



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 emphasizes State support for parents in the performance of their responsibilities. Article 18 must be read in conjunction with article 5 (parental and family duties and rights, the child's evolving capacities) and articles 3(2) and 27 (the State's responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living). These four articles of the Convention, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their "basic concern", but that this responsibility is circumscribed by the child's

rights under the Convention and may be shared with others such as members of the wider family. The State must take appropriate steps to assist parents in fulfilling their responsibilities, and if parents cannot manage this, the State must step in to secure the child's rights and needs.

Article 10 of the International Covenant on Economic, Social and Cultural Rights provides that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children" and "Special measures of protection and assistance should be taken on

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 No. 5, 1994, HRI/GEN/1/Rev.8, para. 30, p. 31)

The requirements of the Human Rights Committee are more detailed: “Responsibility for guaranteeing children the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is interpreted broadly to include all persons composing it in the society of the State Party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child’s personality and his enjoyment of the rights recognized in the Covenant. However, since it is quite common for the father and mother to be gainfully employed outside the home, reports by States Parties should indicate how society, social institutions and the State are discharging their responsibility to assist the family in ensuring the protection of the child.” (Human Rights Committee, General Comment No. 17, 1989, HRI/GEN/1/Rev.8, para. 6, p. 184) ■

“Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child”

Article 18 makes a clear statement supporting the primacy of parents; although elsewhere (articles 5 and 30), the Convention recognizes that family structures vary and that children’s wider family, tribe, community or culture can play an important role in the child’s upbringing. However, the Committee has expressed concern about social structures in which the parents’ role may be diminished to the detriment of children, for example to the Democratic Republic of the Congo:

“The Committee is concerned... at the increasing practice of ‘bi-linear’ families under which a community leader assumes parental responsibilities for children and that this practice is replacing parents and has a negative

impact on children.” (Democratic Republic of the Congo CRC/C/15/Add.143, para. 36)

It has also asked several countries in Africa and the Middle East to examine the effect of polygamy on children, for example Yemen:

“The Committee... recommends that the State Party undertake an in-depth and comprehensive study on the impact of polygamy with a view to finding out whether polygamy has negative consequences on the upbringing and development of the child and, if so, to develop measures to address those negative impacts.” (Yemen CRC/C/15/Add.267, para. 48)

In one sense, article 18 seems to be about parents’ rather than about children’s rights. However the assertion of parents’ primacy is made in relation to the State, not the child, and the article is about parental responsibilities rather than rights. Responsibility for the child’s ‘development’ suggests a relatively objective measure for assessing parents’ exercise of their responsibilities. Development is an extremely wide concept (see article 6, page 93, article 27, page 395 and article 29, page 440). If a child’s physical, psychological or intellectual development is being impaired by the avoidable actions of the parents, then the parents can be found to be failing in their responsibilities.

“The best interests of the child will be their basic concern”

When article 18 was being drafted, the delegate from the United States of America commented that it was rather strange to set down responsibilities for private individuals, since the Convention could only be binding on ratifying governments (E/CN.4/1989/48, pp. 50 to 52; Detrick, p. 270).

The imperative tense used here does at first sight seem odd. How can the State secure that the child’s best interests “will be” the parents’ basic concern? But the principle does have direct bearing on the actions of States, because they write all legislation on parents’ rights. Most nations of the world have a history of laws and customs that assumes parental “ownership” of children – an assumption that parental rights over children could be exercised for the benefit of the parents alone. These laws and customs are now being rethought in many parts of the world. The Convention requires that current legal principles of parental rights be translated into principles of parental responsibilities – the legal responsibility of parents to act in the best interests of their children. The Committee sometimes comments on traditional or paternalistic views of children that

are held by parents and authorities. An extreme example of parental ownership of children was given by Mozambique:

"The Committee remains concerned that... as noted by the State Party in its initial report, 'parents and other family members frequently do not fulfil their obligation to guide the minors under their responsibility' and that weaknesses in family structures have led to the greater vulnerability of children... Children are sometimes used to settle financial and other disputes, with families sending their children to work for periods of time to settle debts..." (Mozambique CRC/C/15/Add.172, para. 40)

While sometimes the State can reasonably argue that it cannot control parents, on other occasions its laws are directly responsible for parental neglect – for example, in the Sudan:

"The Committee is concerned that... the severe legal penalties applied to women who become pregnant outside of marriage are such that many women and adolescent girls seek to conceal their pregnancies and then abandon their newborn children, and that the survival rate of these children is extremely low." (Sudan CRC/C/15/Add.190, para. 37)

As has been discussed in relation to articles 3 (page 35) and 9 (page 127), "the best interests of the child" are not written on tablets of stone. They will vary from child to child. Parents may have quite different views on what are a particular child's best interests; professionals, too, may not agree with each other about what is best. The child's rights under the Convention are therefore helpful in making the concept less subjective. Any breach of these rights (including failure to respect children's evolving capacities) is likely to be contrary to the child's best interests.

The Committee has addressed rights-based parenting in General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" and General Comment No. 7 on "Implementing child rights in early childhood". On the parenting of young children, the Committee encourages States:

"... to construct a positive agenda for rights in early childhood. A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. For the exercise of their rights, young children have particular

requirements for physical nurturance, emotional care and sensitive guidance, as well as for time and space for social play, exploration and learning...

"... Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent, involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations)..."

"The Committee is concerned that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young, single parents. Early childhood is the period of most extensive (and intensive) parental responsibilities related to all aspects of children's well being covered by the Convention: their survival, health, physical safety and emotional security, standards of living and care, opportunities for play and learning, and freedom of expression. Accordingly, realizing children's rights is in large measure dependent on the well being and resources available to those with responsibility for their care." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 5, 18 and 20. See box on page 242 for summary.)

And on older children:

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

Parent education

The State has a duty to advise and educate parents about their responsibilities. Investment in parent education, on a non-compulsory basis, is increasingly recognized as being cost-effective, for example in terms of lowering children's delinquency rates. The United Nations Guidelines





for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: “Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and childcare, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.” (para. 16)

In a General Discussion on “States’ role in preventing and regulating separation”, the Committee

“... emphasizes the importance to allocate resources for parenting skills rather than resort to separation. The Committee also reminds families and family associations of their very important educative role for other families. It is often easier to address the question of parenting at the peer-to-peer level within communities. The Committee encourages all stakeholders to seek innovative ways and methods to improve parenting skills, including introducing parenting skills training into the school curricula.” (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 646)

The Committee has stressed in its Concluding Observations to many countries the need for parental education measures, for example:

“... Greater efforts should be made to provide family life education and develop awareness of the responsibility of the parents. The Committee encourages non-governmental organizations and children and youth groups to pay attention to the need to change attitudes as part of their advocacy action.” (Philippines CRC/C/15/Add.29, para. 22)

“The Committee urges the State Party ... to take immediate preventive measures to avoid separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in the performance of their child-rearing responsibilities, including through education, counselling and community-based programmes for parents...” (Lebanon CRC/C/LBN/CO/3, para. 44)

The Committee sees support for parent education as an effective tool for tackling serious social ills, such as the social dislocation following economic transition or armed conflict, but has also stressed its importance in countries with highly developed welfare systems. For example, the Committee observed to Sweden:

“While noting that some municipalities offer family counselling free of charge, and that the fee being charged in other municipalities may not seem too high, the Committee

is concerned that a significant number of families find such fees a disincentive to seeking needed help and assistance. The Committee recommends that the State Party review its policies in this regard so as to facilitate access to family counselling services, in particular for the more vulnerable groups.” (Sweden CRC/C/15/Add.101, para. 16)

When examining Sweden’s Third Report, the Committee regretted that this recommendation had been *“insufficiently addressed”* (Sweden CRC/C/15/Add.248, para. 4).

In its General Comment No. 7 on “Implementing child rights in early childhood”, the Committee recommends to States that:

“... (c) Assistance to parents will include provision of parenting education, parent counselling and other quality services for mothers, fathers, siblings, grandparents and others who from time to time may be responsible for promoting the child’s best interests;

(d) Assistance also includes offering support to parents and other family members in ways that encourage positive and sensitive relationships with young children and enhance understanding of children’s rights and best interests.

“The principle that parents (and other primary caregivers) are children’s first educators is well established ... They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding (art. 5). The Committee invites States Parties to make this principle a starting point for planning early education, in two respects:

(a) In providing appropriate assistance to parents in the performance of their child rearing responsibilities (art. 18.2), States Parties should take all appropriate measures to enhance parents’ understanding of their role in their children’s early education, encourage child rearing practices which are child centred, encourage respect for the child’s dignity and provide opportunities for developing understanding, self esteem and self confidence;

(b) In planning for early childhood, States Parties should at all times aim to provide programmes that complement the parents’ role and are developed as far as possible in partnership with parents, including through active cooperation between parents, professionals and others in developing ‘the child’s personality, talents and mental and physical abilities to their fullest potential’ (art. 29.1(a)).” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 20 and 29)

The State shall use its “best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child”

The importance of both parents having common responsibilities for children should be emphasized. Most societies have only recently recognized that fathers, as well as mothers, can and should undertake the day-to-day care of their children, and that mothers, as well as fathers, have financial responsibilities and legal rights in relation to children. The Convention is one of the first treaties to see this as a human right of children, reflecting the provision in the Convention on the Elimination of All Forms of Discrimination against Women (1979), which requires the recognition by States Parties of “... the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases” (article 5).

Countries are encouraged to highlight this principle in their laws and provision of services, as well as their parent education measures:

“The Committee recommends that further measures be undertaken to educate parents about their responsibilities towards their children, including through the provision of family education which should emphasize the equal responsibilities of both parents...” (United Kingdom CRC/C/15/Add.34, para. 30)

The Committee regretted that there had been no progress on this at the Second Report (United Kingdom CRC/C/15/Add.188, para. 4).

“The Committee is concerned at the large number of children who are not acknowledged by their fathers and the inadequate measures taken to force fathers to be responsible for the welfare of their children.

“... the Committee recommends that the State Party promote parent education and family counselling and take measures to ensure adherence to the principle that both parents have common responsibilities for the upbringing of children.” (Paraguay CRC/C/15/Add.75, paras.19 and 39)

Single-parent families

Article 27 calls for appropriate measures to ensure that maintenance is recovered from the responsible parent (in practice, generally from fathers), but “common responsibility” under this article goes beyond financial responsibility. The aim should be that both parents play an active part in their child’s upbringing, including the fathers of children born outside marriage:

“The Committee recommends that continuing attention be given to the risks of early parenthood and single parenthood, to the promotion of higher levels of involvement of fathers in the upbringing and development of the child, and to the need to provide necessary support to children in these cases.” (Barbados CRC/C/15/Add.103, para. 20)

Many countries document large numbers of children living in one-parent families – usually with the mother. The Committee has often expressed concern about this phenomenon, a concern that does not relate to the state of marriage but to the need of children to have both parents actively involved in their upbringing and to the greater likelihood of poverty for children in one-parent families. Its causes are various, including those described in Jamaica:

“... The difficult domestic employment situation and its negative influence on the family situation, e.g. the practice of “child shifting” and situations where one or both parents migrate, leaving the children behind...” (Jamaica CRC/C/15/Add.210, para. 34)

Or Equatorial Guinea:

“The Committee is concerned ... by the fact that less than 50 per cent of children live with both parents due to various factors including urbanization, very-large-scale poverty, the increase of HIV/AIDS, a deterioration of traditional solidarity and a high level of promiscuity.” (Equatorial Guinea CRC/C/15/Add.245, para. 36)

Countries that do not enable fathers of children born outside marriage to assume parental responsibilities risk being in breach of the Convention (bearing in mind that article 9 allows for parents and children to be separated when necessary for the child’s best interests). The Committee made the following proposals to Mongolia:

“The Committee recommends that the State Party take all necessary measures to provide parents and families with the necessary financial and other support to the extent possible, paying attention to single-parent families and families living in particularly difficult circumstances. With regard to the principle that both parents have responsibilities for the upbringing and development of the child, the Committee endorses the recommendation adopted by the Committee on the Elimination of Discrimination against Women in 12001 (A/56/38, paras. 269-270) urging the State Party to develop laws, policies and educational programmes that support and promote the idea of joint parental responsibility.” (Mongolia CRC/C/15/Add.264, para. 32)





The State should undertake legal reform to end any discrimination against children who are born outside marriage:

“The Committee further recommends that the State Party take all necessary measures, including those of a legal nature, to ensure that the rights of children born of ‘visiting’ and common law relationships are protected. It is suggested that the State Party seek technical assistance from, inter alia, UNICEF and WHO.” (Saint Kitts and Nevis CRC/C/15/Add.104, para. 21)

The State can also adopt employment, tax and welfare measures to encourage both parents’ active involvement in child rearing. The Committee suggested to Iceland, when examining its Initial Report, that

“... appropriate measures be taken to counter the inequalities between men and women with regard to remuneration, since it may be detrimental to the child, in particular in homes headed by a single woman.” (Iceland CRC/C/15/Add.50, para. 25)

When Iceland submitted its Second Report the Committee welcomed the fact that it had adopted laws to equalize the rights of mothers and fathers (Iceland CRC/C/15/Add.203, para. 30).

The Committee spells out particular concerns relating to teenage mothers. As well as often resulting in lone parenting, teenage pregnancies can blight the health and social expectations of the young mother, who is, of course, a child too under the Convention (see article 24, page 363). The Committee has expressed concern that:

“... The high incidence of teenage pregnancies and female-headed households make children particularly vulnerable to sexual abuse, domestic violence, neglect and abandonment, sometimes leading to children becoming involved in activities conflicting with the law.” (Jamaica CRC/C/15/Add.32, para. 13)

When parents separate

The inequality of parental responsibility in many countries is often highlighted when parents separate. A number of countries’ Initial and Second Reports revealed legal and social traditions that inflexibly allocate responsibility for child-rearing to either the mother or the father when they separate. Often the formula is that mothers are given initial responsibility for babies, infants and young children but that fathers have subsequent responsibility and dominant powers generally, to determine the shape of the child’s life. Such measures usually represent some progress away from a totally patriarchal system – recognition of the strong bond between mothers and young children which it would be harmful to sever. Nonetheless translating this recognition into an inflexible law

can result in a breach of children’s rights. The Convention on the Elimination of All Forms of Discrimination against Women endorses this point, article 5 of which provides that: “States Parties shall take all appropriate measures... to ensure ... the recognition of the common responsibility of men and women in the upbringing and development of the children, it being understood that the interest of the children is the primordial consideration in all cases.” Article 16 goes on to say: “States Parties... shall ensure, on a basis of equality of men and women... The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.”

Under the terms of article 18, the law must recognize the principle that parents have **common** responsibility. As is recognized in article 18(2), Government measures should be directed at supporting and promoting the viability of joint parenting. If parents separate, or if they have never lived together, it may however be necessary for courts to allocate rights to one or the other parent. As discussed in relation to article 9 (see page 122) in such circumstances the law should not make inflexible presumptions about which parent takes priority. The Committee has frequently raised concerns about such presumptions, for example to Niger and Pakistan:

“The Committee is concerned at the practice of repudiation of women, which can lead to the separation of the child from his/her mother, and at the custom applicable in divorce cases which holds that children are entrusted to their mothers before they are 7 years old and to their fathers when older, without the views of the child and his/her best interests being taken into account.” (Niger CRC/C/15/Add.179, para. 38)

“The Committee is concerned that the State Party’s legislation uses age limits, instead of the best interests of the child, as criteria in determining custody in case of divorce. Such permission, in addition to implying that siblings being separated, discriminates between the sexes and fails to acknowledge the child’s right to express her/his views and have them taken into account.” (Pakistan CRC/C/15/Add.217, para. 44)

Article 23(4) of the International Covenant on Civil and Political Rights provides that States Parties “shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and on its dissolution”. The Human Rights Committee states in a General Comment: “During marriage, the spouses should have equal rights

and responsibilities in the family. This equality extends to all matters arising from their relationship ... Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage ... Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody ... visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interests of the children in this connection.” (Human Rights Committee, General Comment No. 19, 1990, HRI/GEN/1/Rev.8, paras. 8 and 9, p. 189)

Germany entered a declaration in relation to article 18(1), which states that this provision does not apply when parents are unmarried or separating “... automatically and without taking into account the best interests of the respective child ... Such an interpretation would be incompatible with article 3(1) of the Convention” (CRC/C/2/Rev.8, p. 22). This is undoubtedly the case, as is made clear by article 9 (see page 122). It should, however, be noted how article 9(3) is phrased: “... the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” This, together with article 7 (child’s right to know and be cared for by parents) and article 18, implies that the law should presume that, unless it is proved to the contrary, the continued involvement of both parents in the child’s life is in his or her best interests. Germany has told the Committee that it believes the declaration is unnecessary, and has amended its legislation to provide for shared parental custody when parents are separated or not married. (Germany CRC/C/15/Add.226, paras. 7 and 34)

When the child goes into state care

The Committee has also made clear that, even though the child’s care may have to be taken over by the State, this does not mean that parents should automatically lose their legal rights and responsibilities, as for example in Luxembourg:

“The Committee is concerned about the fact that parents automatically lose parental authority over their children when they are placed in foster care or in institutions by the courts, apparently without determining whether such an automatic measure is in the best interests of the child.

“The Committee recommends that the State Party take all possible measures, including revision of the existing legislation, in order to adequately protect parental rights and parent-child relationship and that the transfer of parental authority be used only in exceptional

circumstances and in the best interests of the child.” (Luxembourg CRC/C/15/Add.250, paras. 34 and 35)

(See article 9, page 121 and article 20, page 277.)

“For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities...”

Paragraph 2 of article 18 emphasizes the State’s responsibility to provide appropriate assistance to parents. It reflects the provisions of article 3(2): “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;” and of article 27(3), as regards the child’s right to an adequate standard of living: “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right.” (See pages 35 and 397.)

State assistance is obviously appropriate when parents are unable to undertake their child-rearing responsibilities, regardless of whether or not this is their fault. The State should assist families identified as at risk of breaking down with practical measures, such as financial benefits, housing, day care, home helps, equipment and so forth, as well as psychological and professional support. The Committee’s Concluding Observations to the Ukraine provide an example:

“The Committee notes with deep concern that, as noted in the State Party’s report, family disintegration, including high rates of divorce, growing numbers of single-parent families and cases of parental neglect, is a growing phenomenon. The Committee is further concerned at the growing percentage of families living below the poverty line, and regrets that its previous recommendation that the State Party take further steps to strengthen the system of assistance to both parents in the performance of their child-rearing responsibilities has not been followed-up. Moreover, financial assistance to families has decreased.

“In the light of article 18, the Committee recommends that the State Party:

- a) Strengthen its efforts to protect children’s right to a secure family environment and*





ensure, through a comprehensive new Children's Act, effective protection of children and access by all children and parents in need to financial assistance in this regard;
(b) Take action on the recently drafted social assistance bill designed to restructure the system of social security benefits;
(c) Improve social assistance and support to families through advice and education so as to promote positive child-parent relationships;
(d) Provide adequate training to social workers;
(e) Strengthen preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction;
(f) Consider increasing financial support for families with children living in poverty..."
(Ukraine CRC/C/15/Add.191, paras. 40 and 41)

But beyond targeting support to families "in need", the article enjoins States to recognize their responsibility to assist all parents. Universal services and non-means-tested financial benefits are a recognition by the State of its responsibility towards, and interest in, children; such services and benefits are an investment in the country's future. In addition, universal provision is often the most effective form of prevention, in that families at risk will automatically receive it, whereas targeted provision may not be taken up by those who most need it because of ignorance, a perceived stigma or complications in making a claim.

"For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall ... ensure the development of institutions, facilities and services for the care of children"

Relatively few services fall solely within the scope of this right, since article 20 addresses the responsibility of the State to provide for children who cannot live with their families, including provision of suitable institutions, paragraph (3) of article 18 addresses States' duty to secure child services where parents are working (such as day care for infants and after school facilities for older children), and articles 24, 28 and 23 cover health and education services and services for children with disabilities.

The sorts of services additionally envisaged in article 18(2) include, presumably, community-based initiatives such as centres for mothers with babies and young children, play groups, toy

libraries or youth clubs. Additionally, these may contribute to parent education, often on a non-authoritarian basis, and can therefore be of double value to children. Multidisciplinary services such as child guidance or school-based medical staff and advice centres also make an important contribution towards children's care.

Governments often invest in expensive public institutions at the expense of small, locally developed services, although the latter can often be both more economical and more effective in meeting the needs of parents and children. States should be prepared to trust the users of services with capital to develop what they need. It should also be noted that the duty on States under this article is to "ensure the **development** of institutions, facilities and services" which means that the State can never be complacent or inflexible about its delivery of services to children. Constant evaluation of the service's effectiveness is required.

As well as services for young children and particularly day care for working parents (see below), the Committee's General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" urges States not to neglect the needs of the parents of older children:

"The Committee calls upon States Parties to develop and implement, in a manner consistent with adolescents' evolving capacities, legislation, policies and programmes to promote the health and development of adolescents by
(a) providing parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of material assistance and support with regard to nutrition, clothing and housing (art. 27(3));
(b) providing adequate information and parental support to facilitate the development of a relationship of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found that respect the adolescent's rights (art. 27(3));
(c) providing adolescent mothers and fathers with support and guidance for both their own and their children's well-being (arts. 24(f), 27(2-3));
(d) giving, while respecting the values and norms of ethnic and other minorities, special attention, guidance and support to adolescents and parents (or legal guardians), whose traditions and norms may differ from those in the society where they live; and

State assistance for working parents: United Nations International Conference on Population and Development (Cairo, 1994)

“... The process of rapid demographic and socio-economic change throughout the world has influenced patterns of family formation and family life, generating considerable change in family composition and structure. Traditional notions of gender-based division of parental and domestic functions and participation in the paid labour force do not reflect current realities and aspirations, as more and more women in all parts of the world take up paid employment outside the home. At the same time, widespread migration, forced shifts in population caused by violent conflicts and wars, urbanization, poverty, natural disasters and other causes of displacement have placed greater strains on the family, since assistance from extended family support networks is often no longer available. Parents are often more dependent on assistance from third Parties than they used to be in order to reconcile work and family responsibilities. This is particularly the case when policies and programmes that affect the family ignore the existing diversity of family forms, or are insufficiently sensitive to the needs and rights of women and children...”

“Governments, in cooperation with employers, should provide and promote means to facilitate compatibility between labour force participation and parental responsibilities, especially for single-parent households with young children. Such means could include health insurance and social security, day-care centres and facilities for breastfeeding mothers within the work premises, kindergartens, part-time jobs, paid parental leave, paid maternity leave, flexible work schedules and reproductive and child health services.” (A/CONF.171/13, p. 32)



(e) ensuring that interventions in the family to protect the adolescent and, when necessary, separate her/him from the family, e.g. in case of abuse or neglect, are in accordance with applicable laws and procedures. Such laws and procedures should be reviewed to ensure that they conform to the principles of the Convention.” (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 16)

“The State shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”

Day-care services for working parents

The importance of meeting the needs of children of working parents cannot be overestimated. The provisions of article 3(3) (securing the quality of standards of all facilities for children) were originally drafted specifically in reference to child-care services. This reflects widespread concern about childcare for very young children whose developmental needs are for security, consistent individual relationships and one-to-one stimulation. High-quality day-care places are seen as the responsibility of the State:

The Committee has spelled out States’ responsibilities in its General Comment No. 7 on “Implementing child rights in early childhood”:

“The Committee recommends that States Parties support early childhood development programmes, including home and community based pre-school programmes, in which the empowerment and education of parents (and other caregivers) are main features. States Parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school. They are encouraged to construct high quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather by imposing a standardized approach to early childhood care and education.” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 31)

The needs of older children of working parents are also a matter of concern:

“The Committee expresses its concern at the many children in urban areas who are left unattended at home while their parents are at work or pursue leisure activities and notes that, owing to recent and rapid urbanization,



assistance from extended family support networks is not always available...

"The Committee ... urges the State Party to consider developing comprehensive measures to encourage responsible parenthood and to assist needy families with their child-rearing responsibilities, for instance by offering social assistance to families or by securing child-care services and facilities for working parents."
(Marshall Islands CRC/C/15/Add.139, paras. 38 and 39)

Anxieties about placing young infants in day care must be set against the realities of modern life – the economic demands on families that often require one or both parents to work, the new opportunities for women to work outside the narrow domestic sphere and the break-up of extended families (removing a traditional source of childcare – the grandparent). In this context, high-quality, low-cost or free day care and after-school care are essential to protect the needs of children, as, for example, the Committee pointed out to Nigeria:

"Given the large number of working mothers who require childcare in the State Party, the Committee is concerned with the quality of childcare provided in private and public day-care facilities. The Committee also notes with concern that there are no measures in place to support single parents. The Committee is also concerned by the lack of resources in these facilities to enable full physical, mental and intellectual development of children.

"The Committee recommends that the State Party adopt a programme to strengthen and increase capacities of child-care facilities in the State Party, inter alia, through the strengthening of existing structures including child-care centres and extended families. The Committee recommends that the appropriate training be given to all professionals working with children in child-care facilities and that sufficient resources are allocated to public child-care facilities. The Committee further urges the State Party to establish standards and procedures, guaranteed in legislation, for alternative care, including in the areas of health, education and safety and in accordance with the principles and provision of the Convention. The Committee recommends that the State Party seek assistance from UNICEF in this regard." (Nigeria CRC/C/15/Add.257, paras. 40 and 41)

Although the needs of pre-school children may not be strictly educational, this recommendation underlines the importance of pre-school facilities that are more than just containment – the development of infants must be actively encouraged by pre-school staff. The World Summit for Children Plan of Action goals include: "Expansion

of early childhood development activities, including appropriate low-cost family- and community-based interventions" (World Summit for Children, Declaration and Plan of Action, Appendix, II, E(i)). In its General Comment No. 7 on "Implementing child rights in early childhood", the Committee indicates that day care for older infants and pre-school children is an integral part of their education:

"Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long term social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between 'care' and 'education' services have not always been in children's best interests, the concept of 'Educare' is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 30)

At the heart of all childcare must be the rights and best interests of children and, by extension, the rights and interests of their parents. The Committee took the Democratic People's Republic of Korea to task for its utilitarian approach to day care:

"The Committee notes with appreciation the commitment of the State Party to early childcare... However, it is concerned at the excessive degree of State involvement in childcare to the detriment of the parental involvement, hindering psychosocial and cognitive development of children. Of particular concern [is] the widespread practice of leaving children in nurseries from Mondays to Saturdays... Furthermore, the Committee expresses concern over the lack of human and financial resources available for nurseries, which affects the quality of care..."

"The Committee notes the State Party's commitment to early childhood development and the high enrolment rates in nurseries and kindergartens. However, it is concerned that the economic hardships facing the country have negatively affected the quality of services provided by childcare facilities, and that there is no comprehensive strategy to address this problem."

"In the light of article 18, paragraph 1 of the Convention, the Committee recommends that the State Party place greater emphasis on its policies on the primary responsibilities of parents, and to encourage and provide

parents with the necessary support to enable their greater involvement in the nursing and upbringing of their children, reducing the role of the State to a subsidiary and not a primary one.

“The Committee recommends the State Party to promote day-care nurseries and kindergartens and to discourage the use of the 24-hour nursery and kindergarten system (often 5 days a week) to be used by parents only as a last resort. The Committee recommends the State Party to develop a strategy to increase the financial and human resources available for childcare facilities and ensure a basic minimum standards of services for all institutions, in particular with regard to nutrition, heating, water, sanitation and hygiene.” (Democratic People’s Republic of Korea CRC/C/15/Add.239, paras. 38, 40, 39 and 41)

Employment benefits

Generous maternity and paternity leave and pay and “family-sensitive” working conditions clearly meet the needs of both children and working parents. The International Labour Organization (ILO) has a long-standing commitment to these principles, providing policy support. ILO Recommendation supplementing the Maternity Protection Convention, 2000 (No. 191) expressly supports the principles of article 18. It encourages States to provide parental leave, available to either parent, during a period following the expiry of maternity leave. It recommends that adoptive mothers and fathers have rights to the working benefits to which birth parents are eligible, and that employed fathers are granted leave to care for children in the event of their mothers’ sickness or death before the expiration of maternity leave.

The Committee has expressed concern about inadequate leave and benefits to parents, or cut-backs on existing provision, as for example in Kazakhstan:

“The Committee ... is concerned that limiting the duration of maternity leave, abolishing family leave, as well as abolishing or failing

to pay many benefits to women with small children put extra strain on families.

“In the light of article 18, the Committee recommends that the State Party... promote the family as the best environment for the child and provide counselling and community-based programmes to assist parents to keep children at home... and increase financial support and other benefits for families with children, in particular for those living in poverty.” (Kazakhstan CRC/C/15/Add.213, paras. 40 and 41)

It is also vigilant about specific groups of parents who are discriminated against in this respect – for example Roma parents in Greece or migrant parents in Sri Lanka:

“The Committee is concerned... that the system of financial “allowances” provided by the State to assist in the care of children under certain circumstances, such as low family income ... that the amount of such financial allowances is extremely low and, in addition, that many Roma families do not receive these allowances at all.

“In the light of article 18, the Committee recommends that the State Party... strengthen its efforts to protect children’s right to a family environment, including by reducing the number of persons living in poverty and ensuring access for all children and parents in need to financial assistance, giving particular attention in this regard to children and parents from Roma communities...” (Greece CRC/C/15/Add.170, paras. 48 and 49)

“The Committee notes the new programme for children of migrant workers undertaken by the Bureau of Foreign Employment, yet it is concerned that families of migrant workers receive little or no assistance with their child-rearing responsibilities while they are working abroad.

“The Committee recommends that the State Party develop a comprehensive policy to support the families and caregivers of children of migrant workers in their child-rearing responsibilities...” (Sri Lanka CRC/C/15/Add.207, paras. 30 and 31)



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



Implementing child rights in early childhood

Committee on the Rights of the Child, General Comment No. 7, 2005: summary

This General Comment arises out of the Committee's concern that very little information is supplied by reporting States about early childhood. It aims to strengthen States' understanding of the human rights of young children and to promote States' realization of these rights through policies, laws, programmes, practices, training and research.

The Committee proposes as a working definition of 'early childhood' as the period from birth to the age of eight years (in order to include the child's transition to school).

