other ranks have to undergo rigorous medical examination including checks for puberty. A recruit found to be pre-pubescent is automatically rejected.

Officers and other ranks without exception are required to undergo two years of compulsory training. This ensures that they are not assigned to combat units before the age of 18. All officers and other ranks are carefully screened before being assigned to combat units. These tests include tests of psychological maturity including an understanding of the elements of international law of armed conflict inculcated at all levels.

The Government of the People’s Republic of Bangladesh declares that stringent checks in accordance with the obligations assumed under the Optional Protocol will continue to be applied without exception.”

Canada

“Pursuant to article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Canada hereby declares:

1. The Canadian Armed Forces permit voluntary recruitment at the minimum age of 16 years.
2. The Canadian Armed Forces have adopted the following safeguards to ensure that recruitment of personnel under the age of 18 years is not forced or coerced:

(a) all recruitment of personnel in the Canadian Forces is voluntary. Canada does not practice conscription or any form of forced or obligatory service. In this regard, recruitment campaigns of the Canadian Forces are informational in nature. If an individual wishes to enter the Canadian Forces, he or she fills in an application. If the Canadian Forces offer a particular position to the candidate, the latter is not obliged to accept the position;

(b) recruitment of personnel under the age of 18 is done with the informed and written consent of the person’s parents or legal guardians. Article 20, paragraph 3, of the National Defence Act states that ‘a person under the age of eighteen years shall not be enrolled without the consent of one of the parents or the guardian of that person’,

(c) personnel under the age of 18 are fully informed of the duties involved in military service. The Canadian Forces provide, among other things, a series of informational brochures and films on the duties involved in military service to those who wish to enter the Canadian Forces; and

(d) personnel under the age of 18 must provide reliable proof of age prior to acceptance into national military service. An applicant must provide a legally recognized document, that is an original or a certified copy of their birth certificate or baptismal certificate, to prove his or her age.”





of the 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 in particular 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).

When a State ratifies or accedes to the 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”. A State can strengthen its declaration at any time by notifying the Secretary-General.

The safeguards must ensure as a minimum that:

- recruitment is genuinely voluntary;
- recruitment is done with the informed consent of parents or legal guardians;
- such persons are fully informed of the duties involved in such military service;
- reliable proof of age is provided prior to acceptance into national military service.

The only exception to the requirement to raise the 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 405 and 431).

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).

Article 5, reflecting article 41 of the Convention, notes that nothing in the 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”.

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 Protocol “widely known and promoted by appropriate means, to adults and children alike”. The last paragraph of the Preamble to the 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 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. International cooperation in implementing the 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 Protocol (see full text in Appendix 2, page 667).

Reporting obligations under the Optional Protocol

States Parties to the 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 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 689). Thereafter, States Parties shall include any further information on implementation of the 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 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 (currently Somalia and the United States of America) may become States Parties to the Optional Protocol.

Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol on the involvement of children in armed conflict, 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 the Optional Protocol

- ☐ Does the State ensure that under-18-year-olds who are members of its armed forces do not take a direct part in hostilities?
- ☐ Does the State ensure that under-18-year-olds 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?
- ☐ 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?

How to use the checklists, see page XVII



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-18-year-olds by other armed groups?
- ☐ Has the State adopted legal measures to prohibit and criminalize such practices by other armed groups?
- ☐ Does the State ensure that any children in its jurisdiction recruited or used in hostilities in ways contrary to the 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 on the involvement of children in armed conflict 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 of the Convention

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 in the Convention

Articles whose implementation is 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 Appendix 2, page 670
and for reporting guidelines, see Appendix 3, page 692)*

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 child sale, prostitution and pornography and requires ratifying States to take all possible measures to criminalize these offences and prosecute offenders domestically, though 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 supported by the Committee on the Rights of the Child or many of the NGOs working in the field. It was felt that the issues were already addressed within the Convention, that they should not be seen in isolation but holistically within the broad range of children's human rights, and that energies should rather be put into strengthening the implementation of existing rights than into the creation of new instruments. Nonetheless the desire for more detailed State responsibilities to tackle these forms of child abuse, particularly as regards the prosecution and extradition of "sex tourists", ultimately ensured the Optional Protocol's adoption. ■

Summary

Background

Action to tackle commercial sexual exploitation of children started in the 1990s and is described in detail under article 34 (page 505). 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 inter-governmental 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 discussed 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. By March 2001 the Optional Protocol had been signed by 76 States and ratified by 17. 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 (see page 510) 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 forms

of sale of children, child prostitution and child pornography (see Appendix 2, page 670 and discussion on page 479). 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 adopted by the United Nations General Assembly in 2000 (for comments, see page 523. For full text, see Appendix 4, page 746).

Provisions of the Protocol

Article 1 requires the 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 declared when it signed the Optional Protocol 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 – and requires that all these activities are criminalized, whether committed domestically or transnationally, and supported by appropriate penalties and State measures to secure enforcement. These measures shall include ensuring that “legal persons” – that is, legal entities, such as film or publishing companies involved in pornography – are made liable if they are involved in the commission of these offences.

The final paragraph 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.

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.



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 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.

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 (rather than “the paramount consideration” as it is in most civil cases relating to children) 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. It does not contain a provision for the de-criminalization 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 prostitution will encourage more exploitation of minors and that older children, over the legal ages of consent and criminal responsibility, should have the same liability as adults.

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.

Article 11 is similar to article 41 of the Convention, providing that the 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 Protocol can be included within States’ five-yearly periodic reports on the Convention. The Committee adopted reporting guidelines for Initial Reports under the Optional Protocol in October 2001 (for text, see Appendix 3, page 692).

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.



Implementation Checklist



● General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol on the sale of children, child prostitution and child pornography, 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?

How to use the checklists, *see page XVII*



- ☐ 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 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 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?
- ☐ 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?



How to use the checklists, see page XVII

- ☐ 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?
- ☐ 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, which 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, which assist child victims?

Reminder: The Optional Protocol on the sale of children, child prostitution and child pornography 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 of the Convention

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 in the Convention

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 United Nations and United Nations- related agencies

This appendix gives brief directory information about agencies and bodies within the United Nations system which are relevant to the Convention on the Rights of the Child and its implementation

U

UNITED NATIONS MAIN BODIES

• General Assembly

The General Assembly consists of all Members of the United Nations (as at March 2001 there were 189 Members). It may discuss any questions or matters within the scope of the United Nations Charter, or relating to the powers and functions of any organ provided for in the Charter. The General Assembly normally meets once a year in September at United Nations headquarters in New York, but special sessions and emergency special sessions may also be called. It 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

ph. (1) 212 963 1234

fax (1) 212 963 4879

Website: www.un.org/aboutun/mainbodies.htm

• Economic and Social Council

The United Nations Charter charges the United Nations to promote within the social and economic fields: higher standards of living, full employment, and conditions of social and economic progress and development; solutions of international economic, social, health and related problems, and international cultural and educational cooperation, and universal respect for and observance of human rights and fundamental freedoms for

all without distinctions to race, sex, language or religion.

The 54-member Economic and Social Council (ECOSOC) is elected by the General Assembly. It makes or initiates studies and reports with respect to international economic, social, cultural, educational, health and related matters. It makes recommendations to the General Assembly, to the members of the United Nations, and to the specialized agencies concerned. It also makes recommendations for the purpose of promoting respect for, and observance of human rights. It prepares draft conventions for submission to the Assembly within its competence and calls international conferences on such matters. It enters into agreements with specialized agencies and makes arrangements for consultation with non-governmental organizations. ECOSOC now holds one session a year between May and July, alternately in New York and Geneva.

ECOSOC has set up various commissions in economic and social fields and for the promotion of human rights, described below.

ECOSOC Secretariat, c/o United Nations Headquarters, DPCSD Room 2963J, New York, NY 10017, USA

ph. (1) 212 963 1234

fax (1) 212 963 4879

Website: www.un.org/documents/ecosoc.htm

Centre for International Crime Prevention (CICP)

Provides policy guidance to member States, develops the United Nations crime prevention programme, etc. Membership elected by

ECOSOC. Meets annually in Vienna.

Centre for International Crime Prevention, UN Office in Vienna, Vienna International Centre, Wagramer Strasse 5, P.O. Box 500, 1400 Vienna, Austria

ph. (43) 1 26060-4269

fax (43) 1 26060-5898

Website: www.uncjin.org/CICP/cicp.html

Commission for Social Development (CSD)

Established to advise ECOSOC on social policies of a general character, and in particular on matters in the social field not covered by the specialized intergovernmental agencies. Meets biennially in New York.

Commission for Social Development, United Nations Plaza, Room DC2-1370, New York, NY 10017, USA

ph. (1) 212 963 6763

fax (1) 212 963 3062

Website: www.un.org/esa/socdev/csd/index.html

Commission on Human Settlements

A Standing Committee of ECOSOC, established by General Assembly resolution in 1977; provides overall direction to the United Nations Centre for Human Settlements (Habitat) which serves as the Commission's secretariat, and provides a focal point for human settlements action and the coordination of action within the United Nations system. Members elected by ECOSOC. Meets biennially.

United Nations Office at Nairobi, P.O. Box 30030, Nairobi, Kenya

ph. (254) 2 621-234

fax (254) 2 624 266

Website: www.unchs.org

Commission on Narcotic Drugs

Established by ECOSOC in 1946 to advise the Council and prepare draft international agreements on all matters relating to the control of narcotic drugs. Members elected by ECOSOC. Meets annually in Vienna.

*Vienna International Centre, Wagramer Strasse 5,
P.O. Box 500, 1400 Vienna, Austria*

ph. (43) 1 260600

fax (43) 1 26060-5866

Website: www.undcp.org/cnd.html

Commission on Population and Development

Established by ECOSOC to study and advise the Council on population changes, including migration, and their effect on economic and social conditions. Current name was adopted following 1994 International Conference on Population and Development (ICPD), when it was charged with monitoring, reviewing and assessing implementation of the ICPD Programme of Action at national, regional and international levels. Members elected by ECOSOC. Meets annually in New York.

c/o ECOSOC Secretariat, United Nations

Headquarters, DPCSD Room 2963J,

New York, NY 10017, USA,

ph. (1) 212 963 1234

fax (1) 212 963 4879

Website: www.un.org/documents/ecosoc.htm

Commission on the Status of Women

Established by ECOSOC to prepare reports on matters concerning the promotion of women's rights in the political, economic, social and educational fields, and to make recommendations concerning women's rights. Members elected by ECOSOC. Meets annually in New York. Has established various working groups.

c/o ECOSOC Secretariat, United Nations

Headquarters, DPCSD Room 2963J,

New York, NY 10017, USA,

ph. (1) 212 963 1234

fax (1) 212 963 4879

Website: www.un.org/womenwatch/daw/csw/

There are various other Commissions established by ECOSOC, including the Commission on Science and Technology for Development, the Commission on Sustainable Development, the Statistical Commission. There are also Regional Economic or Economic and Social Commissions. Other Standing Committees include the Committee for Programme and Coordination, and the Committee on Non-Governmental Organizations (to report on consultative relationship between the Council and NGOs, and on what action the Council should take on submissions from NGOs). There are also "Expert Committees" established by ECOSOC (among them the Committee on Economic, Social and Cultural Rights, which oversees implementation of the International Covenant on Economic, Social and Cultural Rights; see below, page 656).

• Commission on Human Rights

Established in 1946, by resolution of ECOSOC, with mandate to prepare recommendations and reports regarding an international bill of rights, international declarations or conventions and any other matters concerning human rights. Membership elected by ECOSOC. Meets annually in Geneva.

*Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland*

ph. (41) 22 917 9000

fax (41) 22 917 9016

Website: www.unhchr.ch

- **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.

There are other thematic Special Rapporteurs, as well as those with country-specific mandates. Examples of other thematic Rapporteurs include the following:

- **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 situations of systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict**

- **Special Rapporteur on the right to education**

- **Special Rapporteur on the human rights of migrants**

- **Special Rapporteur on adequate housing**

- **Special Rapporteur on the right to food**

Sub-Commission on the Promotion and Protection of Human Rights

Formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Established by the Commission on Human Rights to undertake studies and make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities, and to carry out other functions for ECOSOC or the Commission. Members nominated by Governments and elected by Commission. Meets annually in Geneva. The Sub-Commission has established various Working Groups, including on Contemporary Forms of Slavery (which focuses on issues such as child labour, child prostitution, illegal adoption and early marriage), and on indigenous populations.

c/o Commission on Human Rights,

Palais des Nations, 8-14 Av. de la Paix,

1211 Geneva 10, Switzerland

ph. (41) 22 917 9000

fax (41) 22 917 9016

Website: www.unhchr.ch

• International Court of Justice

The principal judicial organ of the United Nations, functioning according to its statute which is part of the United Nations Charter. Its main purpose is to decide, in accordance with international law, such cases as are submitted to it by States. It is directed to apply international conventions establishing rules expressly recognized by the contesting States; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; judicial decisions and the teachings of the most highly qualified jurists of the various nations, as subsidiary means for the determination of the rules of law. Gives advisory opinions on legal questions to the General Assembly and to other organs of the United Nations and specialized agencies, when authorized to do so. Members elected by General Assembly and Security Council.

Peace Palace, Carnegieplein 2

2517KL The Hague, The Netherlands

ph. (31) 70 302 2323

fax (31) 70 364 9928

Website: www.icj-cij.org

• Human Rights Treaty Bodies

The Treaty Bodies are the Committees established to monitor the implementation of various human rights treaties, and to receive and consider reports from States Parties to those treaties:

Committee against Torture (CAT)

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, 8-14 Avenue de la Paix,

1211 Geneva 10, Switzerland

ph. (41) 22 917 9000

fax (41) 22 917 9016

Website: www.unhchr.ch

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, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland
ph. (41) 22 917 9000
fax (41) 22 917 9016
Website: www.unhchr.ch*

Committee on the Elimination of Discrimination against Women (CEDAW)

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.

*Division for the Advancement of Women,
Department of Policy Coordination and Sustainable Development, United Nations Headquarters, New York, NY 10017, USA
ph. (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 (CERD)

The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969 and establishes a Committee of 18 experts elected by States Parties. The Committee examines reports from States Parties, and where a State has accepted its competence, may consider communications from individuals or groups of individuals claiming to be victims of a violation of the Convention.

*Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland
ph. (41) 22 917 9000
fax (41) 22 917 9016
Website: www.unhchr.ch*

Committee on the Rights of the Child

For detailed description of mandate and role, see article 43, page 569.

*Secretariat to the Committee on the Rights of the Child, Office of the High Commissioner for Human Rights, Room 1-065, Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland
ph. (41) 22 917 9000
fax (41) 22 917 9016
Website: www.unhchr.ch*

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, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland
ph. (41) 22 917 9000
fax (41) 22 917 9016
Website: www.unhchr.ch*

OTHER BODIES SUBSIDIARY TO OR RELATED TO THE UN

• International Research and Training Institute for the Advancement of Women (INSTRAW)

Established by ECOSOC resolution 1998 (LX) in 1976, INSTRAW is an autonomous institute within the United Nations system. The Institute undertakes research, training and information activities towards developing new methods for enhancing women's economic and political empowerment and their contribution to sustainable development and for making the overall development process more attuned to the needs and concerns of women. INSTRAW incorporates a life-cycle approach in its research and training activities, thereby extending its work to include elderly and young women, and the girl child (para. 334, Beijing Platform for Action). The Institute's work is concentrated in four main areas: economic and political empowerment; environment and sustainable development; communications and media; statistics and indicators on gender issues.

*INSTRAW Headquarters, Calle César Nicolás Pensón 102-A, Santo Domingo, Dominican Republic
ph. (809) 685 2111
fax (809) 685 2117
INSTRAW Liaison Office, Room DC1-1106
One United Nations Plaza, New York, New York 10017, USA
ph. (1) 212 963 5684
fax (1) 212 963 2978
Website: www.un-instraw.org/*

• Joint United Nations Programme on HIV/AIDS (UNAIDS)

The Joint United Nations Programme on HIV/AIDS (UNAIDS) was established in January 1996. UNAIDS is a co-sponsored programme that brings together the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations International Drug Control Programme (UNDCP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the World Bank in a common effort against the epidemic. It is the first programme of its kind in the UN system: a small programme with a large outreach and the potential to lever significant resources and action through the creation of strategic partnerships. UNAIDS strives to prevent the spread of HIV/AIDS amongst children and youth and to reduce the vulnerability of chil-

dren, families and communities to its impact.
*20 Avenue Appia,
1211 Geneva 27, Switzerland
ph. (41) 22 791 3666
fax (41) 22 791 4187
Website: www.unaids.org*

• UN Children's Fund (UNICEF)

In 1946 the General Assembly established the UN 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
ph. (1) 212 326 7000
fax (1) 212 888 7465
Website: www.unicef.org*

• UN Conference on Trade and Development (UNCTAD)

The General Assembly established UNCTAD in 1964; it meets every four years. Its principal function is the promotion of international trade, with a view to maximising the trade and development opportunities of developing countries.

*Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland
ph. (41) 22 907 1234
fax (41) 22 907 0057
Website: www.unctad.org*

• UN Development Fund for Women (UNIFEM)

In 1984 the General Assembly decided that the activities of the Voluntary Fund for the UN Decade for Women should be continued by establishing a separate entity - UNIFEM - in autonomous association with the UN Development Programme (UNDP - see below). Its aims are to serve as a catalyst with the goal of ensuring the appropriate involvement of women in mainstream development activi-

ties, promoting the human rights of women and supporting innovative and experimental activities benefiting women in line with national and regional priorities.

304 East 45th Street, 15th Floor,
New York, NY 10017, USA

ph. (1) 212 906 6400

fax (1) 212 906 6705

Website: www.unifem.undp.org

• UN Development Programme (UNDP)

The UNDP administers and coordinates most of the technical assistance provided through the UN system. It was formed by General Assembly resolution which combined the UN Expanded Programme of Technical Assistance with the Special Fund. The current Mission Statement endorsed in 1996 states that the mission is to help countries in their efforts to achieve sustainable human development by assisting them to build their capacity to design and carry out development programmes in poverty eradication, employment creation and sustainable livelihoods, the empowerment of women and the protection and regeneration of the environment, giving first priority to poverty eradication. Special attention is paid to the needs of the least developed countries.

One United Nations Plaza, New York,
NY 10017, USA

ph. (1) 212 906 5000

fax (1) 212 826 2057

Website: www.undp.org

• UN Environment Programme (UNEP)

Following the 1972 UN Conference on the Human Environment, the General Assembly established the United Nations Environment Programme, with a Governing Council, Secretariat and an Environment Fund with a detailed mandate of functions and responsibilities. On 4 April 1997, the resumed 19th session of the Governing Council established a High-Level Committee of Ministers and Officials as a subsidiary organ of the Council, consisting of 36 members elected from among members of the United Nations and its specialized agencies. The new Committee will have the mandate to consider the international environmental agenda and to make reforms and policy recommendations to the Governing Council.