During this period, children:

- experience their most rapid physical and intellectual growth;
- lay the foundations for their physical and mental health, cultural and personal identity and developing competencies;
- form strong emotional attachments to their parents or carers, from whom they require nurturance, protection and guidance;
- establish relationships with other children, from which they learn social behaviour.

Growth and development will vary according to children's individual nature, as well as their gender, living conditions, care arrangements and education systems, and will be powerfully shaped by cultural beliefs and their role in family and community. A growing body of research confirms the importance of the child's relationships with others, but also reveals significant variations between cultures in their expectations of early childhood. States are encouraged to respect traditional values, provided these uphold children's rights. Implementing these rights in early childhood is an effective way to prevent difficulties during later life.

The general principles

Right to life, survival and development (article 6). States are urged to take all possible measures to improve perinatal care, reduce child mortality and combat malnutrition and preventable diseases. Health and well-being are interdependent: both may be risked by poverty, neglect, abuse and lack of opportunity. The right to survival and development can only be implemented in a holistic manner, through enforcement of the Convention as a whole.

Right to non-discrimination (article 2). Young children are especially at risk of discrimination which may take the form of reduced nutrition, inadequate care, restricted opportunities for play, learning or expressing feelings, harsh or exploitative treatment or unreasonable expectations.

For example, girls may be victims of selective abortion or infanticide, genital mutilation or physical neglect; they may have to undertake excessive responsibilities or be deprived of opportunities to learn. Children with disabilities may be treated less well than other children, although they often require additional assistance in order to realize their rights. Children with or affected by HIV/AIDS may also suffer discrimination from public policies as well as everyday practices. Children are also subject to discrimination because of their parents' ethnic origin, class/caste or beliefs, or because they have been born out of wedlock or because their parents are refugees. States have responsibility for combating discrimination in every form, especially regarding the delivery of health, education and welfare services. They should systematically monitor the availability of these services to all young children and where necessary guarantee equality of access.

Best interests of the child (article 3). Because of their relative immaturity young children are often reliant on parents and the authorities to uphold their best interests. Where legal decisions relating to individual children are concerned, States are urged to arrange for independent representation of the child's best interests. In addition all laws, policies, administration and service provision that directly or indirectly impact on young children must take account of their best interests.

Respect for the views and feelings of young children (article 12). Respect for the young child's agency as a participant in family, community and society is frequently overlooked or rejected. In many places, traditional beliefs emphasize young children's need for socialization, regarding them as lacking even basic capacities for understanding, communicating or making choices and leaving them powerless, voiceless and invisible. The Committee emphasizes that article 12 applies to very young children, who are able to communicate their wishes in many ways before they can write, or even speak. The Committee urges States to take all measures to secure children's right to express views and be consulted from the earliest age. This right should be anchored in daily home life and in the child's community. The adults concerned must adopt a child-centred attitude, listening to and respecting the dignity of young children, and to show patience and creativity in finding ways to communicate appropriate to levels of understanding.

Parents and the State

The family – the variety of arrangements, including the nuclear family and the extended family, made for the nurture of young children – is fundamental to their welfare. Babies and young children form strong mutual attachments with their parents (or primary caregiver) and through these relationships they construct their identity, acquire culturally valued behaviour and realize their rights. Respecting young children's evolving capacities is crucial and is especially important over this period of rapid change. Younger children's greater need for guidance should not be an excuse for authoritarian practices that restrict autonomy and self-expression.

The State should respect the primacy of parents in promoting the child's well-being and support them by reducing circumstances which prevent them from fulfilling their responsibilities. Parenting may impact negatively if parents are under material or psychological stress, are neglectful, abusive or inconsistent, or there is conflict between parents. Development is also threatened if the child is separated from parents, and by low-quality institutional care. Though family structures and sizes will vary, all young children are best provided for within a small number of consistent, caring relationships. Family breakdown, economic pressures forcing parents to work far away, and illness or death will impair these relationships. Parents, particularly young parents, should be supported in their challenging task. Examples of state support include appropriate taxation and benefits, adequate housing, reasonable working hours, perinatal health services, parenting education and provision of health visitors.

State services

Too often early childhood has low priority in government, with services unplanned and uncoordinated, the responsibility of several departments or largely provided by private or voluntary sectors. States are urged to develop rights-based, coordinated, multisectoral strategies which recognize the changing developmental priorities for specific age groups. Staff should be trained in appropriate child-centred practice, socially valued and properly paid. States should ensure that all children, particularly those who are most at risk of discrimination, have access to these services. A first step to securing access is universal birth registration, which may need flexible arrangements (such as mobile registration units or late registration). Another essential strategy is poverty-reduction since growing up in absolute or even relative poverty can have serious consequences for well-being and development.

States should ensure all children have access to the highest attainable standard of **health care**, in particular by ensure access to clean drinking water, adequate sanitation, immunization, good nutrition (including obesity reduction) and medical services. Parents should be educated about the advantages of breastfeeding, nutrition and hygiene. All necessary steps should be taken to prevent HIV/AIDS infection between parents and young children and to provide accurate diagnoses, effective treatment and support for affected parents and children, as well as alternative care for orphaned children.

The Committee notes with appreciation that some States make one year of **pre-school education** freely available to all children. This education should be geared to the aims of education (article 29), child centred and respectful of the dignity of the child. Parents are, of course, their child's





first educators and States should enhance their understanding of this important role. Education programmes should aim to work in partnership with parents. And while pre-school education has been shown to be beneficial for successful transition to school, it should be education in its broadest sense and better integrated with childcare provisions that are used by many working parents.

The Committee recommends support for early childhood **community-based programmes** in which the empowerment of parents is a main feature. States are encouraged to work with local communities in creating high-quality and culturally relevant programmes which build children's confidence and enthusiasm for learning.

The Committee recommends that States support the early years' activities of both the "for profit" and "non-profit" parts of the **non-governmental sector** and ensure that this provision respects the principles of the Convention. The State has primary responsibility and the role of civil society should be complementary to, not a substitute for, the role of the State.

The Committee recommends that States include **human rights education** in early childhood education and care, adapted to the interests and evolving capacities of this age group.

Insufficient attention has been given to the implementation of article 31, guaranteeing the right of children to **rest, leisure and play**. Through play, children enjoy and extend their capacities, yet there is often a shortage of opportunities, particularly in urban environments, for young children to meet and interact in child-centred, secure, supportive, stimulating and stress-free environments. Design of housing, industry and transport, noise, pollution and safety hazards are often obstacles; children's right to play can also be frustrated by their excessive domestic chores or by competitive schooling. States are encouraged to pay greater attention and allocate adequate resources to this right.

Early childhood is a specialist market for publishers and **media** producers, who should be encouraged to disseminate appropriate and beneficial material reflecting national diversities, with particular regard for minority groups. Article 17 calls for States to protect children from harmful material: modern technologies are a new cause for concern in this respect. States are urged to regulate media production and delivery in ways that protect young children.

Young children in need of special protection

The Committee notes that large numbers of young children grow up in circumstances that violate their rights. Young children are less able to recognize or resist harm, particularly when their parents are unable to offer adequate protection. And yet young children, because of their rapid development, are more vulnerable to the effects of such harm. The Committee draws States' attention to some major difficulties that have clear implications for rights in early childhood:

- Young children are frequent victims of abuse and neglect, often within their own families. This can have negative impact on development including measurable effects on brain maturation in young children. States should take all necessary preventive measures and offer non-stigmatizing help to the victims of abuse.
- Children's development can also be jeopardized when they are orphaned, abandoned or otherwise deprived of family care. Research shows that low-quality institutional care can have serious negative consequences for young children, particularly those under three years. Early placement in family-based or family-like care is best and States are encouraged to invest in care that secures opportunities for young children to form long-term attachments, for example through fostering or supported placements within the extended family. Where adoption is envisaged, the best interests of the child must be the "paramount" (not just "primary") consideration.
- Young children who are refugees are most likely to be disorientated, having lost much that is familiar. The Committee offers detailed guidance in General Comment No. 6 on this issue.

- Early childhood is the period during which disabilities are identified. Young children should never be institutionalized on the grounds of disability and States should, as a priority, ensure that these children participate fully in education and community life, by giving them (and their parents) appropriate specialist assistance. Children with disabilities should at all times be treated with dignity and in ways that encourage their self-reliance.
- In some countries, children are socialized to work from an early age, including potentially hazardous or exploitative work, often as part of a family enterprise. Even young babies may be vulnerable, as when they are used for begging. Exploitation of young children in the entertainment industry is also a cause for concern. States have particular responsibilities in relation to the “worst forms of child labour” under ILO Convention (No.182)
- While very young children are unlikely to be substance abusers, they may require specialist care if born to addicted mothers or need protection where family members are abusers.
- Young children, especially girls (for example those employed as domestic workers) are vulnerable to early sexual abuse, and may also be victims of producers of pornography.
- The Committee has frequently expressed concern about the sale and trafficking of abandoned and separated children, for purposes including adoption, child prostitution and child labour. States are urged to ratify the Optional Protocol on the sale of children, child prostitution and child pornography and the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.
- Under no circumstances should young children be included in legal definitions of criminal responsibility. Those who violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution.

In all of these circumstances States should support measures for the physical, psychological and social recovery of child victims.

Capacity-building

States are urged to adopt comprehensive, strategic and time-bound plans for early childhood. This requires an increase in human and financial **resources**. The Committee acknowledges the difficulties that some States have in this regard, but it is nonetheless important there is sufficient investment in early childhood for the reasons already stated. States are encouraged to develop partnerships with public services, NGOs, the private sector and families. Where services are decentralized, this should not be to the disadvantage of young children.

The Committee is aware that States lack adequate national **data collection** systems and urges them to develop indicators disaggregated by gender, age, family structure, and urban and rural residence.

The Committee also encourages more **research** into early childhood as evidence has much to offer in the development of policies and practices. It notes that available research is limited to certain regions and contexts, and does not sufficiently address children’s rights, particularly their participatory rights.

States Parties are encouraged to provide systematic child rights **training** for children, their parents and all professionals and administrators working with them or for them. States are also urged to conduct awareness-raising campaigns for the public.

The Committee recommends that donor institutions, including the World Bank and other United Nations bodies, support early childhood development programmes and make them a main target for **international assistance**.

(Committee on the Rights of the Child, General Comment No. 7, “Implementing child rights in early childhood”, 2005, CRC/C/GC/7/Rev.1. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 18, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 18 is relevant to **the departments of tax and finance, social security, social welfare, employment and education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 18 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 18 likely to include the training of **social workers, child guidance staff, community workers, social security officers and those engaged in parent education**)?

• Specific issues in implementing article 18

- Does legislation support parents' primacy of responsibility for children's upbringing and development?
- Is parental responsibility defined in legislation?
- Does legislation make clear that the exercise of parental responsibility has the best interests of the child as its basic concern?
- Are parents provided with education programmes on the exercise of their responsibilities?
- Are laws, administrative systems, tax and welfare measures and public education aimed at supporting both parents' common responsibilities for, and active participation in, their child's upbringing?
- Does the law enable fathers of children born outside marriage to assume parental rights and responsibilities (compatible with the child's best interests)?
- Is there a presumption in law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents?



How to use the checklist, see page XIX

- When parents separate, does legislation ensure that the grounds for allocating parental responsibility are based on the individual child's best interests?
- Are all parents provided with the following assistance where necessary:
- financial support?
 - housing?
 - appropriate child-care equipment?
 - day care and respite care?
 - advice and counselling?
- Is good quality day care available for all working parents?
 - Are parents of children with disabilities provided with appropriate additional forms of assistance?
 - Are parents with disabilities provided with appropriate additional forms of assistance?
 - Are mothers entitled to maternity leave?
 - Are fathers entitled to paternity leave?
 - Are fathers entitled to leave if the mother is sick or dies before the expiration of her maternity leave?
 - Are adoptive parents entitled to parental leave at the outset of the adoption?
 - Are parents entitled to take leave if their child is sick?
 - Does the State pay for parental leave where necessary?
 - Does the State encourage employment conditions which assist working parents in the exercise of their parental responsibilities?

Reminder: The Convention is indivisible and its articles interdependent.
Article 18 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 18 include:

Article 5: parental responsibilities and child's evolving capacities

Article 7: child's right to know and be cared for by parents

Article 9: non-separation from parents except in child's best interests

Article 10: family reunification

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

Article 27: duty of parents and State to secure an adequate standard of living for the child



Child's right to protection from all forms of violence

article

19

Text of Article 19

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

Article 19 goes beyond children's rights to protection from what is arbitrarily defined as "abuse" in different societies, and beyond their right to protection, guaranteed under article 37, from torture and cruel, inhuman or degrading treatment or punishment; article 19 requires children's protection from "all forms of physical or mental violence" while in the care of parents or others. Thus, article 19 asserts children's equal human right to full respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6 (see page 83).

Article 19 requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protective

measures, acknowledging that social and educational measures, and in particular the provision of appropriate support to children and families, are relevant to the protection of the child from violence, abuse and exploitation. The Committee has consistently interpreted the Convention as requiring prohibition and other measures to end all corporal punishment and other cruel or degrading punishment or treatment of children, and it confirmed this in a detailed General Comment issued in 2006 (CRC/C/GC/8).

Growing awareness exists in all countries of the extent of violence against children in their homes, in institutions and in the community. Only in the last few decades has the prevalence of deliberate violence to children by parents and other caregivers been widely acknowledged. More recently "discovered" is the widespread sexual abuse of children in the family and in institutions, and also

Summary

organized sexual abuse, including “sex tourism” and other forms of sexual exploitation (the obligation to protect children from sexual exploitation is further expanded in article 34 (see page 513) and in the Optional Protocol on the sale of children, child prostitution and child pornography (see page 669). Along with growing knowledge of the prevalence of violence to children has come growing awareness, through research, of its dangers and of the links between childhood experience of violence and violent and other anti-social behaviour in childhood and later life.

The Committee decided to devote two Days of General Discussion to violence against children, in September 2000 on “State violence against children” and in September 2001 on “Violence against children, within the family and in schools”. One key recommendation proposed that the Secretary-General of the United Nations should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The proposal was adopted by the General Assembly in November 2001, and the study was completed and a report presented to the General Assembly in October 2006. ■

A global movement to end violence against children

Under the Convention on the Rights of the Child, the State is responsible for the prevention of all forms of violence against children, whether perpetrated by State officials or by parents, other carers, teachers or other children. From its earliest days the Committee has devoted considerable attention to challenging violence against children. Following its 2000 and 2001 Days of General Discussion on the issue, it adopted very detailed recommendations (see box, page 270; also www.ohchr.org/english/bodies/crc/discussion.htm). The Committee has highlighted throughout that all forms of violence against children, however light, must be prohibited, with prohibition supported by awareness-raising, sensitization and training. In recommendations adopted following its 2001 Day of General Discussion on “Violence against children within the family and in schools”, the Committee emphasizes that this is a human rights obligation, and calls for non-violent relationships based on the human rights of all within the family and schools:

“The Committee recommends that an alternative vision of a school and a family where the rights and dignity of all are respected including children, parents and teachers should guide all actions on the issue of violence against children. The main strategy

should be to galvanise actions around this vision rather than using punitive measures. In this vision relations between and among children and parents or teachers (as well as other family members or students) are mutually respectful and the safety and security of all is promoted.

“The Committee considers that violence against children is unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child...” (Committee on the Rights of the Child, Report on the twenty-eighth session, September 2001, CRC/C/111, paras. 2 and 3)

And the Committee goes on to emphasize the critical importance of direct involvement of children themselves:

“In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children.” (CRC/C/111, para. 4)

The Committee recognizes that

“... different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school contexts reinforce one another. Action against violence therefore must take a holistic approach and emphasise non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another.” (CRC/C/111, para. 6)

After each of its Days of General Discussion, the Committee recommended that the Secretary-General should be requested, through the General Assembly, to conduct an in-depth international study into violence against children. The General Assembly accepted the proposal in 2001 (in its resolution 56/138) and, in 2003, Professor Paulo Sérgio Pinheiro was appointed by the Secretary-General to lead the study on violence against children. His report, submitted to the General Assembly in 2006, and the accompanying more comprehensive book, *World Report on Violence against Children*, echo the Committee’s “zero-tolerance” approach. The Study process included nine substantial regional consultations, held during 2005, expert seminars, a detailed questionnaire sent to States by Professor Pinheiro and responded to by over 130 governments (for responses, see www.ohchr.org/english/bodies/crc/study.htm) and many submissions from organizations and individuals, including children.



Report of the independent expert for the United Nations study on violence against children – principles and recommendations

The overarching recommendations of the independent expert, Professor Paulo Sérgio Pinheiro, are prefaced by this set of principles:

- (a) “No violence against children is justifiable. Children should never receive less protection than adults;
- (b) All violence against children is preventable. States must invest in evidence-based policies and programmes to address factors that give rise to violence against children;
- (c) States have the primary responsibility to uphold children’s rights to protection and access to services, and to support families’ capacity to provide children with care in a safe environment;
- (d) States have the obligation to ensure accountability in every case of violence;
- (e) The vulnerability of children to violence is linked to their age and evolving capacity. Some children, because of gender, race, ethnic origin, disability or social status, are particularly vulnerable;
- (f) Children have the right to express their views, and to have these views taken into account in the implementation of policies and programmes.”

The report includes a set of overarching recommendations, summarized below, and also more detailed settings-related recommendations:

Overarching recommendations

“1. Strengthen national and local commitment and action

- I recommend that all States develop a multifaceted and systematic framework to respond to violence against children which is integrated into national planning processes. A national strategy, policy or plan of action on violence against children with realistic and time-bound targets, coordinated by an agency with the capacity to involve multiple sectors in a broad-based implementation strategy, should be formulated...

2. Prohibit all violence against children

- I urge States to prohibit all forms of violence against children, in all settings, including all corporal punishment, harmful traditional practices, such as early and forced marriages, female genital mutilation and so-called honour crimes, sexual violence and torture and other cruel, inhuman or degrading treatment or punishment.
- I urge States to ensure that no person below 18 years of age is subjected to the death penalty or a sentence of life imprisonment without possibility of release...

3. Prioritize prevention

- I recommend that States prioritize preventing violence against children by addressing its underlying causes. Just as resources devoted to intervening after violence has occurred are essential, States should allocate adequate resources to address risk factors and prevent violence before it occurs.

4. Promote non-violent values and awareness-raising

- I recommend that States and civil society should strive to transform attitudes that condone or normalize violence against children, including stereotypical gender roles and discrimination, acceptance of corporal punishment, and harmful traditional practices. States should ensure that children’s rights are disseminated and understood, including by children. Public information campaigns should be used to sensitize the public about the harmful effects that violence has on children...





5. Enhance the capacity of all who work with and for children

- I recommend that the capacity of all those who work with and for children to contribute to eliminate all violence against them must be developed. Initial and in-service training which imparts knowledge and respect for children's rights should be provided. States should invest in systematic education and training programmes both for professionals and non-professionals who work with or for children and families to prevent, detect and respond to violence against children...

6. Provide recovery and social reintegration services

- I recommend that States should provide accessible, child-sensitive and universal health and social services, including pre-hospital and emergency care, legal assistance to children and, where appropriate, their families when violence is detected or disclosed. Health, criminal justice and social service systems should be designed to meet the special needs of children.

7. Ensure participation of children

- I recommend that States actively engage with children and respect their views in all aspects of prevention, response and monitoring of violence against them, taking into account article 12 of the Convention on the Rights of the Child. Children's organizations and child-led initiatives to address violence, guided by the best interests of the child, should be supported and encouraged.

8. Create accessible and child-friendly reporting systems and services

- I recommend that States should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children. All children, including those in care and justice institutions, should be aware of the existence of mechanisms of complaint. Mechanisms such as telephone helplines, through which children can report abuse, speak to a trained counsellor in confidence and ask for support and advice, should be established and the creation of other ways of reporting violence through new technologies should be considered.

9. Ensure accountability and end impunity

- I recommend that States should build community confidence in the justice system by, *inter alia*, bringing all perpetrators of violence against children to justice and ensure that they are held accountable through appropriate criminal, civil, administrative and professional proceedings and sanctions. Persons convicted of violent offences and sexual abuse of children should be prevented from working with children.

10. Address the gender dimension of violence against children

- I recommend that States should ensure that anti-violence policies and programmes are designed and implemented from a gender perspective, taking into account the different risks facing girls and boys in respect of violence...

11. Develop and implement systematic national data collection and research

- I recommend that States improve data collection and information systems in order to identify vulnerable subgroups, inform policy and programming at all levels, and track progress towards the goal of preventing violence against children... Where not currently in place, birth, death and marriage data registries with full national coverage should be created and maintained. States should also create and maintain data on children without parental care and children in the criminal justice system. Data should be disaggregated... States should also develop a national research agenda on violence against children across settings where violence occurs, including through interview studies with children and parents...

12. Strengthen international commitment

- I recommend that all States should ratify and implement the Convention on the Rights of the Child and its two Optional Protocols on the involvement of children in armed conflict and on

the sale of children, child prostitution and child pornography. All reservations that are incompatible with the object and purpose of the Convention and the Optional Protocols should be withdrawn... States should ratify all relevant international and regional human rights instruments that provide protection for children... States should implement all their international legal obligations and strengthen their cooperation with the treaty bodies.

- I recommend that States act in conformity with their commitments on the prevention of violence made at the special session of the General Assembly on children and in the context of the WHO Health Assembly resolution 76 on implementing the recommendations of the *World Report on Violence and Health* and other regional public health resolutions that reinforce this resolution.”

(Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, paras. 93 and 96 to 109)



The report’s key message is: “No violence against children is justifiable; all violence against children is preventable.” Its introduction continues: “Yet the in-depth study on violence against children confirms that such violence exists in every country of the world, cutting across culture, class, education, income and ethnic origin. In every region, in contradiction to human rights obligations and children’s developmental needs, violence against children is socially approved, and is frequently legal and state-authorized.

“The Study should mark a turning point – an end to adult justification of violence against children, whether accepted as ‘tradition’ or disguised as ‘discipline’. There can be no compromise in challenging violence against children. Children’s uniqueness – their potential and vulnerability, their dependence on adults – makes it imperative that they have more, not less, protection from violence.

“Every society, no matter its cultural, economic or social background, can and must stop violence against children... Protection of children from violence is a matter of urgency. Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known, children must be provided with the effective prevention and protection to which they have an unqualified right.” (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 1 to 3 and 6. For full report see www.violencestudy.org/IMG/pdf/English.pdf; for *World Report on Violence against Children*, see www.violencestudy.org.)

The report includes a set of overarching principles and recommendations (see box opposite), as well

as more detailed settings-specific recommendations; sections of the report and of the *World Report on Violence against Children* review violence in the different settings of children’s lives: the home and family, schools, care and justice systems, the workplace and the community. The report also sets certain timebound targets, including that States should prohibit all violence against children by 2009.

Since September 2006, the Committee has consistently followed up the United Nations Secretary-General’s Study and its recommendations when it examines States’ reports. For example:

“In the context of the Secretary-General’s in-depth study on the question of violence against children and the related questionnaire to Governments, the Committee acknowledges with appreciation the written replies of the State Party and its participation in the Regional Consultation for Latin America held in Argentina between 30 May-1 June 2005. The Committee recommends that the State Party use the outcome of this regional consultation in order to take action, in partnership with civil society, to ensure the protection of every child from all forms of physical or mental violence, and to generate momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse.” (Colombia CRC/C/COL/CO/3, para. 60)

Following its Days of General Discussion, the Committee indicated that it would adopt a series of General Comments on violence against children. In 2006, it issued the first, on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, *inter alia*)”, explaining:

“The Committee aims to guide States Parties in understanding the provisions of



the Convention concerning the protection of children against all forms of violence. This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.

"The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take." (Committee on the Rights of the Child, Report on

the forty-second session, May/June 2006, CRC/C/GC/8, paras. 1 and 2. See summary, page 272.)

In other General Comments, the Committee has highlighted the particular vulnerability of certain groups of children to violence (see page 258).

A World Fit for Children: recommendations on violence

In the outcome document of the United Nations General Assembly's special session on children, *A World Fit for Children*, States made detailed commitments to end violence against children (see below). (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1; see also www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf).

A world fit for children – without violence

Extracts from Plan of Action of outcome document of the 2002 United Nations General Assembly's special session on children

"Children have the right to be protected from all forms of abuse, neglect, exploitation and violence. Societies must eliminate all forms of violence against children. Accordingly, we resolve to:

- (a) Protect children from all forms of abuse, neglect, exploitation and violence;
- (b) Protect children from the impact of armed conflict and ensure compliance with international humanitarian law and human rights law;
- (c) Protect children from all forms of sexual exploitation including paedophilia, trafficking, and abduction;
- (d) Take immediate and effective measures to eliminate the worst forms of child labour as defined in International Labour Organization Convention No.182, and elaborate and implement strategies for the elimination of child labour that is contrary to accepted international standards;
- (e) Improve the plight of millions of children who live under especially difficult circumstances.

"To achieve these goals, we will implement the following strategies and actions:

General protection

1. Develop systems to ensure the registration of every child at or shortly after birth, and fulfil his or her right to acquire a name and a nationality, in accordance with national laws and relevant international instruments.
2. Encourage all countries to adopt and enforce laws, and improve the implementation of policies and programmes to protect children from all forms of violence, neglect, abuse and exploitation, whether at home, in school or other institutions, in the workplace, or in the community.
3. Adopt special measures to eliminate discrimination against children on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status and ensure their equal access to education, health and basic social services.
4. End impunity for all crimes against children by bringing perpetrators to justice and publicizing the penalties for such crimes.

5. Take steps with a view to the avoidance of and refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that impedes the full achievement of economic and social development by the population of the affected countries, in particular children and women, that hinders their well-being and that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services. Ensure that food and medicine are not used as tools for political pressure.
6. Raise awareness about the illegality and harmful consequences of failing to protect children from violence, abuse and exploitation.
7. Promote the establishment of prevention, support and caring services as well as justice systems specifically applicable to children, taking into account the principles of restorative justice and fully safeguard children's rights and provide specially trained staff that promote children's reintegration in society.
8. Protect children from torture and other cruel, inhuman or degrading treatment or punishment. Call upon the Governments of all States, in particular States in which the death penalty has not been abolished, to comply with the obligations they have assumed under relevant provisions of international human rights instruments, including in particular articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the International Covenant on Civil and Political Rights.
9. End harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violate the rights of children and women.
10. Establish mechanisms to provide special protection and assistance to children without primary caregivers.
11. Adopt and implement policies for the prevention, protection, rehabilitation and reintegration, as appropriate, of children living in disadvantaged social situations and who are at risk, including orphans, abandoned children, children of migrant workers, children working and/or living on the street and children living in extreme poverty, and ensure their access to education, health, and social services as appropriate.
12. Protect children from adoption and foster care practices that are illegal, exploitative or that are not in their best interest.
13. Address cases of international kidnapping of children by one of the parents.
14. Combat and prevent the use of children, including adolescents, in the illicit production of and trafficking in narcotic drugs and psychotropic substances.
15. Promote comprehensive programmes to counter the use of children, including adolescents, in the production and trafficking of narcotic drugs and psychotropic substances.
16. Make appropriate treatment and rehabilitation accessible for children, including adolescents, dependent on narcotic drugs, psychotropic substances, inhalants and alcohol.
17. Provide protection and assistance to refugees and internally displaced persons, the majority of whom are women and children, in accordance with international law, including international humanitarian law.
18. Ensure that children affected by natural disasters receive timely and effective humanitarian assistance through a commitment to improved contingency planning and emergency preparedness, and that they are given all possible assistance and protection to help them resume a normal life as soon as possible.
19. Encourage measures to protect children from violent or harmful web sites, computer programmes and games that negatively influence the psychological development of children, taking into account the responsibilities of the family, parents, legal guardians and caregivers."

("A World Fit for Children", Plan of Action, strategies and actions, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 43 and 44)



Appropriate legislative, administrative, social and educational measures to protect the child from “all forms of physical or mental violence...”

In its examination of States Parties’ reports, the Committee on the Rights of the Child comments on many different forms of violence. In relation in particular to legislation, the Committee has criticized provisions that excuse or authorize corporal punishment of children, however light (see below, pages 264 and 265). “Mental violence” includes humiliation, harassment, verbal abuse, the effects of isolation and other practices that cause or may result in psychological harm. Research provides growing evidence of the effects on children’s mental health not only of direct violence but also of witnessing violence – both family violence within the home and violence in the community, including armed conflict.

Other articles in the Convention cover in more detail the child’s right to protection from forms of violence and exploitation that may take place in various settings or to protection in the wider society:

- protection of children from harmful information (article 17, see page 224);
- protection of children from traditional practices prejudicial to health (article 24(3), see page 371);
- school discipline to be consistent with the child’s human dignity and in conformity with the Convention (article 28(3), see page 428);
- sexual exploitation and sexual abuse including “organized” abuse and involvement of children in prostitution and pornography (article 34, see page 513 and Optional Protocol, page 669);
- protection of children from sale, trafficking and abduction (article 35, see page 531);
- other forms of exploitation (article 36, see page 543);
- protection from torture and other cruel, inhuman or degrading treatment or punishment (article 37, see page 547);
- effects of armed conflict on children (article 38, see page 573 and Optional Protocol, page 659).

The Committee expresses concern at the level of violence to children, inside and outside the home,

and recommends a variety of measures to prevent it. For example:

“While the Committee takes note of the State Party’s efforts to prevent and combat cases of abuse and ill-treatment of children, it is of the opinion that these measures need to be reinforced. Concern is also expressed at the insufficient awareness regarding the harmful consequences of neglect and abuse, including sexual abuse, both within and outside the family. Concern is also expressed at the insufficient resources, both financial and human, as well as at the lack of adequately trained personnel, to prevent and combat such abuse. The insufficiency of rehabilitation measures and facilities for victims, and their limited access to justice are also matters of concern. In the light of, inter alia, articles 19 and 39 of the Convention, the Committee recommends that the State Party take effective measures, including reinforcing current multidisciplinary programmes and rehabilitation measures, to prevent and combat child abuse and ill-treatment of children within the family, at school and in society at large. It suggests, inter alia, that law enforcement should be strengthened with respect to such crimes; adequate procedures and mechanisms to deal with complaints of child abuse should be reinforced, in order to provide children with prompt access to justice and to avoid the impunity of offenders. Furthermore, educational programmes should be established to combat traditional attitudes within society regarding this issue. The Committee encourages the State Party to consider seeking international cooperation to this effect from, inter alia, UNICEF and international non-governmental organizations.” (Costa Rica CRC/C/15/Add.117, para. 20)

It provided more detailed recommendations when it examined Costa Rica’s Third Report:

“With reference to its previous recommendation... the Committee notes the effort made by the State Party to address the problems of child abuse and neglect, inter alia by promoting the reporting of alleged cases of child abuse, the waiver of civil/criminal responsibility in case of reporting in good faith, the establishment of a protocol for dealing with cases of child abuse and the functioning of the helpline 911. But the Committee is concerned that the provision of services to child victims is to a large degree left to non-governmental organizations and that a comprehensive prevention policy has not been developed.