P.O. Box 30552, United Nations Avenue,
Gigiri, Nairobi, Kenya

ph. (254) 2 621 234

fax (254) 2 624 489

Website: www.unep.org

• UN High Commissioner for Human Rights, Office of the (OHCHR)

The UN General Assembly created the post of High Commissioner for Human Rights in 1993 to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, including the right to development (Assembly resolution 48/141

1993). The High Commissioner functions as the United Nations official with principal responsibility for UN human rights activities. 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. In 1997, as part of the High Commissioner's Plan of Action for the strengthening of the implementation of the Convention on the Rights of the Child, a Support Team was appointed to reinforce the substantive servicing of 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. The Office 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, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland

ph. (41) 22 917 9000

fax (41) 22 917 9016

Website: www.unhchr.ch

• UN High Commissioner for Refugees, Office of the (UNHCR)

UNHCR's mandate is to provide international protection to refugees and others of concern to UNHCR, and to seek durable solutions to their plight. Activities in fulfilment of this mandate include provision of material assistance, legal advice and assistance, and cooperation with other agencies. UNHCR has developed specific policies, practices and guidelines relating to refugee children. It seeks to promote the standards contained in the Convention on the Rights of the Child and to provide protection, promotion and implementation of durable solutions for refugee children which are in their best interests.

UNHCR, Senior Coordinator for Refugee
Children,

94 rue de Montbrillant, Case Postale 2500,
1211 Geneva 2, Switzerland

ph. (41) 22 739 8111

fax (41) 22 731 9546

Website: www.unhcr.ch

• UN Institute for Training and Research (UNITAR)

Established by General Assembly resolution, UNITAR became operational in 1966. Its purpose is to enhance the effectiveness of the UN in achieving its major objectives, in particular the maintenance of international peace and security and promotion of economic and social development. It provides training to persons, particularly from developing countries, for assignments with the UN or specialized agencies or related to their work.

It also conducts research and study related to the functions and objectives of the UN (later resolutions affirmed that it should focus on providing training programmes and research related to training).

Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland

ph. (41) 22 798 5850

fax (41) 22 733 1383

Website: www.unitar.org

• UN International Drug Control Programme (UNDCP)

Established in 1991, following General Assembly resolution (45/179, 21 December 1990). UNDCP's work is guided by the three United Nations drug abuse control Conventions. UNDCP acts as the focal point for the coordination of international drug abuse control activities within the UN system. UNDCP provides substantial services to the Commission on Narcotic Drugs. UNDCP addresses all aspects of the drug problem, including prevention, treatment and rehabilitation of drug addicts.

UNDCP promotes programmes and interventions aiming at reducing drug abuse among young people and particularly out-of-school youth, street children and working children. UNDCP cooperates with other United Nations agencies in the definition of comprehensive programmes addressing health and education of youth at risk.

Demand Reduction Section, UNDCP

P.O. Box 500, A-1400 Vienna, Austria

ph. (43) 1 260 600

fax (43) 1 260 60 5866

Website: www.undcp.org

• UN Interregional Crime and Justice Research Institute (UNICRI)

Established in 1968 to undertake and promote policy-oriented research, training and technical cooperation activities in crime prevention and criminal justice. UNICRI has implemented, *inter alia*, a study on child abuse, the compilation and analysis of an international bibliography on violence in the family, a comparative study on Romani youth and the juvenile justice system. It plans to implement a project on children in difficult circumstances in South East Asia, and a study on the interactions between youths from migrant families and drug trafficking and consumption.

Viale Maestri del Lavoro 10, 10127 Turin, Italy

ph. (39) 011 653 7111

fax (39) 011 631 3368

Website: www.unicri.it

• UN Population Fund (UNFPA)

In 1969 the United Nations Trust Fund for Population Activities was established. In 1987, it was renamed the United Nations Population Fund. Shares Executive Board with UN Development Programme. Three main areas of work are: to help ensure universal

access to reproductive health, including family planning and sexual health, to all couples and individuals, by the year 2015; to support population and development strategies that enable capacity-building in population programming; to promote awareness of population and development issues and to advocate for the mobilization of the resources and political will necessary to accomplish its areas of work.

UNFPA is guided by, and promotes, the principles of the Programme of Action of the International Conference on Population and Development (1994). In particular UNFPA affirms its commitment to reproductive rights, gender equality and male responsibility, and to the autonomy and empowerment of women everywhere.

*Technical and Evaluation Division,
220 East 42nd Street, New York,
NY 10017, USA*

ph. (1) 212 297 5211

fax (1) 212 297 4915

Website: www.unfpa.org

• UN Research Institute for Social Development (UNRISD)

An autonomous agency engaging in multidisciplinary research on the social dimensions of contemporary development problems. Its work is guided by the conviction that, for effective development policies to be formulated, an understanding of the social and political context is crucial. The Institute attempts to provide governments, development agencies, grassroots organizations and scholars with a better understanding of how development policies and processes of economic, social and environmental change affect different social groups. Working through an extensive network of national research centres, UNRISD aims to promote original research and strengthen research capacity in developing countries.

*Programme Information Officer, UNRISD
Palais des Nations, 8-14 Avenue de la Paix,
1211 Geneva 10, Switzerland*

ph. (41) 22 917 1234

fax (41) 22 917 0650

Website: www.unrisd.org

• World Food Programme (WFP)

The World Food Programme is the food aid arm of the United Nations system.

Established by parallel resolutions of the General Assembly and the Food and Agriculture Organization (FAO) in 1961, it provides approximately one quarter of global food aid to combat hunger and to save the lives of victims of natural and other disasters. WFP's mission is threefold: to meet refugee and other emergency and protracted relief food needs, and to provide the associated logistic support; to improve the nutrition and quality of life of needy people at critical times in their lives, in such a way that they can fully realize their human potential; and to

help the hungry poor become self-reliant and build assets such as roads and schools in their communities.

WFP concentrates its efforts and resources on assisting the most vulnerable: women, children and the elderly. It provides food aid primarily to least-developed and low-income, food-deficit countries, with the aim of eradicating hunger and promoting food security. The ultimate objective of food aid is the elimination of the need for food aid.

WFP also administers the International Emergency Food Reserve created by the General Assembly.

*Via Cesare Giulio Viola 68, Parco de' Medici,
00148 Rome, Italy*

ph. (39) 06 6513 2628

fax (39) 06 6513 2840

Website: www.wfp.org

SPECIALIZED AGENCIES

These are separate autonomous organisations, "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 is in the process of establishing a new instrument in 1998-1999 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 is operating in 26 countries and there is preparatory work in a further 15 countries.

*International Labour Standards Department
4 Route des Morillons, 1211 Geneva 22,
Switzerland*

ph. (41) 22 799 7155/799 6111

fax (41) 22 799 6771

Website: www.ilo.org

• Food and Agriculture Organization (FAO)

Established in 1945. Its aims are to raise levels of nutrition and standards of living, securing improvements in the efficiency of the production and distribution of all food and agricultural products; bettering the condition of rural populations; and thus contributing towards an expanding world economy and ensuring humanity's freedom from hunger. The conference meets every two years, and elects a Council with delegated powers.

In November 1996, heads of state and government and government ministers from 186 countries attended the World Food Summit at FAO in Rome at which they pledged to reduce food hunger by at least half by 2015. In the Rome Declaration on World Food Security and Plan of Action, they promised to "give special attention to promoting and protecting the interests and needs of the child, particularly the girl child, in food security programmes, consistent with the ... Convention on the Rights of the Child". FAO targets rural women through projects to improve their access to credit, training, land and agricultural inputs, as a way of also improving child nutrition.

*Viale Delle Terme di Caracalla,
00100 Rome, Italy*

ph. (39) 06 57051

fax (39) 06 5705 3152

Website: www.fao.org

• UN 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 to achieve education for all, 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.

Other major programmes within UNESCO are its communications and culture programmes. The communications programme promotes active measures to assist the protection and participation of children in the media. With

Gothenburg University, Sweden, an International Clearing House for Children and Violence on the Screen has been established.
7 Place de Fontenoy, 75700 Paris, France
ph. (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
ph. (41) 22 791 2111
fax (41) 22 791 0746
Website: www.who.org

• **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
ph. (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
ph. (1) 202 623 7090
fax (1) 202 623 6220
Website: www.imf.org/

• **International Narcotics Control Board (INCB)**

INCB was established pursuant to the Single Convention on Narcotic Drugs of 1961. The Board's task is to monitor international and domestic movement of narcotic drugs and psychotropic substances used for medical and scientific needs and precursor chemicals which can be used in the illicit manufacture of drugs and to promote overall compliance by governments with the various international drug control treaties.

Vienna International Centre, Room E-1339,
Wagramer Strasse 5, P.O. Box 500,
1400 Vienna, Austria
ph. (43) 1 260 600
fax (43) 1 260 60 5867
Website: www.incb.org

• **World Trade Organization (WTO)**

WTO is the legal and institutional foundation of the multilateral trading system. It provides the principal contractual obligations determining how governments frame and implement trade policy. It is also the platform on which trade relations among States evolve through collective debate, negotiation and adjudication. Its principal functions are to administer and implement multilateral and plurilateral trade agreements, to act as a forum for multilateral trade negotiations, seek to resolve trade disputes and examine national trade policies. WTO is the successor to the 1947 General Agreement on Tariffs and Trade (GATT).

Centre William Rappard, 154 Rue de
Lausanne, 1211 Geneva 21, Switzerland
ph. (41) 22 739 5019
fax (41) 22 739 5458
Website: www.wto.org

Convention on the Rights of the Child

Adopted by the General Assembly
of the United Nations on 20 November 1989

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 United Nations 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 ten) 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 cooperation 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 18 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 cooperation.

● 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 speedily re-establishing 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 cooperation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

● 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 intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

● Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

● 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 breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present

article. In this regard, particular account shall be taken of the needs of developing countries.

● 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 principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

● Article 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 admissions 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 practises;
- (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 18 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 15 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 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

● Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

● Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

● Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Part II

● Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

● Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten 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.

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.

● 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 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.

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

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 by General Assembly resolution 54/263
of 25 May 2000

T

he General Assembly,

Recalling all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

1. *Adopts and opens for signature, ratification and accession* the two optional protocols to the Convention on the Rights of the Child¹ on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;

2. *Invites* all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;

3. *Decides* that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled “World Summit for Social Development and beyond: achieving social development for all in a globalizing world”, to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;

4. *Requests* the Secretary-General to include information on the status of the two optional protocols in his report to the General Assembly on the status of the Convention on the Rights of the Child.

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this 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 generally having a significant presence of children, such as schools and hospitals,

Noting the adoption of the Statute of the International Criminal Court and, in particular, the inclusion in the Statute of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities as a war crime 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, raising 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 under the age of 18 years do not take part in hostilities,

Welcoming also the unanimous adoption, in June 1999, of ILO 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 this 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 of the United Nations 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 this Protocol owing to their economic or social status or gender,

Mindful also of the necessity to take 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 implementation of this protocol, as well as 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 information and education 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 the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in article 38.3 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 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol which sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties which permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

Such recruitment is genuinely voluntary;

Such recruitment is done with the informed consent of the person's parents or legal guardians;

Such persons are fully informed of the duties involved in such military service; and
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 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, 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 under this Protocol 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 which 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 this 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 this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these 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 to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation among concerned States parties and 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 General Assembly rules.

● Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, 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 they submit to the Committee on the Rights of the Child in accordance with article 44 of the Convention any further information with respect to the implementation of the 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 this Protocol.

● Article 9

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification or 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 of the United Nations, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States which have signed the Convention of each instrument of declaration pursuant to article 3, ratification or accession to the Protocol.

● 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 present 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 which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations. 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 which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at 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 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 Protocol and any earlier amendments which 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 which 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 by General Assembly resolution 54/263
of 25 May 2000

T

he General Assembly,

Recalling all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

1. *Adopts and opens for signature, ratification and accession* the two optional protocols to the Convention on the Rights of the Child¹ on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;
2. *Invites* all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;
3. *Decides* that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled “World Summit for Social Development and beyond: achieving social development for all in a globalizing world”, to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;
4. *Requests* the Secretary-General to include information on the status of the two optional protocols in his report to the

General Assembly on the status of the Convention on the Rights of the Child.

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, 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 of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and 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 the Protection of Children and Co-operation with Respect to Intercountry Adoption, the Hague Convention on the Civil Aspects of Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and ILO Convention No. 182 Concerning 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 of the 1996 Stockholm Congress against the Commercial Sexual Exploitation of Children 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 this Protocol.

● Article 2

For the purpose of the present Protocol:
SALE OF CHILDREN

(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;

CHILD PROSTITUTION

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

CHILD PORNOGRAPHY

(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, the dominant characteristic of which is depiction for a sexual purpose.

● 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 these 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 (a):

(i) The offering, delivering, or accepting by whatever means a child for the purpose of:
Sexual exploitation of the child;
Transfer of organs of the child for profit;
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 (b); and

(c) Producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography as defined in article 2 (c).

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties which 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 this article. Subject to the legal principles of the State Party, this 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 3.1, 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 3.1 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 above-mentioned offences when the alleged offender is present in its territory and it does not extradite him to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

● Article 5

1. The offences referred to in article 3.1 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 these treaties.

2. If a State Party which 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 this Protocol as 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 which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3.1 and if 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 3.1, 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; Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (i);

(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, for the persons who work with child victims of the offences prohibited under the present Protocol.

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 child victims of such offences.

5. Nothing in this article shall be construed as 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 these 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 for 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 practices of sale, prostitution, 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 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 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child in accordance with article 44 of the Convention any further information with respect to the implementation of the 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 this Protocol.

● Article 13

1. The present Protocol is open for signature by any State which is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification or open to accession by any State which 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 present 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 which have signed the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Commit-

tee prior to the date at 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 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.

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 Protocol and any earlier amendments which 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 this Protocol to all States Parties to the Convention and all States which have signed the Convention.

Reporting Guidelines to States Parties

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

Adopted by the Committee on the Rights of the Child
at its 343rd meeting (thirteenth session)
on 11 October 1996

Introduction

1. Pursuant to article 44, paragraph 1 of the Convention on the Rights of the Child, States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the implementation of the Convention:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

Reports should provide information on the measures adopted by the State Party to give effect to the rights set forth in the Convention 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 Convention. The Committee, in providing these guidelines, wishes to emphasize its supportive role in fostering effective implementation of the Convention and in encouraging international cooperation, as called for in article 45. Reports should also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

2. The Committee may, in the light of article 44, paragraph 4 of the Convention, request from States Parties further information relevant to the implementation of the Convention.

3. The Committee believes that the process of preparing a report for submission to the Committee provides an important opportunity to conduct a comprehensive review of the various measures undertaken to harmonize law and

policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention. Such a process should encourage and facilitate popular participation and public scrutiny of government policies.

4. The Committee considers that the reporting process entails an ongoing reaffirmation by States Parties of their commitment to respect and ensure observance of the rights enshrined in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the Committee and the States Parties.

5. Periodic reports on the implementation of the Convention should provide information with respect to the period covered by the report on:

The measures adopted by the State Party, including the conclusion of and accession to bilateral and multilateral agreements in the field of children's rights, and changes which have occurred in legislation and practice at the national, regional and local levels, and where appropriate at the federal and provincial levels, such as:

Mechanisms and structures to coordinate and monitor efforts to implement the Convention; Overall or sectoral policies, programmes and services developed to implement the Convention.

The progress achieved in the enjoyment of children's rights;

The factors and difficulties encountered in the full implementation of the rights set forth in the Convention and on steps taken to overcome them;

The plans envisaged to improve further the realization of the rights of the child.

6. Periodic reports should include information on the consideration given to the concluding observations adopted by the Committee in relation to the previous report, including on: The areas of concern identified by the Committee, as well as difficulties which may have affected the realization of such suggestions and recommendations;

The measures adopted as a follow-up to the suggestions and recommendations addressed by the Committee to the State Party upon examination of its previous report. Steps taken to implement should be identified in relation to each suggestion and recommendation and all relevant action taken should be specified including in relation to legislation, policy, mechanisms, structures and allocation of resources;

The difficulties which may have affected the realization of such suggestions and recommendations;

The steps taken to widely disseminate the previous report, as well as the concluding observations adopted by the Committee.

7. Reports should be accompanied by copies of the principal legislative texts and judicial decisions, as well as detailed statistical information, indicators referred to therein and relevant research. This accompanying material will be made available to the members of the Committee. Quantitative information should indicate variations between various areas of the country and within areas and between groups of children and include:

Changes in the status of children;

Variations by age, gender, region, rural/urban area, and social and ethnic group;

Changes in community systems serving children;

Changes in budget allocation and expenditure for sectors serving children;
Changes in the extent of international cooperation received or contributed for the realization of children's rights.

It should be noted, however, that for reasons of economy, these documents will not be translated or reproduced for general distribution. It is desirable, therefore, 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. IN THE LIGHT OF 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 BASIC INFORMATION IN ITS SUBSEQUENT REPORTS. IT SHOULD, HOWEVER, CLEARLY REFERENCE THE INFORMATION PREVIOUSLY TRANSMITTED, AND INDICATE THE CHANGES THAT HAVE OCCURRED DURING THE REPORTING PERIOD.

9. In the present guidelines the provisions of the Convention have been grouped in clusters with a view to assisting States Parties in the preparation of their reports. This approach reflects the Convention's holistic perspective of children's rights: that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein.

10. Information provided in States Parties' reports on the various sections identified by the Committee should closely follow the present guidelines with regard to content.

I. GENERAL MEASURES OF IMPLEMENTATION **(arts. 4; 42 and 44,** **paragraph 6 of the Convention)**

SEE PARAGRAPH 8 ABOVE

11. In the spirit of the World Conference on Human Rights, which encouraged States to consider reviewing any reservation with a view to withdrawing it (see A/CONF.157/23, II, paras. 5 and 46), please indicate whether the Government considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.

12. States Parties are requested to provide relevant information pursuant to article 4 of the Convention, including information on the measures adopted to bring national legislation and practice into full conformity with the principles and provisions of the Convention, together with details of:

Any comprehensive review of the domestic legislation to ensure compliance with the Convention;

Any new laws or codes adopted, as well as amendments introduced into domestic legislation to ensure implementation of the Convention.

13. Please indicate the status of the Convention in domestic law:

With respect to recognition in the Constitution or other national legislation of the rights set forth in the Convention;

With respect to the possibility for the provisions of the Convention to be directly invoked before the courts and applied by the national authorities;

In the event of a conflict with national legislation.

14. In the light of article 41 of the Convention, please indicate any provisions of the national legislation which are more conducive to the realization of the rights of the child.

15. Please provide information on judicial decisions applying the principles and provisions of the Convention.

16. Please provide information on remedies available in cases of violation of the rights recognized by the Convention.

17. Please indicate any steps taken or envisaged to adopt a comprehensive national strategy for children in the framework of the Convention, such as a national plan of action on children's rights and relevant goals established.

18. Please provide information on existing or planned mechanisms at the national, regional and local levels, and when relevant at the federal and provincial levels, for ensuring implementation of the Convention, for coordinating policies relevant to children and for monitoring progress achieved, including information on:

The governmental departments competent in the areas covered by the Convention, the steps taken to ensure the effective coordination of their activities, as well as to monitor the progress made by them;

The steps taken to ensure effective coordination of activities between central, regional and local authorities, and where relevant between federal and provincial authorities;

Any governmental institutions created to promote the rights of the child and monitor implementation, and how they relate to non-governmental organizations;

Any independent body established to promote and protect the rights of the child, such as an Ombudsperson or a Commissioner;

The measures taken to ensure the systematic gathering of data on children and their fundamental rights and to assess existing trends at the national, regional and local levels, and where appropriate at the federal and provincial levels, as well as the steps taken to develop mechanisms for the identification and gathering of appropriate indicators, statistics, relevant research and other relevant information as a basis for policy-making in the field of children's rights;

The steps taken to ensure a periodic evaluation of progress in the implementation of the Convention at the national, regional and local levels, and where appropriate at the federal and provincial levels, including through the preparation of any periodic report by the Government to the Parliament.

19. Please indicate any initiatives taken in cooperation with the civil society (for example, professional groups, non-governmental organizations) and any mechanisms developed to evaluate progress achieved.

20. Using indicators or target figures where necessary, please indicate the measures undertaken to ensure the implementation at the national, regional and local levels, and where relevant at the federal and provincial levels, of the economic, social and cultural rights of children to the maximum extent of available resources, including:

The steps undertaken to ensure coordination between economic and social policies;

The proportion of the budget devoted to social expenditures for children, including health, welfare and education, at the central, regional and local levels, and where appropriate at the federal and provincial levels;

The budget trends over the period covered by the report;

Arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified;

The steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policy-making; The measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services;

The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.

21. Please indicate the extent to which international cooperation relevant to the State Party is designed to foster the implementation of the Convention, including economic, social and cultural rights of children. Please indicate the proportion of international aid at the multilateral and bilateral levels allocated to programmes for children and the promotion of their rights and, where appropriate, the assistance received from regional and international financial institutions. Please also indicate the percentage of international cooperation contributed during the reporting period in the total government budget, as well as the percentages of such cooperation respectively allocated to the health sector, to the education sector, to the social sector and to other sectors. Please further indicate any relevant measures adopted as a follow-up to the Declaration and Programme of Action of the World Summit for Social Development.

22. In addition, States are requested to 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, by appropriate and active means, to adults and children alike. In this regard, reports should also indicate:

The extent to which the Convention has been translated into the national, local, minority or indigenous languages. In this connection, an indication should be given of the number of languages into which the Convention has been translated and the number of copies translated

into the minority languages during the reporting period;

Whether the Convention has been translated and has been made available in the languages spoken by the larger refugee and immigrant groups in the country concerned;

The measures adopted to publicize the Convention and create widespread awareness of its principles and provisions. In this connection, an indication should be given of the number of meetings (such as parliamentary or governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio or television and the number of publications issued explaining the Convention on the Rights of the Child during the reporting period;

The specific steps taken to make the Convention widely known to children and the extent to which it has been reflected in the school curricula and considered in parents' education campaigns. An indication should be given of the number of copies of the Convention distributed in the educational system and to the public at large during the reporting period;

The measures adopted 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 incorporated in professional training curricula and codes of conduct or regulations;

The steps taken to promote understanding of the principles and provisions of the Convention by the mass media and by information and publishing agencies;

The involvement of non-governmental organizations in awareness and advocacy campaigns on the Convention, as well as any support provided to them. In this connection, an indication should be given of the number of non-governmental organizations who participated in such events during the reporting period;

The participation of children in any of these activities.

23. States are also requested to 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. In this regard, please indicate: The process of preparation of the present report, in particular the extent to which governmental departments, at the central, regional and local levels, and where appropriate, at the federal and provincial levels, participated, and non-governmental organizations were involved. An indication should also be given of the number of non-governmental organizations which participated in the preparation of the report;

The steps taken to publicize the report, to translate and disseminate it in the national, local, minority or indigenous languages. An indication should be given of the number of meetings (such as parliamentary and governmental conferences, workshops, seminars)

held, the number of programmes broadcast on radio or television, the number of publications issued explaining the report and the number of non-governmental organizations which participated in such events during the reporting period;

The measures adopted or foreseen to ensure wide dissemination and consideration of the summary records and the concluding observations adopted by the Committee in relation to the State Party's report, including any parliamentary hearing or media coverage. Please indicate the events undertaken to publicize the concluding observations and summary records of the previous report, including the number of meetings (such as parliamentary or governmental conferences, workshops, seminars) held, the number of programmes broadcast on radio or television, the number of publications issued explaining the concluding observations and summary records, and the number of non-governmental organizations which participated in such events during the reporting period.

II. DEFINITION OF THE CHILD (art. 1)

SEE PARAGRAPH 8 ABOVE

24. Under this section, States Parties are requested to provide relevant information with respect to article 1 of the Convention, including on:

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

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

Legal and medical counselling without parental consent;

Medical treatment or surgery without parental consent;

End of compulsory education;

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

Marriage;

Sexual consent;

Voluntary enlistment in the armed forces;

Conscription into the armed forces;

Participation in hostilities;

Criminal responsibility;

Deprivation of liberty, including by arrest, detention and imprisonment, *inter alia* in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions;

Capital punishment and life imprisonment;

Giving testimony in court, in civil and criminal cases;

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

Participating in administrative and judicial proceedings affecting the child;

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

Having access to information concerning the biological family;

Legal capacity to inherit, to conduct property transactions;

To create or join associations;

Choosing a religion or attending religious school teaching;

Consumption of alcohol and other controlled substances;

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

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

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

III. GENERAL PRINCIPLES

SEE PARAGRAPH 8 ABOVE

A. Non-discrimination (art. 2)

25. Reports should indicate whether the principle of non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions. Reports should further indicate the measures adopted to ensure the rights set forth in the Convention to each child under the jurisdiction of the State without discrimination of any kind, including non-nationals, refugees and asylum-seekers.

26. Information should be provided on steps taken to ensure that discrimination is prevented and combated, both in law and practice, including discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his/her parents or legal guardians.

27. Please indicate the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced, refugees or asylum-seekers, and children who are living and/or working on the streets.

28. Please provide information on the specific measures taken to eliminate discrimination against girls and when appropriate indicate measures adopted as a follow-up to the Fourth World Conference on Women.

29. Please indicate measures taken to collect disaggregated data for the various groups of children mentioned above.

30. What measures have been taken to prevent and eliminate attitudes to and prejudice against children contributing to social or ethnic tension, racism and xenophobia?

31. Information should also be provided on the measures pursuant to article 2, paragraph 2 taken 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.

32. Please indicate major problems encountered in implementing the provisions of article 2 and plans to solve these problems, as well as any evaluation of progress in preventing and combating all forms of discrimination, including those arising from negative traditional practices.

B. Best interests of the child (art. 3)

33. Reports should indicate whether the principle of the best interests of the child and the need for it to be a primary consideration in all actions concerning children is reflected in the Constitution and relevant national legislation and regulations.

34. Please provide information on the consideration given to this principle by courts of law, administrative authorities or legislative bodies, as well as by public or private social welfare agencies.

35. Please provide information on how the best interests of the child have been given primary consideration in family life, school life, social life and in areas such as:

Budgetary allocations, including at the central, regional and local levels, and where appropriate at the federal and provincial levels, and within governmental departments;

Planning and development policies, including housing, transport and environmental policies; Adoption;

Immigration, asylum-seeking and refugee procedures;

The administration of juvenile justice;

The placement and care of children in institutions;

Social security.

36. Information should be included on the measures taken in the light of article 3, paragraph 2, including of a legislative and administrative nature, to ensure children such protection and care as is necessary for their well-being.

37. Information should also be provided on the steps taken pursuant to article 3, paragraph 3, to establish appropriate standards for all public and private institutions, services and facilities responsible for the care and protection of children and to ensure that they conform with such standards, particularly in the areas of safety, health, number and suitability of their staff, as well as competent supervision.

38. In the light of the legislative and administrative measures taken to ensure the consideration of the best interests of the child, please indicate the main problems remaining in this respect.

39. Please indicate in what ways the principle of the best interests of the child is made part of the training of professionals dealing with children's rights.

C. The right to life, survival and development (art. 6)

40. Please describe specific measures taken to guarantee the child's right to life and to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society.

41. Information should also be provided on the measures taken to ensure the registration of the deaths of children, the causes of death and, where appropriate, investigation and reporting on such deaths, as well as on the measures adopted to prevent children's suicide and monitor its incidence and to ensure the survival of children at all ages, including adolescents, and the prevention of risks to which that group may be particularly exposed (for example, sexually transmitted diseases, street violence). Please provide relevant disaggregated data, including on the number of suicides among children.

D. Respect for the views of the child (art. 12)

42. Reports should indicate how the right of the child to express views freely on all matters affecting him or her, and provision for those views to be given due weight have been incorporated in legislation.

43. Please provide information on legislative and other measures taken to ensure the right of the child to express views in a manner consistent with his or her evolving capacities, including in:

Family life;

School life;

The administration of juvenile justice;

Placement and life in institutional and other forms of care;

Asylum-seeking procedures.

44. Please indicate the opportunities provided for the child to be heard in judicial and administrative proceedings affecting him or her, as well as the situations in which the child can intervene directly or through a representative or an appropriate body (see also para. 34 above).

45. Please provide information on any bodies or instances where the child has a right to participate in decision-making, such as schools or local councils.

46. Please indicate what measures have been taken to raise the awareness of families and the public in general of the need to encourage children to exercise their right to express their views, and to train professionals working with children to encourage children to do so, and to give their views due weight. An indication should be given of the number of hours of child development courses provided for the following staff:

Judges in general;

Family court judges;

Juvenile court judges;

Probation officers;

Police officers;

Prison officers;

Teachers;

Health workers;

Other professionals.

An indication should also be provided of the number of courses about the Convention included in the curriculum of:

Law schools;

Teachers training schools;

Medical schools and institutions;

Nursing schools;

Social work schools;

Psychology departments;

Sociology departments.

47. Please indicate how the views of the child obtained through public opinion, consultations and assessment of complaints are taken into consideration in the legal provisions, and in policy or judicial decisions.

IV. CIVIL RIGHTS AND FREEDOMS (arts. 7; 8; 13-17 and 37 (a))

SEE PARAGRAPH 8 ABOVE

48. Under this section, States Parties are requested to provide information on the measures adopted to ensure that the civil rights and freedoms of children set forth in the Convention, in particular those covered by articles 7, 8, 13 to 17 and 37 (a), are recognized by law specifically in relation to children and implemented in practice, including by administrative and judicial bodies, at the national, regional and local levels, and where appropriate at the federal and provincial levels.

A. Name and nationality (art. 7)

49. Please indicate the measures taken or envisaged to ensure that every child is registered immediately after birth. Please also indicate the steps undertaken to prevent the non-registration of children immediately after birth, including in view of possible social or cultural obstacles, *inter alia* in rural or remote areas, in relation to nomadic groups, displaced persons, as well as asylum-seeking and refugee children.

50. Please provide information on the measures taken to sensitize and mobilize public opinion on the need for birth registration of children, and to provide adequate training to registry personnel.

51. Please also provide information on the elements of the child's identity included in the birth registration and the measures adopted to prevent any kind of stigmatization or discrimination of the child.

52. Please indicate the measures adopted to ensure the child's right to know and be cared for by his or her parents.

53. Please provide information on the measures adopted pursuant to article 7, paragraph 2, to ensure the child's right to acquire a nationality, in particular where the child would otherwise be stateless. Reference should also be made to the implementation of this right in relation to children born out of wedlock, and asylum-seeking and refugee children. Please indicate the criteria applied for the acquisition of nationality and whether the child is allowed to acquire the nationality of both parents.

B. Preservation of identity (art. 8)

54. Please indicate the measures adopted to preserve the child's identity and to prevent any unlawful interference. In the case of the illegal deprivation of some or all of the elements of the child's identity, reports should also indicate the measures adopted to provide appropriate assistance and protection to the child and ensure the speedy re-establishment of his or her identity.

C. Freedom of expression (art. 13)

55. Please provide information on the measures adopted to ensure the child's right to freedom of expression, including to seek, receive and impart information and ideas regardless of frontiers. Reports should also indicate the restrictions to which the exercise of this right may be subject in conformity with article 13, paragraph 2.

D. Freedom of thought, conscience and religion (art. 14)

56. Please provide information on the exercise of the right to freedom of thought, conscience and religion by children, and the extent to which the child's evolving capacities are taken into consideration.

57. Please indicate the measures adopted to ensure the child's freedom to manifest his or her religion or beliefs, including with regard to minorities or indigenous groups. Information should also be provided on measures to ensure respect for the child's rights in relation to any religious teaching in public schools or institutions, as well as on any limitations to which this freedom may be subject in conformity with article 14, paragraph 3.

E. Freedom of association and peaceful assembly (art. 15)

58. Please indicate the measures adopted to ensure the child's right to freedom of association and peaceful assembly, including any specific legislation enacted to establish the conditions under which children are allowed to create or join associations. Please also indicate any restriction that may be placed on the exercise of these rights, in conformity with article 15, paragraph 2. Information should also be provided on existing children's associations and the role they play in the promotion of children's rights.

F. Protection of privacy (art. 16)

59. Please indicate the measures adopted to prevent any arbitrary or unlawful interference with the child's privacy, family, home or correspondence, as well as any attack on his or her honour and reputation. Please provide information on the protection provided by the law against such interference or attacks, and the remedies made available to the child. Information should also be provided on specific measures adopted for children placed in institutions for treatment, care or protection, including in judicial or administrative proceedings.

G. Access to appropriate information (art. 17)

60. Please provide information on the measures adopted to ensure that children have access from a diversity of national and inter-

national sources to information and material aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health. Please also indicate the measures adopted to encourage:

The production and dissemination of children's books, and the dissemination by the mass media of information and material of social and cultural benefit to the child, with particular regard to the linguistic needs of children belonging to a minority group or who are indigenous;

International cooperation in the production, exchange and dissemination of such information and material of social and cultural benefit for the child, in accordance with the spirit of article 29 of the Convention on the aims of education, including any international agreements concluded for that purpose;

The development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, as well as from harmful exposure in the mass media, bearing in mind the provisions of articles 13 and 18.

H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

61. Please indicate whether torture or other cruel, inhuman or degrading treatment or punishment of children is punished by the criminal law, and whether complaint procedures have been established and remedies made available to the child. Please also provide information on:

Awareness campaigns launched to prevent torture or other cruel, inhuman or degrading treatment or punishment of children;

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;

Any cases where children have been victims of any such acts;

Measures adopted to prevent the impunity of perpetrators, including by investigating such cases and punishing those found responsible;

Measures adopted to ensure the physical and psychological recovery and reintegration of children who have been tortured or otherwise ill-treated;

Any independent monitoring system established.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39)

SEE PARAGRAPH 8 ABOVE

A. Parental guidance (art. 5)

62. Please provide information on family structures within the society and indicate the measures adopted to ensure respect for 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 per-

sons legally responsible for the child, to provide appropriate direction and guidance to the child, further indicating how such direction and guidance are consistent with the child's evolving capacities.

63. Please indicate any family counselling services or parental education programmes available, as well as awareness campaigns for parents and children on the rights of the child within family life, and training activities provided to relevant professional groups (for example, social workers) and indicate if any evaluation has been made of their effectiveness. Please also indicate how knowledge and information about child development and the evolving capacities of the child are conveyed to parents or other persons responsible for the child.

64. Information should also be provided on the measures adopted to ensure respect for the principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible, as well as on the progress achieved in the implementation of article 5, any difficulties encountered and the indicators used.

B. Parental responsibilities (art. 18, paras. 1-2)

65. Please provide information on the consideration given by law to parental responsibility, including the recognition of the common responsibilities of both parents in the upbringing and development of the child and, that the best interests of the child will be their basic concern. Also indicate how the principles of non-discrimination, respect for the views of the child and the development of the child to the maximum extent, as provided for by the Convention, are taken into account.

66. Please provide information on the measures adopted to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, as well as on the institutions, facilities and services developed for the care of children. Information should also be provided on specific measures adopted for children from single-parent families and belonging to the most disadvantaged groups, including those living in extreme poverty.

67. Relevant disaggregated information (for example, by gender, age, region, rural/urban areas and social and ethnic origin) should be given on children having benefited from any of these measures and resources allocated to them (at the national, regional and local levels, and where appropriate at the federal and provincial levels). Information should also be provided on progress achieved and difficulties encountered in the implementation of article 18, as well as on the targets set for the future.

C. Separation from parents (art. 9)

68. Please indicate the measures adopted, including of a legislative and judicial nature, to ensure that the child is not separated from his or her parents except when such separation is necessary for the best interests of the child,

as in cases of abuse or neglect of the child or when the parents live separately and a decision must be made as to the child's place of residence. Please identify the competent authorities intervening in these decisions, the applicable law and procedure and the role of judicial review.

69. Please provide information on the measures taken pursuant to article 9, paragraph 2 to ensure to all interested parties, including the child, an opportunity to participate in any proceedings and to make their views known.

70. Please indicate the measures adopted, including of a legislative, judicial and administrative nature, to ensure that the child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, except if it is contrary to the best interests of the child. Please further indicate the extent to which the views of the child are taken into consideration in this regard.

71. Please indicate the measures adopted pursuant to article 9, paragraph 4 to ensure that in the case of the child's separation from one or both of his or her parents as a result of any action initiated by the State, essential information on the whereabouts of the absent member(s) of the family is provided, upon request, to the child, to the parents or, if appropriate, to another member of the family, unless the provision of the information would be detrimental to the well-being of the child. Also indicate the measures undertaken to ensure that the submission of such a request entails no adverse consequences for the person(s) concerned.

72. Relevant disaggregated information (for example, by age, gender and national, ethnic and social origin) should be provided *inter alia* in relation to situations of detention, imprisonment, exile, deportation or death, together with an assessment of progress achieved in the implementation of article 9, difficulties encountered and targets set for the future.

D. Family reunification (art. 10)

73. Please provide information on the measures adopted to ensure that applications by a child or his or her parents to enter or leave a country for the purpose of family reunification are dealt with by the State in a positive, humane and expeditious manner and that the submission of such a request entails no adverse consequences for the applicants and the members of their family.

74. Please also indicate how such applications are considered in the light of the Convention and in particular of its general principles of non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible, including in the case of unaccompanied and asylum seeking children. Disaggregated information should also be provided, including by gender, age, and national and ethnic origin.

75. Please indicate the measures undertaken to ensure the right of a child whose parents

reside in different States to maintain on a regular basis personal relations and direct contacts with both parents. Please also indicate any exceptions and their compatibility with the provisions and principles of the Convention.

76. Information should be provided on the steps taken to ensure respect for the right of the child and his or her parents to leave any country, including their own, and to enter their own country. They should indicate any restrictions imposed on the right to leave the country, how they are prescribed by law, necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and the extent to which they are consistent with the other rights recognized in the Convention, including the principles of non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

77. Reports should also provide information on the progress achieved in the implementation of article 10, difficulties encountered and targets set for the future.