“The Committee recommends the State Party to strengthen its efforts to combat child abuse and neglect in particular by actively supporting helplines such as 911 and Línea cuenta conmigo, increase its support to



non-governmental organizations and implement programmes under PANI's responsibility to ensure that child victims do receive the necessary protection, counselling and other support. The Committee also recommends the review of existing legislation in order to ensure that legal procedures dealing with cases of child abuse are child sensitive, do respect the child's privacy and prevent revictimization of the child, inter alia, by accepting videotaped testimony of the child victim as admissible evidence. The Committee further recommends the State Party to develop and implement a comprehensive policy for the prevention of child abuse and neglect..." (Costa Rica CRC/C/15/Add.266, paras. 37 and 38)

"injury or abuse, neglect or negligent treatment"

Adult violence to children causes death and injury on a massive scale which has only begun to become visible in the last few decades. The United Nations Secretary-General's Study on Violence Against Children has increased this visibility of all forms of violence in all settings, while emphasizing that further research and systematic data collection is needed (A/61/299).

Neglect may be deliberate or it may be caused by the inability of the parent/family/community/State to provide appropriately for the child. Child neglect exists in various forms and to varying degrees in all societies. For example, some countries with highly developed economies and social systems in which employment of women has reached almost the same level as employment of men are now preoccupied with the neglect of very young children by their working parents and with the self-reported "loneliness" of many children. The State's overall obligation to ensure to the maximum extent possible the survival and development of the child (article 6), and its specific obligations to provide appropriate assistance to parents (article 18) together with rights to health care (article 24), to benefit from social security (article 26), to an adequate standard of living (article 27) and to education (article 28) are all particularly relevant to the prevention of neglect.

Reference to "negligent treatment" raises the issue of accidents to children (also raised in article 24(2)(e), see page 361). The developmental state and physical vulnerability of children makes them particularly prone to accidents. While the primary responsibility may be that of parents, state actions are also required to prevent many types of accident. Article 3(2) gives States an overarching obligation to provide care and protection necessary for the well-being of the child.

"maltreatment or exploitation, including sexual abuse"

The inclusion of these words and of additional articles expanding on sexual and other forms of exploitation (in particular article 32, economic exploitation, page 479; article 34, sexual exploitation, page 513; the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, page 669; and article 36, other forms of exploitation, page 543) emphasizes the intention of the drafters of the Convention to make the protection comprehensive. Maltreatment or exploitation covers any other adverse treatment not necessarily involving physical or mental violence or defined as abuse. In most countries, sexual abuse is defined to include not only violent sexual assaults but also other sexual activity, consensual or not, with children regarded as immature or below a certain defined age of sexual consent (see article 1, page 7).

In many cases, the Committee has stressed the need for particular action to combat sexual abuse, including within the family:

"The Committee notes with concern information indicating a high level of tolerance of promiscuity in families, the lack of information available on child abuse in the family and that legislation for the protection of children from sexual abuse does not expressly prohibit sexual intercourse with minors that are the offender's natural children.

"The Committee recommends that the State Party:

(a) Undertake studies on domestic violence, ill-treatment and abuse (including sexual abuse within the family) in order to adopt effective laws, policies and programmes to combat all forms of abuse;

(b) Develop a national system for receiving, monitoring and investigating complaints and, when necessary, prosecuting cases in a manner that is child sensitive and respects the victims' privacy;

(c) Reform legislation on child abuse in the family to expressly prohibit sexual abuse;
(d) Set up a comprehensive and nationwide response system that is designed to provide, where appropriate, support and assistance to both victims and perpetrators of family violence, rather than only intervention or punishment, and that ensures that all victims of violence have access to counselling and assistance with recovery and reintegration, while preventing stigmatization of victims of abuse;

(e) Seek technical assistance from, among others, UNICEF, in this regard." (Equatorial Guinea CRC/C/15/Add.245, paras. 44 and 45)





The Committee also expresses concern about discrimination in protection on grounds of gender or age. For example:

“... the Committee is concerned at the age limit set in the legislation regarding violence against children, as children above 14 or 16 years (depending on the relations with the perpetrator) do not benefit from the same protection...”

“In the light of article 19 of the Convention, the Committee recommends that the State Party: (c) Amend its legislation regarding the existing age limit set for a special protection against all forms of violence against children...;” (Italy CRC/C/15/Add.198, paras. 37 and 38)

“... The Committee also notes with concern that the Penal Code criminalizes only the rape of girls, leaving boys without legal protection.” (Lebanon CRC/C/LBN/CO/3, para. 47)

“while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”

The scope of article 19 includes what happens within the family home and within other “caring” situations – foster care and day care, schools, all institutional settings and so forth. The requirement in article 3(3) for consistent standards and supervision for all institutions, services and facilities is relevant to the prevention of violence to children (see below, page 264).

The Committee has also noted that violence within the family often drives children from their homes and onto the streets:

“The Committee is seriously alarmed by the existence of child abuse (including sexual abuse) and neglect within the family, which often lead to children being abandoned or running away, thus facing the additional risks of violations of their human rights.” (Philippines CRC/C/15/Add.29, para. 13)

Children particularly vulnerable to violence

The report of the United Nations Secretary-General’s Study on Violence Against Children suggests that young children are at greatest risk of physical violence, while sexual violence predominantly affects those who have reached puberty or adolescence. Boys are at greater risk of physical violence than girls, while girls face greater risk of sexual violence, neglect and forced prostitution. The report identifies some groups of children as especially vulnerable to violence: “These include children with disabilities, those from ethnic minorities and other marginalized groups, ‘street children’ and those in conflict with the law, and refugee and other displaced children.” (A/61/299, paras. 30 and 31)

In five General Comments, the Committee on the Rights of the Child has identified vulnerabilities of very young children, children with disabilities, adolescents, children affected by HIV/AIDS, and unaccompanied and separated children:

Early childhood. *“Young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States Parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered...” (Committee on the Rights of the Child, General Comment No. 7 on “Implementing child rights in early childhood”, 2005, CRC/C/GC/7/Rev.1, para. 36(a))*

Children with disabilities. *“Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, including alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse as well as being particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family. In addition, the lack of access to a functional complaint-receiving monitoring system, is conducive to systematic and continuing abuse. School bullying is a particular form of violence that children are exposed to and more often than not, this form of abuse targets children with disabilities. The main reasons for their particular vulnerability include, inter alia:*

- (a) Their inability to hear, move, and dress, toilet, and bath independently, increases their vulnerability to intrusive personal care or abuse.*
- (b) Living in isolation from parents, siblings, extended family and friends, increases the likelihood of abuse.*
- (c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse.*

(d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse.

(e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and therefore can be targets of abusive people, particularly those who base abuse on sexuality. "In addressing the issue of violence and abuse, States Parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

(a) Train and educate parents or others taking care of the child to understand the risks and signs of abuse of the child.

(b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse.

(c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities.

(d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached.

(e) Schools must take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system.

(f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated and have accessible and sensitive complaint mechanisms.

(g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles.

(h) Take all necessary legislative measures that are required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continues to live in a safe and healthy environment.

(i) Ensure the treatment and reintegration of victims of abuse and violence with a special focus on their overall recovery programmes..."

(Committee on the Rights of the Child, General Comment No. 9 on "The rights of children with disabilities", 2006, CRC/C/GC/9, paras. 43 and 44)

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, requires special measures for protection from all forms of exploitation, violence and abuse, in article 16:

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

"2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

"3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities...

"5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

In article 17, the Convention asserts the right of every person with disabilities "to respect for his or her physical and mental integrity on an equal basis with others".

Adolescence. In its General Comment on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee on the Rights of the Child suggests that States should pay increased attention to the specific forms of abuse, neglect, violence and exploitation which affect the adolescent age group. In particular they should adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable:

"In taking these measures, States Parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 19)





The General Comment identifies other vulnerable groups of adolescents:

“Violence results from a complex interplay of individual, family, community and societal factors. Vulnerable adolescents such as those who are homeless or who are living in institutions, who belong to gangs or who have been recruited as child soldiers are especially exposed to both institutional and interpersonal violence. Under article 19 of the Convention, States Parties must take all appropriate measures to prevent and eliminate:

(a) institutional violence against adolescents, including through legislation and administrative measures in relation to public and private institutions for adolescents (schools, institutions for disabled adolescents, juvenile reformatories, etc.), and training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police; and

(b) interpersonal violence among adolescents, including by supporting adequate parenting and opportunities for social and educational development in early childhood, fostering non-violent cultural norms and values (as foreseen in article 29 of the Convention), strictly controlling firearms and restricting access to alcohol and drugs.” (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 23)

HIV/AIDS. *“Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected, and may also be subjected to violence as a result of their being infected or affected by HIV/AIDS. Violence, including rape and other forms of sexual abuse, can occur in the family or foster setting or may be perpetrated by those with specific responsibilities towards children, including teachers and employees of institutions working with children, such as prisons and institutions concerned with mental health and other disabilities...*

“Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States Parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children – girls and boys – who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in

refugee camps...” (Committee on the Rights of the Child, General Comment No. 3 on “HIV/AIDS and the rights of the child”, 2003, CRC/GC/2003/3, paras. 37 and 38)

Unaccompanied or separated children. The Committee highlights the vulnerability of unaccompanied or separated children outside their country of origin, in particular to sexual exploitation and trafficking. (General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin”, 2005, CRC/GC/2005/6, paras. 50 to 53. See also articles 34 and 35 and the Optional Protocol on the sale of children, child prostitution and child pornography.)

The child’s right to protection from corporal punishment

The Committee on the Rights of the Child has paid particular attention to challenging the legality and social acceptance of corporal punishment of children since it began examining reports. The Committee frequently emphasizes to individual States that no form or level of corporal punishment should be permitted; that it should be prohibited “however light”.

It adopted its General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment” in 2006 (For summary, see box, page 262).

The Committee welcomes global progress in its General Comment No. 8:

“Since it began examining States Parties’ reports the Committee has recommended prohibition of all corporal punishment, in the family and other settings, to more than 130 States in all continents. The Committee is encouraged that a growing number of States are taking appropriate legislative and other measures to assert children’s right to respect for their human dignity and physical integrity and to equal protection under the law. The Committee understands that, by 2006, more than 100 States had prohibited corporal punishment in their schools and penal systems for children. A growing number have completed prohibition in the home and family and all forms of alternative care.” (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 5)

In its first General Comment on “The aims of education”, the Committee recalls that:

“Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with

article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline.” (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

The Summary Record of the Committee’s discussion with Government representatives about the United Kingdom’s Initial Report states that a member of the Committee said: “It was the Committee’s experience that difficulties arose whenever a ‘reasonable’ level of corporal punishment was permitted under a State’s internal law. To draw an analogy, no one would argue that a ‘reasonable’ level of wife-beating should be permitted. His conclusion was that the United Kingdom position represented a vestige of the outdated view that children were in a sense their parents’ chattels. In the Scandinavian countries and Austria, stricter legislation had resulted in fewer cases going to court than in the United Kingdom, rather than the reverse. Furthermore, he noted from recent press reports that some judges tended to interpret the legislation fairly liberally: one, for example, had ruled that 15 lashes administered with a leather belt did not constitute excessive punishment. The notion of a permissible level of corporal punishment was thus best avoided.” (United Kingdom CRC/C/SR.205, para. 63)

The United Kingdom’s Initial Report had defended the concept of “reasonable chastisement”: “In the United Kingdom Government’s view article 19 has to be read in conjunction with article 5 which obliges States to respect a parent’s responsibilities to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. The Government’s view is that appropriate direction and guidance include the administration, by the parent, of reasonable and moderate physical chastisement to a child... Excessive punishment amounting to abuse is, of course, a criminal offence, and so it must remain.” (United Kingdom CRC/C/11/Add.1, paras. 335 and 336)

But in discussion with United Kingdom Government representatives, a Committee member stated: “... with regard to corporal punishment within the family the United Kingdom delegation had stated that it was not appropriate to regulate what should be a private matter by means of legislation. It must be borne in mind, however, that article 19 of the Convention required all appropriate mea-

asures, including legislative measures, to be taken to protect the child against, *inter alia*, physical violence. A way should thus be found of striking the balance between the responsibilities of the parents and the rights and evolving capacities of the child that was implied in article 5 of the Convention. There was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law...” (United Kingdom CRC/C/SR.205, para. 72)

When it examined the United Kingdom’s Second Report, the Committee stated that it

“... deeply regrets that the State Party persists in retaining the defence of ‘reasonable chastisement’ and has taken no significant action towards prohibiting all corporal punishment of children in the family.

“The Committee is of the opinion that the Government’s proposals to limit rather than to remove the ‘reasonable chastisement’ defence do not comply with the principles and provisions of the Convention and the aforementioned recommendations, particularly since they constitute a serious violation of the dignity of the child (see similar observations of the Committee on Economic, Social and Cultural Rights, E/C.12/11/Add.79, para. 36). Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline.”

The Committee went on to recommend that the United Kingdom:

“(a) With urgency adopt legislation throughout the State Party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;

(b) Promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.” (United Kingdom CRC/C/15/Add.188, paras. 36 to 38)

The Committee frequently emphasizes that no level of corporal punishment should be permitted:

“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, in schools, at home and in institutions; in the view of the Committee this contravenes the principles and provisions of the Convention, in particular articles 3, 5, 6, 19, 28(2), 37(a), (c) and 39...” (Australia CRC/C/15/Add.79, para. 15)





The right to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, *inter alia*)

Committee on the Rights of the Child, General Comment No. 8, 2006: summary

The purpose of General Comment No. 8, the first of a series of Comments on violence against children, is “to highlight the obligation of all States Parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take. Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States Parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.”

Definition

The Committee defines corporal, or physical, punishment as:

“... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”

Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems – both as a sentence of the courts and as a punishment within penal and other institutions, in situations of child labour, and in the community.

The Committee distinguishes between violence and humiliation as forms of punishment, which it rejects, and discipline in the form of “necessary guidance and direction”, which is essential for healthy growth of children. The Committee also differentiates between punitive physical actions against children and physical interventions aimed at protecting children from harm.

Human rights standards

The foundations of the human rights obligation to prohibit and eliminate all corporal punishment and all other degrading forms of punishment lie in the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law. The Committee traces this back to the International Bill of Human Rights – “The dignity of each and every individual is the fundamental guiding principle of international human rights law” – and shows how the Convention on the Rights of the Child builds on these principles. Article 19 of the Convention, which requires States to protect children “from all forms of physical or mental violence”, leaves no room for ambiguity: “‘all forms of physical or mental violence’ does not permit any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

The Committee notes that corporal punishment has been condemned by other international and regional human rights treaty bodies and by constitutional and high-level courts in many countries.

The fact that article 19 and article 28(3) – on school discipline – do not specifically refer to corporal punishment does not in any way undermine the obligation to prohibit and eliminate it: “... the Convention, like all human rights instruments, must be regarded as a living instrument, whose

interpretation develops over time. In the 16 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and NGOs.

“Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.”

In response to the view that a certain degree of “reasonable” or “moderate” corporal punishment is in the “best interests” of the child, the Committee states that “interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child’s views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity”.

The Committee recognizes that some justify the use of corporal punishment through religious teachings but again notes that “practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity” and that “freedom to practice one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others”.

Measures and mechanisms required to eliminate corporal punishment and other cruel or degrading forms of punishment

Legal reform is essential in eliminating corporal punishment. All provisions which allow any degree of corporal punishment – “reasonable” punishment, “lawful” correction and so on – whether in statute or in case/common law – should be repealed. But the law must also explicitly prohibit corporal punishment in all settings: “Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever they are and whoever is the perpetrator. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation – e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law – clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others and also the rules or charters of institutions emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment.”

The Committee emphasizes that law reform should be accompanied by awareness-raising, guidance and training, because the primary purpose of such reform is prevention. Prohibition in law does not mean that all cases of corporal punishment of children by parents should lead to prosecution.

Effective prohibition also requires the consistent promotion of positive, non-violent relationships and education to all those involved with children. While the Convention does not prescribe in detail how parenting should be carried out, it does “provide a framework of principles to guide relationships both within the family and between teachers, carers and others and children” (para. 46). For example, children’s developmental needs must be respected, their best interests are fundamental, and their views should be given due weight.

Finally, States Parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment, including through the use of interview research involving children and the establishing of independent monitoring bodies, and should report on all measures taken in their Periodic Reports to the Committee.

(Committee on the Rights of the Child, General Comment No. 8, “The right to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia)”, 2006, CRC/C/GC/8. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)



“The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, at home. In the view of the Committee, this contravenes the principles and provisions of the Convention.” (Libyan Arab Jamahiriya CRC/C/15 Add.84, para. 14)

Violence in schools and care and justice systems

Reports to the Committee from various countries have raised the problem of violence to children in institutions, which can take two particular forms:

- “legalized” use (or continued use despite prohibition) of violent and/or humiliating discipline or treatment such as corporal punishment, unreasonable physical restraint, solitary confinement and other forms of isolation, obligations to wear distinctive clothing, reduction of diet, restriction or denial of contact with family members and/or friends, verbal abuse or sarcasm and so on;
- violence, or threats of violence, by children against children, termed “bullying” or “mobbing” in some societies, which can range from teasing and harassment (commonly including racial and sexual harassment) to serious physical assault.

The Committee adopted detailed recommendations about violence to children in institutions following its 2000 Day of General Discussion on “State violence against children” (see box, page 270).

Article 3(3) requires that “institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”. In relation to protection from violence, there should be clear standards established in legislation:

- prohibiting corporal punishment and any other inhuman or degrading treatment or punishment (in addition, rules should specify the prohibition of any other forms of cruel, inhuman or degrading discipline or treatment known to be commonly used);
- requiring clear policies for the prevention of any forms of violence by children against children in institutions;
- ensuring there are clear and well-publicized procedures to enable children to seek confidential advice and to make representations and complaints about their treatment to an independent body with appropriate powers

of investigation and recommendation/action. Such procedures should ensure that where necessary children have access to independent advocates or representatives who can advise them and/or act on their behalf; special arrangements may be required to safeguard children with disabilities and very young children.

In relation to schools, article 28(2) requires that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” As the Committee has stressed, in General Comment No. 1 on “The aims of education” (see article 29, page 439) and in General Comment No. 8, this includes conformity with article 19, and the protection of children from “all forms of physical or mental violence”. Physical punishment and other humiliating punishments amounting to mental violence are thus outlawed.

The Committee has highlighted bullying in schools in comments to some States (and in recommendations adopted following its Day of General Discussion on “Violence against children, within the family and in schools”). For example:

“The Committee welcomes the efforts taken to eradicate bullying, such as the incorporation into the Education Act ... and into the national curriculum of rules on action to counter bullying, as well as the 2001-2002 campaign against bullying, entitled ‘Together’ (Tillsammans). However, the Committee notes that the rules still have to be fully implemented and that bullying against children with disabilities and of foreign origin continues to be a concern.

“The Committee recommends that the State Party, in its efforts to prevent and combat bullying, pay special attention to children with disabilities and of foreign origins, and that the rules for countering bullying are fully implemented in all schools and other institutions with the involvement of children.” (Sweden CRC/C/15/Add.248, paras. 35 and 36)

The Committee’s examination of reports has found that in some States corporal punishment persists as a sentence of the courts for children under 18 years, as well as being administered as a punishment within penal institutions. This conflicts not only with article 19 and other articles of the Convention but also with the United Nations rules and guidelines relating to juvenile justice, which the Committee has consistently promoted as providing relevant standards (see box). Violence by State officials including police has



Corporal punishment and juvenile justice standards

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the “Beijing Rules”: rule 17.3 (Guiding Principles in Adjudication and Disposition) states: “Juveniles shall not be subject to corporal punishment.”

United Nations Rules for the Protection of Juveniles Deprived of their Liberty: rule 67 states: “...all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment...”

United Nations Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines: paragraph 21(h) states that education systems should devote particular attention to “avoidance of harsh disciplinary measures, particularly corporal punishment” and paragraph 54 says “No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.”



concerned the Committee in a number of countries, including violence against children living and/or working on the streets.

Traditional practices involving violence and/or prejudicial to health

The specific reference to protecting children from traditional practices comes in article 24(3), which obliges States to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (see page 371 for further discussion). Traditional practices also need to be reviewed to determine whether they involve any form of physical or mental violence from which children must be protected under article 19.

Suicide and self-harm

Protecting children from self-harm, including suicide and attempted suicide, clearly comes within the ambit of article 19, and also of article 6. Increases in the suicide rate among certain age groups of children in some industrialized countries have caused concern to the Committee, which has proposed research and further action (for discussion, see article 6, page 92).

Violent images

Concern at the levels of interpersonal violence in Western societies has led to a particular focus on the effects that violent images in the media may have on children, including in particular those on television and videos or computer-generated. The concern is both that frequent exposure to such images may desensitize children to violence, and that they may be encouraged to imitate particular violent behaviour. Article 17(e) requires States Parties to “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18” (see article 17, page 224).

Protective and preventive measures: article 19(2)

The second paragraph of article 19 provides a non-exhaustive list of measures that States should take to protect children and to prevent violence (see page 249).

“... procedures for the establishment of social programmes to provide ... support for the child and for those who have the care of the child, as well as for other forms of prevention...”

These words emphasize the relevance of social conditions to the protection of children from violence and, in particular, to the protection from neglect and negligent treatment, and they link article 19 with other relevant provisions in the Convention on the Rights of the Child, including the overall duty in article 4 (to implement measures “to the maximum extent of available resources”), article 18 (the obligation of States Parties to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children), article 26 (the right of children to benefit from social security) and article 27 (the right of the child to an adequate standard of living).

Specific social programmes promoted by the Committee in its comments on States’ reports include education/information campaigns on positive non-violent relationships with children and on the prevention of sexual abuse and exploitation. In addition to its general call for all those working with or for children to receive training in the principles and provisions of the Convention (see article 42, page 629), the Committee has



proposed special training in relation to child protection, telling Saint Vincent and the Grenadines to

"... train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment..."
(Saint Vincent and the Grenadines CRC/C/15/Add.184, para. 39)

And recommending, for example, that Mauritius should

"... train parents, teachers, law enforcement officials, care workers, judges, health professionals and children themselves in the identification, reporting and management of cases of violence and abuse, using a multidisciplinary and multisectoral approach."
(Mauritius CRC/C/MUS/CO/2, para. 48(c))

In relation to eliminating the use of corporal punishment and other cruel or degrading forms of punishment and treatment, General Comment No. 8 emphasizes:

"Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike..."
"The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others. These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems." (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 45 and 48)

"identification"

A long history exists of denial by adult societies of the extent of violence to children. The first step towards effective prevention of violence must be to ensure that all those in contact with children are alerted to the various forms of violence to

children and the likely indications of it and that they are informed about appropriate action in conformity with the principles of the Convention. Public information campaigns to increase overall awareness of violence to children are essential and have been proposed by the Committee to many States Parties. It is only through interview studies with children and parents, in conditions of confidentiality and trust and with appropriate ethical safeguards that States can begin to build up a true picture of the prevalence of all forms of violence against children, including in the family, and be able to measure progress towards its elimination. It is not possible to judge the effectiveness of child protection systems without this sort of research.

"reporting"

The Committee expresses frequent concern at the fact that violence against children is often not reported. The introduction to the report of the independent expert for the United Nations study on violence against children states: "... much violence against children remains hidden for many reasons. One is fear: many children are afraid to report incidents of violence against them. In many cases parents, who should protect their children, remain silent if the violence is perpetrated by a spouse or other family member, a more powerful member of society such as an employer, a police officer, or a community leader. Fear is closely related to the stigma frequently attached to reporting violence, particularly in places where family 'honour' is placed above the safety and well-being of children. In particular, rape or other forms of sexual violence can lead to ostracism, further violence, or death." (A/61/299, para. 25)

The Committee told Lebanon:

"Abuse, neglect and maltreatment of children remain serious problems in the State Party. Due to the strong social and cultural taboos victims and witnesses rarely report these cases, despite the campaign 'Let's stop sticking our heads in the sand', which encourages individuals to bring to light violations of children's rights." (Lebanon CRC/C/LBN/CO/3, para. 47)

The Committee was pleased, for example, with Costa Rica's efforts to promote reporting of alleged cases of child abuse and also to waive civil/criminal responsibility for those who report in good faith (Costa Rica CRC/C/15/Add.266, paras. 37 and 38).

It urged Turkmenistan

"... to encourage reporting of instances of child abuse in all institutions – including out-

of-home placement, orphanages, psychiatric hospitals, schools and juvenile prisons..." (Turkmenistan CRC/C/TKM/CO/1, para. 45)

In many countries there are legal obligations to report known or suspected instances of child abuse to appropriate social authorities and/or the police. In some societies, these duties apply to certain professions (for example, social workers, teachers, doctors and other health workers); in others, they apply to members of the public as well.

The Committee has recommended mandatory reporting by professionals, for example telling Ghana that it was concerned

"... about the fact that there are no mandatory reporting requirements for professionals with regard to child abuse"

and recommending that it should introduce them (Ghana CRC/C/GHA/CO/2, paras. 44 and 45).

It recommended to Belize:

"... that the State Party implement its proposal to introduce legislation making the reporting of child abuse mandatory..." (Belize CRC/C/15/Add.99, para. 22)

Mandatory reporting raises potential conflicts with the child's right to confidential advice and counselling from doctors and others (see article 1, page 7, and article 12, page 168). Do children have a right to a completely confidential relationship with, for example, their doctor, lawyer, priest or religious elder? Article 12 suggests that children should have a right to express their views and have them taken seriously in any action proposed or taken in relation to violence towards them, and a formal right to be heard in any administrative procedures. Article 16 asserts the child's right to privacy, which is relevant to the child's right to confidential advice and counselling (see page 204).

The report of the independent expert for the United Nations study on violence against children recommends "that States should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children" (A/61/299, Overarching recommendations, para. 104, p. 27).

The *World Report on Violence against Children* expands on this: "Retrospective studies, questioning young adults about their childhood experiences, reveal that the majority of child victims did not talk to anyone or approach child protection services during their childhood, even in States which have highly developed systems. Reasons included not knowing where to go for help, a lack of services,

lack of trust in the services or in some cases fear of reprisals from the perpetrator.

"In many countries, certain professional groups are under a legal obligation to report any concerns about violence against children under mandatory reporting systems... The Study has heard varying views about mandatory reporting. It is essential that every Government should review existing reporting systems and involve children or young adults with recent experience of child protection services in the review.

"In every locality and every setting which includes children, there should be well-publicized and easily accessible services required to investigate reports or indications of violence against children. There should also be access to services where children can go to talk in confidence about anything that is worrying or hurting them. Providing confidential services for children – services which guarantee that they will not report to others or take action without the child's consent, unless the child is at immediate risk of death or serious harm – remains controversial in many countries. Making confidential services available to children, including those most vulnerable to violence, challenges outdated concepts of parental 'ownership' of their children. Yet what we now know about intra-familial violence demands that children should have the same rights as adult family members to seek confidential advice and help." (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, Chapter 1, para. 8, p. 21)

The Committee, as well as the report of the United Nations Secretary-General's Study on Violence Against Children, commends the existence of children's telephone helplines which usually offer confidential advice and counselling on violence and other issues.

For example, the Committee told Colombia, Ghana and Latvia to:

"... support national coverage of the toll free child helpline service, Teléfono Amigo, in order to be able to reach out to children in remote areas throughout the country." (Colombia CRC/C/COL/CO/3, para. 59)

"Establish a toll-free nationwide telephone helpline for children resourced with well-trained professionals and volunteers..." (Ghana CRC/C/GHA/CO/2, para. 45)

"... ensure accessibility of the toll-free national helpline, including by increasing its hours of operation to 24 hours daily, creating an easy-to-remember 3-digit toll-free number that is



equally accessible from mobile phones and from rural and remote areas, and to cooperate with NGO hotlines and services for children in emergency situations.” (Latvia CRC/C/LVA/CO/2, para. 37)

But the Committee is concerned that children should have universal access to help. For example, it told Mozambique:

“... although a telephone hotline exists for children to make complaints of abuse, very few children have access to a telephone or the means to pay for a call.”

The Committee went on to recommend that the State should

“... develop child-sensitive mechanisms through which children can report incidents of sexual abuse, including the large majority of children who do not have access to telephones.” (Mozambique CRC/C/15/Add.172, paras. 38 and 39)

“referral”

The implication of referral is that the investigation and treatment of violence to children is an issue requiring specialized, trained responses. In systems that require the reporting of violence, referral to particular agencies is normally specified, and in many countries there are now detailed administrative procedures for inter-agency collaboration (between social services, education, health, police and prosecution authorities, and including voluntary and private agencies). Such procedures for referral should be in conformity with the Convention, and in particular with article 12 – hearing and giving due weight to children’s views.

“investigation”

The State should clearly have formal duties, exercised through one or more agencies, to investigate reported instances or allegations of violence to children, in conformity with the Convention’s principles. The Committee calls for “*child-sensitive*” investigation, avoiding, for example, “*repeatedly interviewing child victims of abuse*” (Czech Republic CRC/C/15/Add.210, para. 41).

Under article 6, the Committee has drawn attention to the importance of full investigation of all child deaths. In countries where a rigorous procedure for such investigations has been implemented, it is less likely that preventable violence to children will go undetected (for discussion, see article 6, page 92).

“treatment and follow-up”

Again, these are specialized functions requiring appropriate training and interdisciplinary coop-

eration. In addition to the child’s rights to health care and relevant services, two other articles of the Convention are relevant:

- the right to periodic review of care and treatment guaranteed by article 25: “States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement” (see page 379);
- the obligation to provide rehabilitation for victims, under article 39: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child” (see page 589).