E. Illicit transfer and non-return (art. 11)

78. Please provide information on:

The steps taken to prevent and combat the illicit transfer and non-return of children abroad, including legislative, administrative or judicial measures, as well as mechanisms established to monitor such situations;

Any bilateral or multilateral agreement on this subject concluded by the State Party or to which it may have acceded and the impact they have had;

Progress achieved and the difficulties met with in countering such situations, together with relevant data on the children concerned, including by gender, age, national origin, place of residence, family status and relationship with the perpetrator of the illicit transfer.

F. Recovery of maintenance for the child (art. 27, para. 4)

79. Please indicate the measures adopted (including legislative, administrative and judicial measures) and mechanisms or programmes developed 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 and from abroad, including in cases of the separation or divorce of the parents. Information should also be provided on:

Measures taken to ensure the maintenance of the child in cases where parents or other persons having financial responsibility for the child evade the payment of such maintenance; Measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent;

The factors and difficulties which may have affected the recovery of maintenance for the

child (for example, lack of birth registration) or the enforcement of decisions concerning maintenance obligations;

The relevant international agreements the State has concluded or to which it has acceded, as well as any other appropriate arrangement it has made;

Relevant disaggregated data in this area, including by gender, age, national origin and place of residence of the child and his or her parents, or of the persons financially responsible for him or her.

G. Children deprived of their family environment (art. 20)

80. Please indicate the measures adopted to ensure:

Special protection and assistance to the child who is temporarily or permanently deprived of his or her family environment or in whose own best interests cannot be allowed to remain in that environment;

Alternative care for such a child, specifying the available forms of such care (*inter alia* foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of the child);

That the placement of such a child in suitable institutions will only be used if really necessary;

Monitoring of the situation of children placed in alternative care;

Respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent.

81. Reports should also indicate the extent to which, when such solutions are being considered, due regard is paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Disaggregated information should be provided on the children concerned by all such measures, including by gender, age, national, social or ethnic origin, language, religion, and by the nature of the measure of alternative care applied.

82. Reports should also provide information on the progress achieved in the implementation of this article, any difficulties encountered or on targets set for the future.

H. Adoption (art. 21)

83. Please indicate the measures adopted, including of a legislative, administrative or judicial nature, to ensure that, when the State recognizes and/or permits the system of adoption, the best interests of the child shall be the paramount consideration. Information should also be provided on:

The authorities which are competent to authorize the adoption of a child;

The applicable law and procedures and the pertinent and reliable information on the basis of which adoption is determined;

The child's status concerning his or her parents, relatives and legal guardians necessary for adoption to be considered permissible;

The involvement of the persons concerned, the circumstances under which their informed consent is required and necessary counselling provided, including to allow for the consideration of the alternatives to and consequences of adoption, and the extent to which the participation of the child is ensured and his or her views are given due weight;

Existing safeguards to protect the child, including any monitoring mechanism put in place;

The effects of adoption on the rights of the child, particularly his or her civil rights, including the child's identity and the right of the child to know his or her biological parents.

84. In the case of intercountry adoption, please indicate the measures undertaken to ensure that:

Such a solution is only considered as an alternative means of care for the child if he or she 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;

The child involved in intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

Placement by intercountry adoption does not result in improper financial gain for those involved in it;

Appropriate mechanisms have been established to monitor the situation of the child, including following his or her placement through intercountry adoption, and to ensure that his or her best interests prevail as a paramount consideration.

85. Reports should also indicate:

Any bilateral or multilateral arrangements or agreements concluded by the State to promote the objectives of article 21 (for example, the Hague Convention of May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption);

Within this framework, the measures adopted to ensure that the placement of a child in another country is carried out by competent authorities or organs;

Relevant disaggregated data on the children involved in intercountry adoption, including by age, gender, status of the child, situation of the child's family of origin and of adoption, as well as country of origin and of adoption; Progress achieved in the implementation of article 21, difficulties encountered and targets set for the future.

I. Periodic review of placement (art. 25)

86. Please indicate the measures undertaken, including of a legislative, administrative and judicial nature, to recognize the right of the child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical and mental health, to a periodic review of the treatment provided to the child in public and private institutions, services and facilities, as well as all other circumstances relevant to his or her placement.

87. Information should be provided *inter alia* on:

The authorities considered competent for such purposes, including any appropriate independent mechanism established;

The circumstances taken into account in deciding on the placement of the child for his or her care, protection and treatment;

The frequency of review of the placement and treatment provided;

The respect ensured to the provisions and principles of the Convention, including non-discrimination, the best interests of the child and respect for the views of the child;

Relevant data on the children concerned, including in situations of abandonment, disability and asylum seeking and refugees, including unaccompanied children, and in situations of conflict with the law, disaggregated *inter alia* by age, gender, national, ethnic and social origin, family situation and place of residence, as well as by duration of placement and frequency of its review;

Progress achieved in the implementation of article 25, difficulties encountered and targets set for the future.

J. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

88. Please indicate all appropriate legislative, administrative, social and educational measures taken pursuant to article 19 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. Reports should indicate in particular:

Whether legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, including corporal punishment, deliberate humiliation, injury, abuse, neglect or exploitation, *inter alia* within the family, in foster and other forms of care, and in public or private institutions, such as penal institutions and schools;

Other existing legal safeguards relevant to the protection of the child as required by article 19;

Whether complaint procedures have been foreseen and the child can lodge complaints, either directly or through a representative, as well as remedies available (for example, compensation);

The procedures developed for intervention by the authorities in cases where the child requires protection from any form of violence, abuse or negligence, as required by article 19; The educational and other measures adopted to promote positive and non-violent forms of discipline, care and treatment of the child; Any information and awareness-raising campaigns to prevent situations of violence, abuse or negligence and to strengthen the system for the child's protection;

Any mechanisms established to monitor the extent of the forms of violence, injury or abuse, neglect, maltreatment or exploitation considered by article 19, including within the family, in institutional or other care, of a welfare, educational or penal nature, and the

social and other factors contributing thereto, as well as any evaluation made of the effectiveness of the measures adopted; in this regard disaggregated data should be provided on the children concerned, including by age, gender, family situation, rural/urban, social and ethnic origin.

89. With respect to article 19, paragraph 2, reports should also provide information *inter alia* on:

Effective procedures developed for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, including rehabilitation mechanisms;

Any other forms of prevention;

Effective measures adopted for the identification, reporting, referral, investigation, treatment and follow-up of instances of maltreatment covered by article 19, as well as for judicial involvement;

The existence of any system of mandatory reporting for professional groups working with and for children (for example teachers, medical doctors);

The existence of confidential help lines, advice or counselling for child victims of violence, abuse or neglect or any other form considered by article 19;

The special training provided for relevant professionals. (See also para. 34 above).

90. Please also indicate the measures adopted pursuant to article 39 to ensure the physical and psychological recovery and social reintegration of the child victim of any form of neglect, exploitation or abuse referred to in article 19, in an environment which fosters the health, self-respect and dignity of the child. Information should also be provided on the progress achieved, any difficulties encountered and on the targets set for the future.

91. Reports should also provide information on the progress achieved in the implementation of these articles, difficulties encountered and targets set for the future.

VI. BASIC HEALTH AND WELFARE (arts. 6; 18, para. 3; 23; 24; 26; 27, paras. 1-3)

SEE PARAGRAPH 8 ABOVE

A. Disabled children (art. 23)

92. Please provide information on:

The situation of the mentally or physically disabled child and the measures taken to ensure: The child's enjoyment of a full and decent life, in conditions which ensure the child's dignity and self-reliance;

The child's enjoyment of his or her rights without discrimination of any kind and the prevention and elimination of discriminatory attitudes against him or her;

The promotion of the child's active participation in the community;

The child's effective access to education, training, health care and 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;

The consideration given to the inclusion of disabled children together with children without disabilities in institutions, services and facilities, including within the education system; The child's right to special care and the steps taken to ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance appropriate to the child's condition and to the circumstances of the parents or others caring for the child;

That, whenever possible, assistance is provided free of charge, taking into account the financial resources of the parents or others caring for the child;

The measures taken to ensure an effective evaluation of the situation of disabled children, including the development of a system of identification and tracking of disabled children, the establishment of any appropriate monitoring mechanism, the assessment of progress and of difficulties encountered, as well as any targets set for the future;

The measures taken to ensure adequate training, including specialized training, for those responsible for the care of disabled children, including at the family and community levels and within relevant institutions;

The measures taken to promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of the medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services. An indication should be given of the measures taken with the aim of enabling States Parties to the Convention to improve their capabilities and skills and to widen their experience in these areas, and the consideration given to the particular needs of developing countries;

The children concerned, including by type of disability, the coverage of the assistance provided, programmes and services made available, including in the fields of education, training, care, rehabilitation, employment and recreation, the financial and other resources allocated, and other relevant information, disaggregated *inter alia* by gender, age, rural/urban area, and social and ethnic origin.

B. Health and health services (art. 24)

93. Please indicate the measures adopted pursuant to articles 6 and 24:

To recognize and ensure the right of the child to the enjoyment of the highest attainable standard of health and to facilities for treatment and rehabilitation;

To ensure that no child is deprived of his or her right of access to such health care services;

To ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, and survival and development to the maximum extent possible.

94. Reports should also provide information about the measures adopted to identify changes which have occurred since the submission of the State Parties previous report, their impact on the life of children, as well as the indicators used to assess the progress achieved in the implementation of this right, the difficulties encountered and any targets identified for the future, including in relation to child mortality and child morbidity, service coverage, data collection, policies and legislation, budget allocation (including in relation to the general budget), involvement of non-governmental organizations and international assistance.

95. Please also provide information on the measures undertaken in particular:

To diminish infant and child mortality, indicating the average rates and providing relevant disaggregated data, including by gender, age, region, rural/urban area, ethnic and social origin.

To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care, including:

The distribution of both general and primary health care services in the rural and urban areas of the country and the balance between preventive and curative health care;

Information on the children having access to and benefiting from medical assistance and health care, as well as persisting gaps, including by gender, age, ethnic and social origin, and measures adopted to reduce existing disparities;

The measures adopted to ensure a universal immunization system.

To combat disease and malnutrition, including in 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 account the risks and dangers of environmental degradation and pollution; reports should indicate the overall situation, persisting disparities and difficulties, as well as policies to address them, including priorities identified for future action, and information should also be provided, including by gender, age, region, rural/urban area, and social and ethnic origin on:

The proportion of children with low birth weight;

The nature and context of the most common diseases and their impact on children;

The proportion of the child population affected by malnutrition, including of a chronic or severe nature, and lack of clean drinking water;

The children provided with adequate nutritious food;

The risks from environmental pollution and the measures adopted to prevent and combat them.

To ensure appropriate prenatal and post-natal health care for mothers, indicating the nature of services provided, including appropriate information given, the coverage ensured, the rate of mortality and its main causes (average

and disaggregated, *inter alia*, by age, gender, region, urban/rural area, social and ethnic origin), the proportion of pregnant women who have access to and benefit from pre- and post-natal health care, trained personnel and hospital care and delivery;

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 breast-feeding, hygiene and environmental sanitation and the prevention of accidents; in this regard, information should also be provided on:

Campaigns, programmes, services and strategies and other relevant mechanisms developed to provide basic knowledge, information and support to the general population, in particular to parents and children;

The means used, particularly in relation to the areas of child health and nutrition, the advantages of breast-feeding and the prevention of accidents;

The availability of safe sanitation;

The measures adopted to increase food production to ensure household food security;

The measures adopted to improve the system of education and training of health personnel;

Disaggregated data, including by age, gender, region, rural/urban area, social and ethnic origin.

To develop preventive health care, guidance for parents and family planning education and services; in this regard, reports should also provide information on:

The policies and programmes developed, as well as services available;

The population covered, including in rural and urban areas, by age, gender, social and ethnic origin;

The measures adopted to prevent early pregnancy and to take into consideration the specific situation of adolescents, including provision of appropriate information and counselling;

The role played by the education system in this regard, including in the school curricula;

Disaggregated data on the incidence of children's pregnancy, including by age, region, rural/urban area, and social and ethnic origin.

96. Please indicate the prevalence of HIV/AIDS and the measures adopted to promote health information and education on HIV/AIDS among the general population, special groups at high risk and children, as well as:

The programmes and strategies developed to prevent HIV;

The measures adopted to assess the occurrence of HIV infection and AIDS, among both the general population and children, and its incidence *inter alia* by age, gender, rural/urban area;

The treatment and management provided in case of HIV infection and AIDS among children and parents, and the coverage ensured nationwide, in urban and rural areas;

The measures adopted to ensure an effective protection and assistance to children who are orphans as a result of AIDS;

The campaigns, programmes, strategies and other relevant measures adopted to prevent and combat discriminatory attitudes against children infected by HIV or with AIDS, or whose parents or family members have been infected.

97. Please provide information on the measures adopted pursuant to article 24, paragraph 3, with a view to abolishing all traditional practices prejudicial to the health of children, particularly girls, or otherwise contrary to the principles and provisions of the Convention (for example, genital mutilation and forced marriage). Reports should also indicate any assessment made of traditional practices persisting in society that are prejudicial to children's rights.

98. Information should also be provided on the measures adopted pursuant to article 24, paragraph 4, to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in this article, and the particular consideration given to the needs of developing countries. Reports should *inter alia* indicate the activities and programmes developed in the framework of international cooperation, including at the bilateral and regional levels, the areas addressed, the target groups identified, the financial assistance provided and/or received and the priorities considered, as well as any evaluation made of the progress achieved and of the difficulties encountered. Mention should be made, whenever appropriate, of the involvement of United Nations organs and specialized agencies and non-governmental organizations.

C. Social security and child care services and facilities (arts. 26 and 18, para. 3)

99. With respect to article 26, please provide information on:

The measures adopted to recognize for every child the right to benefit from social security, including social insurance;

The necessary measures taken to achieve the full realization of this right in accordance with the national law;

The manner in which the benefits granted take into account the resources and the circumstances of the child and of the persons having responsibility for his or her maintenance, as well as any other considerations relevant to an application for benefits made by or on behalf of the child.

100. Reports should also indicate the legal provisions relevant to the implementation of this right, the circumstances under which children themselves are allowed to apply for social security measures, either directly or through a representative, the criteria taken into account to grant the benefits, as well as any relevant disaggregated information concerning the coverage and financial implications of such measures, its incidence by age, gender, number of children per family, civil status of the parents, the situation of single parents, and the relationship of social security to unemployment.

101. Please indicate the measures adopted pursuant to article 18, paragraph 3, and taking into account the provisions of articles 3, 6 and 12 of the Convention, to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible. In this regard, reports should *inter alia* provide information on the legislation adopted to recognize this right and ensure its realization, as well as on the coverage with regard to services and facilities, by region and by urban and rural areas, as well as on their financial implications and on the children benefiting from such measures, including by age, gender and national, social and ethnic origin.

102. Reports should also provide information on the progress achieved in the implementation of these rights, the difficulties encountered and any targets identified for the future.

D. Standard of living (art. 27, paras. 1-3)

103. Please provide information on:

The measures adopted to recognize and ensure the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

The relevant indicators used to assess such an adequate standard of living, and its incidence among the child population, including by gender, age, region, rural/urban area, social and ethnic origin, and family situation;

The criteria established to assess the ability and financial capacity of parents or others responsible for the child to secure the living conditions necessary for the child's development, as well as to identify those conditions; All the measures taken, in accordance with national conditions and within the State Party's means, to assist parents and others responsible for the child to implement this right, including the nature of the assistance made available, its budget implications, its relation to the cost of living and its impact on the population; where relevant, the information provided should be disaggregated, *inter alia* by region, rural/urban area, age, gender and social and ethnic origin;

The measures adopted to provide, in case of need, material assistance and support programmes, particularly with regard to nutrition, clothing and housing, indicating, *inter alia*, the nature of such assistance and programmes, the population addressed by them, including by gender, age, rural/urban area, social and ethnic origin, the proportion of budget allocated, the coverage ensured, the priorities and targets identified;

Relevant measures adopted as a follow-up to the Declaration and Plan of Action adopted by the United Nations Conference on Human Settlements (Habitat II).

104. Reports should also provide information on the progress achieved in the implementation of these rights, difficulties encountered and targets set for the future.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (arts. 28; 29; 31)

SEE PARAGRAPH 8 ABOVE

A. Education, including vocational training and guidance (art. 28)

105. Please indicate the measures adopted, including of a legislative, administrative and budgetary nature, to recognize and ensure the right of the child to education, and to achieve this right progressively and on the basis of equal opportunities.

106. In this regard, reports should indicate, *inter alia*:

The measures adopted to ensure respect for the general principles of the Convention, namely the best interests of the child, respect for the views of the child, the right to life, survival and development to the maximum extent possible, and non-discrimination, including with a view to reducing existing disparities; The proportion of the overall budget (at the central, regional and local, and where appropriate at the federal and provincial levels) devoted to children and allocated to the various levels of education;

The consideration given to the real cost to the family of the child's education and the appropriate support provided;

The measures adopted to ensure that children may be taught in local, indigenous or minority languages;

Mechanisms developed to ensure the access of all children, including girls, children with special needs and children in especially difficult circumstances, to quality education adapted to the child's age and maturity;

The steps taken to ensure that there are sufficient teachers in the school system, to enhance their competence, and to ensure and assess the quality of teaching;

The measures adopted to provide adequate educational facilities, accessible to all children;

The rate of illiteracy below and over 18 years, and the rate of enrolment in literacy classes, including by age, gender, region, rural/urban area, and social and ethnic origin;

Any systems of non-formal education;

Any system or extensive initiatives by the State to provide early development and education services for young children, especially for young children from disadvantaged social groups;

The changes that have occurred in the education system (including with regard to legislation, policies, facilities, budgetary allocation, quality of education, enrolment, drop-out and literacy);

Any monitoring mechanism developed, factors and difficulties encountered and targets identified for the future;

Other relevant disaggregated data on the children concerned, including on education outcomes, *inter alia* by gender, age, region, rural/urban area, and national, ethnic and social origin.

107. Reports should also indicate the particular measures adopted:

To make primary education compulsory and available free for all, particularly children, indicating the minimum age for enrolment in primary school, the minimum and maximum ages for compulsory education, the proportion

of children enrolled who complete primary education, as well as any relevant disaggregated data including by age, gender, region, urban/rural area, national, social and ethnic origin, service coverage and budgetary allocation;

To encourage the development of different forms of secondary education, including general and vocational education, and measures adopted;

To make such forms available and accessible to every child, providing *inter alia* any relevant disaggregated data including by gender, age, region, rural/urban area, national, social and ethnic origin, coverage and budgetary allocation;

To introduce free secondary education and offer financial assistance in case of need, indicating the children concerned, including by gender, age, region, rural/urban area, and national, social and ethnic origin, and the budget allocated for that purpose;

To make higher education accessible to all on the basis of capacity, indicating *inter alia* the rate of access to higher education by age, gender and national, social and ethnic origin;

To make educational and vocational information and guidance available and accessible to all children, indicating, *inter alia*, the forms of such information and guidance, the mechanisms used to assess their effectiveness, the budget allocated for that purpose, as well as any relevant disaggregated data, including by age, gender, region, urban/rural area, and social and ethnic origin;

To encourage regular attendance at school and to reduce drop-out rates, including research, any mechanisms developed to assess the situation, and incentives provided to encourage school entrance, regular school attendance and school retention, any alternatives provided for children who are excluded from school, as well as other relevant data disaggregated by age, gender, region, urban/rural area, and social and ethnic origin.

108. Reports should also provide information on any category or group of children who do not enjoy the right to education and the circumstances in which children may be excluded from school temporarily or permanently (for example disability, deprivation of liberty, pregnancy, HIV/AIDS infection), including any arrangements made to address such situations and to ensure alternative education. Disaggregated data should be provided, including by age, gender, region, rural/urban area, and social and ethnic origin.

109. Please indicate all appropriate measures taken pursuant to article 28, paragraph 2, to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention, including:

Legislation applying to public and private schools and other education institutions and prohibiting all forms of violence, including corporal punishment, as well as any other disciplinary measures which are not consistent with the child's human dignity or in conformity with the provisions of the Convention, includ-

ing articles 19, 29 and 37 (a), and its general principles particularly of non-discrimination, best interests and respect for the views of the child;

Any monitoring system of the administration of the school discipline, as well as mechanisms of reporting and complaint;

Any independent mechanism established for that purpose;

Legislation providing the opportunity for the child to participate in administrative or judicial proceedings relating to education and affecting him or her, including those relating to the choice of school, school exclusion.

110. With regard to article 28, paragraph 3, please provide information on the measures adopted to 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;

Facilitating access to scientific and technical knowledge and modern teaching methods;

Taking particular account of the needs of developing countries.

111. Reports should also indicate the activities and programmes developed, including at the bilateral and regional levels, the target groups identified, including by age, gender and national, social and ethnic origin, the financial assistance provided and/or received and the priorities established, and the consideration given to the aims of education as identified by article 29 of the Convention, as well as any evaluation made of the progress achieved and of the difficulties encountered. Mention should be made, whenever appropriate, of the involvement of United Nations organs and specialized agencies and non-governmental organizations.

B. Aims of education (art. 29)

112. Please indicate the legislative, administrative, educational and other measures adopted to ensure that the aims of education established in the State Party are consistent with the provisions of this article, in particular with regard to:

The development of respect for the child's personality, talents and mental and physical abilities to their fullest potential;

The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations, indicating whether the subject of human rights in general, and children's rights in particular, has been incorporated in the school curricula for all children and promoted in school life;

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 originates and for civilizations different from his or her own;

The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

The development of respect for the natural environment.

113. Reports should also indicate:

The training provided to teachers to prepare them to direct their teaching towards these aims;

The revision of school policies and school curricula to reflect the aims identified in article 29 at the various levels of education;

Relevant programmes and material used;

Any peer education and peer counselling promoted;

Efforts made to bring school organization in line with the Convention's principles, for example mechanisms created within schools to improve the participation of children in all decisions affecting their education and well-being.

114. Please indicate the measures adopted pursuant to article 29, paragraph 2, to ensure respect for the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions conforms to such minimum standards as are laid down by the State.

115. Reports should also provide information on the appropriate mechanisms developed to: Ascertain that the aims of education identified by the Convention are respected by such institutions;

Ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent; Ensure that all such institutions are conducted in conformity with standards established by competent authorities, particularly in the areas of safety, health, number and suitability of staff, as well as of competent supervision.

116. Reports should further provide information on the progress achieved in the implementation of this article, difficulties encountered and targets set for the future.

C. Leisure, recreation and cultural activities (art. 31)

117. Please provide information on the measures adopted, including of a legislative nature, to recognize and ensure the right of the child to:

Rest and leisure;

Engage in play and recreational activities appropriate to the age of the child;

Participate freely in cultural life and the arts.

118. In this regard, reports should also indicate:

The proportion of the relevant overall budget allocated (at the central, regional, local and where relevant at the federal and provincial levels) for children;

The cultural, artistic, recreational and leisure activities, programmes or campaigns developed and provided at the national, regional or local, and where appropriate at the federal and provincial levels, to ensure the enjoyment of this right including in the family, in the school and in the community;

The enjoyment of the rights recognized by article 31 in relation to other rights recognized by the Convention, including the right to education;

The respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent; Relevant data on the children concerned, including by age, gender, region, rural/urban area, and national, social and ethnic origin; Progress achieved in the implementation of article 31, difficulties encountered and targets set for the future.

VIII. SPECIAL PROTECTION MEASURES (arts. 22; 38; 39; 40; 37 (b)-(d); 32-36)

SEE PARAGRAPH 8 ABOVE

A. Children in situations of emergency

1. Refugee children (art. 22)

119. Please provide information on the appropriate measures adopted pursuant to article 22, paragraph 1 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, whether unaccompanied or accompanied by his or her parents or by any other person, receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention and in other international human rights or humanitarian instruments to which the State is a Party.

120. Reports should also indicate:

The international and domestic law and procedures applicable to the child who is considered a refugee or is seeking asylum; Relevant international human rights and humanitarian instruments to which the State is a Party, at the multilateral, regional and bilateral levels;

The domestic legislation and procedures in place, including to determine refugee status and ensure and protect the rights of asylum seeking and refugee children, as well as any safeguards established and remedies made available to the child;

The protection and humanitarian assistance provided to the child in the enjoyment of his or her rights set forth in the Convention, as well as in other relevant international instruments, including civil rights and freedoms and economic, social and cultural rights;

The measures adopted to ensure and protect the rights of the unaccompanied child or of the child accompanied by his or her parents or by any other person, including in relation to temporary and long-term solutions, family tracing and family reunion;

The measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible;

The measures adopted to ensure appropriate dissemination of information and training on

the rights of the child who is a refugee or is seeking asylum, particularly to the officials competent in the areas addressed by this article;

The number of asylum seeking and refugee children disaggregated *inter alia* by age, gender, country of origin, nationality, accompanied or unaccompanied;

The number of such children going to school and covered by health services;

The number of staff handling refugee children who attended training courses to understand the Convention on the Rights of the Child during the reporting period, classified by type of job.

121. Please also indicate the measures adopted pursuant to article 22, paragraph 2 to provide cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to: Protect and assist the child;

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, please indicate the measures adopted to ensure that the child is 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 Convention.

122. Pursuant to this article, please also indicate any evaluation mechanism established to monitor the progress achieved in the implementation of the measures adopted, any difficulties encountered, as well as any priorities set for the future.

2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)

123. Please provide information on the measures adopted pursuant to article 38, including of a legislative, administrative and educational nature, to respect and ensure respect for the rules of international humanitarian law applicable to the State in armed conflicts which are relevant to the child. In this regard, reports should identify the relevant international conventions, instruments and other rules of humanitarian law applicable to the State and the measures adopted to enforce them, as well as to ensure their effective dissemination and appropriate training for professionals concerned.

124. Please indicate all the measures taken pursuant to article 38, paragraph 2, including of a legislative, administrative or other nature, to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. In this regard, reports should also indicate the measures adopted to ensure and protect the rights of the child during hostilities. Information should also be provided on any mechanism established to monitor this situation. When relevant, indication should also be given of the proportion of children participating in hostilities, including by age, gender and social and ethnic origin.

125. Please indicate the measures adopted pursuant to article 38, paragraph 3, including of a legislative and administrative nature, to ensure that no person who has not attained the age of 15 years is recruited into the armed forces, as well as to ensure that, in recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority is given to those who are oldest. In this regard, reports should also indicate any mechanisms established to monitor this situation, as well as the proportion of children being recruited or voluntarily enlisted into armed forces, including by age, gender, and social and ethnic origin.

126. Please provide information on all the measures adopted pursuant to article 38, paragraph 4, and in accordance with the State's obligations under international humanitarian law to protect the civilian population in armed conflicts, including measures of a legislative, administrative, budgetary and other nature, to ensure the protection and care of children who are affected by an armed conflict.

127. In this regard, please indicate the relevant international humanitarian law applicable to the State, the criteria used to assess the feasibility of the measures adopted, the steps taken to identify and address the specific situation of children within the civilian population and to ensure respect for and protection of their rights, the measures adopted to ensure that humanitarian assistance and relief programmes are promoted and put in place, including through the negotiation of special arrangements such as corridors of peace and days of tranquillity, as well as any relevant disaggregated data on the children concerned, including by age, gender, and national, social and ethnic origin. Where relevant, please also indicate the number of child casualties due to armed conflict, as well as the number of children displaced because of armed conflict.

128. When providing information on the implementation of the provisions of article 38, please further indicate the respect ensured to the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, development and survival to the maximum extent.

129. Please indicate all measures adopted pursuant to article 39 to:

Promote physical and psychological recovery and social reintegration of child victims of armed conflicts;

Ensure that such recovery and reintegration takes place in an environment which fosters the health, self-respect and dignity of the child.

130. In this regard, reports should provide information *inter alia* on:

The policies and programmes developed, including at the family and community levels, to address the physical and psychological effects of conflicts on children and to promote their reintegration in society;

The steps taken to ensure the demobilization of child soldiers and to prepare them to participate actively and responsibly in society;

The role played by education and vocational training;

The surveys and research undertaken;

The budget allocated for them (at the national, regional, local and where appropriate at the federal and provincial levels);

The number of children who received physical and/or psychological treatment as a consequence of armed conflict.

131. Information should also be provided on the progress achieved on the implementation of articles 38 and 39, on any difficulties encountered and targets set for the future.

B. Children involved with the system of administration of juvenile justice

1. The administration of juvenile justice (art. 40)

132. Please provide information on the legislative and other measures taken to recognize and ensure the right of every child involved with the system of the administration of juvenile justice (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;

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;

Which ensures respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child and the right to life, survival and development to the maximum extent.

133. With respect to article 40, paragraph 2, please indicate the relevant international instruments applicable in the area of the administration of juvenile justice, including at the multilateral, regional or bilateral levels, as well as legislative and other appropriate measures adopted to ensure in particular that:

No child shall be alleged as, 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;

Every child alleged as or accused of having infringed the penal law has at least the following guarantees, indicating, where relevant, additional guarantees provided to the child:

To be presumed innocent until proven guilty according to law;

To be informed promptly (indicating any time-limit fixed by law) and directly of the charges against him or her and, if appropriate, through his or her legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; in this regard, please indicate what other appropriate assistance may be made available to the child;

To have the matter determined without delay (indicating any time-limit fixed by law) 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 (indicating what other appropriate assistance may be made available to the child) and, unless it is considered not to be in the best interests of the child, in particular taking into account his or her age or situation, in the presence of his or her parents or legal guardians;

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;

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;

To have the free assistance of an interpreter if the child cannot understand or speak the language used;

To have his or her privacy respected at all stages of the proceedings.

134. Please indicate the measures adopted pursuant to article 40, paragraph 3 to promote the establishment of laws, procedures, authorities and institutions specially applicable to children alleged as, accused of, or recognized as having infringed the penal law, providing information *inter alia* on the areas addressed by legislation and procedures, as well as the functions, number and distribution throughout the country. Reports should in particular indicate the measures adopted to ensure a child-oriented system, including:

The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

Measures taken for dealing with such children without resorting to judicial proceedings, and to ensure that in such cases human rights and legal safeguards are fully respected, indicating the situations in which such a system applies and relevant procedures established for that purpose.

135. Please indicate the variety of dispositions made available pursuant to article 40, paragraph 4, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care, to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

136. Reports should further indicate the training activities developed 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 other relevant international instruments in the field of juvenile justice, including the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

137. Relevant information should also be provided on the progress achieved in the implementation of article 40, any difficulties encountered and targets set for the future, as well as disaggregated data on the children concerned,

inter alia by age, gender, region, rural/urban area, national, social and ethnic origin, offence and disposition made available.

2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))

138. Please indicate the legislative and other measures adopted pursuant to article 37 (b) to ensure that:

No child is deprived of his or her liberty unlawfully or arbitrarily; /According to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 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 (rule 11 (b))./

The arrest, detention or imprisonment of a child is in conformity with the law and is used only as a measure of last resort and for the shortest appropriate period of time;

The general principles of the Convention are respected, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

139. Reports should also indicate the existing alternatives to deprivation of liberty, the frequency with which they are used and the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin.

140. Information should also be given on the measures and mechanisms established to:

Prevent the deprivation of liberty of children, including through arrest, detention and imprisonment, *inter alia* in relation to asylum seekers and refugees;

Prevent the imposition of indeterminate sentences, including through their legal prohibition;

Monitor the situation of the children concerned, including through an independent mechanism;

Monitor progress, identify difficulties and set goals for the future.

141. In this regard, information should further be provided on the number of children deprived of liberty, unlawfully, arbitrarily and within the law, as well as on the period of deprivation of liberty, including data disaggregated by gender, age, region, rural/urban area, and national, social and ethnic origin, and the reasons for such deprivation of liberty.

142. Please indicate the legislative and other measures adopted pursuant to article 37 (c) to ensure that any child deprived of liberty is treated:

With humanity and respect for the inherent humanity of the human person;

In a manner which takes into account the needs of persons of his or her age.

143. Reports should also provide information on the measures adopted and arrangements made to ensure that:

The child deprived of liberty is separated from adults unless it is considered in the best interests of the child not to do so;

The child has the right to maintain contact with his or her family through correspondence and visits (indicating the number of such contacts), save in exceptional circumstances, those circumstances being specified in the report; The conditions in institutions in which children are placed are supervised and monitored, including by an independent mechanism; Complaint procedures are made available to the child;

A periodic review is made of the situation of the child and of the circumstances relevant to his/her placement;

Education and health services are provided to the child;

The general principles of the Convention are respected, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

144. Please indicate the measures adopted pursuant to article 37 (d) to ensure that every child deprived of liberty has the right to:

Prompt access to legal and other appropriate assistance, indicating *inter alia* whether there is any legal time-limit for such access to assistance and what other appropriate assistance may be made available to the child;

Challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority;

A prompt decision on any such action, indicating *inter alia* whether there is any legal time-limit for such a decision to be taken.

145. Information should also be provided on the overall situation, as well as on the percentage of cases where legal or other assistance has been provided, and where the legality of the deprivation of liberty has been confirmed, including disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin.

146. Reports should also indicate the progress achieved in the implementation of article 37 (b) to (d), difficulties encountered and targets set for the future.

3. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37 (a))

147. Please provide information on the measures adopted, at the legislative and other levels, to ensure that neither capital punishment nor life imprisonment without possibility of release is imposed for offences committed by persons below 18 years of age.

148. Please also indicate the progress achieved in the implementation of article 37 (a), difficulties encountered and targets set for the future.

4. Physical and psychological recovery and social reintegration of the child (art. 39)

149. Please provide information on all measures taken pursuant to article 39 and in the light of article 40, paragraph 1, to promote the physical and psychological recovery and social reintegration of the child involved with the system of the administration of juvenile justice, and to ensure that such recovery and reintegration take place in an environment

which fosters the health, self-respect and dignity of the child.

150. Reports should also identify, *inter alia*, the mechanisms established and the programmes and activities developed for that purpose, as well as the education and vocational training provided, and indicate relevant disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin. They should further indicate the progress achieved in the implementation of article 39, difficulties encountered and targets set for the future.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

1. Economic exploitation of children, including child labour (art. 32)

151. Please provide information on the measures taken, including of a legislative, administrative, social and educational nature, to recognize and ensure the right of the child to be protected from:

Economic exploitation;

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.

152. In this regard, reports should in particular indicate:

Whether legislation has included a prohibition, as well as a definition, of hazardous and harmful work, and/or of the activities considered to be hazardous, harmful to the child's health or development or to interfere with the child's education;

Any preventive and remedial action undertaken, including information and awareness campaigns, as well as education, in particular compulsory education, and vocational training programmes, to address the situation of child labour both in the formal and informal sector, including as domestic servants, in agriculture or within private family activities;

The measures adopted to ensure respect for the general principles of the Convention, particularly non-discrimination, the best interests of the child, the right to life, and survival and development to the maximum extent possible.

153. Please also indicate the appropriate measures adopted pursuant to article 32, paragraph 2, and having regard to the relevant provisions of other international instruments, including measures at the legislative and administrative levels, to provide in particular for:

A minimum age or minimum ages for admission to employment;

Appropriate regulation of the hours and conditions of employment;

Appropriate penalties or other sanctions to ensure the effective enforcement of this article, and any mechanism of inspection and system of complaint procedures available to the child, either directly or through a representative.

154. In this regard, reports should also provide information on the international conventions and other relevant instruments to which the State may be a Party, including in the frame-

work of the International Labour Organization, as well as on:

Any national policy and multidisciplinary strategy developed to prevent and combat situations of children's economic exploitation and labour;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used;

Relevant programmes of technical cooperation and international assistance developed;

The progress achieved in the implementation of this article, benchmarks set up as well as difficulties encountered;

Relevant disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin, as well as on infringements observed by inspectors and sanctions applied.

2. Drug abuse (art. 33)

155. Please indicate all appropriate measures adopted, including legislative, administrative, social and educational measures, to:

Protect children from the illicit use of narcotic drugs and psychotropic substances, as defined in relevant international treaties;

Prevent the use of children in the illicit production and trafficking of such substances.

156. Reports should also indicate:

The relevant international conventions, including at the regional and bilateral levels, to which the State is a party;

Any arrangements made and structures developed to raise awareness in the general population and amongst children, including through the school system and whenever appropriate by the consideration of this topic by the school curricula;

Any measures undertaken to assist children and their families, including through counselling, advice and helplessness, where appropriate of a confidential nature, and policies and strategies designed to ensure the physical and psychological recovery and social reintegration of children concerned;

Any measures designed to monitor the incidence of drug abuse on children, as well as their involvement in the illicit production and trafficking of narcotic and psychotropic substances, progress achieved, difficulties encountered and targets set for the future;

Any relevant disaggregated data, including by age, gender, region, rural/urban area, and social and ethnic origin.

157. In addition, please also provide information on legislative and other measures taken to prevent the use by children of alcohol, tobacco and other substances which may be prejudicial to their health and which may be available with or without restrictions to adults, and on any evaluation made of the effectiveness of such measures, together with relevant disaggregated data on the use by children of such substances.

3. Sexual exploitation and sexual abuse (art. 34)

158. Please indicate the measures adopted, including of a legislative, educational and social nature, to protect the child from all

forms of sexual exploitation and sexual abuse. Reports should in particular provide information on all national, bilateral and multilateral measures taken 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.