“and, as appropriate, judicial involvement”

The appropriateness, or otherwise, of judicial involvement over instances of violence to children depends on the type and severity of the violence and on consideration of the Convention’s articles identified by the Committee as general principles, in particular giving due weight to the expressed views of affected children (article 12) and ensuring that the best interests of the child are given primary consideration (article 3(1)).

There are two distinct forms of judicial involvement: to prosecute the perpetrator under the criminal law and to protect the child through various forms of supervision, removal of the perpetrator or placement of the child away from home. In regard to the latter, article 9(1) requires that a child “shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child” (see also page 121). Article 9 indicates in paragraph 1 that one of the circumstances in which such separation may be necessary is a case involving abuse or neglect of a child by his or her parents. When one parent is the alleged abuser, article 9 requires efforts to prevent separation of the child from the other parent if he or she is not implicated in the abuse.



The Committee has emphasized that the child may suffer from judicial involvement. It expressed concern to Saint Vincent and the Grenadines that

“Only the police and not social workers have the authority to remove a child from a family situation in which the child is suffering abuse or neglect, and this may add to the trauma suffered by the child.”

It recommended:

“... giving the necessary legal authority to the social services to take urgent action to protect children from abuse.” (Saint Vincent and the Grenadines CRC/C/15/Add.184, paras. 38 and 39)

While discussing Ukraine’s Initial Report, a Committee member noted that the Report referred to deprivation of parental rights of persons who mistreated their children or inflicted corporal punishment on them: “In fact, there was no need to adopt such drastic solutions for every case. In his opinion, what the Committee had in mind was a clear signal from the relevant legislation that ill-treatment of children should never take place. If it did occur, the solution in all cases might not be for the child to be taken away from the parents. That might also be contrary to the best interests of the child. Efforts should rather be made to solve the problem within the family, if possible.” (Ukraine CRC/C/8/Add.10, para. 65 and Ukraine CRC/C/SR.240, para. 65)

The Committee suggested to Poland, for example, that it should

“... set up a comprehensive and nationwide response system designed to provide, where appropriate, support and assistance to both victims and perpetrators of family violence, rather than only intervention or punishment...” (Poland CRC/C/15/Add.194, para. 35(b))

The Committee and the Rights of the Child has, in some cases, expressed concern that lack of prosecution may lead to a perception of impunity:

“The Committee is also preoccupied by the level of violence and the high incidence of ill-treatment and abuse of children, including cases attributed to the police or military personnel. It notes with concern that the efforts of the Government to combat child abuse and neglect are insufficient, both from the prevention and the sanction point of view... The failure to take effective steps to prosecute and punish those responsible for such violations or to make public decisions taken in this regard, including towards paedophiles, may lead to a feeling in the population that impunity prevails and that it is therefore useless to bring complaints before

the competent authorities.” (Philippines CRC/C/15/Add.29, para. 14)

The Committee has emphasized, in particular, that child victims of violence and exploitation should not be criminalized or stigmatized, quoting the importance of article 39 (rehabilitation of child victims, see page 589; see also article 34, page 513).

Recent developments have taken place in a number of countries to safeguard the welfare of child witnesses in cases involving prosecution of adult perpetrators of violence. These include less formal courts and opportunities for children’s evidence to be pre-recorded or for children to give evidence or be cross-examined behind screens or through video links. Such provisions are justified in terms of the welfare and best interests of the child but must also comply with the rights of the adult defendants as set out in international law.

The Committee often calls for “a child-sensitive judicial procedure”, proposing to Costa Rica for example that it should ensure that

“... legal procedures dealing with cases of child abuse are child sensitive, do respect the child’s privacy and prevent re-victimization of the child, inter alia, by accepting videotaped testimony of the child victim as admissible evidence...” (Costa Rica CRC/C/15/Add.266, para. 38)

As noted under article 12 (page 156), in 2005 the Economic and Social Council of the United Nations adopted Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. These define as “child sensitive” an approach that “balances the child’s right to protection and that takes into account the child’s individual needs and views” (para. 9(d)). The Guidelines provides both principles and a framework “that could assist Member States in enhancing the protection of child victims and witnesses in the criminal justice system” (Economic and Social Council, resolution 2005/20, annex). The Committee draws States’ attention to the Guidelines. It recommended that Thailand should “improve child-sensitive court procedures” in accordance with the Guidelines (Thailand CRC/C/THA/CO/2, para. 30).

The Committee has noted that violations of children’s rights under article 19 and other provisions of the Convention should not be investigated by military courts:

“... Violations of human rights and children’s rights should always be examined by civilian courts under civilian law, not military courts. The outcome of investigations and cases



of convictions should be widely publicized in order to deter future offences and thus combat the perception of impunity.” (Colombia CRC/C/15/ Add.30, para. 17)

It returned to this when it examined Colombia’s Third Report, noting with concern

“... the unbroken pattern of impunity and the tendency to refer serious violations of human rights to the military justice system”.

The Committee requested Colombia to *“... respect its international legal obligations in relation to fair trials and ensure that all investigations are carried out independently and impartially.” (Colombia CRC/C/COL/CO/3, paras. 44 and 45)*

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



Committee on the Rights of the Child:

Recommendations adopted following Days of General Discussion on violence against children

State violence against children

Following its first Day of General Discussion in September 2000, on “State violence against children”, the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

(a) “REVIEW OF LEGISLATION

6. The Committee urges States Parties to repeal, as a matter of urgency, any legislation that allows the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18, contrary to the provisions of article 37(a) of the Convention.
7. The Committee recommends that States Parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40). It also recommends that States Parties consider incorporating into all relevant domestic laws and regulations (including, where appropriate, those dealing with children in care) the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’, adopted by General Assembly resolution 40/33 of 29 November 1985), of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990), of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990), and of the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In particular, the Committee recommends that penal legislation applicable to juveniles be reviewed so as to ensure that courts are not restricted to custodial sentences disproportionate to the offence.
8. The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims.
9. The Committee recommends that States Parties review all relevant legislation to ensure that children under 18, who are in need of protection are not considered as offenders (including leg-

isolation dealing with abandonment, vagrancy, prostitution, migrant status, 'truancy', runaways, etc.) but are dealt with under child protection mechanisms.

10. The Committee recommends that States Parties review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets).
11. The Committee recommends, in particular, that States Parties give urgent consideration to the need to provide appropriate safeguards to guarantee the security, protection and rehabilitation of children held in custody, including through measures such as the imposition of strict limits on pre-trial detention, that would reduce the number of children held in detention.
12. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that placement decisions are subject to periodic judicial review, including at the request of children themselves. Such legislation should also be reviewed so as to ensure that relevant rules and regulations set out detailed standards of care for all institutions (public and private) caring for children, including the prohibition of the use of violence.
13. The Committee recommends that the effective implementation of all such legislation be carefully monitored, including for the provision of necessary resources.

AWARENESS-RAISING, SENSITIZATION AND TRAINING

14. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to raising awareness about the problem of violence against children:
 - (a) The Committee urges the launching of public information campaigns to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero tolerance' of violence;
 - (b) The media should be encouraged to play an active role in educating the public and raising awareness. Negative reporting (blaming categories of children for individual incidents) should be avoided and positive reporting (calling attention to the violations) encouraged;
 - (c) In raising awareness, children's views and experiences of violence should be publicized and heard;
 - (d) Accurate, up-to-date and disaggregated data should be collected on the numbers and condition of children living in institutions or in the care of the State, held in pre-trial detention or in police stations, serving custodial sentences or subject to diversionary or alternative measures, etc.;
 - (e) States Parties should translate appropriate information on violence against children into its national and local languages, and ensure that it is disseminated to all relevant professional groups, to children and to the general public.
15. The Committee recommends that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.
16. The Committee recommends that States Parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline,



promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those from minority groups, children with disabilities, etc.).”

Other sections cover international actions, including the proposals for a United Nations study on violence against children and a workshop on strengthening relevant United Nations human rights mechanisms; prevention, including alternatives to institutionalization; monitoring and complaint mechanisms; resources; and the role of non-governmental organizations. (Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 688 et seq.)

Violence against children, within the family and in schools

Following its second Day of General Discussion in September 2001, on “Violence against children, within the family and in schools”, the Committee on the Rights of the Child adopted detailed recommendations. The following are brief extracts from key sections:

“GUIDING PRINCIPLES

701. The Committee urges that references to ‘family’ and ‘school’ not be understood as narrowly defined. The references to ‘family’ (or to ‘parents’) must be understood within the local context and may mean not only the ‘nuclear’ family, but also the extended family or even broader communal definitions including grandparents, siblings, other relatives, guardians or care providers, neighbours, etc. Similarly, all references to ‘school’ (or to ‘teachers’) should be understood to include schools, teaching institutions, and other formal and non-formal learning environments.

702. The Committee recommends that an alternative vision of the school and the family that respects the rights and dignity of all, including children, parents and teachers should guide all actions on the issue of violence against children. The main strategy should be to galvanize actions around this vision rather than using punitive measures. In this vision relations between and among children and parents or teachers (as well as other family members or students) are mutually respectful and the safety and security of all is promoted.

703. The Committee considers that violence against children is unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child...

704. In conceptualizing violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore, children and young people must be meaningfully involved in promoting and strategizing action on violence against children.

705. The Committee recommends that efforts be made to strengthen the link between communities and families and between communities and schools. Community members, including parents, children and teachers, need to be well informed about their rights and fully involved in the life of the school, including in school governance.

706. The Committee recognizes that different forms of violence against children (such as corporal punishment, bullying, sexual harassment and abuse, and verbal and emotional abuse) are interlinked, and that violence in the family and school reinforce one another. Action against violence therefore must take a holistic approach and emphasize non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated. Tolerance of violence in one sphere makes it difficult to resist it in another...

REVIEW OF DOMESTIC LEGISLATION

715. The Committee urges States Parties, as a matter of urgency, to enact or repeal their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37(a) and taking into account articles 2, 3, 6 and 12 as well as 4, 5, 9, 18, 24, 27, 29 and 39.



716. The Committee recommends that such legislation incorporate provisions for appropriate sanctions for violations and compensation for victims.

717. The Committee urges States Parties to review all relevant child protection legislation to ensure that while effective protection is guaranteed, intervention is adequately tailored to individual contexts and circumstances, favours the least intrusive method, and adopts a positive approach that seeks to protect the child from additional harm. The Committee recommends that States Parties review legislation dealing with children deprived of a family environment to ensure that all placement decisions are subject to periodic judicial review, including at the request of children themselves, and with family reunification as the preferred outcome, within the requirements of articles 3, 9, 19 and 39 of the Convention.

718. The Committee recommends careful monitoring of the effective implementation of such legislation, including through *inter alia* the provision of education, training and resources.

PREVENTION: AWARENESS-RAISING, SENSITIZATION AND TRAINING

719. The Committee recommends that States Parties adopt clear national policy statements on violence against children within the family and in schools, to be used as an advocacy tool and disseminated throughout the country.

720. The Committee recommends that every State Party undertake a comprehensive study on the extent, nature, causes and consequences of violence against children. This study should be widely disseminated and used to formulate policy and programmes.

721. The Committee encourages States Parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to promoting a more positive approach to acknowledging children as bearers of human rights and to raising awareness about and bringing about change in cultural attitudes towards protecting children from violence and the availability of more constructive and effective methods of discipline. Such an approach should include the following:

(a) Public information campaigns should be launched, involving religious, traditional and community leaders, to raise awareness and sensitize the public about the severity of human rights violations and the harm to children in this domain, and to address cultural acceptance of violence against children, promoting instead the unacceptability of all forms of violence against children.

(b) Children and parents should be meaningfully involved in all aspects of the design and implementation of awareness-raising campaigns, including through peer education efforts.

(c) The media should be encouraged to play an active role in educating the public and raising awareness. Reporting should call attention to the violations and reflect children's views and experiences of violence, while avoiding sensationalism and ensuring respect for the right to privacy of child victims. The media and entertainment industry should also avoid disseminating positive images of any form of violence.

(d) States Parties should translate appropriate information on protection of children from violence into its national and local languages, and ensure that it is disseminated, through all appropriate channels and involving grass roots groups, to all relevant professional and other reporting groups, children, parents, and the general public...."

Other sections cover international actions – including further detail on the Committee's proposal for an international study; other prevention and protection strategies; monitoring and complaint mechanisms; coordination and resources; and role of civil society. (Committee on the Rights of the Child, Report on the twenty-eighth session, September/October 2001, CRC/C/111, paras. 701 et seq.)



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 19, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 19 is relevant to **departments of social welfare, justice, health, education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 19 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 19 likely to include the training of **all those working in child protection or with or for children and their families, and in parenting education**)?

• Specific issues in implementing article 19

- Does legislation in the State protect children from all forms of physical or mental violence?
- Has the State ensured there are no exceptions or defences available to parents or others in relation to assaults on children?

Does legislation protect all children from any form of corporal punishment and any other form of cruel or degrading punishment or treatment:

- in the home?
- in schools
 - state run?
 - private?
- in child-care institutions
 - state run?
 - private?

How to use the checklist, see page XIX



- in foster care?
- in other forms of alternative care?
in day care institutions
 - state run?
 - private?
 - other arrangements (e.g. childminding etc.)?
- in the penal system
 - as a sentence of the courts?
 - as a punishment in penal institutions?

Does legislation, policy and practice protect all children from

- ill-treatment and violence, including violence by other children, in schools and all other institutions?
- traditional practices involving physical or mental violence, or prejudicial to health?

Has the State taken appropriate measures to prevent all forms of violence to children?

Has the State taken appropriate educational and other measures to promote positive, non-violent forms of discipline and treatment

- in the family?
- in alternative care?
- in all institutions which include children?

Do all children in the State have access to effective complaints procedures in relation to ill-treatment

- while in the care of parents or others legally responsible for them?
- in all forms of alternative care?
- in all institutions including schools and custodial institutions?
- In cases of ill-treatment, do children have a right to appropriate remedies, including, for example, compensation?

Does legislation in the State require the reporting of all forms of violence and abuse of children to appropriate bodies:

- by certain professional groups?
- by all citizens?
- Have any reporting arrangements/requirements been reviewed in the light of the Convention's principles, including article 12 (respect for the views of the child) and article 16 (the child's right to privacy)?

Has the State established effective systems for

- identification of violence, abuse, etc.?
- reporting?
- referral?
- investigation?
- treatment and follow-up?
- appropriate judicial involvement?

How to use the checklist, see page XIX



- Has the State taken particular measures to identify and respond to sexual abuse within the family and in institutions?
- Has the State ensured that the principle of respect for the views of the child is observed in child protection procedures and practice?
- Has the State taken special measures to encourage responsible reporting of child abuse by the mass media?
- Has the State established or supported confidential helplines, advice and counselling for child victims of violence, abuse or neglect?
- Has the State considered its law, policy and practice in the light of the recommendations of the United Nations Secretary-General's Study on Violence Against Children (A/61/299)?

Reminder: The Convention is indivisible and its articles interdependent. Article 19 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 19 include:

Article 5: parental responsibilities and child's evolving capacities

Article 9: separation from parents following abuse or neglect

Article 18: parental responsibilities

Article 20: alternative care

Article 24(3): protection of children from traditional practices

Article 25: periodic review of placement or treatment

Article 28(2): school discipline without violence

Article 34: protection from sexual exploitation

Article 37: protection from torture and inhuman or degrading treatment or punishment

Article 38: armed conflict

Article 39: rehabilitative care for victims of violence

Optional Protocols to the Convention on the Rights of the Child

Children deprived of their family environment

article

20

Text of Article 20

- 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
- 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.*
- 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

Article 20 concerns children who are temporarily or permanently unable to live with their families, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed for their best interests.

Such children are entitled to “special protection and assistance”. The method of care for them will depend in part on national traditions (for example Islamic law does not recognize adoption, and guardianship preserving the original family relationship is common in Central and Eastern Europe), but must secure the child’s rights under the Convention and, in particular, give due regard to the desirability of continuity of upbringing

including ethnicity, religion, culture and language (see articles 21, 8 and 30).

The article principally applies to the social work or welfare departments of government and to social workers, foster caregivers and adoptive parents. In 1986 the General Assembly agreed the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally which sets out basic principles in this field. In 2005 the Committee on the Rights of the Child also held a Day of General Discussion on “Children without parental care” in which it proposed United Nations guidelines on this topic. Draft United Nations Guidelines for the Care and Protection of

Summary



Children without Parental Care (the working title) were prepared by the International Social Service and UNICEF, in collaboration with the NGO Working Group on Children without Parental Care, and revised by the Committee on the Rights of the Child at its forty-second session, May 2006. This draft will be considered and revised by United Nations Member States.

Committee members have also recommended States should draw upon the United Nations publication *Human Rights and Social Work: A Manual for Schools of Social Work and the Social Work Profession*. This Manual references all the relevant international and regional rights instruments and sets out basic principles and issues, as well as providing training materials in terms of testing questions and case vignettes. ■

Children who are temporarily or permanently deprived of, or removed in their best interests from, their family environment

It should be noted that this provision refers to family, not parents, an important distinction. While it may be in the child's best interests to be removed from his or her parents (see article 9, page 122), the State should first seek placement in the child's wider family, as upheld in article 5 (page 76), before looking for alternatives. Article 4 of the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally states: "When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute – foster or adoptive – family or, if necessary, by an appropriate institution should be considered." This suggests a hierarchy of options: first, family relatives, including older children (for example in child-headed families orphaned by the AIDS epidemic); second, substitute family through fostering or adoption; and third, an appropriate institution. This approach is reflected in the provisions of article 20 and the rest of the Convention, as well as in comments by the Committee, which has consistently encouraged States to use institutions only as a last resort (see also box with extracts from its General Discussion on "Children without parental care", page 279):

"The Committee recommends that the State Party... put more focus, inter alia, on:
(a) Effective support programmes for children in vulnerable families, such as those affected by HIV/AIDS, single-parent families and families suffering from poverty,
(b) Effective support to extended families

which care for children of parents who have died of AIDS and for child-headed families,
(c) The promotion and support for family-type forms of alternative care for children deprived of parental care, in order to reduce the resort to residential care." (Uganda CRC/C/UGA/CO2, para. 42)

And it encouraged Panama

"... to develop and implement a comprehensive policy for the family to protect their children's rights which would include:
(a) Measures to strengthen the competence of parents and to provide them with the necessary material assistance and support in that regard, with particular attention to poor families and female-headed households;
(b) Measures to make fathers more aware of their parental responsibilities and to ensure that they provide the necessary financial child support;
(c) Measures to provide children who cannot be raised by their natural parents with an alternative family environment by organizing an effective system of good quality foster care, including kinship care..." (Panama CRC/C/15/Add.233, para. 36)

As discussed in article 9 (page 123), poverty is not a 'best interests' reason to deprive children of their family environment. As the Committee put it, in the Day of General Discussion on "Children without parental care":

"The Committee is deeply concerned about the fact that children living in poverty are over-represented among the children separated from their parents both in the developed and developing countries. It acknowledges that separation from parents is in many cases involuntary due to social and economic strains. It also notes with concern that tough social and economic conditions may lead to the abandonment of the child and a high number of street children. Poverty can create a vicious circle. Parents living in poverty do not necessarily dare to approach authorities and ask for help because they are afraid of losing their children. Without external assistance and support the situation may end up separating children from their parents. In addition the Committee notes that the socially and/or economically disadvantaged families are rarely involved in the policy-making processes and lack opportunities to affect the policy makers." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para.658)

The Committee has also expressed concern at laws that enable parents to abdicate responsibility for their children and place them in state care, for example Belize:

"... The Committee expresses serious concern about the provisions of the [legislation] on

Children without parental care

Committee on the Rights of the Child, Day of General Discussion, 2005: extracts

“The Committee is concerned that the institutionalization of children is used systematically. The Committee acknowledges that there has been a general agreement that the family environment provides the best possibilities for the harmonious development of the child, but between the family of origin and the placement in institution, options have to be found. These options could include the traditional placement in the family or in the extended family, open centres, the placement for day or night, emergency placement, temporary stay solutions, etc. Many of these options already exist. The Committee wishes to refer to many countries where the cultural values cherish the solidarity within the family or in the community and it encourages States Parties to examine these inspiring examples and possibilities with a view to providing children with the individual care solutions.

In the context of children separated from their parents, the Committee wishes to emphasize the principle of individualization. Every child is unique and the separation from parents and the placement into out-of-home care should always be looked at case by case. There is no one solution which fits all situations. The individualization of solutions means more tailored solutions based on the actual situation of the child, including her/his personal, family and social situation. This provides better opportunities for the assessment of the child’s long-term development and it respects the principle of the best interests of the child, e.g., what are the actual needs of the child, how to keep a close relationship with the biological family.

However, there are obstacles standing in the way of this ideal path towards individualization of solutions, such as the lack of time, including no time to carry out assessment of the actual situation, the lack of personnel, places in families, temporary and emergency measures and reception homes... However, the Committee notes with concern that one important obstacle is often our pattern of thought, among other things, the lack of creativity, the lack of will to change old habits and customs and gaps in the training or in the knowledge of existing resources.”

(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 665, 667 and 668)



“uncontrollable behaviour” according to which parents are able to seek institutional care... for a child beyond parental control.

“The Committee urges the State Party to provide parents and children with adequate knowledge, skills and support services and to review its legislation, practices and services with a view to eliminating the concept and expression ‘uncontrollable behaviour’ of children and to gradually preparing for ‘deinstitutionalization’.” (Belize CRC/C/15/Add.252, paras. 42 and 43)

This sort of legislation also represents a breach of article 9, which requires independent judicial review of such placements.

The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, also makes clear that the disability of either parent or child is not sufficient reason for removing the child from his or her family: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review

determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.” (Article 23(4))

Such children shall be “entitled to special protection and assistance”

The use of the word “entitled” stresses the obligation the State has towards children who cannot be cared for by their parents. It goes to the heart of the duty all societies owe children – that if parents cannot meet their children’s needs then the children have a moral claim on the rest of us. Article 3(2) establishes this general obligation: “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents...” The Committee’s Day of General Discussion on “Children without parental

care” stressed the principle of “individualization” – that each child is unique and all placements should be considered in response to their individual needs (see box page 279).

Children who have been deprived of their families often have greater needs than simply the provision of an alternative placement. The loss of family attachments and identity together with the instabilities and disruptions of a new placement can impede their physical, intellectual and emotional development; children in such circumstances are also vulnerable to abuse and exploitation. When deciding to hold a Day of General Discussion on “State violence against children” in September 2000, the Committee commented:

“Unfortunately it is often children deprived of family protection who are the most common victims of the worst forms of mistreatment and abuse, and too often such abuse takes place either at the hands of state agents or is made possible by their approval, tolerance or neglect.” (Committee on the Rights of the Child, Report on the twenty-fifth session, September/October 2000, CRC/C/100, para. 668)

The Committee has expressed concern about this, for example to Burundi:

“Recognizing the large numbers of orphans and other children in need of alternative care in the State Party, the Committee is deeply concerned at violations of child rights that occur in the context of alternative care, at the lack of systematic monitoring of the situation of children in institutions or informal foster families, at the use of children for labour in some informal foster families and at reports indicating that many of these children do not have adequate emotional support or access to health and education services.” (Burundi CRC/C/15/Add.133, para. 50)

Even children in the care of rich States with highly developed welfare systems may suffer. The Committee expressed concern to Denmark about the “increasing number of children placed in out-of-home care”:

“... It is particularly concerned that:
(a) *A thorough assessment of the need for out-of-home placement does not always take place;*
(b) *A significant number of young children (0-7 years) have experienced three or more placements;*
(c) *Children of ethnic minorities are over-represented in alternative care facilities;*
(d) *Contact between the child and her/his parents is very limited.”* (Denmark CRC/C/DNK/CO/3, para. 33)

“... shall in accordance with their national laws ensure

alternative care... such care could include, *inter alia*, foster placement, *kafalah*, adoption, or if necessary, placement in suitable institutions for the care of children”

The *Guidelines for Periodic Reports (Revised 2005)* requires States to provide relatively detailed information on this aspect of their responsibilities:

“With reference to children separated from parents, States Parties should provide data... on the:

(a) Number of children without parental care disaggregated by causes (i.e. due to armed conflict, poverty, abandonment as a result of discrimination, etc.);

(b) Number of children separated from their parents as a result of court decisions (*inter alia*, in relation to situations of detention, imprisonment, exile or deportation);

(c) Number of institutions for these children disaggregated by region, number of places available in these institutions, ratio of caregivers to children and number of foster homes;

(d) Number and percentage of children separated from their parents who are living in institutions or with foster families as well as the duration of placement and frequency of its review;

(e) Number and percentage of children reunited with their parents after a placement;

(f) Number of children in domestic (formal and informal) and intercountry adoption programmes disaggregated by age and with information on the country of origin and of adoption for the children concerned.” (CRC/C/58/Rev.1, para. 12, pp. 12 and 13)

During the drafting of article 20, the delegate from the United States of America made a proposal that States should have to “facilitate permanent adoption” of children in care. The proposal was rejected on the grounds that adoption is not the “only solution” when children cannot be cared for by their families. Even the milder proposal that children should have a right to a “stable family environment” did not survive to reach the final text. (E/1982/12/Add.1, C, pp. 56 to 59; Detrick, p. 299)

Adoption is unrecognized by Islamic law, which has developed instead the concept of *kafalah* – a permanent form of foster care that generally stops short of the child taking the family name or having inheritance rights. Notwithstanding the non-prescriptive nature of the list of possible placements,



four Arab States (Brunei Darussalam, Egypt, Jordan and Syrian Arab Republic) have entered explicit reservations to article 20 on the grounds that adoption is incompatible with the principles of Islam (CRC/C/2/Rev.8, pp. 16, 21, 26 and 39).

While accepting the viability of *kafalah*, the Committee has, nonetheless, queried the treatment of some children cared for in this way:

"The Committee welcomes the adoption of [new legislation] which regulates the kafalah system, but is concerned that its implementation may encounter difficulties. In addition, the Committee is concerned that in practice more girls than boys benefit from kafalah.

"The Committee recommends that the State Party take all necessary measures to fully implement the new [legislation] on the kafalah system in order to ensure that:

(a) A judicial decision is at the origin of the placement of the child;

(b) All social benefits are attributed to these children in the same way as is done for other children;

(c) Effective mechanisms to receive and address complaints from children are established, standards of care are monitored and... placement is reviewed periodically;

(d) Boys and girls are given the same opportunities under kafalah." (Morocco CRC/C/15/Add.211, paras. 38 and 39)

"While acknowledging with appreciation the kafalah system, the Committee is concerned that its application does not ensure the full enjoyment of all rights provided by the Convention...

"The Committee recommends that the State Party continue to develop and implement legislative and other measures, policies and procedures to ensure that children receive, when necessary, adequate alternative care, preferably in their own immediate families or extended families or in kafalah, which fully respects the provisions of the Convention, in particular articles 20 and 21..." (Saudi Arabia CRC/C/SAU/CO/2, paras. 48 and 49)

The Convention on the Rights of the Child specifically addresses adoption in the next article, article 21 (page 293). As regards foster care, articles of the 1986 Declaration provide:

"6. Persons responsible for foster placement or adoption procedures should have professional or other appropriate training...

10. Foster placement of children should be regulated by law.

11. Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

12. In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child."

Even though children are probably more exposed to violence or neglect in institutions, the vulnerability of children in foster care should not be underestimated. The Committee on the Rights of the Child has raised such concerns, for example:

"The Committee notes with concern that foster care has not yet been institutionalized or standardized and that the organizations involved are generally left to develop their own individual systems of monitoring and recruitment. The Committee ... recommends that the State Party develop a clear policy with respect to foster care and introduce measures to ensure a standardized approach with respect to recruitment, monitoring and evaluation under existing foster care programmes." (Mali CRC/C/15/Add.113, para. 22)

"The Committee recommends that the State Party develop additional programmes to strengthen its alternative care facilities, in particular an adequate and well-supported (e.g., via special grants for foster parents) foster care system." (Lesotho CRC/C/15/Add.147, para. 38)

Foster placement can also be used to disguise one of the more hidden aspects of child abuse – children being kept as domestic workers in conditions of near slavery (see article 32, page 480) or systems, like that of 'confiage' in Burkina Faso or 'restavek' children in Haiti, where children are routinely sent to live with wealthier families as servants. The State is not absolved of responsibility because parents have arranged the placement:

"While noting the positive aspects of the placement of children in informal foster care, in particular of children from rural areas, for educational reasons, the Committee is concerned at the lack of adequate monitoring to prevent possible abuse of these children, such as their use as domestic workers.

"The Committee recommends that the State Party undertake the necessary measures to establish outside supervision of these placements, in order to prevent the child being abused by his/her foster family." (Comoros CRC/C/15/Add.141, paras. 29 and 30)

Those training foster caregivers and supervising foster placements should ensure that foster children are not treated as inferior to other children within the family or exploited as domestic workers.





Article 25, in relation to children placed by “competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health,” calls for “a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement”. The task of the State is not over once a child has been placed in alternative family care or an institution. Too many children have failed to thrive, or have even suffered abuse, following such placements, so continual monitoring is essential for each individual child (see page 380). In addition, the institution or foster carers must be subject to independent oversight. Article 3(3) requires States Parties to ensure that “the institutions, services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision” (see page 41).