159. Reports should also indicate, *inter alia*: Information, awareness and education campaigns to prevent any form of sexual exploitation or abuse of the child, including campaigns undertaken in cooperation with the media; Any national and multidisciplinary strategy developed to ensure protection of children below the age of 18 against all forms of sexual exploitation and abuse, including within the family;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used; Legislation developed to ensure effective protection of child victims, including through access to legal and other appropriate assistance and support services;

Whether sexual exploitation and abuse of children, child prostitution and child pornography, including the possession of child pornography, and the use of children in other unlawful sexual practices are considered criminal offences;

Whether the principle of extraterritoriality has been incorporated in the legislation to criminalize the sexual exploitation of children by nationals and residents of the State Party when committed in other countries;

Whether special units of law enforcement officials and police liaison officers have been appointed to deal with children who have been sexually exploited or abused, and whether appropriate training has been provided to them; Relevant bilateral, regional and multilateral agreements concluded or to which the State Party may have acceded to foster the prevention of all forms of sexual abuse and exploitation and to ensure the effective protection of child victims, including in the areas of judicial cooperation and cooperation among law enforcement officials;

Relevant programmes of technical cooperation and international assistance developed with United Nations bodies and other international organizations, as well as with other competent bodies, including INTERPOL, and non-governmental organizations;

Relevant activities and programmes developed, including of a multidisciplinary nature, to ensure the recovery and reintegration of the child victim of sexual exploitation or abuse, in the light of article 39 of the Convention;

The measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible;

Relevant disaggregated data on the children concerned by the implementation of article 34,

including by age, gender, region, rural/urban area, and national, social and ethnic origin. Such data should include the number of cases in which a child was used in drug trafficking during the reporting period; the minimum penalty in the law for using children in drug trafficking; and the number of cases of commercial sexual exploitation, sexual abuse, sale of children, abduction of children and violence against children reported during this period; The progress achieved in the implementation of article 34, difficulties encountered and targets set.

4. Sale, trafficking and abduction (art. 35)

160. Please provide information on all measures adopted, including of a legislative, administrative, educational and budgetary nature, at the national, bilateral and multilateral levels, to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

161. In this regard, reports should indicate *inter alia*:

The legislation adopted to ensure effective protection of children against abduction, sale and trafficking, including through the consideration of these acts as criminal offences;

Awareness and information campaigns to prevent their occurrence, including campaigns undertaken in cooperation with the media;

The allocation of appropriate resources for the development and implementation of relevant policies and programmes;

Any national strategy developed to prevent and suppress such acts;

Any coordinating and monitoring mechanism established for that purpose;

The relevant indicators identified and used;

Whether special units have been created among law enforcement officials to deal with these acts;

Relevant training activities provided to the competent authorities;

Structures and programmes developed to provide support services to the children concerned and to promote their physical and psychological recovery and social reintegration, in the light of article 39;

The measures adopted to ensure that in the implementation of article 35 due consideration is taken of other provisions of the Convention, including in the areas of civil rights, particularly in relation to the preservation of the identity of the child, adoption and prevention of any form of exploitation of children, including child labour and sexual exploitation; The measures adopted to ensure respect for the general principles of the Convention, including non-discrimination, the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible.

162. Reports should also indicate the relevant bilateral and multilateral agreements concluded by the State Party, or to which it may have acceded, to prevent the sale and abduction of and trafficking in children, including in the areas of international cooperation between judicial authorities and law enforcement officials, *inter alia* on any existing system of collection and exchange of information on perpet-

rators of such acts as well as on the child victims. Relevant disaggregated information should also be provided on the children concerned by the implementation of article 35, including by age, gender, region, rural/urban area, and social and ethnic origin, as well as on the progress achieved in the implementation of this article, the difficulties encountered and the targets set for the future.

5. Other forms of exploitation (art. 36)

163. Please provide information on all measures adopted, including of a legislative, administrative, educational, budgetary and social nature, to protect the child against all forms of exploitation prejudicial to any aspects of his or her welfare.

164. Reports should also indicate, *inter alia*: The prevalence of any form of exploitation prejudicial to the child's welfare;

Awareness and information campaigns launched, including for children, families and the public at large, as well as the involvement of the media;

Training activities developed for professional groups working with and for children;

Any national strategy developed to ensure protection to the child and the targets set for the future;

Any mechanism established to monitor the situation of the child, the progress achieved in the implementation of this article and any difficulties encountered;

The relevant indicators used;

Measures adopted to ensure the physical and psychological recovery, as well as the social reintegration, of the child victim of exploitation prejudicial to any aspects of his or her welfare;

Relevant measures adopted to ensure respect for the general principles of the Convention, namely non-discrimination, the best interests of the child, respect for the views of the child, the right to life and survival and development to the maximum extent possible;

The measures adopted to ensure that the implementation of this article takes into due consideration other relevant provisions of the Convention;

Relevant disaggregated data on the children concerned by the implementation of this article, including by age, gender, region, rural/urban area, and national, social and ethnic origin.

D. Children belonging to a minority or an indigenous group (art. 30)


165. Please provide information on the measures adopted, including at the legislative, administrative, educational, budgetary and social levels, to ensure that a child belonging to an ethnic, religious or linguistic minority or who is indigenous is not denied the right, in community with other members of his or her group:

To enjoy his or her culture;

To profess and practise his or her own religion;

To use his or her own language.

166. In this regard, reports should also indicate *inter alia*:



The ethnic, religious or linguistic minorities or indigenous groups existing within the State Party's jurisdiction;

The measures adopted to ensure the preservation of the identity of the minority or indigenous group to which the child belongs;

The measures adopted to recognize and ensure the enjoyment of the rights set forth in the Convention by children belonging to a minority or who are indigenous;

The measures adopted to prevent any form of discrimination and combat prejudice against those children, as well as those designed to

ensure that they benefit from equal opportunities, including in relation to health care and education;

The measures adopted to ensure respect for the general principles of the Convention, namely the best interests of the child, respect for the views of the child, the right to life, and survival and development to the maximum extent possible, as well as non-discrimination; The measures adopted to ensure that in the implementation of the rights recognized in article 30 due consideration is taken of other provisions of the Convention, including in the

areas of civil rights, particularly in relation to the preservation of the child's identity, family environment and alternative care (for example art. 20, para. 3 and art. 21), education and the administration of juvenile justice;

Relevant disaggregated data on the children concerned, including by age, gender, language, religion, and social and ethnic origin;

The progress achieved and the difficulties encountered in the implementation of this article, as well as any targets set for the future.

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 on the Rights of the Child 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 Optional Protocol, who are not parties to the Convention, shall submit a report every five years, after the submission of the comprehensive report.

The Committee may, in the light of article 8, paragraph 3 of the Optional Protocol, request from States Parties further information relevant to the implementation of the Optional Protocol.

Reports should provide information on the measures adopted by the State Party to give effect to the rights set forth in the Optional Protocol and on the progress made in the enjoyment of those rights and should indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol.

Copies of the principal legislative texts and judicial decisions, administrative and other relevant instructions to the armed forces,

both of a civil and military character, as well as detailed statistical information, indicators referred therein and relevant research should accompany reports. In reporting to the Committee, States Parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the Rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination. Finally, reports should indicate the date of reference used when determining whether or not a person is within an age limit (for instance, the date of birth of the person concerned or the first day of the year during which the person concerned reaches that age limit).

Article 1

Please provide information on all measures taken, including of a legislative, administrative or other nature, to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. In this respect, please provide information notably on:

The meaning of “direct participation” in the legislation and practice of the State concerned;

The measures taken to avoid that a member of the armed forces who has not attained the age of 18 years is deployed or maintained in an area where hostilities are taking place and the obstacles encountered in applying these measures;

When relevant, disaggregated data on members of the armed forces below the age of 18 years who were made prisoners, whereas they did not directly participate in hostilities;

Article 2

Please indicate all the measures taken including of a legislative, administrative or other nature, to ensure that persons who have not attained the age 18 years are not compulsorily recruited into the armed forces. In this regard, reports should indicate among others: Detailed information on the process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces) indicating the minimum age linked to each step and, at what time in that process, recruits become members of the armed forces; The reliable documents to verify age, which are required prior to acceptance into compulsory military service (birth certificate, affidavit, etc.);

Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency). In this respect, please provide information on the age it can be lowered to, the process and the conditions for that change.

For States Parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set up in the previous regime and how, and under what conditions, this previous system can be reinstalled.

Article 3 para. 1

Reports should notably indicate:

The minimum age set out for voluntary recruitment into the armed forces, in

accordance with the declaration submitted upon ratification or accession or any change thereafter;

When relevant, disaggregated data on children below the age of 18 years voluntarily recruited into the national armed forces (for example, by gender, age, region, rural/urban areas and social and ethnic origin, and military ranks);

When relevant, pursuant to article 38, paragraph 3 of the Convention on the Rights of the Child, the measures taken to ensure that in recruiting those persons who have attained the minimum age set out for voluntary recruitment but who have not attained the age of 18 years, priority is given to those who are the oldest. In this respect, please provide information on the measures of special protection adopted for the under-18-years-old recruits.

● Article 3 paras. 2 and 4

Reports should notably provide information on :

The debate which has taken place in the State concerned prior to the adoption of the binding declaration and the people involved in that debate;

When relevant, the national [or regional, local, etc.] debates, initiatives or any campaign aiming at strengthening the declaration if it set out a minimum age lower than 18 years.

● Article 3 para. 3

With regard to the minimum safeguards that States Parties shall maintain concerning voluntary recruitment, reports should provide information on the implementation of these safeguards and indicate among others:

A detailed description of the procedure used for such recruitment from the expression of intention to volunteer until the physical integration into the armed forces;

Medical examination foreseen before recruitment of volunteers;

The reliable documentation used to verify the age of the volunteers (birth certificate, affidavit, etc.);

Information that is made available to the volunteers, and to their parents or legal guardians allowing them to formulate their own opinion and to make them aware of the duties involved in the military service. A copy of any materials used for this information to be annexed to the report;

The effective minimum service time and the conditions for early discharge; the use of military justice or discipline to under-18-years recruits and disaggregated data on the number of such recruits under trial or in detention; the minimum and maximum sanctions foreseen in case of desertion;

The incentives used by the national armed forces for encouraging volunteers to join the ranks (scholarships, advertising, meetings at schools, games, etc.).

● Article 3 para. 5

Reports should indicate, among others, information on:

The minimum age of entry into schools operated by or under the control of the armed forces;

Disaggregated data on schools operated by or under the control of the armed forces, including numbers, type of education provided, proportion between academic education and military training in the curricula; length of this education; academic/military personnel involved, educational facilities, etc.;

The inclusion in the school curricula of human rights and humanitarian principles, including in areas relevant to the realisation of the rights of the child;

Disaggregated data on the students in these schools (for example, by gender, age, region, rural/urban areas and social and ethnic origin); their status (members or not of the armed forces); their military status in the case of a mobilisation or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career;

All appropriate measures taken, to ensure that school discipline is administered in a manner consistent with the child's human dignity and any complaint mechanisms available in this regard.

● Article 4

Please provide information on, inter alia:

The armed groups operating on/from the territory of the State concerned or with sanctuary on that territory;

Update on the status of the negotiations of the State Party with armed groups;

Disaggregated data on children who have been recruited and used in hostilities by the armed groups, and on those who have been arrested by the State concerned (for example, by gender, age, region, rural/urban areas and social and ethnic origin, time spent in the armed groups, and time spent in hostilities); Any written or oral commitment made by armed groups aiming at not recruiting and using children below the age of 18 years in hostilities;

Measures adopted by the state concerned aiming at raising awareness amongst armed groups and within the communities of the need to prevent recruitment of children below the age of 18 years and of their legal duties with regard to the minimum age set up in the Optional Protocol for recruitment and use in hostilities;

The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 years by such armed groups and the judicial decisions applying to this issue;

The programmes to prevent notably children who are at highest risk of recruitment or use by such armed groups, such as refugee and internally displaced children, street children, orphans (e.g. birth registration campaigns) from being recruited or used by armed groups.

● Article 5

Please indicate any provision of the national legislation and of international instruments and international humanitarian law applicable in the State concerned, which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State concerned of the main international instruments concerning children in armed conflict and on other commitments undertaken by that State concerning this issue.

● Article 6 paras. 1 and 2

Please indicate the measures adopted to ensure the effective implementation and enforcement of the provisions of the Optional Protocol within the jurisdiction of the State Party, including information on:

Any review of domestic legislation and amendments introduced into it;

The legal status of the Optional Protocol in national law and its applicability before domestic jurisdictions, as well as, when relevant, the intention of the State Party to withdraw existing reservations made to this Protocol;

The competent governmental departments or bodies responsible for the implementation of the Optional protocol and their coordination with regional and local authorities as well as with civil society;

The mechanisms and means used for monitoring and periodically evaluating the implementation of the Optional Protocol;

Measures adopted to ensure the relevant training of peacekeeping personnel on the rights of the child, including the provisions of the Optional Protocol; The dissemination in all relevant languages of the Optional Protocol to all children and adults, notably those responsible for military recruitment, and the appropriate training offered to all professional groups working with and for children.

● Article 6 para. 3

When relevant, please indicate all measures adopted with regard to disarmament, demobilization (or release from service) and to the provision of appropriate assistance for the physical and psychological recovery and social reintegration of children, taking due account of the specific situation of girls, including information on:

Disaggregated data on children involved in that proceeding, on their participation in such programmes, and on their status with regard to the armed forces and armed groups (e.g. when do they stop to be members of the armed forces or groups?);

The budget allocated to these programmes, the personnel involved and their training, the organizations concerned, cooperation among them, and participation of civil society, local communities, families, etc.;

The various measures adopted to ensure the social reintegration of children, e.g. interim care, access to education and vocational training, reintegration in the family and

community, relevant judicial measures, while taking into account the specific needs of children concerned depending notably on their age and sex.

The measures adopted to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation;

The legal provisions adopted criminalizing the recruitment of children and the inclusion of that crime in the competence of any specific justice seeking mechanisms established in the context of conflict (e.g. war crimes tribunal, truth and reconciliation bodies). The safeguards adopted to ensure that the

rights of the child as a victim and as a witness are respected in these mechanisms in light of the Convention on the Rights of the Child;

The criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected;

When relevant, the provisions of peace agreements dealing with the disarmament, demobilization and/or physical and psychological recovery and social reintegration of child combatants.

● Article 7

Reports should provide information on cooperation in the implementation of the Optional Protocol, including through technical cooperation and financial assistance. In this regard, reports should provide information, inter alia, on the extent of the technical cooperation or financial assistance, which the State Party has requested or offered. Please indicate, if the State Party is in a position of providing financial assistance, the existing multilateral, bilateral or other programs that have been undertaken for that assistance.

Guidelines regarding initial reports to be submitted by States Parties under article 12 (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 on the Rights of the Child at its 777th meeting (twenty-ninth session) on 1 February 2002

Introduction

Pursuant to article 12 (1) of the Optional Protocol, each State Party shall, within two years following the entry into force of this 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 Optional Protocol. Thereafter, pursuant to article 12 (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 (1)(b) of the Convention any further information with respect to the implementation of the Optional Protocol. State Parties to the Optional Protocol, who are not parties to the Convention, shall submit a report every five years.

The Committee may, in the light of article 12 (3) of the Optional Protocol, request from States Parties further information relevant to the implementation of the Optional Protocol. Reports should provide information on:

- a) the legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions;
- b) when relevant, the intention of the State Party to withdraw existing reservations made to this Optional Protocol;
- c) the competent governmental departments or bodies for the implementation of the Optional Protocol and their coordination with regional and local authorities as well as the civil society, the business sector, media, etc.;
- d) the dissemination to the public at large, including children and parents, through information by all appropriate means, education and training, about the provisions of the Optional Protocol;

- e) the dissemination of the Optional Protocol and the appropriate training offered to all professional groups working with and for children and all other relevant groups (immigration and law enforcement officers, social workers, etc); and

- f) the mechanisms and procedures used for a periodic evaluation of the implementation of the Optional Protocol and the main challenges encountered so far.

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. The States Parties also should elaborate on how and to what extent the implementation of the Optional Protocol contributes to the implementation of the provisions of the Convention on the Rights of the Child, in particular articles 1, 11, 21, 32, 33, 34, 35, and 36 (see preamble of the Optional Protocol). 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.

Moreover, for all areas raised in these guidelines, the Committee invites States Parties to provide it with:

- a) the progress made in the enjoyment of the rights set forth in the Optional Protocol;
- b) the analysis of the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol; and
- c) budget allocated to the various activities of the State Party related to this Optional Protocol;

- d) detailed disaggregated data; and
- e) copies of the principal legislative, administrative and other relevant texts and judicial decisions and relevant research.

II. Prohibition of the sale of children, child prostitution, and child pornography

Please provide information on existing criminal or penal laws and regulations covering and defining the acts and activities enumerated in article 3 (1) of the Optional Protocol. In this respect, please provide information on:

- a) the age limit used for defining a child in the definition of each of these offences;
- b) the penalties, which apply to each of these offences and what are the aggravating or attenuating circumstances applicable to them;
- c) the time of prescription for each of these offences;
- d) any other relevant acts or activities which are criminalized under penal or criminal laws of the State Party and which are not covered by article 3(1) of the Optional Protocol;
- e) the liability of legal persons for the acts and activities enumerated in article 3(1) of the Optional Protocol, indicating the definition of a legal person in the State Party; and
- f) the status, under criminal or penal law of the State Party, of attempt to commit and complicity or participation in any of the offences referred to previously.

With regard to adoption [article 3 (1)(a)(ii)], please indicate the bilateral and multilateral agreements, which are applicable to the State Party and how the State Party ensures that all persons involved in the adoption of child act in conformity with these international agreements.

III. Penal/criminal procedure

Jurisdiction

Please indicate the measures adopted, including of a legislative, judicial and administrative nature, to establish the State Party's jurisdiction over the offences referred to in article 3(1) of the Optional Protocol when:

- a) these offences are committed in its territory or on board a ship or aircraft registered in the State Party;
 - b) the alleged offender is a national of the State Party or a person who has his/her habitual residence in its territory;
 - c) the victim is a national of the State Party;
 - d) the alleged offender is present in its territory and it does not extradite her/him to another State Party on the ground that the offence has been committed by one of its nationals. In that last case, please indicate if an extradition is required prior to establishing its jurisdiction.
- Please indicate any other measures at the national level, including of a legislative, judicial and administrative nature, which establish other rules concerning criminal jurisdiction by the State Party.

Extradition

Please provide information on the State Party's extradition policy related to the offences referred to in article 3(1) of the Optional Protocol with specific attention to the various situations enumerated in article 5 of the Optional Protocol. For each situation relevant to the State Party, in light of the disaggregated data as requested under I(5)(d) of these guidelines, please indicate the numbers of extradition requests received or sent with mention of the States concerned, and disaggregated data about the offenders and the victims (age, sex, nationality, etc.). Please also provide information on the length of the procedure, and on cases of extradition requests which have been sent or received and which did not succeed.

Seizure and confiscation of goods and proceeds; and closure of premises

Please provide information on the measures adopted, including of a legislative, judicial and administrative nature, related to:

- a) the seizure and confiscation of goods and proceeds referred to in article 7 (a) of the Optional Protocol;
- b) the closing, on a temporary or definitive basis, of premises used to commit offences as provided for in article 3(1) of the Optional Protocol.

IV. Protection of the rights of child victims

In light of articles 8, 9 (3), and 9 (4) of the Optional Protocol, please provide information on the measures, including of a legislative, judicial and administrative nature, that have been adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol at all stages of the criminal justice process while ensuring the rights of the accused to a fair and impartial trial. Please indicate the measures adopted :

- a) to take the principle of the best interests of the child as a primary consideration in all actions within the treatment by the criminal justice system of child victims in relevant domestic legislation and regulations;

b) to ensure the initiation of criminal investigations even in cases where the actual age of the victim cannot be ascertained and the means used to establish this age;

c) to adapt the procedures to be child-sensitive, with special regard to the dignity and worth of the child and her/his cultural background, including the procedure used for investigation, interrogation, trial and cross-examination of child victims and witnesses; the right to the presence of a parent or guardian; the right to be represented by a legal adviser or to apply for free legal aid. In that respect, please indicate what are the legal consequences for a child who has committed an offence under the law applicable to her/him as a direct result of the practices prohibited under the Optional Protocol;

d) to inform the child during the whole legal process and the persons responsible for this task;

e) to allow the child to express her/his views, needs and concerns;

f) to provide appropriate support services to child victims, including psychosocial, psychological and linguistic support at every step of legal proceedings;

g) to protect, as appropriate, the privacy and identity of the child victims;

h) to provide, in appropriate cases, for the safety of the child victims, as well as their families, witnesses on their behalf, and individuals/organisations dealing with the prevention and/or protection and rehabilitation of child victims, from intimidation and retaliation;

i) to ensure that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible and to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation; and

j) to ensure all appropriate assistance to child victims, including their full social reintegration and their full physical and psychological recovery.

V. Prevention of the sale of children, child prostitution and child pornography

In light of article 9 (1), 9 (2), 9 (5), and 10 (1), please provide information on:

- a) the measures adopted, including of a legislative, judicial and administrative nature, and on the policies and programmes to prevent the offences referred to in the Optional Protocol. Reports should also give information on children concerned by these preventive measures and on the measures used to particularly target children who are especially vulnerable to such practices;
- b) the means used to raise awareness within the population at large about the offences prohibited under the Optional Protocol. Please provide disaggregated information, including on :
 - the various types of awareness, educational and training activities;
 - the public concerned;
 - the involvement of governmental bodies and non-governmental organisations, business sector, media professionals, etc.;
 - the participation of children/child victims, and/or communities;
 - the scope of these activities (local, regional, national and/or international).

c) the measures adopted, including of a legislative, judicial and administrative nature, to effectively prohibit the production and dissemination of material advertising the offences described in the Optional Protocol, as well as mechanisms established to monitor the situation.

VI. International assistance and co-operation

Prevention

In light of article 10 (3) of the Optional Protocol please provide information on the activities of the State Party to promote international cooperation in order to address the root causes particularly poverty and under-development, which contribute to vulnerability of children to the sale of children, child prostitution, child pornography, and child sex tourism.

Protection of victims

In light of article 10 (2) of the Optional Protocol please provide information on the international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

Law enforcement

In light of articles 6 and 10 of the Optional Protocol, please provide information on the assistance and co-operation provided by the State Party in all steps/parts of the penal or criminal procedure with regard to the offences as provided in article 3 (1) of the Optional Protocol (detection, investigation, prosecution, punishment and extradition proceedings). In light of article 7(b) of the Optional Protocol, please provide information on requests received from another State Party for seizure or confiscation of goods or proceeds referred to in article 7(a) of the Optional Protocol.

Please indicate the relevant bilateral, regional and/or multilateral agreements, treaties or other arrangements, which the State Party concerned is party to, and/or any relevant domestic legislation in that respect. Finally, please indicate what cooperation/coordination has been set up between the State Party's authorities, national and international non-governmental organisations, and international organisations.

Financial and other assistance

With reference to international cooperation, mentioned above (paras. 14-17), please provide information on the financial, technical or other assistance provided and/or received through existing multilateral, bilateral or other programmes, that have been undertaken for that assistance.

VII. Other legal provisions

Please indicate any provision of the domestic legislation and of international law applicable in the State concerned, which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State concerned of the main international instruments concerning sale of children, child prostitution, child pornography and child sex tourism and on other commitments undertaken by that State concerning this issue and on their implementation and challenges encountered."

Universal Declaration of Human Rights

Adopted and proclaimed by
General Assembly resolution 217 A (III)
of 10 December 1948

Preamble

W

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

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.

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

Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.

● Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution. 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

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

● Article 16

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. Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

● Article 17

Everyone has the right to own property alone as well as in association with others. 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

Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.

● Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right to equal access to public service in his country. 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 co-operation 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

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

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.

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

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.

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

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.

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.

Parents have a prior right to choose the kind of education that shall be given to their children.

● Article 27

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.

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

Everyone has duties to the community in which alone the free and full development of his personality is possible.

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.

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.



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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, spiritu-

ally 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 indi-

vidual 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 Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession
by General Assembly resolution 2200A (XXI)
of 16 December 1966

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 co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect

that right, in conformity with the provisions of the Charter of the United Nations.

PART II

● Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, 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 co-operation, 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 1 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 1 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.

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

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 co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization

of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions

of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

● Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

● Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 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 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 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.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been

convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

● Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

● Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

● Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

● Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

● Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

● Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

● Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

● Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

● Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

● Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

● Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

● Article 26

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

● Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

● Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the

field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

● Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

● Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

● Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

● Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

● Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

● Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

● Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

● Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

● Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

● Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

● Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

● Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

● Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with

in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

● Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the

Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

● Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

● Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to

other procedures for settling a dispute in accordance with general or special international agreements in force between them.

● Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

● Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

● Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

● Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

● Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or

instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

● Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

● Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

● Article 52

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.

ILO Minimum Age Convention, 1973 (No. 138)

Adopted by the General Conference
of the International Labour Organization
on 26 June 1973

T

he General Conference of the International Labour Organisation,

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 the 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 Conven-

tion, 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 organisations 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 Organisation 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 organisations 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 organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

● Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations 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 Organisation 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 organisations 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 Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

(b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

● Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of—

(a) a course of education or training for which a school or training institution is primarily responsible;

(b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or

(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

● Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is—

(a) not likely to be harmful to their health or development; and

(b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

● Article 8

1. After consultation with the organisations 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 vir-

tue 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 Organisation 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 ratifications 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 Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation 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

T

he General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other international human rights instruments pertaining to the rights of young persons,

Also bearing in mind that 1985 was designated the International Youth Year: Participation, Development, Peace and that the international community has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration of the Rights of the Child,

Recalling solution 4 adopted by the Sixth United Nations congress on the Prevention of Crime and the treatment of Offenders, which called for the development of standard minimum rules for the administration of juvenile justice and the care of juveniles, which could serve as a model for Member States,

Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, through the Interregional Preparatory Meeting, held at Beijing from 14 to 18 May 1984,

Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace, freedom, dignity and security,

Considering that existing national legislation, policies and practices may well require review and the rules,

Considering further that, although such standards may seem difficult to achieve at present in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum,

1. *Notes* with appreciation the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders and other United Nations institutes in the development of the Standard Minimum Rules for the Administration of Juvenile Justice;

2. *Takes note* with appreciation of the report of the Secretary-General on the draft Standard Minimum Rules for the Administration of Juvenile Justice;

3. *Commends* the Interregional Preparatory Meeting held at Beijing for having finalized the text of the rules submitted to the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders for consideration and final action;

4. *Adopts* the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress, contained in the annex to the present resolution, and approves the recommendations of the Seventh Congress that the Rules should be known as "Beijing Rules";

5. *Invites* Member States to adapt, wherever this is necessary, their national legislation, policies and practice, particularly in training juvenile justice personnel, to the Beijing Rules and

to bring the Rules to the attention of relevant authorities and the public in general;

6. *Calls upon* the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of Crime and the treatment of offenders.

7. *Invites* Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

8. *Requests* Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;

9. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages of the United Nations, including the intensification of information activities in the field of juvenile justice;

10. *Requests* the Secretary-General to develop pilot projects on the implementation of the Beijing Rules;

11. *Requests* the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, in particular in the areas of recruitment, training and exchange of personnel, research and evaluation, and the development of new alternatives to institutionalization

12. *Requests* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review the progress made in the implementation of the Beijing Rules and of the recommendations contained in the present resolution, under a separate agenda item on juvenile justice;

13. *Urges* all relevant organs of the United Nations system, in particular the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, other intergovernmental organizations and non-governmental organizations to collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in the Beijing Rules.

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 needs of society;

(c) 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 re-commended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

PART FOUR

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Cooperation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the cooperation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Interministerial and interdepartmental 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 not 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. Interministerial and interdepartmental 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

T

he General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as other international instruments pertaining to the rights and well-being of young persons, including relevant standards established by the International Labour Organization,

Bearing in mind also the Declaration of the Rights of the Child*, the Convention on the Rights of the Child, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling General Assembly resolution 40/33 of 29 November 1983, in which the Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also that the General Assembly, in its resolution 40/35 of 29 November 1985, called for the development of standards for the prevention of juvenile delinquency which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance, care and community involvement, and called upon the Economic and Social Council to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved with respect to the standards, for review and action,

Recalling further that the Economic and Social Council, in resolution 1986/10 of 21 May 1986, requested the Eighth Congress

to consider the standards for the prevention of juvenile delinquency, with the view to adoption,

Recognizing the need to develop national, regional and international approaches and strategies for the prevention of juvenile delinquency,

Affirming that every child has basic human rights, including, in particular, access to free education,

Mindful of the large number of young persons who may or may not be in conflict with law but who are abandoned, neglected, abused, exposed to drug abuse, in marginal circumstances, and who are in general at social risk,

Taking into account the benefits of progressive policies for the prevention of delinquency and the welfare of the community,

1. *Notes* with satisfaction the substantive work accomplished by the Committee on Crime Prevention and Control and the Secretary-General in the formulation of the guidelines for the prevention of juvenile delinquency;

2. *Expresses* appreciation for the valuable collaboration of the Security Studies and Training Centre at Riyadh, in hosting International Meeting of Experts on Juvenile Delinquency, held at Riyadh from 28 February to 1 March 1988, in cooperation with the United Nations Office at Vienna;

3. *Adopts* the United Nations Guidelines for the Prevention of Juvenile Delinquency contained in the annex to the present resolution, to be called the Riyadh Guidelines

4. *Calls upon* Member States, in their comprehensive crime prevention plans, to apply the Guidelines in national law, policy and practice and bring the Guidelines to the attention of the relevant authorities, including policy makers, juvenile

justice personnel, educators, the mass media, practitioners and scholars;

5. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Guidelines in all official languages of the United Nations;

6. *Further requests* the Secretary-General and invites all relevant United Nations offices and interested institutions, in particular, the United Nations Children's Fund, as well as individual experts, to make a concerted effort to promote the application of the Guidelines;

7. *Also requests* the Secretary-General to intensify research on particular situations of social risk and on the exploitation of children, including the use of children as instruments of criminality, with a view to developing comprehensive counter-measures and to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

8. *Further requests* the Secretary-General to issue a composite manual on juvenile justice standards, containing 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, and a set of full commentaries on their provisions;

9. *Urges* all relevant bodies within the United Nations system to collaborate with the Secretary-General in taking appro-

priate measures to ensure the implementation of the present resolutions;

10. *Invites* the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument with a view to promoting the application of its provisions;

11. *Invites* Member States to support strongly the organization of technical and scientific workshops, and pilot and demonstration projects on practical issues and policy matters relating to the application of the provisions of the Guidelines and to the establishment of concrete matters for community-based services designed to respond to the special needs, problems and concerns of young persons, and requests the Secretary-General to co-ordinate efforts in this respect;

12. *Also invites* Member States to inform the Secretary-General on the implementation of the Guidelines and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

13. *Recommends* that the Committee on Crime Prevention and Control request the Ninth Congress to review the progress made in the promotion and application of the Riyadh Guidelines and the recommendations contained in the present resolution, under separate agenda item on juvenile justice and keep the matter under constant review.

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

- (a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- (c) Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;
- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;
- (f) Community involvement through a wide range of services and programmes;
- (g) Close interdisciplinary cooperation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- (h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- (i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

- 11. Every society should place a high priority on the needs and well-being of the family and of all its members.
- 12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.
- 13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.
- 14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and

the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

- (a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;
- (b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;
- (c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
- (d) Undertaking activities that foster a sense of identity with and of belonging to

the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation 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

T

he General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, as well as other international instruments relating to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders,

Bearing in mind further the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by its resolution 43/173 of 9 December 1988 and contained in the annex thereto,

Recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

Recalling further that the economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eighth United Nations Congress on the Prevention of Crime

and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty world wide,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

Concerned that many systems do not differentiate between adults and juveniles at various of stages of the administration of justice and that juveniles are therefore being held in jails and facilities with adults,

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defense for Children International and Rädda Barnen International (Swedish Save the Children Federation), and scientific institutions concerned with the rights of children and juvenile justice in the development of United Nations draft Rules for the Protection of Juveniles Deprived of their Liberty;

4. *Adopts* the United Nations Rules for the Protection of Juveniles Deprived of their Liberty contained in the annex to the present resolution;

5. *Calls upon* the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

6. *Invites* Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in the training of all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;

7. *Also invites* Member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice and to report regularly to the Committee on Crime Prevention and Control on the results achieved in their implementation;

8. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;

9. *Requests* the Secretary-General to conduct comparative research, pursue the requisite collaboration and devise strategies to deal with the different categories of serious and persistent young offenders, and to prepare a policy-oriented report thereon for submission to the Ninth United Nations

Congress on the Prevention of Crime and the Treatment of Offenders;

10. *Also requests* the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;

11. *Urges* all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organization, to collaborate with the Secretary-General and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules;

12. *Invites* the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;

13. *Requests* the Ninth Congress to review the progress made on the promotion and application of the Rules and on the recommendations contained in the present resolution, under a separate agenda item on juvenile justice.

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of

juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

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

25. All juveniles should be helped to understand the regulations governing the internal

organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale

detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leav-

ing a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and

identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers 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

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, sub-paragraph c, have not been given before the child attains the age of eighteen years.

Chapter II

Requirement 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) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(c) promote the development of adoption counselling and postadoption 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 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 or 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 and 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 and 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

Recognitions 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 inter-country 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 165 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 or origin.

● Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

Chapter VII

Final Clauses

● Article 43

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

● Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

● Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

● Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force—

(a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

● Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

● Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

(a) the signatures, ratifications, acceptances and approvals referred to in Article 43;

(b) the accessions and objections raised to accessions referred to in Article 44;

(c) the date on which the Convention enters into force in accordance with Article 46;

(d) the declarations and designations referred to in Articles 22, 23, 25 and 45;

(e) the agreements referred to in Article 39;

(f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention. Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Resolution 48/96 adopted by the General Assembly
on the Report of the Third Committee (A/48/627)
on 20 December 1993



he General Assembly,

Recalling Economic and Social Council resolution 1990/26 of 24 May 1990, in which 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, and requested the Commission, should it establish such a working group, to finalize the text of those rules for consideration by the Council in 1993 and for submission to the General Assembly at its forty-eighth session,

Also recalling that in its resolution 32/2 of 20 February 1991 the Commission for Social Development decided to establish an ad hoc open-ended working group of government experts in accordance with Economic and Social Council resolution 1990/26,

Noting with appreciation the participation of many States, specialized agencies, intergovernmental bodies and non-governmental organizations, especially organizations of disabled persons, in the deliberations of the working group,

Also noting with appreciation the generous financial contributions of Member States to the working group,

Welcoming the fact that the working group was able to fulfil its mandate within three sessions of five working days each,

Acknowledging with appreciation the report of the ad hoc open-ended working group to elaborate standard rules on the equalization of opportunities for persons with disabilities,

Taking note of the discussion in the Commission for Social Development at its thirty-third session on the draft standard rules contained in the report of the working group,

1. *Adopts* the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, set forth in the annex to the present resolution;
2. *Requests* Member States to apply the Rules in developing national disability programmes;
3. *Urges* Member States to meet the requests of the Special Rapporteur for information on the implementation of the Rules;
4. *Requests* the Secretary-General to promote the implementation of the Rules and to report thereon to the General Assembly at its fiftieth session;
5. *Urges* Member States to support, financially and otherwise, the implementation of the Rules.

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 convened a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade.

9. A draft outline of the convention was prepared by Italy and presented to the General Assembly at its forty-second session. Further presentations concerning a draft convention were made by Sweden at the forty-fourth session of the Assembly. However, on both occasions, no consensus could be reached on the suitability of such a convention. In the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons.

Towards standard rules

10. Guided by the deliberations in the General Assembly, the Economic and Social Council, at its first regular session of 1990, finally agreed to concentrate on the elaboration of an international instrument of a different kind. By its resolution 1990/26 of 24 May 1990, the Council authorized the Commission for Social Development to consider, at its thirty-second session, the establishment of an ad hoc open-ended working group of government experts, funded by voluntary contributions, to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults, in close collaboration with the specialized agencies, other intergovernmental bodies and non-governmental organizations, especially organizations of disabled persons. The Council also requested the Commission to finalize the text of those rules for consideration in 1993 and for submission to the General Assembly at its forty-eighth session.

11. The subsequent discussions in the Third Committee of the General Assembly at the forty-fifth session showed that there was wide support for the new initiative to elaborate standard rules on the equalization of opportunities for persons with disabilities.

12. At the thirty-second session of the Commission for Social Development, the initiative for standard rules received the support of a large number of representatives and discussions led to the adoption of resolution 32/2 of 20 February 1991, in which the Commission decided to establish an ad hoc open-ended working group in accordance with Economic and Social Council resolution 1990/26.

Purpose and content of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities

13. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities have been developed on the basis of the experience gained during the United Nations Decade of Disabled Persons (1983-1992). The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.

14. Although the Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. The Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.

15. The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies of the world there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organizations should play an active role as partners in this process. The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.

Fundamental concepts in disability policy

16. The concepts set out below appear throughout the Rules. They are essentially built on the concepts in the World Programme of Action concerning Disabled Persons. In some cases they reflect the development that has taken place during the United Nations Decade of Disabled Persons.

Disability and handicap

17. The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

18. The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and

education, which prevent persons with disabilities from participating on equal terms.

19. The use of the two terms “disability” and “handicap”, as defined in paragraphs 17 and 18 above, should be seen in the light of modern disability history. During the 1970s there was a strong reaction among representatives of organizations of persons with disabilities and professionals in the field of disability against the terminology of the time. The terms “disability” and “handicap” were often used in an unclear and confusing way, which gave poor guidance for policy-making and for political action. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.

20. In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. The International Classification of Impairments, Disabilities, and Handicaps makes a clear distinction between “impairment”, “disability” and “handicap”. It has been extensively used in areas such as rehabilitation, education, statistics, policy, legislation, demography, sociology, economics and anthropology. Some users have expressed concern that the Classification, in its definition of the term “handicap”, may still be considered too medical and too centred on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification.

21. As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings of the society (various obstacles for participation).

Prevention

22. The term “prevention” means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.

Rehabilitation

23. The term “rehabilitation” refers to a process

aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal-oriented activities, for instance vocational rehabilitation.

Equalization of opportunities

24. The term “equalization of opportunities” means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.

25. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation.

26. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.

27. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.