In its Concluding Observations to Lithuania the Committee summarized its recommendations regarding alternative care, applicable to all States:

“The Committee recommends that the State Party:

- (a) Ensure that institutionalization is used only as a measure of last resort, meaning that it is professionally indicated and in the best interests of the child;*
- (b) Systematically conduct periodic reviews of the placement of children, in conformity with article 25 of the Convention;*
- (c) Carry out a reform of the alternative care system and ensure that there are enough qualified supervisors and adequate resources for the proper functioning and monitoring of the system;*
- (d) Ensure that children, if they are raised in institutions, live in small groups and are individually cared for, that the parent-child relationship will not be negatively affected by placement in alternative care, and that family reunion or establishment of family environment is prioritized;*
- (e) Provide targeted services to children who will soon become adults and leave the institutions and encourage their reintegration into society;*
- (f) Strengthen and support the system of foster care, develop quality standards for foster care and significantly decrease the time spent in institutions by children without parental care;*
- (g) Provide adequate social and economic support to the social risk families, including through the establishment of a support network and the creation of job opportunities for these families;*

(h) Consider creating a special fund to provide social service for a family in a crisis situation; and

(i) Adopt and implement the recommendations presented in the regional monitoring report ‘A Decade of Transition’ (2001) of the UNICEF Innocenti Research Centre on children under the state guardianship.” (Lithuania CRC/C/LTU/CO/2, para. 42)

Institutional care

Article 20 implies, but does not spell out, that placement in “suitable institutions for the care of children” is the last resort, second best to placement in an alternative family. The qualifier “if necessary” is used, which reflects the fact that institutional care may sometimes be the best placement for some children – for example if the child has suffered multiple foster care breakdowns, or when large families of siblings wish to remain together, or for older children nearing independence. The Committee requires that States:

“... Ensure that the institutionalization of a child is a measure of last resort and only occurs when family-type measures are considered inadequate for a specific child, and that institutionalization is subject to regular review with a view to reassessing the possibility for reunification...” (Latvia CRC/C/LVA/CO/2, para. 33)

Institutionalization is particularly inappropriate for young children. The Committee’s General Comment No. 7 on “Implementing child rights in early childhood” states:

“Research suggests that low quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family based or family like care is more likely to produce positive outcomes for young children. States Parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families.” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 36)

In the Day of General Discussion on “Children without parental care”, the Committee drew attention to

“... several groups of children in need of special support measures, such as children

with disabilities, children associated with drug abuse, street children, refugee children or asylum-seeking children and children infected with or affected by HIV/AIDS. These children are often placed in big institutions due to their social and health status without evaluating the actual situation case by case..." (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 670)

In its General Comment No. 3 on "HIV/AIDS and the rights of the child", the Committee, while accepting that sometimes institutionalization may be necessary, tells States that

"... strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States Parties are reminded that limits must be placed on the length of time children spend in these institutions, and programmes must be developed to support any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 35)

Nepal, for example, was of deep concern to the Committee because

"... an increasing number of families and children are facing the risks of family disintegration and separation as a consequence of the current armed conflict in the State Party. The Committee is equally concerned at the increasing number of children placed in residential care facilities not only as a result of the armed conflict, but also of HIV/AIDS, and that many of these children still have both or one of the parents and/or close relatives. Furthermore the Committee is concerned that these residential care facilities do not meet the standards set by the State Party, and that many of them are not registered. The Committee is also concerned that adequate and effective monitoring of the quality of these facilities is lacking.

"The Committee recommends the State Party ... to undertake effective measures for the reunification of separated families... and for the introduction of a foster care system that is well resourced, with adequately trained staff;... to ensure that residential care facilities meet quality standards in conformity with the Convention, that they are registered and regularly monitored and that the placement of children in these facilities is regularly reviewed ... to ensure that such placement is only used as the last resort and for the shortest time possible." (Nepal CRC/C/15/Add.261, paras. 49 and 50)

The link between violence and institutionalization led the Committee to make the following

recommendations in its Day of General Discussion on "State violence against children":

"The Committee recommends that, for children placed in institutions, consideration be given to the following:

- (a) Small institutions caring for children in home-type settings often have a better record of caring for children;*
- (b) Smaller institutional settings, or the delivery of care and assistance to children and support to their families can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large, sometimes impersonal institutions;*
- (c) A lesser number of better trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers;*
- (d) Efforts should be made to ensure contact between the child and his or her family (when appropriate) and to avoid the isolation of children in institutions (for example, by ensuring that education, recreation, or health services are provided outside the institution).*

"... The Committee recommends that States Parties make every effort to ensure, in recruiting staff to care for children in all types of institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline. Institutions should adopt anti-bullying and anti-violence strategies and policies, and provide training for staff in their implementation." (Report on the twenty-fifth session, September/October 2000, CRC/C/100, 688.22 and 688.24)

This concern is reflected in the United Nations Secretary-General's Study on Violence Against Children, which recommends that alternatives to institutions should be found for children wherever possible, because of the high risk of violence:

"As many as 8 million of the world's children are in residential care. Relatively few are in such care because they have no parents, but most are in care because of disability, family disintegration, violence in the home, and social and economic conditions, including poverty.

"Violence by institutional staff, for the purpose of "disciplining" children, includes beatings with hands, sticks and hoses, and hitting children's heads against the wall, restraining children in cloth sacks, tethering them to furniture, locking them in freezing rooms for days at a time and leaving them to lie in their own excrement.

"In residential institutions, children with disabilities may be subject to violence in the guise of treatment. In some cases children as young as nine are subjected to electroconvulsive treatment (ECT) without the use of muscle





relaxants or anaesthesia. Electric shocks may also be used as “aversion treatment” to control children’s behaviour. Drugs may be used to control children’s behaviour and make them more “compliant”, leaving them less able to defend themselves against violence

“Neglect is also a feature of many residential institutions where conditions are so poor that they put the health and lives of children at risk. In many facilities for children with disabilities, there is no access to education, recreation, rehabilitation or other programmes. Children with disabilities are often left in their beds or cribs for long periods without human contact or stimulation. This can lead to severe physical, mental and psychological damage.

“Children in residential care are vulnerable to violence from other children, particularly when conditions and staff supervision are poor and older, more aggressive children are not separated from younger or more vulnerable ones. Staff may sometimes sanction or encourage peer abuse among children.” (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 55 to 59)

If children are placed in institutions, then the State must take measures to ensure that they are provided with well-trained staff, that the children’s needs are met and their quality of life is good and that they are protected from abuse (see also article 3(3), page 41):

“The Committee recommends that the State Party establish a code of standards to ensure that children deprived of a family environment receive adequate care and protection. The Committee recommends that the State Party reinforce its efforts to provide additional training, including in children’s rights, for the staff of institutions; ensure the periodic review of placements in institutions; and establish an independent complaint mechanism for children in alternative care institutions. The Committee encourages the State Party to introduce measures to guarantee and protect the human dignity of children living in institutions and to make these institutions more child friendly. The State Party is also encouraged to increase the level of resources allocated for the protection and care of children deprived of a family environment...” (Georgia CRC/C/15/Add.124, para. 35)

All institutions must conform to minimum standards of care, and the State must secure effective inspection mechanisms to check on children’s welfare in all institutions, state, voluntary or private (see article 3, page 35). For example, the

Committee raised its concerns with Guyana:

“While welcoming the establishment of a Visiting Committee, the Committee notes with concern the lack of standards for minimum care in institutions and of systematic supervision and oversight, particularly in private institutions.

“The Committee recommends that the State Party:

(a) Strengthen the role of the Visiting Committee, e.g., by assigning to it a standard-setting role, and provide it with sufficient human and financial reserves;

(b) Provide institutions run by NGOs with adequate financial and other support and bring them under the inspection and standard-setting role of the Visiting Committee.”

(Guyana CRC/C/15/Add.224, paras. 35 and 36)

It is particularly important for all institutions where children are living to implement the principles of article 12. The natural way in which family members talk and listen to each other, and particularly parents listen to their children, cannot easily be replicated in more formal living institutions. Deliberate steps must be taken to ensure that staff hear and take proper account of the children’s views and respect their civil rights. For example, the Committee observed to Finland:

“The Committee notes that children are often placed in alternative care without their views being adequately taken into account...”

“The Committee... recommends that the State Party sufficiently take into account children’s views in any decision regarding their placement in alternative care.” (Finland CRC/C/15/Add.272, paras. 28 and 30)

And recommended that Poland:

“... Establish procedures to ensure that children currently residing in institutions that are being closed down are fully informed and able to participate in deciding their future placement, and that these children retain their right to social protection.” (Poland CRC/C/15/Add.194, para. 37)

One unfortunate outcome of a childhood spent in institutions is that the child finds independent life in the ordinary world difficult, sometimes impossibly so. The Committee has noted this:

“... The Committee is concerned by reports about the extremely low quality of many institutions and by the fact that children previously in state care subsequently are overrepresented among the homeless.

“... During placement in institutions children should be assisted in maintaining contact with their families with a view towards achieving reintegration. The quality of institutions needs to be improved, staff should be offered additional training, psychosocial assistance should be providing for the children and

the education provided should seek to prepare children for an independent life in adulthood. The children affected should be directly consulted throughout the period of institutional placement.” (Hungary CRC/C/HUN/CO/2, paras. 31 and 33)

The Committee encouraged Armenia

“... to implement plans to offer one-room apartments free of charge for a period of 10 years to children discharged from children’s homes” (Armenia CRC/C/15/Add.225, para. 36)

and Kazakhstan to

“... provide adequate follow-up and reintegration support and services to children who leave institutional care.” (Kazakhstan CRC/C/15/Add.213, para. 44)

Other Convention provisions, for example article 2 (protection from discrimination), article 13 (freedom of expression), article 16 (right to privacy) and article 19 (protection from violence), should secure that institutions do not adopt measures that are prejudicial to the child’s normal development and socialization, for example requiring the children to wear uniforms, or revealing children’s personal history to their schools or other inmates, or using inappropriate controls or sanctions (such as corporal punishment, restriction of liberty, or the use of tranquillizing drugs or the deprivation of food, sleep or contact with family).

Deprivation of liberty

Article 37 addresses the rights of children deprived of their liberty, which includes “arrest, detention or imprisonment”. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides a more precise definition: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority.” Many children in institutions, including mental health institutions, are subjected to rules and administrative orders preventing them from leaving the establishment, that go beyond family-type rules intended to safeguard their welfare (for example, forbidding them to go out late at night). Where children are deprived of their liberty in institutions the provisions of article 37 (page 547) and of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (endorsed by the Committee) should apply, even though these institutions operate outside the penal system.

The Committee has expressed concern to a number of countries about their failure to separate children who are in need of care from

children who have committed offences, for example Argentina and Antigua and Barbuda:

“... the Committee is deeply concerned that [Argentine laws] are based on the doctrine of ‘irregular situation’, do not distinguish between children in need of care and protection and those in conflict with the law.” (Argentina CRC/C/15/Add.187, para. 40)

“The Committee is seriously concerned that no safe houses or places of alternative care exist for boys who suffer from parental neglect or who need to be removed from their family environment, and that they are generally placed in the facility for boys in conflict with the law.” (Antigua and Barbuda CRC/C/15/Add.247, para. 41)

Children with disabilities

Children with disabilities are vulnerable to abandonment by parents, either at birth or when they are older, often because the parents have inadequate support or are frightened that they will not be able to cope. Also, traditions and cultures sometimes express prejudice or hostility towards people with disabilities, encouraging parents to abdicate responsibility for a child with disabilities. Social workers may find that foster caregivers are reluctant to accept children with disabilities and small, home-like institutions may not have the staff or facilities to receive them. As a result such children may end up living in large or uncaring institutions (see article 23, page 321).

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, upholds rights to family life, covering not only children with disabilities but also the children of parents with disabilities. The Convention makes clear that disability is not a sufficient ground for removing the child in either case, and that where children with disabilities are in the care of the State, institutionalization should be a last resort:

“(3) States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

(4) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.





(5) States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.” (Article 23)

Rule 9(1) of the complementary Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides: “Persons with disabilities should be enabled to live with their families. States should encourage the inclusion in family counselling of appropriate modules regarding disability and its effects on family life. Respite-care and attendant-care services should be made available to families that include a person with disabilities. States should remove all unnecessary obstacles to persons who want to foster or adopt a child or adult with disabilities.”

These points are reiterated in the Committee’s General Comment No. 9 on “The rights of children with disabilities” (CRC/C/GC/9, paras. 47 to 49).

Thus States should first ensure that all measures of support have been taken to keep a child with disabilities within his or her family. It should perhaps be noted that expenditure on such measures is often cost-effective in the long term. The social-care services should ensure that foster caregivers are trained and encouraged to accept placements of children with disabilities and that small “family” institutions are equipped and staffed to receive children with disabilities alongside children without disabilities.

The Committee took up this issue with Ukraine and Turkmenistan

“The Committee is concerned about the absence in Ukraine of a programme involving social work. In particular, the Committee expresses its concern at the situation of the institutionalization, treatment and protection of handicapped children. Alternatives to institutionalization are not sufficiently taken into account; support services to parents who keep their handicapped child at home are inadequate.” (Ukraine CRC/C/15/Add.42, para. 13)

The Committee reiterated these concerns in its consideration of the Second Report, made worse by the

“... considerable reduction in the resources allocated to residential homes”. (Ukraine CRC/C/15/Add.191, paras. 46 to 48, 53 and 54)

“The Committee... is concerned that children with disabilities are over-institutionalized and that there is a lack of disability specialists. The Committee recommends that the State Party... undertake efforts to establish and implement alternative measures to prevent the institutionalization of children with disabilities,

including community-based rehabilitation programmes and home-based care...” (Turkmenistan CRC/C/TKM/CO/1, paras. 49 and 50)

Children who live and/or work on the streets

The phenomenon of “street children” (see article 2, page 30 for discussion of this term) is not addressed explicitly within the Convention on the Rights of the Child, but the number of children living or working on the streets of cities in almost all countries of the world is large and growing. This is a source of great concern to the Committee on the Rights of the Child, which has begun to give the topic its own separate section in Concluding Observations. The Committee now raises the issue with almost all poor countries but it has noted that the cities of rich countries also have populations of homeless or runaway children – for example it commented on the high percentage of foreign children who are street children in Germany (Germany CRC/C/15Add.226, para.59) and it recommended that Australia

“... intensify its efforts to address the urgent needs and rights of homeless children especially with regard to their housing, health and education. Furthermore, the State Party should provide homeless children with adequate recovery and social reintegration services for physical, sexual and substance abuse and to promote reunification with their families, when feasible.” (Australia CRC/C/15/Add.268, para. 66)

Children who live on the streets do not, as is commonly believed, automatically fall within the scope of article 20 because they are not necessarily “deprived of their family environment”. For example, a Namibian survey of 515 “street children” found that: “Almost all of the children surveyed had a family to which they returned on a regular basis, and most came from families of five or more children. About half of the children came from single-parent families, most of these being households headed by mothers, who are often more vulnerable than men to unemployment...” (Namibia CRC/C/3/Add.12, paras. 190 to 192) In such cases, economic want has driven them on to the streets and damage is sometimes caused by States or non-governmental organizations’ intervention because it is assumed that any child found roaming the streets must be removed to a permanent alternative home. On the other hand family reunification is sometimes not the best solution, for example if the child has been abused or rejected by the family. As the Committee points out, it is essential to listen and respond to the child’s individual history and views, recommending to the Russian Federation that it:

"Promote and facilitate the reunification of street children with their parents and other relatives or provide alternative care, taking into account the children's own views." (Russian Federation CRC/C/RUS/CO/3, para. 75)

And it urged Uganda to ensure children's views informed general strategy, recommending that the State

"... Develop and implement with the active involvement of street children themselves a comprehensive policy which, inter alia, should address the root causes, in order to prevent and reduce this phenomenon, and which should provide street children with the necessary protection, adequate health-care services, education and other social services..." (Uganda CRC/C/UGA/CO/2, para. 72)

Today, most projects offering assistance to "street children" take a considered and careful approach, looking both at the children's need to maintain relationships with their families and communities, and at the children's own sense of independence and self-reliance. Such projects increasingly advocate and support the principles of the Convention, which uphold children's autonomy as individuals and their civil rights and also which support the child's family. Projects tend to be based in the locality of the child's street existence, providing practical services while supporting the child's ability to control the pace of change and encouraging rehabilitation with their families or communities. The Committee recommends that States take an equally sensitive response, as shown in this recommendation to Lebanon:

"The Committee recommends that the State Party continue its efforts to address the issue of street children, with the aim of protecting these children and reducing their number:
(a) *By adopting a comprehensive national strategy to address the situation of street children and provide these children with official documents and adequate assistance, including recovery and social reintegration services for physical, sexual and substance abuse, as well as vocational and life-skills training, in order to support their full development;*
(b) *By refraining, as a matter of policy, from detaining children begging in the streets and seeking alternative forms for their detention, that are fully compatible with the provisions of the Convention;*
(c) *By undertaking an action-oriented study to identify the root causes and magnitude, as well as the personal characteristics, of street children in order to prevent this phenomenon, and providing them with opportunities for reunification with their family when this is in the best interests of the child; and*
(d) *By collaborating with non-governmental organizations working with street children in*

the State Party and with children themselves, and seeking technical assistance from relevant United Nations and other international organizations." (Lebanon CRC/C/LBN/CO/3, para. 78)

As can be seen from this set of recommendations, the challenge to States is twofold: to reduce the numbers of children on the streets by finding better alternatives to the street, but also to protect them while they are living and working on the streets. These children face huge difficulties: state services, such as health care or welfare benefits, are often denied them because they lack identification or a place of residence; they are often subject to persecution or discrimination by other citizens and sometimes outright violence from law enforcement officers; they are vulnerable to sexual exploitation and to drug abuse; they may be recruited by street gangs or criminal organizations. The Committee has expressed deep concern whenever it finds the State is implicated in oppressive measures, for example:

"Noting that begging is an offence, the Committee is concerned that children who are picked up for this crime risk court proceedings, or placement in detention or orphanages." (Jordan CRC/C/15/Add.125, para. 51)

"... serious concern is expressed at allegations of rape, ill-treatment and torture, including murder for the purpose of 'social cleansing', of children living in the streets." (Guatemala CRC/C/15/Add.154, paras. 54)

"The Committee is extremely concerned at... the increasing number of street children and unacceptable policies and programmes implemented by the juvenile affairs services to address this situation... the special preventive sweeps such as 'Lesson', 'Street children', 'Railway station' and 'Holiday' and at the keeping of a special data base of information on these children which is being considered as social assistance aimed at preventing abandonment and criminality..." (Ukraine CRC/C/15/Add.191, para. 69)

"According to the Law on Temporary Detention of Children without Supervision adopted in July 1994, a runaway child can be detained up to one week. The Committee recommends the State Party, as regards this [law]... refrain as a matter of policy from detaining runaway children..." (Mongolia CRC/C/15/Add.264, para. 62)

And it has recommended a number of protective measures:

"... the Committee recommends that the State Party ... provide the police services with training on children's rights so that the police can contribute to the protection of children





from acts of violence or other abuse while on the street.” (Burundi CRC/C/15/Add.133, para. 70)

“... consider addressing the situation of street children within the system of youth social welfare services rather than juvenile affairs services.” (Ukraine CRC/C/15/Add.191, para.70)

“... Raise awareness of the issue of street children in order to change negative public attitudes about them, particularly among law-enforcement officers...” (United Republic of Tanzania CRC/CITZA/CO/2, para. 62)

“... Establish an adequate mechanism to receive complaints from street children about cases of abuse and violence.” (Trinidad and Tobago CRC/C/TTO/CO/2, para. 66)

The Committee’s General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child” draws attention to the particular needs of homeless young people:

“Homeless adolescents are particularly vulnerable to violence, abuse and sexual exploitation from others, self-destructive behaviour, substance abuse and mental disorders. In this regard, States Parties are required to
(a) develop policies and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials;
(b) develop strategies for the provision of appropriate education and access to health care, and of opportunities for the development of livelihood skills.” (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, para. 36)

Unaccompanied refugee and immigrant children

The Committee’s General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin” addresses the fact that alternative care will have to be found for these children and says their care and accommodation arrangements must comply with the following principles:

- “Children should not, as a general rule, be deprived of liberty;
- In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child;
- In accordance with the principle of family unity, siblings should be kept together;
- A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would

be contrary to the best interests of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel;

- Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child’s physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities;
- States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households;
- In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. This interim care provides for their security and physical and emotional care in a setting that encourages their general development;
- Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 40)

When considering solutions, due regard to be paid to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”

This provision relates to article 7 (right to know and be cared for by parents, see page 97), article 8 (preservation of the child’s identity, see page 113) and article 30, the right of children of minority or indigenous backgrounds under article 30 generally to enjoy their culture, practice their religion and use their language (see page 455). Unfortunately a number of countries have histories of violating this right, compulsorily removing children from indigenous or minority groups and placing them with well-off childless parents. Though perhaps well-intentioned, such actions reveal a crude racism and have caused damage to many children and adults.

The Committee raised these issues in its Day of General Discussion on “Children without parental care”:

“Children feel better in their own environment and this should be taken into consideration when they are placed into out-of-home care. The basic premise is that children should be

kept in their own distinctive communities. For instance, indigenous communities often have a very close family system and the child protection system should take into consideration both indigenous culture, values and the child's right to indigenous identity..."
(Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 673)

Continuity of upbringing implies continuity of contact, wherever possible, with parents, family and the wider community – achievable even when the child is adopted (see further discussion under article 21, page 298). Continuity of upbringing also implies finding a foster or adoptive home from the same cultural background, or ensuring that all or some members of the staff in an institution are from the same culture, and, preferably, that the institution itself is located in an appropriate community. The specifying of “linguistic background” is very important. Fluency in language is best – and often only – obtained during childhood, so every effort should be made to ensure that children learn their mother tongue even when placed with speakers of another language.

However a blanket policy that required children to be placed only with persons of the same ethnicity or religion would be incompatible with the

flexibility inherent in the phrase “due regard”. The best interests of the child, in terms of article 3(1), may not be served by the continuity of religion or culture – for example if the child has been removed from parents because of harmful religious or cultural practices or if the child has run away from home because of a clash with parental beliefs or practices. And once children have sufficiently evolved capacity, their own rights to determine their religion, as well as their rights to freedom of expression and association, should be respected under articles 13 to 15.

Continuity of upbringing also implies that the State should take all measures to avoid multiple placements of children in its care. When children have suffered the trauma of losing their family they may present behavioural problems that could result in them being passed from one foster home to another, or in their spiralling downwards, through increasingly restrictive institutions, which could then lead to further behavioural problems. Care must be taken to avoid such disruption in children’s lives.



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 20, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 20 is relevant to the **departments of social welfare, education and health**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 20 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 20 likely to include the training of **social workers, adoption agency staff, staff of institutions, foster parents, teachers, police and medical personnel**)?

• Specific issues in implementing article 20

- Are parents provided with appropriate support to avoid the need to seek alternative care for the child?
- When children cannot be cared for by parents, are systematic efforts made to seek a placement with members of their wider family, with appropriate support where necessary?
- Where child-headed families occur, does the State provide the family with appropriate measures of support?
- Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?
- Are social services able to require assistance from health, education and other professionals in meeting the needs of children without families?
- Are those responsible for the placement of children without families appropriately trained?



How to use the checklist, *see page XIX*

Are the views of children obtained when

- alternative placements are being considered for them?
- alternative placements are chosen?
- alternative placements are being monitored?
- Are independent, child-friendly complaints systems available to protect children placed away from their family environment?
- Are foster parents fully investigated and authorized as appropriate before placement?
- Are foster parents recruited and encouraged to care for children with disabilities?
- Are foster parents trained to care for children with disabilities?
- Are foster placements regularly monitored?
- Are foster caregivers required to ascertain the views of the child in all matters affecting him or her and to give these views due weight?
- Does the State monitor the welfare of children fostered privately by parents?
- Are children placed in institutions only when necessary?
- Are institutional placements regularly monitored?
- Do all institutions caring for children have sufficient numbers of, and suitably qualified, staff?
- Are staff trained to secure children's rights under the Convention?
- Do such institutions respect children's human dignity, provide children with as normal a life as possible and take all measures to secure their integration in society?

For example, do such institutions prohibit

- the use of compulsory uniforms?
- child labour (which goes beyond normal domestic chores)?
- corporal punishment?
- restriction of liberty?
- the use of drugs for control purposes?
- deprivation of food?
- deprivation of sleep?
- deprivation of contact with families for control purposes?
- Are such institutions required to ascertain the views of the child in all matters affecting him or her and give these views due weight?
- Do all institutions, where possible, accommodate children with disabilities together with children without disabilities?
- Are changes in placements of children avoided if possible?
- Has the State adopted a strategy, in consultation with the children and organizations working with them, to address the situation of homeless children and children who live and/or work on the streets?
- Are these children provided with official documents and adequate assistance for their immediate protection and their social reintegration?
- Are these children the responsibility of social service authorities, not juvenile justice agencies?

How to use the checklist, see page XIX



- Do projects for these children ensure that the children, where possible and in their best interests, maintain contact with their families and communities?

When choosing or supporting a placement, do the social-work authorities pay due regard to the desirability of continuity in the child's upbringing in relation to

- the child's ethnic background?
- the child's religious background?
- the child's cultural background?
- the child's linguistic background?

(For example, by maintaining contact with the child's family, friends and community or, where this is not possible, by making special arrangements.)

Reminder: The Convention is indivisible and its articles interdependent. Article 20 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 20 include:

Article 3(2) and (3): State obligations to provide protection and care and to ensure consistent standards in all placements and services for children

Article 7: right to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

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

Article 18: parents having primary and joint responsibility with appropriate state support

Article 21: adoption

Article 22: refugee children

Article 25: periodic review of placement

Article 30: children of minorities or indigenous peoples

Adoption



Text of Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in 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 while recognizing that not all countries permit adoption. It establishes the paramountcy of children's best interests in all adoption arrangements and details minimum requirements for adoption procedures. Intercountry adoption

is only to be considered if the child cannot be suitably placed in his or her own country.

The need of all young children for a family, and for a sense of security and permanency in their relationships, is recognized in most parts of the world and is celebrated in the Convention's

Summary



Preamble which asserts that the family is “... the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children” and that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.” Adoption as the permanent solution to meet this need is, however, more controversial.

The Convention on the Rights of the Child remains neutral about the desirability of adoption: article 20 mentions it as one of the possible options for the care of children without families. It is clear that children’s psychological need for permanency and individual attachments can be met without the formality of adoption; where adoption is used, it should be properly regulated by the State to safeguard children’s rights. ■

States Parties which “recognize and/or permit the system of adoption”

There are those who believe that adoption is the best solution for children without families. For example, the delegate from the United States in the Working Group drafting the Convention proposed: “In cases where a child cannot be cared for by his parents or other members of his biological family, the competent authorities of States Parties shall take appropriate measures to facilitate permanent adoption of the child.” (E/1982/12/Add.1, C, pp. 56 to 59; Detrick, p. 299)

At the other end of the spectrum of opinion are those States which operate in accordance with Islamic law and so do not recognize adoption at all. Others report abuses of adoption – for example, there are reports of “fake adoptions” to disguise the bonded labour of children. (Report of the Working Group on Contemporary Forms of Slavery, eighteenth session, Economic and Social Council, E/CN.4/Sub.2/1993/30, p. 33. See also article 32, page 479.) The Committee on the Rights of the Child has also expressed concern about abuse of adoption, for example:

“The Committee is concerned at ... the potential misuse of intercountry adoption for purposes of trafficking, inter alia, for economic and sexual exploitation.” (Russian Federation CRC/C/15/Add.110, para. 43)

When examining Russia’s Third Report, the Committee expressed continued concern about the lack of oversight of intercountry adoptions (Russian Federation CRC/C/RUS/CO/3, para. 42).

“Given the significant number of Nepalese children who are adopted by foreigners and in the context of the current armed conflict in the State Party, the Committee is concerned at the lack of a clear policy and appropriate legislation, which results in various practices, such as trafficking and smuggling of babies. The Committee also expresses concern regarding the practice of the so-called informal adoption, which may entail exploitation of children as domestic servants.” (Nepal CRC/C/15/Add.261, para. 53)

Islamic law does not recognize the concept of an adoption which disguises the true parentage and blood relationships of a child. Children without families are able to live in permanent forms of foster care under *kafalah* which means in most Islamic States that they may not take the family name or have rights of inheritance (see article 20, page 280). Some countries, such as Lebanon, prohibit adoption for Muslims but permit it for non-Muslims (Lebanon CRC/C/8/Add.23, paras. 46 and 47). Notwithstanding the article’s careful wording a number of States with Islamic populations entered a specific reservation to article 21, including Bangladesh, Brunei Darussalam, Indonesia, Jordan, Kuwait, Maldives and the Syrian Arab Republic (CRC/C/2/Rev.8, pp. 14 to 39). The Committee observed to Jordan:

“The Committee observes that the State Party’s reservation to article 20 and 21 of the Convention is superfluous. It points out that article 20(3) of the Convention expressly recognizes kafalah of Islamic law as alternative care, and article 21 expressly refers to those States that ‘recognize and/or permit’ the system of adoption, which in any case does not apply to Jordan.

“The Committee recommends to the State Party to withdraw its reservation...” (Jordan CRC/C/15/Add.125, paras. 10 and 11)

Other countries have traditional forms of adoption which the State should ensure are consistent with the Convention. The Committee has encouraged Canada to withdraw its reservation to the provisions of article 21 “... to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada” (CRC/C/2/Rev.8, p. 16; Canada CRC/C/15/Add.37, para. 10). Following examination of its Second Report, Canada was urged “to continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation” (Canada CRC/C/15/Add.215, para. 7).

The Republic of Korea, which does not have a significant Muslim population, entered a reservation that it did not “consider itself bound” to article 21(a). The Committee has expressed consistent concern that:

“... due to prevailing negative cultural traditions, domestic adoptions may be arranged without authorization or involvement of the competent authorities and that such arrangements do not necessarily take into account the best interests of the child or, where appropriate, the views of the child.

“The Committee... calls for... a comprehensive review of the system of domestic and intercountry adoptions with a view to reforming legislation in order to bring it into full conformity with... the Convention...”

(Republic of Korea CRC/C/15/Add.197, paras. 42 and 43)

The best interests of the child shall be the paramount consideration

In adoption the best interests of the child must be “the paramount” consideration rather than simply “a primary” consideration as in article 3. The provision establishes that no other interests, whether economic, political, state security or those of the adopters, should take precedence over, or be considered equal to, the child’s. As Peru put it in its Second Report, “a family is found for the child, not a child for the family”. (Peru CRC/C/65/Add.8, para. 179)

The paramouncy principle should be clearly stated in law. Any regulation that fetters the principle could lead to a breach of the Convention – for example inflexible rules about the adopters, such as the setting of age limits, or about the child, for example requiring a lengthy period before an abandoned child can be adopted. (For further discussion of “best interests” see article 3, page 35; article 9, page 121; and article 18, page 231.)

“The child” is of course the child being proposed for adoption, but best interests’ consideration should not necessarily be limited to that child; other children may be affected by adoption procedures. Philippine law, for example, requires that “the child of the adoptive parents who is 10 years or older shall give his or her consent to the adoption” (Philippines CRC/C/3/Add.23, para. 52). An adoption considered to be contrary to the best interests of the other children within the family would be difficult to square with the principles of the Convention.

Adoption procedures can also give rise to forms of discrimination, for example in Grenada, Hungary and Mexico:

“The Committee is ... concerned about the apparent gender bias in favour of girls in the adoption process... The Committee

recommends that the State Party undertake a study to assess the situation and determine the impact of intercountry adoptions and to determine why girls are favoured over boys in the adoption process.” (Grenada CRC/C/15/Add.121, para. 19)

“... The Committee is... concerned by the high number of Roma children who are maintained in institutions even though some of them might benefit from adoption.

“... The Committee urges the State Party to identify those children who could benefit from adoption and initiate the adoption process, taking into consideration the cultural background of these children in accordance with article 20 of the Convention.” (Hungary CRC/C/HUN/CO/2, paras. 34 and 35)

“The Committee is concerned about... the fact that adoptions by rich families are reportedly prioritized, without giving due consideration to the child’s best interests and her or his cultural origins.” (Mexico CRC/C/MEX/CO/3, para. 41)

The Committee sees central monitoring by the State of all forms of adoption as essential for securing the best interests of children.

Adoption authorized “only by competent authorities... in accordance with applicable law”

In all countries where adoption is allowed, the Committee has expected to see legislation regulating both its domestic and international forms. “Competent authorities” covers the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered. Thus, both trained social workers and adjudicators should be involved in the process. The Committee raised concerns in this respect with Mauritius:

“The Committee is concerned about the lack of a specific requirement to have a social report to assist judges in their decisions that adoption is in the best interests of the child. The Committee is further concerned about the lack of a follow-up system.

“... the Committee recommends that the State Party take legislative measures to ensure that in case of adoption the decision of the judge is supported by relevant information regarding both the child and the adopting parents in order to ensure that adoption is in the best interests of the child.” (Mauritius CRC/C/MUS/CO/2, paras. 45 and 46)

The Committee has also stressed the principle that delay is likely to be prejudicial to the best





interests of the children, and that social services involvement should continue after the adoption has occurred. The Committee expressed concern about Switzerland and the Philippines, because:

“... children adopted abroad must wait two years before being formally adopted, which can lead to discrimination and statelessness. In addition, the Committee is concerned that, because of the inadequate follow-up, cases of ill-treatment of children by adoptive parents have been reported.” (Switzerland CRC/C/15/Add.182, para. 36)

“... The Committee is concerned that the lengthy process of declaring a child for adoption results in a prolonged stay in an institution...” (Philippines CRC/C/15/Add.259, para. 48)

Determination “on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary”

While the best interests of children are the paramount consideration in an adoption process, there is a presumption within the Convention that children’s best interests are served by being with their parents wherever possible (articles 7 and 9) and that their parents have “primary responsibility” for their upbringing, a responsibility they must exercise within the framework of the child’s best interests, his or her rights under the Convention and his or her evolving capacity (articles 5 and 18). An adoption can only occur if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility – any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children’s and parents’ rights under the Convention. The requirement for proper consent for adoption has arisen because of cases in which children have been wrongfully removed from their parents.

The Committee expressed concern, for example, at the Hungarian practice of making an adoption placement before the child has been born (Hungary CRC/C/15/Add.87, paras. 17 and 33). When Hungary made its Second Report, the Committee was still concerned

“... over the short period of time after birth during which the mother may withdraw her consent”. (Hungary CRC/C/HUN/CO/2, para. 34)

And it raised with Kyrgyzstan,

“... The practice of encouraging parents to sign documents by which they agree to give up their children when placing the latter under institutional care, although not widespread, is a matter of concern to the Committee.” (Kyrgyzstan CRC/C/15/Add.244, para. 41)

The “paramountcy” of children’s best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child’s best interests. The Convention’s provisions mean that each potential adoption will require proper investigation with full reports by independent professionals to the authorities considering the adoption application. Article 21 does not spell out what consents must be obtained. “If required” leaves it up to domestic legislation – although any gross violation of either the child’s or a natural parent’s rights to family life would amount to a breach of the Convention (see articles 7 and 9) and other human rights instruments. States should reconsider, for example, laws that do not permit fathers of children born outside marriage to have any potential rights in adoption procedures. Where consents are required, the Convention provides that these must be given “on the basis of such counselling as may be necessary”.

The child’s views

The child’s views are not explicitly mentioned in the requirements relating to consent, but proper consideration of them is undoubtedly implied, as well as required under article 12 (see page 155). Children’s ascertainable views must be central to any consideration of their “best interests”. As discussed in articles 7 and 8, the Committee has made clear that adopted children have the right to be told they are adopted and to know the identity of their biological parents, if they so wish, which implies keeping accurate and accessible records of the adoption (page 115).

In addition to taking the child’s views into account, adoption legislation may also require that the child’s formal consent be obtained. Some countries report that ages are set above which the child’s consent is legally required for adoption (for example Nova Scotia, where consent to an adoption is needed from any child aged 12 or more (Canada CRC/C/11/Add.3, para. 1129), from any child aged 10 or more in Croatia (Croatia CRC/C/8/Add.19, para. 103) and aged 9 or more in Mongolia (Mongolia CRC/C/3/Add.32, paras. 135 to 139)). Another possibility is giving children the power to veto their own adoption. Adoption is never essential (the Islamic experience shows

that permanency can be achieved without it) and is usually irrevocable. Consent to adoption therefore carries more risk, is a weightier decision, than vetoing it. Passively refraining from exercising a right of veto, rather than actively stating consent, is also less likely to place a burden of guilt on children in relation to their natural parents and complies with the principle of article 12 that children should be free to express their views, but should not feel forced to do so. It is hard to imagine in what circumstances a child of any age should be adopted against his or her expressed wishes. Even if a very young infant objected, it would seem wise to accept his or her wishes and return to the subject at a later date.

The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption provides that such adoptions can only take place if the authorities of the State of origin “have ensured, having regard to the age and degree of maturity of the child, that he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required” and that “consideration has been given to the child’s wishes and opinions...” (article 4(d)). It also states that where consent is required, it must be given freely, without inducements.

The Committee has emphasized the importance of the child’s rights under article 12 to have his or her wishes considered in relation to adoption:

“In the framework of the adoption process, due consideration should be given to the provisions of article 12 of the Convention.” (Mexico CRC/C/15/Add.13, para. 18)

“... the Committee recommends that consideration be given to extending and broadening the involvement of children in decisions affecting them in the family and in social life, including in proceedings relating to family reunification and adoption.” (Germany CRC/C/15/Add.43, para. 29)

“... In particular, the Committee recommends that the State Party ... require that children of a certain age consent to their adoption.” (New Zealand CRC/C/15/Add.216, para. 34)

“Intercountry adoption may be considered as an alternative means of child’s care under certain conditions”

The wording deliberately falls short of saying that countries must consider international adoption as one of the options of care for children without families, and, as discussed below, article 21 requires that it must only be undertaken as a last resort.

The rising number of intercountry adoptions has been the cause of much concern. Children are a highly desirable commodity in countries where low birth rates and relaxed attitudes towards illegitimacy have restricted the supply of babies for adoption. This has led to an apparently increasing number of adoptions being arranged on a commercial basis or by illicit means. Without very stringent regulation and supervision children can be trafficked for adoption or can be adopted without regard for their best interests; some children are even adopted for nefarious purposes, such as child prostitution or forms of slavery. This has been recognized in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see page 669). This requires States to take measures to criminalize as an extraditable offence any sort of trafficking in children, including: “Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal legal instruments on adoption.” (Articles 2, 3 and 5)

The Committee has frequently expressed concern about the phenomenon, for example:

“The Committee expresses its grave concern over the information brought to its attention of alleged trafficking in intercountry adoptions in violation of the provisions and principles of the Convention. It is further concerned about the absence of a normative framework in the field of intercountry adoptions, namely in the light of articles 3, 12 and 21 of the Convention.” (Paraguay CRC/C/15/Add.27, para. 11)

“The Committee notes with concern the information provided by the State Party that an illegal adoption network has been uncovered and that the mechanisms to prevent and combat such violations of children’s rights are insufficient and ineffective.” (Guatemala CRC/C/15/Add.58, para. 21)

Even when intercountry adoptions are regulated, the Committee has remained concerned about countries that have high numbers; it also encourages the receiving countries to monitor the welfare of children who have been adopted abroad.

Argentina entered a reservation to paragraphs (b), (c), (d) and (e) of article 21, but not because it was unconcerned about international adoption. On the contrary it stated that these provisions do not apply within its jurisdiction: “because, in its view, for the purpose of their implementation, a rigorous mechanism for the legal protection of the child in respect of international adoption must already be in place, in order to prevent the trafficking and sale of children” (CRC/C/2/Rev.8, p. 13,





Argentina CRC/C/8/Add.2, para. 62). The Committee was not satisfied with this argument and recommended that Argentina review the reservation with a view to withdrawing it (Argentina CRC/C/15/Add.35, paras. 8 and 14; and Argentina CRC/C/15/Add.187, para. 14).

Intercountry adoption only “if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin”

In other words, intercountry adoption must be a solution of last resort. States are under an obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her country of origin. This “last resort” provision is consonant with article 20(3) requiring due regard to be paid to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; with article 7, upholding the child’s rights to know and be cared for by parents, and with article 8, the child’s right to preserve identity. It is confirmed in the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which establishes the “subsidiarity principle” that an intercountry adoption should only take place “after possibilities for placement of the child within the State of origin have been given due consideration”. Prolonged institutionalization in most cases is unlikely to constitute “suitable” care in the child’s country of origin.

The Committee is concerned when countries seem to have a disproportionate number of intercountry adoptions, for example in Bolivia and Latvia:

“... the Committee is concerned about the limited understanding and acceptance in the State Party that domestic adoptions are more desirable than intercountry adoptions, the lack of mechanisms to prepare prospective adoptive parents, and the lack of mechanisms to follow up and monitor the situation of adopted children...” (Bolivia CRC/C/15/Add.256, para. 41)

“The Committee is concerned that the number of children adopted domestically remains significantly lower than the number adopted through intercountry adoptions...” (Latvia CRC/C/LVA/CO/2, para. 34)

It recommended that Latvia take steps
“... to encourage domestic adoptions, including through the dissemination of

accessible information relating to the conditions for adoption, offering preparatory assistance to persons willing to adopt and working groups for adoptive parents. The Committee also recommends ... preference is given to domestic adoption over intercountry adoption.” (Latvia CRC/C/LVA/CO/2, para. 35)

Unaccompanied refugee or immigrant children

Large and rising numbers of unaccompanied children are arriving in the rich nations of the world. In its General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin”, the Committee recognized that, although it was tempting to see adoption as a good solution for these children, there were, in fact, many potential hazards. It recommends the following:

- *“Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means, inter alia, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption. The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn;*
- *Unaccompanied or separated children must not be adopted in haste at the height of an emergency;*
- *Any adoption must be determined as being in the child’s best interests and carried out in keeping with applicable national, international and customary law;*
- *The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption, where such consent is required. Such consent must have been given freely and not induced by payment or compensation of any kind;*
- *Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture;*
- *Adoption should not be considered*
 - *where there is reasonable hope of successful tracing and family reunification is in the child’s best interests;*

- if it is contrary to the expressed wishes of the child or the parents;
- unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members have been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time;
- Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future.” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 91)

Duty to “ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption”

Thus every international adoption must be authorized as being in the best interests of the child by competent authorities of the child’s State, on the basis of proper investigation and information and with proper consents (with counselling, if necessary) having been obtained. While the Hague Convention lays down these ground rules and provides the details for intercountry adoption, it is, of course, up to each State to ensure that its adoption legislation, professional training and administrative mechanisms are in place.

Intercountry adoption should not result in “improper financial gain”

Country reports and Committee observations highlight the widespread concern about the trafficking of children for adoption. While payments by adoptive couples may be made in good faith and without harm to the child, a system that puts a price on a child’s head is likely to encourage criminality, corruption and exploitation. Article 35 of the Convention on the Rights of the Child requires States Parties to take measures to prevent the sale of children for any purpose. Article 32 of the Hague Convention states:

“1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.”

The Optional Protocol on the sale of children, child prostitution and child pornography (see page 669) obliges States Parties to criminalize any improper financial gain from the adoption of a child as an extraditable offence (articles 2, 3 and 5).

The Committee’s concerns in this area are primarily because of the danger of children being trafficked. However, it has also signalled its disapproval of any form of profiteering from intercountry adoption, for example in its concluding observations to Colombia and the Russian Federation:

“... The Committee is particularly concerned that the practice of private ‘Adoption Houses’ increases the risk of profit-making in conjunction with adoptions and contravenes article 21 of the Convention.

“The Committee recommends that the State Party ensure that all intercountry adoptions be administered through a central authority...” (Colombia CRC/C/COL/CO/3, paras. 56 and 57)



States that have ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (as at July 2007)

Albania	Ecuador	Philippines
Australia	El Salvador	Poland
Austria	Finland	Portugal
Belarus	France	Romania
Belgium	Germany	Slovakia
Bolivia	Hungary	Slovenia
Brazil	India	Spain
Bulgaria	Israel	Sri Lanka
Burkina Faso	Italy	Sweden
Canada	Latvia	Switzerland
Chile	Luxembourg	Thailand
China	Madagascar	Turkey
Colombia	Mexico	United Kingdom
Costa Rica	Netherlands	Uruguay
Cyprus	Norway	Venezuela
Czech Republic	Panama	
Denmark	Peru	

“The Committee... notes that the federal authorities do not exercise sufficient control of foreign adoption agencies with respect to documentation required for adoption, undue payments and allowing prospective adoptive parents to select the child they will adopt...”
(Russian Federation CRC/C/RUS/CO/3, para. 42)

States should conclude “bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs”

The most important treaty for States to join as parties is now the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (see Appendix 4, page 747). This was drafted to meet the need for detailed, legally binding international standards, for an agreed system of supervision and for channels of communications and effective relationships between the authorities in the countries of the adopted child and the adopters. It builds upon article 21 and the rest of the Convention on the Rights of the Child and reflects the provisions of

the 1986 United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. The Hague Convention’s first objective is “to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law” (article 1(a).

The Committee has systematically taken note of the signing of this Convention, taking pains to commend those countries that have become parties (see box) and strongly encouraging those that have not yet done so. It should be noted that most of the States that have become parties have significant numbers of intercountry adoptions. However, it noted with disapproval that in France,

“... the majority of intercountry adoptions are made with countries of origin that have not ratified the Hague Convention of 1993 and is concerned at the high percentage of intercountry adoptions which are not made through the accredited bodies but through individual channels.” (France CRC/C/15/Add.240, para. 33)

Rich countries – the “receiving States” of the Hague Convention – should be vigilant about adoptions that seek to get round the provisions of the Convention.

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 21, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 21 is relevant to the **departments of justice, social welfare and foreign affairs**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 21 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 21 likely to include the training of **social workers, judiciary, port and border control authorities, adoption agency staff and development of education for adoptive parents**)?

• Specific issues in implementing article 21

- Does the State recognize and/or permit a system of adoption of children?

If yes:

Does legislation and administration ensure that in all adoption proceedings (domestic, "customary" and intercountry)

- the best interests of the child are the paramount consideration?
 - adoptions are authorized only by competent authorities?
 - these authorities make their decisions on the basis of all pertinent and reliable information?
- Does this information include the ascertainable views of the child?
 - Are the views of the child given due weight, having regard to age and maturity?



How to use the checklist, *see page XIX*

- Are the views and best interests of other children affected by a proposed adoption (such as the children of the prospective adopters) considered by the competent authorities?
- In this process is due regard paid to the child's right to know and be cared for by his or her parents?
- In this process is due regard paid to preservation of the child's identity and the desirability of continuity in the child's background and to the child's ethnic, religious, cultural and linguistic background?

Before agreeing to an adoption, must the authorities be satisfied that

- the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians?
- all consents required by law have been given by the persons concerned?
- Where consents are required by law, are the persons concerned provided with counselling?

Do children have a right to consent to an adoption

- at any age?
- at a particular age?
- according to age and maturity?
- Do all children have a right to veto their adoption?
- Are all adoption placements centrally monitored and periodically reviewed by the authorities?
- Are intercountry adoptions only permitted if the child cannot be placed in a foster or an adoptive family or cannot be cared for in any other suitable manner within the jurisdiction?
- Do all children involved in intercountry adoptions (whether leaving or entering the State) enjoy safeguards and standards equivalent to those regulating domestic adoptions?
- Do border controls monitor the entry and exit of babies and children travelling with adults who are not their parents?
- Is improper financial gain from intercountry adoption prohibited by law?
- Has the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption been ratified or acceded to?
 - If yes, 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 interdependent.
Article 21 should not be considered in isolation.

**Particular regard should be paid to:
The general principles**

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 21 include:

Article 5: parental guidance and child's evolving capacities

Article 7: child's right to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

Article 10: family reunification

Article 11: protection from illicit transfer and non-return

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

Article 18: parents having joint responsibility

Article 20: children deprived of their family environment

Article 25: periodic review of placement

Article 35: prevention of sale, trafficking and abduction

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



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. This is the only explicit reference to refugees in the general human rights treaties and is particularly important for children in States that have not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates

that about half of the world's 10 million refugees are children. Almost every Concluding Observation by the Committee on the Rights of the Child has a section on the country's treatment of refugee children.

The article stresses that these children are entitled to the rights of the Convention (as are all children within the State's jurisdiction, regardless of their nationality status). In particular article 22 must be read in conjunction with articles 7 and 8 (right to nationality and family relations) and article 9 (separation from parents only when

Summary



necessary in the best interests of the child), article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), article 20 (children without families), article 35 (trafficking of children), article 37 (deprivation of liberty a measure of last resort) and article 39 (recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse). The two Optional Protocols, on armed conflict and on the sale of children, are also relevant, particularly as regards treatment of children outside their country of origin. In addition there are a number of international treaties relating to these children that the Committee consistently urges States to adopt, as well as guidelines by UNHCR (see box below). The Committee has also issued a General Comment on “Treatment of unaccompanied and separated children outside their country of origin” (CRC/GC/2005/6). ■

Background

Earlier drafts of article 22 emphasized that the refugee child “needs special protection and assistance”. This word “special” was changed to “appropriate”,

partly because the drafters recognized that the needs of these children would be met if the articles of the Convention on the Rights of the Child were properly applied to them, and partly in response to pressure from States that were cautious about according children special rights of residence or nationality, or which did not want to bear the cost of tracing family members (E/1982/12/Add.1, C, pp. 64 to 68; Detrick, pp. 320 to 329). It is important, nonetheless, that States recognize that refugee and asylum-seeking children need specific forms of protection and assistance.

There have been a number of UNHCR Executive Committee Conclusions to this effect, for example, Executive Committee Conclusions No.47 (1987) on Refugee Children; No.59 (1989) on Refugee Children; No.84 (1997) on Refugee Children and Adolescents; No.88 (1999) on Protection of the Refugee’s Family; and No.105 (2006) on Women and Girls at Risk. These have now been augmented by General Comment No. 6 of the Committee on the Rights of the Child, on “Treatment of unaccompanied and separated children outside their country of origin” (CRC/GC/2005/6, see box for summary, page 309).

Related international treaties and guidelines

The Committee encourages States to ratify other international instruments that address issues relating to unaccompanied and separated children, including:

- the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography),
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- the Convention on the Elimination of All Forms of Discrimination against Women,
- the Convention relating to the Status of Refugees (“the 1951 Refugee Convention”) and the Protocol relating to the Status of Refugees,
- the Convention on the Reduction of Statelessness,
- the Convention relating to the Status of Stateless Persons,
- the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption,
- the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children,
- the four Geneva Conventions of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

The Committee also encourages States Parties to the Convention and others concerned to take into account UNHCR’s *Guidelines on Protection and Care* (1994) and the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* (ICRC, 2004).

(Committee on the Rights of the Child, General Comment No. 6, “Treatment of unaccompanied and separated children outside their country of origin”, 2005, CRC/GC/2005/6, para. 15)

The Convention relating to the Status of Refugees and its 1967 Protocol are the key global instrument on this issue. Over fifty countries have not yet ratified this Convention, and the Committee on the Rights of the Child has consistently recommended that they become parties, as well as encouraging States to lift any reservations entered in respect of refugees.

... a child who is seeking refugee status or who is considered a refugee “in accordance with applicable international or domestic law and procedures”

Article 22 does not define what is meant by “refugee” but refers to applicable international or domestic law and procedures. The 1951 Convention relating to the Status of Refugees (as amended by the 1967 Protocol relating to the Status of Refugees) provides the international definition of refugees. The defining conditions for adults and children under this Convention are, broadly speaking, that refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and they must be unable or unwilling to return because of this fear. A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return (known as “non-refoulement” obligations). The *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* is widely recognized as an authoritative interpretation of the 1951 Convention.

It is for States to enact and implement their national asylum legislation (though UNHCR may conduct refugee status determination under its mandate where governmental procedures are not in place or are insufficient). This legislation must conform to any international obligations to which the State is Party, including the Convention on the Rights of the Child, but it does not have to be limited by these obligations. This important principle is considered customary international law, and thus binding on countries that are not parties to the 1951 Convention or the 1967 Protocol.

Accompanied children usually, but do not have to, assume their parents’ refugee status. Problems may arise, however, when unaccompanied or separated children have to prove refugee status – the difficulty of establishing this status may be compounded by their lack of maturity and the fact that the claim for refugee status may have arisen from circumstances relating to their families or relatives rather than directly to the children themselves.

In its General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin” the Committee clarifies that States’ non-refoulement obligations derive directly from the Convention:

“Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-state actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.

“... In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status determination procedures.” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 27 and 74)

For example, the Committee was critical of Germany because it did not accept recruitment of children as soldiers as a “child-specific” form of persecution in the asylum procedure (Germany CRC/C/15/Add.226, para. 54).

Where there are inadequate systems for establishing refugee status the situation of children can become dire, as the Committee pointed out to China:

“The Committee is... concerned that children entering mainland China from the Democratic People’s Republic of Korea are categorically considered as economic migrants and returned to the Democratic People’s Republic of Korea





without consideration of whether there are risks of irreparable harm to the child upon return.” (China CRC/C/CHN/CI2, para. 80)

Even when children’s welfare is not directly jeopardized, poor systems can lead to delay, which is inevitably damaging to children’s welfare:

“... the Committee remains concerned at:
(a) The large number of asylum applicants whose initial requests are rejected leading, inter alia, to delays and detention at the State Party’s borders that may affect respect for the rights of the children involved;
(b) The frequent occurrence of delays throughout the administrative and/or judicial processes with regard to asylum or refugee applications, including delays in family reunification, which affect children;
(c) The absence of adequate public funding of legal aid for asylum seekers and refugees;
(d) The insufficient attention provided for the specific needs and situation of unaccompanied child refugees...” (Greece CRC/C/15/Add.170, para. 68)

“The Committee is concerned about... the very long processing period for asylum application, which may have negative consequences for the mental health of the child.” (Sweden CRC/C/15/Add.248, para. 39)

On the other hand, procedures should not be speeded up so that the child’s application for asylum is not given a fair hearing:

“... The Committee is concerned that in the Netherlands the definition of an unaccompanied minor seeking asylum does not conform to international standards... It is also concerned that the determination and rejection of a significant and increasing proportion of applications for refugee status through the 48-hour accelerated procedure are not in keeping with article 22 of the Convention and international standards...” (Netherlands CRC/C/15/Add.227, para. 53)

... a child who is seeking refugee status... whether “unaccompanied or accompanied”

The Committee’s General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin” details the essential safeguards for children who travel alone or with adults who are not their parents or caregivers (see summary in box, page 309). The General Comment stresses that the interviews and hearings should be conducted in child-friendly environments and that there should be access to appeal. A guardian or adviser should

be appointed to ensure that all decisions taken are in the child’s best interests, and lawyers and interpreters as well, where necessary. The Committee usually checks that these safeguards are in place in the receiving countries:

“The Committee is... concerned about reports that unaccompanied children are not provided with adequate support during the asylum procedure and that the appointment of a legal guardian to such children takes too long.” (Slovenia CRC/C/15/Add.230, para.56)

“The Committee notes the efforts of the State Party to address the situation of unaccompanied minors by providing them assistance during their time in the holding area by an ‘ad hoc administrator’ who replaces a legal representative. However, the Committee also notes that the number of minors in such situations has been steadily increasing, and that the implementation of the new legislation remains a challenge... The Committee is also concerned that unaccompanied children arriving at the airport may be returned to the country of origin without judicial intervention and without an evaluation of their family situation... In addition to this, the age determination process allows for errors which may lead to minors not being accorded protection they are entitled to.” (France CRC/C/15/Add.240, para. 50)

“... the Committee is... concerned that unaccompanied minors do not have access to the national refugee status determination procedure because they lack a guardian.” (Russian Federation CRC/C/RUS/CO/3, para. 66)

There are also many countries in Africa, Asia and South America that act as host to large numbers of refugees from adjoining countries. The Committee recognizes that the appointment of a guardian, or even assessment of refugee status, may not be possible for each child in the face of the emergency and the receiving State’s available resources. In Concluding Observations the Committee expressly thanks these countries for their generosity and tends to focus its comments on improving basic conditions in the camps. In its General Comment it recommends:

“In cases of large-scale refugee movements where individual refugee status determination is not possible, States may grant refugee status to all members of a group. In such circumstances, all unaccompanied or separated children are entitled to be granted the same status as other members of the particular group.” (Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, para. 73)

Treatment of unaccompanied and separated children outside their country of origin

Committee on the Rights of the Child, General Comment No. 6, 2005: summary

“Unaccompanied” refers to children who are not being cared for by a responsible adult; “separated” to children who are with family members that are not their primary caregiver(s). Such children primarily include refugees, trafficked children and children in search of economic opportunities; they are often exposed to exploitation, abuse, persecution and discrimination.

General obligations of the Convention

Convention rights apply to all children within the State’s territory, irrespective of their nationality or immigration status. These rights should be enforced in domestic legislation. States are also encouraged to ratify other, related, international treaties (see box, page 306).

Article 2: The State must take active steps to combat discrimination. Any public order or policing measure must be taken on an individual, not collective, basis.

Article 3: Determination of best interests requires a comprehensive assessment of the children’s identity, upbringing, cultural background, particular vulnerabilities and needs, which should be carried out in a friendly atmosphere by trained professionals. The appointment of a guardian, and where necessary a legal representative, is an essential safeguard, as is periodic review of any placement.

Article 6: States must be vigilant against criminal activities linked to these children, by for example giving trafficked children priority status and the prompt provision of guardians. The State must not only respect the international law principle of “non-refoulement” – that people must not be returned to territories where their life or freedom is threatened or they are at risk of persecution – but also that a child may not be sent to a country where they are at risk of irreparable harm of any sort.

Article 12: Children should be provided with all relevant, age-appropriate information concerning their entitlements, the asylum process, the situation in their country of origin etc. The children’s views should be taken into account about all decisions affecting them. Interpreters should be available at all stages.

Article 16: Children’s right to confidentiality must be respected; particular care should be taken not to endanger the child’s family members in the country of origin.

Specific measures

Priority should be given to identifying these children at ports of entry. Assessment of age must respect their human dignity: where age is uncertain, they should be given the benefit of the doubt. Interviews should be conducted by professionals, be age- and gender-sensitive, in a language the child understands. Information sought should include: the identity and citizenship of the child and of both parents and siblings; the reason for being separated/unaccompanied; assessment of any vulnerabilities and needs, and any evidence of persecution, conflict or violence in the country of origin.

The children should be provided with personal identity documentation and a qualified guardian should be appointed to safeguard the child’s interests until their majority; adult family members accompanying separated children should be their guardians unless contrary to best interests.

Care and accommodation arrangements should be with relatives where possible; alternative placements must take into account children’s ethnic, religious, cultural and linguistic background; siblings should be kept together; changes of residence should only occur where this is in their best interests and the placement should be monitored by qualified people.

All children should have access to full educational opportunities, including being registered with the school authorities as soon as possible, and provided with appropriate educational certificates where return or resettlement is likely. They should have an adequate standard of living and have the same access to health care as children who are nationals. In particular, rehabilitation services should be provided for children who have been the victim of any sort of abuse or trauma.





Measures to protect children from trafficking include regular checks on their whereabouts; enforcing legislation against perpetrators but not criminalizing the child; giving victims access to asylum procedures. States should also protect children from recruitment into armed forces (or re-recruitment); former child soldiers should be rehabilitated and not interned (unless a serious security threat).

As a general rule children should not be deprived of liberty. Detention cannot be justified solely on the basis of children's migratory status or because they are unaccompanied or separated. Where exceptional circumstances lead to detention, this should be for the shortest appropriate time and children should have contact with relatives and representatives and be provided with all basic necessities including access to education, preferably outside the place of detention.

Rights in asylum procedures

States must enact and enforce legislation to enable children of all ages to claim asylum, even if they are unable themselves to articulate a well-founded fear of persecution. They should be represented by their guardians and, free of charge, a legal representative and an interpreter; decisions on asylum must take into account the unique combination of factors relating to each child. Persecution of relatives; risk of under-age recruitment, trafficking, sexual exploitation, female genital mutilation are examples justifying the granting of refugee status.

Children should not be referred automatically to asylum procedures and those who are not entitled to asylum should enjoy the same rights as other children while they remain within the State.

Family reunification

The State must make all efforts, as quickly as possible, to trace the family of unaccompanied or separated children and reunite them, unless this is contrary to children's interests, or would jeopardize the family. Child refugees may not be returned to their country of origin; where there are smaller risks it may also be necessary to balance them against the children's right to be with their family. Applications by family members to join the child should be dealt with in a positive, humane and expeditious manner.

Return to country of origin

This is not an option if there is a reasonable risk that children's rights will be violated. Determination of risk must include investigation, through social work networks, of the security and socio-economic conditions, the precise care arrangements for the children, their views and level of integration in the host country and their right to preserve identity and continuity of upbringing.

Local integration

If return is not possible, local integration is the primary option. It must be based on secure legal status, including residence status. Appropriate long term arrangements must then be made. Resettlement in a third country may be the best interests-solution for some children.

Intercountry adoption

This may only occur if all efforts regarding tracing and family reunification have failed, if it is not contrary to the expressed wishes of the child or parents and is compliant with all international and national law. Adoptions should not occur in the country of asylum if there is a possibility of safe voluntary repatriation in the near future.

Training and record-keeping

The training of officials working with these children must include the Convention, knowledge of the country of origin, appropriate interview techniques, cultural sensitivity and child development.