PREAMBLE

States,

Mindful of the pledge made, under the Charter of the United Nations, to take joint and separate action in cooperation with the Organization to promote higher standards of living, full employment, and conditions of economic and social progress and development, Reaffirming the commitment to human rights and fundamental freedoms, social justice and the dignity and worth of the human person proclaimed in the Charter,

Recalling in particular the international standards on human rights, which have been laid down in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, Underlining that those instruments proclaim that the rights recognized therein should be ensured equally to all individuals without discrimination,

Recalling the Convention on the Rights of the Child, which prohibits discrimination on the basis of disability and requires special meas-

ures to ensure the rights of children with disabilities, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides for some protective measures against disability,

Recalling also the provisions in the Convention on the Elimination of All Forms of Discrimination against Women to ensure the rights of girls and women with disabilities, Having regard to the Declaration on the Rights of Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons, the Declaration on Social Progress and Development, the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care and other relevant instruments adopted by the General Assembly,

Also having regard to the relevant conventions and recommendations adopted by the International Labour Organisation, with particular reference to participation in employment without discrimination for persons with disabilities,

Mindful of the relevant recommendations and work of the United Nations Educational, Scientific and Cultural Organization, in particular the World Declaration on Education for All, the World Health Organization, the United Nations Children’s Fund and other concerned organizations,

Having regard to the commitment made by States concerning the protection of the environment,

Mindful of the devastation caused by armed conflict and deploring the use of scarce resources in the production of weapons,

Recognizing that the World Programme of Action concerning Disabled Persons and the definition therein of equalization of opportunities represent earnest ambitions on the part of the international community to render those various international instruments and recommendations of practical and concrete significance,

Acknowledging that the objective of the United Nations Decade of Disabled Persons (1983-1992) to implement the World Programme of Action is still valid and requires urgent and continued action,

Recalling that the World Programme of Action is based on concepts that are equally valid in developing and industrialized countries,

Convinced that intensified efforts are needed to achieve the full and equal enjoyment of human rights and participation in society by persons with disabilities,

Re-emphasizing that persons with disabilities, and their parents, guardians, advocates and organizations, must be active partners with States in the planning and implementation of all measures affecting their civil, political, economic, social and cultural rights,

In pursuance of Economic and Social Council resolution 1990/26, and basing themselves on the specific measures required for the attainment by persons with disabilities of equality with others, enumerated in detail in the World Programme of Action,

Have adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities outlined below, in order:

- (a) To stress that all action in the field of disability presupposes adequate knowledge and experience of the conditions and special needs of persons with disabilities;
- (b) To emphasize that the process through which every aspect of societal organization is made accessible to all is a basic objective of socio-economic development;
- (c) To outline crucial aspects of social policies in the field of disability, including, as appropriate, the active encouragement of technical and economic cooperation;
- (d) To provide models for the political decision-making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;
- (e) To propose national mechanisms for close collaboration among States, the organs of the United Nations system, other intergovernmental bodies and organizations of persons with disabilities;
- (f) To propose an effective machinery for monitoring the process by which States seek to attain the equalization of opportunities for persons with disabilities.

I. PRECONDITIONS FOR EQUAL PARTICIPATION

Rule 1. Awareness-raising

States should take action to raise awareness in society about persons with disabilities, their rights, their needs, their potential and their contribution.

1. States should ensure that responsible authorities distribute up-to-date information on available programmes and services to persons with disabilities, their families, professionals in the field and the general public. Information to persons with disabilities should be presented in accessible form.
2. States should initiate and support information campaigns concerning persons with disabilities and disability policies, conveying the message that persons with disabilities are citizens with the same rights and obligations as others, thus justifying measures to remove all obstacles to full participation.
3. States should encourage the portrayal of persons with disabilities by the mass media in a positive way; organizations of persons with disabilities should be consulted on this matter.
4. States should ensure that public education programmes reflect in all their aspects the principle of full participation and equality.
5. States should invite persons with disabilities and their families and organizations to participate in public education programmes concerning disability matters.
6. States should encourage enterprises in the private sector to include disability issues in all aspects of their activity.

7. States should initiate and promote programmes aimed at raising the level of awareness of persons with disabilities concerning their rights and potential. Increased self-reliance and empowerment will assist persons with disabilities to take advantage of the opportunities available to them.

8. Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes. Persons with disabilities could also assist one another in awareness-raising through the activities of their own organizations.

9. Awareness-raising should be part of the education of all children and should be a component of teacher-training courses and training of all professionals.

Rule 2. Medical care

States should ensure the provision of effective medical care to persons with disabilities.

1. States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.

2. Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.

3. States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society.

4. States should ensure that all medical and paramedical personnel are adequately trained and equipped to give medical care to persons with disabilities and that they have access to relevant treatment methods and technology.

5. States should ensure that medical, paramedical and related personnel are adequately trained so that they do not give inappropriate advice to parents, thus restricting options for their children. This training should be an ongoing process and should be based on the latest information available.

6. States should ensure that persons with disabilities are provided with any regular treatment and medicines they may need to preserve or improve their level of functioning.

Rule 3. Rehabilitation*

*Rehabilitation is a fundamental concept in disability policy and is defined above in paragraph 23 of the introduction.

States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning.

1. States should develop national rehabilitation programmes for all groups of persons with disabilities. Such programmes should be based on the actual individual needs of persons with disabilities and on the principles of full participation and equality.

2. Such programmes should include a wide range of activities, such as basic skills training to improve or compensate for an affected function, counselling of persons with disabilities and their families, developing self-reliance, and occasional services such as assessment and guidance.

3. All persons with disabilities, including persons with severe and/or multiple disabilities, who require rehabilitation should have access to it.

4. Persons with disabilities and their families should be able to participate in the design and organization of rehabilitation services concerning themselves.

5. All rehabilitation services should be available in the local community where the person with disabilities lives. However, in some instances, in order to attain a certain training objective, special time-limited rehabilitation courses may be organized, where appropriate, in residential form.

6. Persons with disabilities and their families should be encouraged to involve themselves in rehabilitation, for instance as trained teachers, instructors or counsellors.

7. States should draw upon the expertise of organizations of persons with disabilities when formulating or evaluating rehabilitation programmes.

Rule 4. Support services

States should ensure the development and supply of support services, including assistive devices for persons with disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights.

1. States should ensure the provision of assistive devices and equipment, personal assistance and interpreter services, according to the needs of persons with disabilities, as important measures to achieve the equalization of opportunities.

2. States should support the development, production, distribution and servicing of assistive devices and equipment and the dissemination of knowledge about them.

3. To achieve this, generally available technical know-how should be utilized. In States where high-technology industry is available, it should be fully utilized to improve the standard and effectiveness of assistive devices and equipment. It is important to stimulate the development and production of simple and inexpensive devices, using local material and local production facilities when possible. Persons with disabilities themselves could be involved in the production of those devices.

4. States should recognize that all persons with disabilities who need assistive devices should have access to them as appropriate, including financial accessibility. This may mean that assistive devices and equipment should be provided free of charge or at such a low price that persons with disabilities or their families can afford to buy them.

5. In rehabilitation programmes for the provision of assistive devices and equipment, States should consider the special requirements of girls and boys with disabilities concerning the

design, durability and age-appropriateness of assistive devices and equipment.

6. States should support the development and provision of personal assistance programmes and interpretation services, especially for persons with severe and/or multiple disabilities. Such programmes would increase the level of participation of persons with disabilities in everyday life at home, at work, in school and during leisure-time activities.

7. Personal assistance programmes should be designed in such a way that the persons with disabilities using the programmes have a decisive influence on the way in which the programmes are delivered.

II. TARGET AREAS FOR EQUAL PARTICIPATION

Rule 5. Accessibility

States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should (a) introduce programmes of action to make the physical environment accessible; and (b) undertake measures to provide access to information and communication.

(a) Access to the physical environment

1. States should initiate measures to remove the obstacles to participation in the physical environment. Such measures should be to develop standards and guidelines and to consider enacting legislation to ensure accessibility to various areas in society, such as housing, buildings, public transport services and other means of transportation, streets and other outdoor environments.

2. States should ensure that architects, construction engineers and others who are professionally involved in the design and construction of the physical environment have access to adequate information on disability policy and measures to achieve accessibility.

3. Accessibility requirements should be included in the design and construction of the physical environment from the beginning of the designing process.

4. Organizations of persons with disabilities should be consulted when standards and norms for accessibility are being developed. They should also be involved locally from the initial planning stage when public construction projects are being designed, thus ensuring maximum accessibility.

(b) Access to information and communication

5. Persons with disabilities and, where appropriate, their families and advocates should have access to full information on diagnosis, rights and available services and programmes, at all stages. Such information should be presented in forms accessible to persons with disabilities.

6. States should develop strategies to make information services and documentation accessible for different groups of persons with disabilities. Braille, tape services, large print and other appropriate technologies should be used to provide access to written information and documentation for persons with visual impairments. Similarly, appropriate technologies should be used to provide access to

spoken information for persons with auditory impairments or comprehension difficulties.

7. Consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.

8. Consideration should also be given to the needs of people with other communication disabilities.

9. States should encourage the media, especially television, radio and newspapers, to make their services accessible.

10. States should ensure that new computerized information and service systems offered to the general public are either made initially accessible or are adapted to be made accessible to persons with disabilities.

11. Organizations of persons with disabilities should be consulted when measures to make information services accessible are being developed.

Rule 6. Education

States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system.

1. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning curriculum development and school organization.

2. Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.

3. Parent groups and organizations of persons with disabilities should be involved in the education process at all levels.

4. In States where education is compulsory it should be provided to girl 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 educa-

tion 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 concern-

ing the equalization of opportunities for persons with disabilities.

1. States should periodically and systematically evaluate national disability programmes and disseminate both the bases and the results of the evaluations.

2. States should develop and adopt terminology and criteria for the evaluation of disability-related programmes and services.

3. Such criteria and terminology should be developed in close cooperation with organizations of persons with disabilities from the earliest conceptual and planning stages.

4. States should participate in international cooperation in order to develop common standards for national evaluation in the disability field. States should encourage national coordinating committees to participate also.

5. The evaluation of various programmes in the disability field should be built in at the planning stage, so that the overall efficacy in fulfilling their policy objectives can be evaluated.

Rule 21. Technical and economic cooperation

States, both industrialized and developing, have the responsibility to cooperate in and take measures for the improvement of the living conditions of persons with disabilities in developing countries.

1. Measures to achieve the equalization of opportunities of persons with disabilities, including refugees with disabilities, should be integrated into general development programmes.

2. Such measures must be integrated into all forms of technical and economic cooperation, bilateral and multilateral, governmental and non-governmental. States should bring up disability issues in discussions on such cooperation with their counterparts.

3. When planning and reviewing programmes of technical and economic cooperation, special attention should be given to the effects of such programmes on the situation of persons with disabilities. It is of the utmost importance that persons with disabilities and their organizations are consulted on any development projects designed for persons with disabilities. They should be directly involved in the development, implementation and evaluation of such projects.

4. Priority areas for technical and economic cooperation should include:

(a) The development of human resources through the development of skills, abilities and potentials of persons with disabilities and the initiation of employment-generating activities for and of persons with disabilities;

(b) The development and dissemination of appropriate disability-related technologies and know-how.

5. States are also encouraged to support the formation and strengthening of organizations of persons with disabilities.

6. States should take measures to improve the knowledge of disability issues among staff involved at all levels in the administration

of technical and economic cooperation programmes.

Rule 22. International cooperation

States will participate actively in international cooperation concerning policies for the equalization of opportunities for persons with disabilities.

1. Within the United Nations, the specialized agencies and other concerned intergovernmental organizations, States should participate in the development of disability policy.

2. Whenever appropriate, States should introduce disability aspects in general negotiations concerning standards, information exchange, development programmes, etc.

3. States should encourage and support the exchange of knowledge and experience among:

(a) Non-governmental organizations concerned with disability issues;

(b) Research institutions and individual researchers involved in disability issues;

(c) Representatives of field programmes and of professional groups in the disability field;

(d) Organizations of persons with disabilities;

(e) National coordinating committees.

4. States should ensure that the United Nations and the specialized agencies, as well as all intergovernmental and interparliamentary bodies, at global and regional levels, include in their work the global and regional organizations of persons with disabilities.

IV. MONITORING MECHANISM

1. The purpose of a monitoring mechanism is to further the effective implementation of the Rules. It will assist each State in assessing its level of implementation of the Rules and in measuring its progress. The monitoring should identify obstacles and suggest suitable measures that would contribute to the successful implementation of the Rules. The monitoring mechanism will recognize the economic, social and cultural features existing in individual States. An important element should also be the provision of advisory services and the exchange of experience and information between States.

2. The Rules shall be monitored within the framework of the sessions of the Commission for Social Development. A Special Rapporteur with relevant and extensive experience in disability issues and international organizations shall be appointed, if necessary, funded by extrabudgetary resources, for three years to monitor the implementation of the Rules.

3. International organizations of persons with disabilities having consultative status with the Economic and Social Council and organizations representing persons with disabilities who have not yet formed their own organizations should be invited to create among themselves a panel of experts, on which organizations of persons with disabilities shall have a majority, taking into account the different kinds of disabilities and necessary equitable geographical distribution, to be consulted by the Special Rapporteur and, when appropriate, by the Secretariat.

4. The panel of experts will be encouraged by the Special Rapporteur to review, advise and provide feedback and suggestions on the promotion, implementation and monitoring of the Rules.

5. The Special Rapporteur shall send a set of questions to States, entities within the United Nations system, and intergovernmental and non-governmental organizations, including organizations of persons with disabilities. The set of questions should address implementation plans for the Rules in States. The questions should be selective in nature and cover a number of specific rules for in-depth evaluation. In preparing the questions the Special Rapporteur should consult with the panel of experts and the Secretariat.

6. The Special Rapporteur shall seek to establish a direct dialogue not only with States but also with local non-governmental organizations, seeking their views and comments on any information intended to be included in the reports. The Special Rapporteur shall provide advisory services on the implementation and monitoring of the Rules and assistance in the preparation of replies to the sets of questions.

7. The Department for Policy Coordination and Sustainable Development of the Secretariat, as the United Nations focal point on disability issues, the United Nations Development Pro-

gramme and other entities and mechanisms within the United Nations system, such as the regional commissions and specialized agencies and inter-agency meetings, shall cooperate with the Special Rapporteur in the implementation and monitoring of the Rules at the national level.

8. The Special Rapporteur, assisted by the Secretariat, shall prepare reports for submission to the Commission for Social Development at its thirty-fourth and thirty-fifth sessions. In preparing such reports, the Rapporteur should consult with the panel of experts.

9. States should encourage national coordinating committees or similar bodies to participate in implementation and monitoring. As the focal points on disability matters at the national level, they should be encouraged to establish procedures to coordinate the monitoring of the Rules. Organizations of persons with disabilities should be encouraged to be actively involved in the monitoring of the process at all levels.

10. Should extrabudgetary resources be identified, one or more positions of interregional adviser on the Rules should be created to provide direct services to States, including:

(a) The organization of national and regional training seminars on the content of the Rules;

(b) The development of guidelines to assist in strategies for implementation of the Rules;

(c) Dissemination of information about best practices concerning implementation of the Rules.

11. At its thirty-fourth session, the Commission for Social Development should establish an open-ended working group to examine the Special Rapporteur's report and make recommendations on how to improve the application of the Rules. In examining the Special Rapporteur's report, the Commission, through its open-ended working group, shall consult international organizations of persons with disabilities and specialized agencies, in accordance with rules 71 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.

12. At its session following the end of the Special Rapporteur's mandate, the Commission should examine the possibility of either renewing that mandate, appointing a new Special Rapporteur or considering another monitoring mechanism, and should make appropriate recommendations to the Economic and Social Council.

13. States should be encouraged to contribute to the United Nations Voluntary Fund on Disability in order to further the implementation of the Rules.

ILO Worst Forms of Child Labour Convention, 1999 (No.182)

Adopted by the General Conference
of the International Labour Organization
on 1 June 1999

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-

nomic 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 by General Assembly resolution 55/25
of 15 November 2000

T

he General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it 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, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

Expressing its appreciation to the Government of Poland for submitting to it at its fifty-first session a first draft United Nations convention against transnational organized crime and for hosting the meeting of the inter-sessional

open-ended intergovernmental group of experts, established pursuant to resolution 52/85 of 12 December 1997, on the elaboration of a preliminary draft of a possible comprehensive international convention against transnational organized crime, held in Warsaw from 2 to 6 February 1998,

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998,

Expressing its appreciation to the Government of Thailand for hosting the Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

Deeply concerned by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

Noting with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly,

Determined to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, *inter alia*, such criminal

activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, which carried out its work at the headquarters of the United Nations Office for Drug Control and Crime Prevention in Vienna, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the High-level Political Signing Conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;

3. *Requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Palermo in accordance with resolution 54/129;

4. *Notes* that the Ad Hoc Committee has not yet completed its work on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;

5. *Requests* the Ad Hoc Committee to continue its work in relation to this draft Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;

6. *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;

7. *Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to resolution 54/110 of 9 December 1999, should take into consideration the provi-

sions of the United Nations Convention against Transnational Organized Crime;

8. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;

9. *Decides* that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;

10. *Decides also* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

11. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention to serve as the secretariat for the Conference of the Parties to the Convention in accordance with article 33 of the Convention;

12. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above.

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 mat-

ters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

● Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

● Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence,

shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

● Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

● Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

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A

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ACRONYMS

For explanation of abbreviations used in references - IRCO, SR, etc., see page XVIII

AIDS	acquired immune deficiency syndrome	NGO	non-governmental organization
CEDC	Children in especially difficult circumstances	UNAIDS	Joint United Nations Programme on HIV/AIDS
CEDAW	Committee on the Elimination of Discrimination against Women	UNCHS	United Nations Centre for Human Settlements (Habitat)
CERD	Committee on the Elimination of Racial Discrimination	UNCTAD	United Nations Conference on Trade and Development
CRC	Committee on the Rights of the Child	UNDCP	United Nations International Drug Control Programme
ECOSOC	Economic and Social Council of the United Nations	UNEP	United Nations Environment Programme
FAO	Food and Agriculture Organization of the United Nations	UNESCO	United Nations Educational, Scientific and Cultural Organization
HIV	human immunodeficiency virus	UNFPA	United Nations Population Fund
HRC	Human Rights Committee	UNHCR	United Nations High Commissioner for Refugees
IBRD	International Bank for Reconstruction and Development	UNICEF	United Nations Children's Fund
ICPD	International Conference on Population and Development	UNICRI	United Nations Interregional Crime and Justice Research Institute
IDA	International Development Association	UNIFEM	United Nations Development Fund for Women
ILO	International Labour Organization	UNITAR	United Nations Institute for Training and Research
IMF	International Monetary Fund	UNRISD	United Nations Research Institute for Social Development
INCB	International Narcotics Control Board	WFP	World Food Programme
INSTRAW	International Research and Training Institute for the Advancement of Women	WHA	World Health Assembly
INTERPOL	International Criminal Police Organization	WHO	World Health Organization
IOM	International Organization for Migration	WSC	World Summit for Children
IPA	International Association for the Child's Rights to Play	WTO	World Trade Organization
IPEC	International Programme on the Elimination of Child Labour		

Implementation Handbook

for the Convention on the

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