A detailed and integrated system of data on these children should be kept, including basic biographical data on each child with details of their legal status, placement, education, appointment of representatives and attempts at family reunification; overall numbers of children entering, or refused entry, granted asylum or returned to country of origin, numbers of guardians and lawyers appointed. Care must be taken to protect confidentiality, including that of family members still in the country of origin.

(Committee on the Rights of the Child, General Comment No. 6, "Treatment of unaccompanied and separated children outside their country of origin", 2005, CRC/GC/2005/6. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

Internal displacement and migration not covered by article 22

Children and their families may be fleeing persecution or armed conflict within their own country and thus, technically, fall outside the scope of the definition of a refugee, though their experiences are often the same. Indeed, families may oscillate between being refugees and internally displaced persons as they cross and recross their State's frontier.

The Representative of the Secretary-General for Internally Displaced Persons issued *Guiding Principles on Internal Displacement* (1998) which addresses the situation of internally displaced persons, asserting their right to be protected from arbitrary displacement – for example from ethnic cleansing, or from clearances arising from large-scale development projects not justified by compelling or overriding public interests. The Principles recognize the particular needs of children, including those separated from their families or previous legal or customary primary caregiver, and require that their rights to basic services, education and civil liberties are secured.

The Committee has expressed concern about the plight of internally displaced children, referring States to UNHCR.

For example:

"... The Committee is disturbed ... by the massive numbers of people who have been forcibly regrouped within the country and by the very poor, sometimes life-threatening conditions in displaced and regrouped persons camps, and the poor health and education services available to camp populations...

"The Committee urges the State Party to make every effort to protect the civilian population from displacement and to implement its plans to end regroupment, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State Party to ensure that all displaced children and their families, including those who have been regrouped, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee also urges the State Party to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition, the Committee urges the State Party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of a durable solution." (Burundi CRC/C/15/Add.133, paras. 67 and 68)

"The Committee takes note of the State Party's intention to increase resources for assistance to internally displaced children, however it expresses grave concern of the very high number of children who continue to be displaced annually in Colombia. According to UNHCR Colombia has the largest internally displaced population in the world... it is estimated that children constitute more than half of the displaced population. In addition, the Committee is concerned that inadequate attention is paid to the physical protection of internally displaced children and their need for psychosocial assistance in order to overcome the trauma of displacement.

"The Committee recommends that the State Party... substantially increase the resources allocated for internally displaced persons and implement targeted programmes for children in order to provide them with adequate access to food, shelter, education and health services;... pay additional attention to the psychosocial assistance required by children who have been displaced and provide further protection for girls against gender-based violence;... distribute humanitarian assistance by civilian authorities..." (Colombia CRC/C/COL/CO/3, paras. 78 and 79)

Article 22 does not cover migrant children who are not refugees, though many of the world's unaccompanied children outside their country are the so-called economic migrants fleeing poverty and lack of opportunity rather than persecution (covered by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Children in foreign countries may also have been trafficked there for exploitation as prostitutes or domestic workers. The Committee recommends in its General Comment No. 6 that such children should not automatically be routed through asylum channels to the inevitable end of deportation, but should be treated humanely and positively. It also raises concerns about these children with individual countries, such as Thailand:

"While acknowledging the State Party's efforts to register children of migrant families, it is still deeply concerned about their vulnerability in Thailand. The alleged human rights violations of migrant workers and their family members, such as arbitrary arrests and detention by local police, give cause for serious concern. The Committee regrets that many families, even pregnant women with small children, are deported despite their fear of persecution. In addition, the Committee notes with particular concern that children of migrant workers lack access to a range of health and education services, including those related to HIV/AIDS prevention and care, that their living conditions are often extremely





poor and that many of them work long hours in hazardous conditions.

“The Committee recommends that the State Party take urgent measures to ensure that the children of migrant workers or their family members, in particular non-registered migrants, are not arbitrarily arrested, detained or persecuted and that if they are to be returned to their country of origin, the principle of non-refoulement should be respected. It recommends that the children of migrant workers are ensured access to health and social services and to education in accordance with the principle of non-discrimination...” (Thailand CRC/C/THA/CO/2, paras. 68 and 69)

Responsibilities of countries of origin or transit countries, and bilateral cooperation

The State from which these children have fled may be unwilling or unable to remedy the reason for their flight, such as armed conflict, ethnic cleansing or political persecution. This has not, however, stopped the Committee from urging them to take remedial measures. Whenever countries have large-scale child exoduses, for whatever reason, the Committee expects the State to take active measures to remedy the causes and secure the children’s welfare:

“The Committee notes that the departure of children from Albania to neighbouring countries is a significant problem, and that approximately 4,000 children have left the country unaccompanied by their parents.

“The Committee recommends that the State Party strengthen its efforts in this area, in particular:

- (a) To determine and address the causes of such large-scale departure of unaccompanied children and introduce safeguards to reduce the phenomenon, in particular if such children are victims of illegal networks;*
- (b) To ensure a coordinated approach to the collection of information and statistics, allowing a response commensurate to the needs;*
- (c) To strengthen cooperation and accelerate conclusion of agreements with neighbouring countries in order to ensure respect for the rights of these children, as well as their protection and education.” (Albania CRC/C/15/Add.249, paras. 66 and 67)*

The Committee is also encountering situations where the receiving countries have sent back significant numbers of children to their country of origin or to a transit country. For example, Mexico and Morocco receive many children who have been sent back from the United States of America or Spain. The Committee has made clear that such countries have duties under the Convention to these returned children:

“... the Committee remains concerned at the large number of unaccompanied children who are returned to their country of origin from Mexico, and at the absence of measures to protect unaccompanied migrant and refugee children. It is further concerned at the large number of unaccompanied children who are returned to Mexico and at the lack of capacity of the State Party to protect and reintegrate all of them.

“The Committee recommends that the State Party...

(a) ensure that an appropriate legal and operational framework for the guardianship of foreign unaccompanied children is developed;...

(c) enhance the capacity of [specified local organizations] to protect unaccompanied migrant children, including by organizing trainings and awareness raising programmes on the specific rights and vulnerability of unaccompanied minors;...

(e) ensure that all unaccompanied children who are returned to the State Party receive appropriate protection and care, in particular that social reinsertion measures are available to them;

(f) engage in further bilateral or multilateral discussions with neighbouring States to provide for appropriate treatment of unaccompanied children throughout the region;

(g) seek technical assistance in this respect from, among others, UNHCR.” (Mexico CRC/C/MEX/CO/3, paras. 60 and 61)

As the United States of America is not yet a State Party to the Convention, the Committee has not been able to raise concerns with it in parallel to Mexico. However the Committee made energetic attempts to improve links between Spain and Morocco, expressing concern to both:

“The Committee is deeply alarmed about the conditions of unaccompanied foreign children, mostly Moroccans, especially in the autonomous cities of Ceuta and Melilla. In particular, it expresses its concern at reports of... ill-treatment of children by police during forced expulsion to the country of origin where, in some cases, they were deported without access to legal assistance and interpretation ... [and] ... summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin.

“The Committee recommends that the State Party urgently take the necessary measures in order to... coordinate with the Government of Morocco to ensure that, when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency; take all measures to prevent irregular procedures in the expulsion of unaccompanied

foreign children...” (Spain CRC/C/15/Add.185, paras. 45 and 46)

and

“The Committee is deeply concerned at the situation of Moroccan children who are deported, notably in the cities of Ceuta and Melilla in Spain. In particular, the Committee is concerned at allegations of police brutality against such children. The Committee is further concerned that these children, once they are back on the territory of the State Party, do not receive adequate protection or assistance and that their situation is not monitored.

“Taking into consideration its recommendations to Spain ... the Committee recommends that the State Party take all necessary measures... to prevent unaccompanied children from migrating to other countries, including by offering them opportunities for education;... to coordinate with the Government of Spain to ensure that when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency for their care and rehabilitation; ... to investigate in an effective way reported cases of ill-treatment of returned children.” (Morocco CRC/C/15/Add.211, paras. 58 and 59)

The following year Morocco made a special effort to inform the Committee in an official “Reply” that, following these Concluding Observations, it had signed a detailed memorandum of understanding with Spain on their shared responsibility for improved treatment of child migrants, taking into account the Committee’s recommendations (CRC/C/15/Add.211).

The Committee is even more deeply concerned where returned child refugees do not just have their rights under the Convention neglected, but are actively penalized, as in the Democratic People’s Republic of Korea:

“The Committee is concerned that, according to the State Party information, there are some children from the Democratic People’s Republic of Korea that cross the borders and apparently live on the streets of some Chinese cities close to the border which they cross. The Committee is deeply concerned at the information that children and their families who return or are deported back to the State Party are considered not as victims, but as perpetrators of a crime.

“The Committee recommends that the State Party:

- (a) Assess and analyse the causes of children crossing the borders to other countries;*
- (b) Treat the children who return to the State Party as victims and not as perpetrators of a crime;*
- (c) Negotiate their safe repatriation with the*

Chinese authorities; and (d) Provide them with the necessary support for reintegration and counselling.” (Democratic People’s Republic of Korea CRC/C/15/Add.239, paras. 58 and 59)

Refugee child’s rights to “receive appropriate protection and humanitarian assistance” in relation to this Convention and any other international human rights or humanitarian instruments

Refugee children are among the most vulnerable groups in the world – UNHCR points out that they are, for example, disproportionately likely to be victims of sexual abuse or military recruitment. The Committee has taken up these issues with reporting States. Whatever the pressure on the receiving State its legal and moral obligations to protect these children are unarguable. The 2005 updated *Summary Note – UNHCR’s Strategy and Activities concerning Refugee Children* outlines the specific needs of refugee children, including adolescents, and prioritizes the following key areas for action: separation from families and care-givers, sexual exploitation, military recruitment and education.

The reference to other human rights and humanitarian treaties includes the provisions of article 23 of the 1951 Convention: “Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.” Article 22 upholds the same principle in relation to both children with refugee status and children seeking it, but in any event the Convention’s provisions cover all children within the country’s jurisdiction (article 2), so even those children who have been refused refugee status are still protected for as long as they remain in the country.

There should be no discrimination based on age or ethnicity (for example, the Committee expressed concern that Germany did not give benefits to 16- and 17-year-old child refugees and Roma children were being forcibly expelled (Germany CRC/C/15/Add.226, para. 54)). Nor should discrimination occur because States have devolved power and responsibilities to local administrations. While some variations in services to children are an inevitable product of decentralization, States should not permit local governments to violate children’s human rights under the Convention.



Appropriate education, health and welfare services

Refugee children must obviously be provided with the basic essentials for survival, and the Committee has expressed concern at any evidence that this is not the case. Where the receiving country is not wealthy, conditions can be particularly severe. For example:

"The Committee notes that communal clashes linked to political, religious and ethnic differences have led to a large population of internally displaced persons in the State Party, and that Nigeria is a host to a large group of refugees from neighbouring countries such as Chad, Sierra Leone and Liberia. The Committee is concerned about the situation of refugee and internally displaced children living in refugee camps, and regrets the paucity of information with regard to these children in the State Party report and the State Party's position that the issue of asylum-seeking children does not arise in Nigeria. The Committee is particularly concerned about reports of sexual exploitation of refugee girls and women within and outside of the camps, including female teenagers who are forced into prostitution. The Committee is also concerned that incidence of teenage pregnancy is high in the camps." (Nigeria CRC/C/15/Add.257, para. 63)

"The Committee notes with appreciation that Azerbaijan provides protection to refugees, including refugee children of Chechen ethnicity from the Russian Federation. Nonetheless, the Committee remains concerned that 35 per cent of about 600,000 internally displaced persons and 200,000 refugees are children and that they live in very poor conditions, lacking basic sanitary and hygienic services, potable water and educational facilities among other things." (Azerbaijan CRC/C/AZE/CO/2, para. 59)

"... the Committee continues to be deeply concerned about the harsh social and economic living conditions of Palestinian refugee children in refugee camps, their limited access to public services, including social and health services and education, and their exposure to violence at home, in schools and in the wider community." (Lebanon CRC/C/LBN/CO/3, para. 73)

Even where conditions are not so extreme, the Committee has found that asylum-seeking children are not receiving appropriate assistance, for example in Kazakhstan:

"The Committee ... is concerned that... problems exist in accessing education for children who have not been granted refugee status and do not have other documents that are required; ... the treatment, including

nutritional and medical care, provided for illegal migrants, including children, arriving in western Kazakhstan seeking work is inadequate, ... unaccompanied minors are not accorded the same treatment as other children deprived of their family environment." (Kazakhstan CRC/C/15/Add.213, para. 63)

Ideally, refugees, including adolescents, should not be dependent on government or charitable aid but should have opportunities to work (subject to the protections of article 32). The Committee, for example, signified its concern to Jordan about its employment policies which hindered the capacity of refugees to support themselves (Jordan CRC/15/Add.125, para. 56).

The social inclusion of refugee children should be an integral part of these services. This implies inclusion of these children in mainstream schools, and, where necessary, therapy for their inevitably traumatic experiences. Thus the Committee recommended that Norway:

"... strengthen measures to ensure that adequate support and supervision are provided to children living in reception centres, as well as adequate psychological and psychiatric care for traumatized asylum-seeking children. The Committee recommends that the State Party improve the situation in reception centres for unaccompanied children seeking asylum, in terms of resources and adequately trained and competent staff, so that the assistance and care for these children reaches the same level as that provided in other institutions under the child welfare system." (Norway CRC/C/15/Add.263, para. 42)

In addition the Committee is concerned about the number of unaccompanied children who go missing from asylum seekers' reception centres in developed countries. While this sometimes may be initiated by children themselves seeking to avoid deportation, it leaves all such children exposed to abuse and exploitation.

The Committee recommended to Denmark that it *"... conduct a study on unaccompanied children who disappear from reception centres, and the outcome of the study should guide the State Party in respecting the rights of these children." (Denmark CRC/C/DNK/CO/3, para. 52)*

Detention of children

Faced by increasing numbers of asylum seekers and migrants, some States have taken to using detention as a means of control. Under the Convention the detention of refugee children should only be used as "a measure of last resort and for the shortest appropriate period of time"



(article 37(b)). The General Comment states that children should not be detained as a matter of routine and that their migratory or unaccompanied status must not be the sole reason for their detention (CRC/GC/2005/6, paras. 61 to 63).

Any decision to detain them should be subject both to the provisions of the Convention on the Rights of the Child and to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”); similarly, the conditions of their detention should conform to those of the Convention (article 37, page 547 and article 39, page 589) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The Committee raised this issue with Australia:

“The Committee ... remains concerned that children who are unlawfully in Australian territory are still automatically placed in administrative detention – of whatever form – until their situation is assessed. In particular, the Committee is seriously concerned that... administrative detention is not always used as a measure of last resort and does not last for the shortest appropriate period of time; ... conditions of immigration detention have been very poor, with harmful consequences on children’s mental and physical health and overall development; ... there is no regular system of independent monitoring of detention conditions.

“The Committee recommends that the State Party ... bring its immigration and asylum laws fully into conformity with the Convention and other relevant international standards, taking into account the Committee’s General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin. In particular, the State Party should:

- (a) Ensure that children are not automatically detained in the context of immigration and that detention is only used as a measure of last resort and for the shortest appropriate period of time;*
- (b) Seek an assessment by a court or an independent tribunal within 48 hours of the detention of a child in the context of immigration of whether there is a real need to detain that child;*
- (c) Improve considerably the conditions of children in immigration detention when such detention is considered necessary and in the best interests of the child, and bring them into line with international standards;*
- (d) Guarantee periodic review of the detention of children detained in the context of immigration...”* (Australia CRC/C/15/Add.268, paras. 62 and 64)

And it recommended that Canada:

“Refrain, as a matter of policy, from detaining unaccompanied minors and clarify the legislative intent of such detention as a measure of ‘last resort’, ensuring the right to speedily challenge the legality of the detention in compliance with article 37 of the Convention...” (Canada CRC/C/15/Add.215, para. 47)

“States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental or non-governmental organizations cooperating with the United Nations...”

During the drafting of article 22, some delegates to the Working Group were unhappy with the idea that their countries might be obliged to cooperate with non-governmental or intergovernmental organizations, so the words “as they consider appropriate” were added to clarify the discretionary nature of that cooperation. The requirement that intergovernmental organizations and NGOs had to be “working in cooperation with the United Nations” was made because, as some representatives pointed out, terrorist organizations were technically NGOs – although others were concerned because some valid NGOs did not work with the United Nations (E/CN.4/1989/48, pp. 63 to 66; Detrick, p. 325).

The unique and important work of the Office of the United Nations High Commissioner for Refugees (UNHCR) was stressed at all stages of drafting the Convention. The role of UNHCR, established by the General Assembly in 1950, is to provide international protection to refugees under the auspices of the United Nations and, together with governments, to seek durable solutions to their plight and provide them with material assistance.

The value of UNHCR’s work in relation to child refugees is frequently emphasized by the Committee to States Parties. In its General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin”, the Committee recommends that States seek also assistance from UNHCR, UNAIDS, UNESCO, UNICEF and WHO (CRC/GC/2005/6). The Committee has also suggested that States approach the International Organization for Migration (an intergovernmental organization).





“... to trace parents or other members of the family of any refugee child in order to obtain information necessary for reunification”

Preserving and restoring the child’s family unity is of the highest priority in the search for long term solutions for a refugee child, as is stressed in the Committee’s General Comment No. 6 on “Treatment of unaccompanied and separated children outside their country of origin”, which says that

“... all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking account of the right of the child to express his or her views.” (CRC/GC/2005/6, para. 81)

Where reunification is not possible in the country of origin, family reunification in the country where the child is seeking asylum or by resettlement in a third country are the only options. The principles of article 10 should apply to family reunification of refugee children; in particular that applications are dealt with in “a positive, humane and expeditious manner” (see page 136).

The success of tracing largely depends on the energy and commitment of the State receiving the child. The first task must be to set up comprehensive registration and tracing systems, often coordinated by the International Committee of the Red Cross:

“... The Committee recommends that the State Party develop a legislative and administrative framework to guarantee and facilitate family reunification...” (South Africa CRC/C/15/Add.122, para. 35)

Many refugee children carry no documentation which is often needed for speedy processing and family reunification:

“... The Committee recommends that the State Party undertake effective public education campaigns to inform asylum seekers, especially those newly arrived, about asylum procedures and the importance of children having documentation; provide practical assistance in obtaining birth certificates for every child and adequate procedures for the replacement of lost identity and travel documentation; and establish a system allowing refugee and asylum-seeking children to have their own documentation...” (Kyrgyzstan CRC/C/15/Add.127, para. 54)

When examining Kyrgyzstan’s Second Report, the Committee

“... remains concerned that certain practices do not allow persons below 18 to have their own documentation.” (Kyrgyzstan CRC/C/15/Add.244, para. 57)

It should, however, be noted that family reunification should not be used as a justification for acting against the child’s best interests. Children may not wish to be reunited with their family or the family may reject them. As article 9 recognizes, separation from families may exceptionally be necessary in the child’s best interests. The Human Rights Committee states in a General Comment: “In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States Parties should indicate in their reports what measures they have adopted to that end.” (Human Rights Committee, General Comment No. 20, 1992, HRI/GEN/1/Rev.8, para. 9, p. 191)

Even action to trace family members may inadvertently endanger children or their families by inappropriately breaching confidentiality. Social work support may be needed when family reunion is achieved: family members may not have seen each other for long periods and may have experienced very traumatizing events in the interim.

“In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason”

This provision underlines the principle that refugee and asylum-seeking children are entitled to the same treatment as other children who are deprived of their family environment. Article 20 provides that such children are “entitled to special protection and assistance” and should be provided with alternative care, preferably family-based, if no family members are able to look after them (see page 282). Unaccompanied and separated refugee children are, by definition, “temporarily deprived of their family environment” and States should ensure that appropriate arrangements are in place to ensure that their needs are met.

The needs of refugee children are extensive, including ensuring that they are in safe and

habitable environments and accommodated wherever possible with family and community, that their cultural and linguistic backgrounds are respected, that they have access to education and that their emotional needs are recognized, including responding to any abuse that they may have suffered. The general principles of article 2 (non-discrimination) and article 12 (respect for the views of the child) should always be taken into account. The UNHCR *Refugee Children: Guidelines on Protection and Care* provides much practical advice on these matters.

Nationality

Article 7 provides that all children are entitled to the “right to acquire a nationality” and States Parties are particularly reminded of the importance of this “where the child would otherwise be stateless” (article 7, see page 103). Normally the flight of a refugee, including a child, leaves his or her nationality status untouched. However refugees are sometimes arbitrarily deprived of

their nationality, and children born to refugees in the country of asylum are sometimes denied nationality by that country (despite having laws granting nationality by reason of birthplace) and also by the country from which their parents fled.

The Committee has expressed concern, for example, over Chile and Lebanon:

“The Committee notes with concern that the Chilean legislation does not regulate the status of non-accompanied children, who are therefore considered stateless.” (Chile CRC/C/15/Add.173, para. 47)

“The Committee is concerned at the absence of legislative or administrative provisions to protect refugee children. Issues of concern include the fact that only men may confer citizenship upon their children...” (Lebanon CRC/C/15/Add. 169, para. 52)

This was still a matter of concern when Lebanon made its Third Report.



The special needs of adolescent refugees

UNHCR points out that: “The needs of young children are usually evident as adequate nutrition, health care and support are essential for mere survival. The needs of older children, and particularly those of adolescents who are mid-way between childhood and full maturity, may be less visible but are of equal importance...”

“Unaccompanied and separated adolescents may find themselves in situations of great responsibility for themselves and others. They may be difficult to place in foster families, and, moreover, may be part of child-headed households assuming responsibility for younger children. Access to post-primary education, vocational training and income-generating opportunities are the key means of supporting the rights and capacities of adolescents to develop life skills and become self-sufficient. Examples of such activities are the vocational skills training programmes in Azerbaijan, the small business management projects in Burkina Faso and the assistance programme for returnees in Burundi under which returning adolescents are given a plot of land, a house kit and are encouraged to build a house. In Myanmar, special assistance is given to unaccompanied and separated children to enable them to become self sufficient.”

(From Summary Note – UNHCR’s Strategy and Activities concerning Refugee Children and Adolescents, September 2000)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 22, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 22 is relevant to the **departments of justice, foreign affairs, home affairs, social welfare, health, social security and education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 22 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 22 likely to include the training of **social workers, teachers, port and border control officers, lawyers, interpreters, child development experts, mental health personnel and child advocates**)?

• Specific issues in implementing article 22

- Has the State ratified the Convention relating to the Status of Refugees (1951) as amended by the Protocol relating to the Status of Refugees (1967)?
- Has the State ratified the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961)?
- Has the State enacted legislation on asylum and does this include provisions relating to refugee children?
- Has the State established procedures for determining refugee status (including, when necessary, mandating UNHCR to make this determination)?
- Do children have access to such procedures irrespective of their age and of the fact of being unaccompanied or separated?
- Do the procedures for determining refugee status take into account the special needs and rights of children, particularly when the child is unaccompanied or separated from his or her previous legal or customary primary caregiver?



How to use the checklist, *see page XIX*

- Are the interviews and hearings conducted in a child-friendly environment?
- Are the child's views heard or represented in these proceedings?
- Are unaccompanied or separated children seeking asylum
 - provided with legal representation?
 - provided with a guardian?
 - provided with professional interpreters?
 - provided with decision makers experienced in child development?
 - given the benefit of the doubt in relation to their claim for refugee status?
- Are applications by child refugees and/or their parents for the purpose of family reunion treated in a positive, humane and expeditious manner?
- Are unaccompanied or separated children who are refused refugee status allowed to remain in the receiving country when to do so would be in their best interests?
- Are child refugees or children seeking refugee status given special assistance and protection appropriate to all their needs and in accordance with their rights under the Convention?
- Are children who have been refused refugee status but are nonetheless permitted to stay in the country entitled to the same assistance and facilities on the same basis as children with accredited status?
- Are such children informed of these rights in their own language?
- Are such children only deprived of their liberty as a measure of last resort and for the shortest appropriate period of time?
- Are they able to challenge such deprivation of liberty in a fair hearing?
- Are the conditions of detention humane and conducive to the health, self-respect, dignity and social integration of the child?
- Are refugee and asylum-seeking children
 - accommodated in safe and habitable environments, wherever possible with their family?
 - in receipt of education which recognizes their culture, language and need for social integration?
 - provided with appropriate support and rehabilitative care for any traumas they may have suffered?
 - in receipt of all necessary health care?
- Are the particular needs of adolescent refugees recognized (for example to develop skills which will allow them to become self-sufficient)?
- Does the State cooperate with non-governmental organizations or intergovernmental organizations acting in association with the United Nations in respect of refugee and asylum-seeking children and in particular with the United Nations High Commissioner for Refugees and the International Committee of the Red Cross?
- Are all efforts made to trace family members of such children?
- Do such efforts ensure that the child and the child's family members are not endangered?



Reminder: The Convention is indivisible and its articles interdependent.
Article 22 should not be considered in isolation.

Particular regard should be paid to: The other general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 22 include:

Article 7: child's right to nationality and to know and be cared for by parents

Article 8: preservation of child's identity

Article 9: non-separation from parents except when necessary in best interests

Article 10: international family reunification

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

Article 20: children deprived of their family environment

Article 21: adoption

Article 30: children of minorities or indigenous peoples

Article 37: deprivation of liberty as a last resort

Article 38: children affected by armed conflict

Article 39: rehabilitative care for child victims

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

Rights of children with disabilities

article

23

Text of Article 23

- 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*
- 2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*
- 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*
- 4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.*

Summary



Article 2, requiring States to secure all the rights in the Convention on the Rights of the Child without discrimination of any kind, includes the child's or his or her parents' or legal guardian's disability among the non-exclusive list of grounds for discrimination. Article 23 provides further guidance on realizing the rights of children with disabilities. The child with disabilities should be provided with conditions for living that "promote self-reliance" and facilitate "active participation in the community". Paragraphs 2 and 3 set out the right of the child with disabilities to "special care", again stressing that assistance should be designed to ensure "effective access" to various services, "in a manner conducive to the child's achieving the fullest possible social integration and individual development..." Paragraph 4 promotes international exchange of information to improve the capabilities and skills of States Parties.

In December 2006, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly in 1993, was the first detailed instrument reaffirming rights for all people with disabilities.

The Committee on the Rights of the Child held a Day of General Discussion on "The rights of children with disabilities" in 1997 and adopted detailed recommendations. In 2006 it adopted its General Comment No. 9 on "The rights of children with disabilities". The General Comment quotes United Nations estimates suggesting that there are 500 million to 650 million persons with disabilities, approximately 10 per cent of the world population, 150 million of whom are children. ■

Recognizing the human rights of persons with disabilities

Background

The adoption in December 2006 of the Convention on the Rights of Persons with Disabilities is the culmination of a long struggle to ensure full and explicit recognition of people with disabilities as equal holders of human rights. The only reference to disability in the International Bill of Human Rights is in article 25 of the Universal Declaration of Human Rights, which recognizes that everyone has "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". Disability is not mentioned in the International Covenant on Civil

and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

During the 1970s, the United Nations General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons (20 December 1971) and the Declaration on the Rights of Disabled Persons (9 December 1975), which proclaimed that people with disabilities have the same civil and political rights as other human beings. 1981 was designated as the International Year of Disabled Persons, with the theme "Full participation and equality". In 1982 the General Assembly adopted the World Programme of Action Concerning Disabled Persons, which stressed that "More than 500 million people in the world are disabled as a consequence of mental, physical or sensory impairment. They are entitled to the same rights as all other human beings and to equal opportunities. Too often their lives are handicapped by physical and social barriers in society which hamper their full participation. Because of this, millions of children and adults in all parts of the world often face a life that is segregated and debased."

Within the United Nations Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights adopted a recommendation that Governments give consideration to difficulties encountered by persons with disabilities in the enjoyment of universally proclaimed human rights, as well as to the need to strengthen procedures for them to bring allegations of violations of their human rights to a competent body vested with the authority to act on such complaints, or to the attention of the Government (resolution 1982/1). In 1984, the Special Rapporteur on Human Rights and Disability was appointed. The final report prepared by the Special Rapporteur in 1991 notes that "In the majority of countries, at least 1 out of 10 persons has a physical, mental or sensory impairment, and at least 25 per cent of the entire population are adversely affected by the presence of disabilities ... these persons frequently live in deplorable conditions, owing to the presence of physical and social barriers which prevent their integration and full participation in the community. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights, and lead a wretched, marginal life." (E/CN.4/Sub.2/1991/31, para. 3)

In 1987, the Global Meeting of Experts to Review the World Programme of Action Concerning Disabled Persons at the mid-point of the United Nations Decade of Disabled Persons in Stockholm recommended that the General Assembly

should convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities, to be ratified by States by the end of the Decade. A draft outline was prepared by Italy and presented to the General Assembly in 1987. There were further presentations in 1989, but no consensus could be reached: in the opinion of many representatives, existing human rights documents seemed to guarantee persons with disabilities the same rights as other persons. Following these debates in the General Assembly, the Economic and Social Council, at its first regular session in 1990, agreed to concentrate on the elaboration of an international instrument of a different kind. The Commission for Social Development was authorized to establish an ad hoc open-ended Working Group of government experts to elaborate standard rules on the equalization of opportunities for children, youth and adults with disabilities, in close collaboration with the specialized agencies, other intergovernmental bodies and NGOs, especially organizations of persons with disabilities.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities was adopted by the United Nations General Assembly at its forty-eighth session on 20 December 1993 (resolution 48/96). The introduction to the Rules notes that they were developed on the basis of experience gained during the United Nations Decade of Disabled Persons: “The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules.

A lengthy 1994 General Comment on persons with disabilities from the Committee on Economic, Social and Cultural Rights drew attention to the importance of the Rules, and also the importance of addressing disability explicitly: “The absence of an explicit, disability-related provision in the Covenant [on Economic, Social and Cultural Rights] can be attributed to the lack of awareness of the importance of addressing this issue explicitly, rather than only by implication, at the time of the drafting of the Covenant over a quarter of a century ago. More recent international human rights instruments have, however, addressed the issue specifically. They include the Convention on the Rights of the Child (article 23);

the African Charter on Human and Peoples’ Rights (article 18(4)); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (article 18). Thus it is now very widely accepted that the human rights of persons with disabilities must be protected and promoted through general, as well as specially designed, laws, policies and programmes.” (Committee on Economic, Social and Cultural Rights, General Comment No. 5, HRI/GEN/1/Rev.8, para. 6, p. 26)

But the proposal for a convention continued to be advocated, and in 2001 the General Assembly, in resolution 56/168 of 19 December 2001, decided to establish an Ad Hoc Committee “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development”. The Ad Hoc Committee completed its work in 2006 and the Convention was adopted in December 2006 and opened for signature in March 2007. It comes into force following ratification by 20 States.

In a statement to the Human Rights Council in September 2006, the Special Rapporteur on Disability of the Commission for Social Development states that adoption of the Convention ends decades of struggle for recognition of persons with disabilities and their rights, “as human rights requiring protection through a strong, legally binding instrument to which States can commit, not only as a moral obligation, but as a legal one”. (The position of Special Rapporteur was established in 1994 to monitor implementation of the Standard Rules.) In a 2002 report, the Special Rapporteur proposed a Supplement to the Standard Rules (E/CN.5/2002/4 and annex), to complement and develop the text in certain areas identified by him in a previous report to the Commission for Social Development (E/CN.5/2000/3, annex); these included: gender concerns; housing and communication issues; the needs of children and older persons; the needs of persons with developmental and psychiatric disabilities; and the needs of persons with disabilities in poverty situations. In the view of the Special Rapporteur, while the Convention fulfils the need for a legally binding document, the Standard Rules together with the proposed Supplement “represent the software for actualizing the text and the spirit of the Convention” (E/CN.5/2005/5). A 2006 Report of the Special





Rapporteur provides analysis of responses to a detailed questionnaire survey of States' progress on implementation of the Rules (see E/CN.5/2006/4).

As of March 2006, the United Nations Programme on Disability has been consolidated into the Secretariat for the Convention on the Rights of Persons with Disabilities. It is the lead programme on disability within the United Nations system and is housed in the Division for Social Policy and Development at the Department of Economic and Social Affairs of the United Nations Secretariat. The major objectives of the Secretariat are: to support the full and effective participation of persons with disabilities in social life and development; to advance the rights and protect the dignity of persons with disabilities; and to promote equal access to employment, education, information, goods and services.

The Convention on the Rights of Persons with Disabilities

The purpose of the Convention, set out in article 1, is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. The Preamble recognizes that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the relevant obligations undertaken by States Parties to the Convention on the Rights of the Child. Article 7 – “Children with disabilities” – reflects the Preamble

requiring States to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children”.

The Convention contains a number of provisions specifically referring to children. Some of these simply reflect provisions in the Convention on the Rights of the Child, for example the reference to respect for the evolving capacities of children with disabilities (article 3(h)), the best interests principle and the right to express views and have them given due weight (article 7(2) and (3)). Other provisions go further; for example, setting out more specific obligations to ensure a properly supported inclusive education system at all levels (article 24) and to ensure that in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents (article 23(4)). Article 41 of the Convention on the Rights of the Child emphasizes that nothing in the Convention shall affect any provisions which are more conducive to the realization of the rights of the child and are contained in other instruments ratified by the State (see page 625).

The Convention on the Rights of Persons with Disabilities establishes a Committee to monitor its implementation. An Optional Protocol to the Convention, adopted simultaneously, allows States to recognize the competence of the Committee to receive and consider communications from individuals or groups claiming to be victims of violations of the Convention (for full text, see www.ohchr.org/english/law/).

Children's rights and the Convention on the Rights of Persons with Disabilities

This summary covers the Convention's purpose, definitions and principles and indicates provisions specifically related to the rights of children with disabilities; it is not a comprehensive summary of the Convention. (For full text, see www.ohchr.org/english/law/disabilities-convention.htm.)

The Preamble to the Convention recognizes that disability is an evolving concept; disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. The Preamble also recognizes that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the relevant obligations undertaken by States Parties to the Convention on the Rights of the Child.

The Convention's purpose is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. The Convention does not define “disabilities”, but it indicates: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

The Convention defines “discrimination on the basis of disability” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. It includes all forms of discrimination, including denial of “reasonable accommodation”, which is defined as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms” (article 2).

The Convention also defines the related concept of “universal design”, which means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. And it indicates that “universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed (article 2). This concept is referred to in article 4, under which “States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability...” The article lists various duties of States, including “to undertake or promote research and development of universally designed goods, services, equipment and facilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines”.

The “principles” of the Convention (article 3) are:

- (a) “Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”

The general obligations of States, set out in article 4, include closely consulting with and actively involving persons with disabilities, including children with disabilities, through their representative organizations, in the implementation of the Convention, and in other decision-making on issues relating to persons with disabilities.

Article 5 requires States Parties to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds”. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that “reasonable accommodation” is provided. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities are not to be considered discrimination.

Article 7 refers specifically to children with disabilities:

1. “States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.





3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

Under article 8, on awareness-raising, States undertake to adopt measures including “Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities...” Article 16 requires “all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects”. Protection services must be age-, gender- and disability-sensitive. States must put in place “effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”

Article 18(2) requires that children with disabilities are registered immediately after birth and have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Under article 23, States must take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, to ensure that:

- (a) “The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
- (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.”

In addition: “States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

“States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

“States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.” (article 23(2) to (5))

In realizing the right of persons with disabilities to education, without discrimination and on the basis of equal opportunity, States “shall ensure an inclusive education system at all levels...” Article 24 requires that States Parties ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

reasonable accommodation of the individual's requirements is provided; and persons with disabilities receive the support required, within the general education system, to facilitate their effective education. Article 24 also sets out a non-exhaustive list of measures to be taken to enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community (see also article 28, page 418).

Under article 25, persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States are required to take specified measures, including to:

“provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; and

“provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons...”

Under article 26, States must also take “effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life”. To that end, States are required to “organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services...”

Article 28 sets out the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and the right to social protection, both without discrimination on the basis of disability.

Article 30 asserts the right of persons with disabilities to take part on an equal basis with others in cultural life, to develop and utilize their creative, artistic and intellectual potential, “not only for their own benefit, but also for the enrichment of society” and to be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture. To enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States are required to encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels, as well as having an opportunity to organize, develop and participate in disability-specific sporting and recreational activities. States must ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including in the school system.



General Comment on “The rights of children with disabilities”

In 2006, the Committee on the Rights of the Child adopted General Comment No. 9 on “The rights of children with disabilities”. Its aim is to provide guidance and assistance to States in implementing the rights of children with disabilities, “in a comprehensive manner which covers all the provisions of the Convention”. The General Comment starts by reviewing the obligations in article 2 (non-discrimination) and article 23 of the Convention (see box for summary and full text at www.ohchr.org/english/bodies/crc/comments.htm). It gives attention to

the importance of including children with disabilities in the general measures of implementation adopted by States. Then it provides observations on the meaning and implementation of all other articles for children with disabilities. The General Comment was first proposed in recommendations adopted following the Committee’s Day of General Discussion on “The rights of children with disabilities” (Report on the sixteenth session, September/October 1997, CRC/C/69, paras. 338 and 339).

The Committee has commented on disability issues in two other General Comments. In its General Comment No. 7 on “Implementing child rights in early childhood”, the Committee notes that this is the period during which disabilities



are usually identified and the impact on children's well-being and development recognized:

"Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance..." (Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 36(d))

And in its General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child", the Committee refers to education and health rights of adolescents with disabilities:

"... the special rights of adolescents with disabilities should be taken into account and assistance provided to ensure that the disabled child/adolescent has effective access to and receives good quality education. States should recognize the principle of equal primary, secondary and tertiary educational opportunities for disabled children/adolescents, where possible in regular schools..."

"In accordance with article 23 of the Convention, adolescents with mental and/or physical disabilities have an equal right to the highest attainable standard of physical and mental health. States Parties have an obligation to provide adolescents with disabilities with the means necessary to realize their rights. States Parties should

(a) ensure that health facilities, goods and services are available and accessible to all adolescents with disabilities and that these facilities and services promote their self-reliance and their active participation in the community;

(b) ensure that the necessary equipment and personal support are available to enable them to move around, participate and communicate;

(c) pay specific attention to the special needs relating to the sexuality of adolescents with disabilities; and

(d) remove barriers that hinder adolescents with disabilities in realizing their rights."

(Committee on the Rights of the Child, General Comment No. 4, 2004, CRC/GC/2003/4, paras. 19 and 35)

In examining States' reports up to and including its forty-third session in September/October 2006, the Committee has proposed in Concluding Observations that States should take account of the Standard Rules on the Equalization of

Opportunities for Persons with Disabilities and also its own recommendations, adopted following the Day of General Discussion in 1997 (see below). The Committee raises a variety of matters with States, including lack of a national policy or strategy, insufficient data collection, the need for awareness-raising to combat discrimination and the importance of fulfilling the right to education of children with disabilities, and to inclusion in the general education system. For example:

"The Committee recommends that the State Party, taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities held on 6 October 1997 (see CRC/C/69):

(a) Complete the survey on persons with disabilities;

(b) Consider developing and adopting a national policy or strategy on persons with disabilities, paying particular attention to children with disabilities;

(c) Consider creating an inter-institutional plan with the support of local government and civil society and thereby strengthen cooperation between teachers, school management, parents, children and the society at large;

(d) Provide all children with disabilities with access to adequate social and health services, including community based support and services, the physical environment, information and communication, and continue its efforts to standardize the provision of services;

(e) Allocate the necessary resources for programmes, medicines, trained staff and facilities for all children with disabilities, especially the ones living in rural areas;

(f) Provide the necessary financial resources for the development of education for children with special needs and further encourage their inclusion into the general educational system and into society;

(g) Collect adequate statistical data on children with disabilities and use disaggregated data in developing policies and programmes to promote equal opportunities for them in society, paying particular attention to children with disabilities living in rural areas; and

(h) Promote awareness and tolerance concerning children with disabilities throughout communities and disseminate information that would assist in eliminating the traditional practice of infanticide." (Benin CRC/C/BEN/CO/2, para. 50)

"The Committee recommends that the State Party, taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (see

The rights of children with disabilities

Committee on the Rights of the Child, General Comment No. 9, 2006: summary

The purpose of the General Comment is to provide guidance and assistance to States Parties in implementing the rights of children with disabilities. The Committee highlights the importance of creating political will and commitment to investigate the causes of disabilities and to put into practice effective action to prevent disability.

The Committee notes that children with disabilities are still experiencing serious difficulties and barriers in the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barriers are not the disabilities, but a combination of social, cultural, attitudinal and physical barriers which children with disabilities encounter in their daily lives. The strategy for action is therefore to take the necessary action to remove those barriers.

Articles 2 and 23: The General Comment first focuses on the key provisions of articles 2 and 23. In relation to article 2, the Committee proposes that States should:

- include disability as a forbidden ground for discrimination in constitutions and/or in specific anti-discrimination laws;
- provide effective remedies in case of violations of the rights of children with disabilities, easily accessible to the children, their parents and/or others caring for the child;
- conduct awareness-raising and educational campaigns with the public and specific groups of professionals to prevent/eliminate discrimination.

The Committee emphasizes the importance of paying particular attention to girls with disabilities, if necessary taking extra measures.

Paragraph 1 of article 23 – the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community – should be considered the “leading principle” in the implementation of the Convention for children with disabilities. Measures taken, for example in health and education, should explicitly aim at the maximum inclusion of children with disabilities in society.

States Parties should develop and effectively implement a comprehensive policy with a plan of action. This should aim at full enjoyment of the Convention without discrimination, and also ensure that the child with a disability and his/her parents or other carers do receive the special care and assistance they are entitled to, free of charge whenever possible. With reference to paragraphs 2 and 3 of article 23, the Committee urges States to make special care and assistance for children with disabilities a matter of high priority, investing to the maximum extent of available resources in eliminating discrimination and maximising inclusion, and ensuring effective access to and receipt of education, training, health care, recovery, preparation for employment and recreation opportunities.

In relation to paragraph 4, the Committee encourages more active exchange of information on prevention and treatment; it also urges States to pay more attention to children with disabilities in the framework of bilateral or multilateral development assistance.

General measures of implementation: The Committee underlines the need for clear and explicit provisions in legislation for the protection and exercise of the specific rights of children with disabilities and the inclusion in national plans of action of plans and strategies for children with disabilities, with measurable outcomes. There should be a coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or of a national coordination system for persons with disabilities. It is States Parties’ ultimate responsibility to oversee that adequate funds are allocated to children with disabilities, along with strict guidelines for service delivery. Data gathering should reflect the actual situation of children with disabilities. In relation to the need for independent monitoring, the Committee emphasizes, with reference to its General Comment No. 2 on “The role of national human rights institutions”, that institutions





must be accessible to children with disabilities, not only in the physical sense but also to ensure that these children can raise complaints or issues easily and confidentially. States should support and cooperate with NGOs which provide services for children with disabilities. With reference to article 42 of the Convention, States should conduct systematic awareness-raising and training, including in Braille and appropriate forms and use the mass media, to foster positive attitudes towards children with disabilities.

Other rights in the Convention

The General Comment reviews the rights of children with disabilities in relation to the other articles of the Convention on the Rights of the Child, using the clusters of articles identified for reporting. In the *Implementation Handbook*, the implications of the General Comment are covered under each relevant article:

General principles:

Non-discrimination, paras. 8 to 10;
Best interests of the child, paras. 29 and 30;
Right to life, survival and development, para. 31;
Respect for the views of the child, paras. 32 and 33.

Civil rights and freedoms:

General, para. 34;
Birth registration, paras. 35 – 36;
Access to appropriate information and mass media, paras. 37 and 38;
Accessibility to public transportation and facilities, paras. 39 and 40;

Family environment and alternative care:

Family support and parental responsibilities, para. 41;
Violence, abuse and neglect, paras. 42 to 44;
Family-type alternative care, paras. 45 and 46;
Institutions, paras. 47 to 49;
Periodic review of placement, para. 50;

Basic health and welfare:

Right to health, paras. 51 and 52;
Prevention, paras. 53 to 55;
Early identification, paras. 56 and 57;
Multidisciplinary care, para. 58;
Adolescent health and development, paras. 59 and 60;
Research, para. 61.

Education and leisure:

Quality education, paras. 62 and 63;
Self-esteem and self-reliance, para. 64;
Education in the school system, para. 65;
Inclusive education, paras. 66 and 67;
Career education and vocational training, paras. 68 and 69;
Recreation and cultural activities, paras. 70 and 71;
Sports, para. 72.

Special protection measures:

Juvenile justice system, paras. 73 and 74;
Economic exploitation, para. 75;
Street children, para. 76;
Sexual exploitation, para. 77;
Children in armed conflict, para. 78;
Refugee and internally displaced children, children belonging to minorities and indigenous children, paras. 79 and 80.

(Committee on the Rights of the Child, General Comment No. 9, “The rights of children with disabilities”, 2006, CRC/C/GC/9. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

General Assembly resolution 48/96) and the recommendations adopted by the Committee on its Day of General Discussion on the rights of children with disabilities (see CRC/C/69):

(a) Prevent and prohibit all forms of discrimination against children with disabilities and ensure equal opportunities for their full participation in all spheres of life by implementing the Law No. 220 of 2000 on the rights of persons with disabilities, and by including disability aspects in all relevant policymaking and national planning;

(b) Collect adequate statistical data on children with disabilities and use such disaggregated data in developing policies and programmes to promote their equal opportunities in society, paying particular attention to children with disabilities belonging to the most vulnerable groups, such as children with disabilities living in remote areas of the country and Palestinian refugee children with disabilities, particularly girls;

(c) Provide children with disabilities with access to adequate social and health services and the physical environment, information and communication;

(d) Ensure that public education policy and school curricula reflect in all their aspects the principle of full participation and equality and include children with disabilities in the mainstream school system to the extent possible and, where necessary, establish special education programmes tailored to their special needs;

(e) Develop programmes, including community-based programmes, in order to promote alternatives to institutionalization and allow children with disabilities to stay at home with their families;

(f) Strengthen the functioning and activities of the National Committee for Disabled Affairs and cooperation with non-governmental organizations working in the field of disability issues;

(g) Seek technical cooperation with, among others, UNICEF and WHO." (Lebanon CRC/C/LBN/CO/3, para. 51)

"The Committee recommends that the State Party:

(a) Adopt legislation to protect the rights of children with disabilities in conformity with internationally accepted standards;

(b) Provide early childhood education and care and primary and secondary education for children with disabilities in a way that corresponds to the needs of these children, preferably in mainstream educational facilities, and is conducive to the child's achievement of the fullest possible social integration and individual development, and that it provide adequate support, supervision and training to persons working with children with disabilities, including teachers in mainstream schools, and

pay special attention to children not attending school;

(c) Undertake efforts to establish and to implement alternatives to the institutionalization of children with disabilities, including community-based rehabilitation programmes and home-based care;

(d) Undertake awareness-raising campaigns that focus on prevention, inclusive education, family care and the promotion of the rights of children with disabilities, as well as combating negative societal attitudes towards children with disabilities; and

(e) Remove physical barriers to enable effective access of children with disabilities to schools and other institutions and services.

"The Committee also urges the State Party to review existing policies and practice in relation to children with disabilities, giving due attention to the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities." (Latvia CRC/C/LVA/CO/2, paras. 40 and 41)

Definitions of "disability"

While the Committee on the Rights of the Child has in some cases criticized a "narrow" definition of disability (for example, see China CRC/C/CHN/CO/2, paras. 60 and 61), it has avoided attempting any definition itself. Its General Comment No. 9 states that one of the main challenges in obtaining accurate statistics

"... is the lack of a widely accepted clear definition for disabilities. States Parties are encouraged to establish an appropriate definition that guarantees the inclusion of all children with disabilities so that children with disabilities may benefit from the special protection and programmes developed for them..." (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 19)

The General Comment also quotes (para. 7) the non-exclusive definition in article 1 of the Convention on the Rights of Persons with Disabilities: "Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Also, the Preamble to this Convention recognizes "that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others".



The Standard Rules states: “The term ‘disability’ summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature” (Introduction, para. 17).

Discrimination on grounds of disability

The definition of “discrimination on the basis of disability” in the Convention on the Rights of Persons with Disabilities (see box on page 324) reflects definitions in other instruments (for discussion, see article 2, page 29): “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field...”

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee on the Rights of the Child notes that

“... Discrimination takes place – often de facto – regarding various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization lead to their marginalization and exclusion and may even threaten their survival and development in the form of violence. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities leading to the marginalization and alienation of children with disabilities...” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 8)

The Committee goes on to propose that in their efforts to prevent and eliminate all forms of discrimination against children with disabilities, States should take the following measures:

“Include explicitly in constitutional provisions on non-discrimination disability as a forbidden ground for discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions; provide

for effective remedies in case of violations of the rights of children with disabilities, which are easily accessible for children with disabilities and their parents and/or others caring for the child; conduct awareness raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating the de facto discrimination against children with disabilities.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 9)

The Committee highlights the need to give additional attention to discrimination against girls with disabilities, who

“... are often even more vulnerable to discrimination in societies due to gender discrimination. In this context, States Parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.” (CRC/C/GC/9, para. 10)

The Committee frequently identifies forms of discrimination against children with disabilities in its examination of States’ reports. Its concerns are often general. For example:

“Notwithstanding the provision prohibiting discrimination against children with disabilities and the State Party’s continuous efforts to support these children through targeted State welfare measures, including direct and indirect assistance, the Committee is concerned about persisting de facto discrimination. It notes with concern that equal opportunities for children with disabilities are jeopardized, for example, by their limited access to public buildings, government services and public transportation, and that social stigma, fears and misconceptions surrounding disabilities remain strong in society leading to the marginalization and alienation of these children.” (Algeria CRC/C/15/Add.269, para. 53)

But the Committee also identifies state-specific forms of discrimination. When it examined China’s Second Report, the Committee noted that the exception to the “one-child policy”, whereby families who have a child with disabilities are allowed to have a second child, promotes *de facto* discrimination against children with disabilities (China CRC/C/CHN/CO/2, para. 60).

It commented to Hungary on marginalization of both children with disabilities and children with parents with disabilities:

“The Committee is concerned about the lack of an inclusion policy and integration mechanisms and inadequate assistance for children with disabilities.



“The Committee recommends that the State Party: ... Pursue further efforts to avoid the marginalization and exclusion of children with disabilities and of children with disabled parents.” (Hungary CRC/C/HUN/CO/2, paras. 39 and 40(d))

Causes of disability

Many articles in the Convention on the Rights of the Child are related to causes of disability, and thus their implementation can help to prevent disability: for example, articles concerned with protecting the child from involvement in armed conflict and protecting the child from violence and from various forms of exploitation. Article 6 (right to life and maximum survival and development) and article 24 (right to health and health services) are relevant to the prevention of disability, as well as to respecting the right of the disabled child to special care.

The final report of the Special Rapporteur on Human Rights and Disability in 1991 lists the following causes, which appeared most often in responses the Rapporteur received from governmental and non-governmental sources. Most but not all of these are causes of disability in childhood: “heredity, birth defects, lack of care during pregnancy and childbirth because of lack of coverage or ignorance, insalubrious housing, natural disasters, illiteracy and the resulting lack of information on available health services, poor sanitation and hygiene, congenital diseases, malnutrition, traffic accidents, work-related accidents and illnesses, sports accidents, the so-called diseases of ‘civilization’ (cardiovascular disease, mental and nervous disorders, the use of certain chemicals, change of diet and lifestyle, etc.), marriage between close relatives, accidents in the home, respiratory diseases, metabolic diseases (diabetes, kidney failure, etc.), drugs, alcohol, smoking, high blood pressure, old age, Chagas’ disease, poliomyelitis, measles, etc. Non-governmental sources also place particular emphasis on factors related to the environment, air and water pollution, scientific experiments conducted without the informed consent of the victims, terrorist violence, wars, intentional physical mutilations carried out by the authorities and other attacks on the physical and mental integrity of persons, as well as violations of human rights and humanitarian law in general.” (E/CN.4/Sub.2/1991/31, para. 109)

The Special Rapporteur on Human Rights and Disability mentions some deliberately inflicted forms of punishment and other practices as causing disability: amputation as a punishment; the institutionalization of people with disabilities,

institutional abuse, including the use of drugs; forced sterilization, castration and female circumcision (genital mutilation); and the blinding of detainees as an alternative to detention (E/CN.4/Sub.2/1991/31, para. 174). All such practices not only cause physical disabilities but also affect mental health.

The Special Rapporteur also refers to physical and psychological ill-treatment of children, both within and outside of the family, as an “extremely serious cause of disability in both developed and developing countries. The harm that can be caused in children by their parents or other persons beating, insulting, humiliating and maltreating them can be so great that in many cases it causes mental illness, social maladjustment, difficulties in school or at work, sexual impairment, etc.” (E/CN.4/Sub.2/1991/31, para. 139)

The prevention of all forms of violence and exploitation, highlighted in various articles of the Convention, are relevant to prevention of disability: in particular articles 19 (protection from all forms of physical or mental violence), 32 (economic exploitation), 34 (sexual exploitation), 36 (other forms of exploitation) and 37 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment).

The Committee’s General Comment No. 9 on “The rights of children with disabilities” also addresses the causes of disability and prevention:

“Causes of disabilities are multiple and therefore prevention varies. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate pre-conception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children’s development and it can lead to disabilities, such as blindness caused by vitamin A deficiency. The Committee recommends that States Parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance during the delivery. It also recommends that States Parties provide adequate post-natal health care services and develop campaigns to inform parents and others taking care of the child about basic child health care and nutrition. In this regard, the Committee also recommends that the States Parties continue to cooperate and seek technical assistance with, among others, WHO and UNICEF.





“Domestic and road traffic accidents are a major cause of disability in some countries and policies to prevent this need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent cause of disability among children. Hazardous environment toxins also contribute to the causes of many disabilities. Toxins, such as lead, mercury, asbestos, etc., are commonly found in most countries. Countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents...” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras.53 and 54)

The General Comment goes on to highlight the impact of armed conflict and in particular the dangers posed by landmines and other unexploded ordnance (see article 38, page 585):

“Armed conflicts and their aftermath, including availability of and accessibility to small arms and light weapons, are also major causes of disabilities. States Parties are obliged to take all necessary measures to protect children from the detrimental effects of war and armed violence and to ensure that children affected by armed conflict have access to adequate health and social services, including psychosocial recovery and social reintegration. In particular, the Committee stresses the importance of educating children, parents and the public at large about the dangers of landmines and unexploded ordnance in order to prevent injury and death. It is crucial that States Parties continue to locate landmines and unexploded ordnance, take measures to keep children away from suspected areas, and strengthen their de-mining activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras.53 to 55. See also paras. 23 and 78.)

The Graça Machel study on the *Impact of Armed Conflict on Children* states that millions of children are killed by armed conflicts, “but three times as many are seriously injured or permanently disabled by it. According to WHO, armed conflict and political violence are the lead-

ing causes of injury, impairment and physical disability and primarily responsible for the conditions of over 4 million children who currently live with disabilities... The lack of basic services and the destruction of health facilities during armed conflict mean that children living with disabilities get little support...” (A/51/306, 1996, para. 145. See also article 38, page 577.)

The Committee’s General Comment also notes that causes, prevention and management of disabilities do not receive much-needed attention on national and international research agendas:

“States Parties are encouraged to award this issue priority status ensuring funding and monitoring of disability-focused research, paying particular attention to ethical implications.” (CRC/C/GC/9, para. 61)

The World Programme of Action Concerning Disabled Persons notes that the relationship between disability and poverty has been clearly established: “While the risk of impairment is much greater for the poverty-stricken, the converse is also true. The birth of an impaired child, or the occurrence of disability in the family, often places heavy demands on the limited resources of the family and strains on its morale, thus thrusting it deeper into poverty. The combined effect of these factors results in higher proportions of disabled persons among the poorest strata of society. For this reason, the number of affected families living at the poverty level steadily increases in absolute terms. The negative impact of these trends seriously hinders the development process.” (World Programme of Action, para. 41).

The Preamble to the Convention on the Rights of Persons with Disabilities also highlights “the fact that the majority of persons with disabilities live in conditions of poverty” and recognizes the critical need to address the negative impact of poverty on persons with disabilities.

“... a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation”

The Committee states in its General Comment No. 9 on “The rights of children with disabilities” that the first paragraph of article 23

“... should be considered as the leading principle of the implementation of the Convention for children with disabilities: the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community. The measures taken by States

Parties regarding the realization of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph is that children with disabilities should be included in the society. Measures taken for the implementation of the rights in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 11)

Participation rights of children with disabilities

Children with disabilities have the same rights to participation in decision-making as other children, under article 12 (see also page 160). In order to equalize their opportunities to participation, special training and strategies may be required, as well as adaptation of buildings and programmes, and the provision of appropriate technologies. The Convention on the Rights of Persons with Disabilities highlights this in article 7: “States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.” Also, the general obligations of States listed in article 4 of the new Convention include closely consulting with and actively involving persons with disabilities, including children with disabilities, through their representative organizations, in the implementation of the Convention, and in other decision-making on issues relating to persons with disabilities.

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee notes that:

“More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities are heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. This should include their representation in various bodies such as parliament, committees and other forums where they voice views and participate in making the decisions that affect them as children in general and as children with disabilities specifically. Engaging them in such a process not only ensures that the policies are targeted to their needs and

desires, it is also a valuable tool of inclusion since it ensures that the decision-making process is a participatory one. Children should be equipped with whatever mode of communication to facilitate expressing their views. Furthermore, States Parties should support the development of training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 32. See also article 12, page 160.)

The General Comment also highlights the fact that children with disabilities are not often heard in separation and placement decisions:

“In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child’s life and future. Therefore, the Committee recommends that States Parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in out-of-home care and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation.” (CRC/C/GC/9, para. 48)

Inclusive education for children with disabilities

The Committee on the Rights of the Child has expressed concern about realization of the basic right to education for children with disabilities (article 28) and about the low proportion of these children enrolled in schools worldwide. In its examination of States Parties’ reports and in its General Comment No. 9 on “The rights of children with disabilities”, the Committee has gone beyond this general concern about the right to education to emphasize the importance of recognizing the right of children with disabilities to inclusion in regular schools.

The Convention on the Rights of Persons with Disabilities is unequivocal in its support for inclusive education. With a view to realizing the right to education without discrimination and on the basis of equal opportunity, “States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;





(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.”

States are required to ensure that:

- children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- children with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- “reasonable accommodation” of the individual’s requirements is provided;
- persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
- In addition, States must enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. Measures to be taken by States include:
 - (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
- States must also take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education: “Such training shall incorporate disability awareness and the use of appropriate aug-

mentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities”.

- States must also ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.

The Committee on the Rights of the Child consistently recommends development of inclusive education systems:

“The Committee notes with concern that insufficient efforts are being made to include children with disabilities in the mainstream system of education as they are more often than not sent to corrective ‘auxiliary schools’ and ‘correcting classes’. It is also concerned at the significant over-representation of children with disabilities in boarding schools.

“The Committee recommends that the State Party take all necessary measures:

- (a) *To address the issue of discrimination against children with disabilities;*
- (b) *To ensure that children with disabilities have equal access to services, taking into consideration the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96);*
- (c) *To review the placement of children with disabilities in boarding schools with a view to limiting such placements only to those cases where they are in the best interests of the child;*
- (d) *To provide equal educational opportunities for children with disabilities, including by abolishing the practice of ‘corrective’ and ‘auxiliary schools’, by providing the necessary support and by ensuring that teachers are trained to educate children with disabilities in regular schools.” (Russian Federation CRC/CIRUS/CO/3, paras. 49 and 50)*

The Committee expressed concern at “a strong medical approach” in Azerbaijan which did not facilitate inclusion:

“While the Committee notes the measures taken by the State Party in this regard, including the adoption of the Persons with Special Health Needs Act, it is concerned about the inadequate assistance for children in need of special care and at stereotyping and social segregation of children with disabilities also due to the lack of an adequate legislation granting equal rights to them.

“The Committee is also concerned that children with disabilities do not have access to the mainstream education service and that a strong medical approach to this problem does not facilitate their inclusion.

“The Committee recommends that the State Party: ... Ensure that children with disabilities may exercise their right to education and facilitate inclusion in the mainstream education system; undertake greater efforts to make available the necessary professional (i.e., disability specialists) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups; pursue efforts to avoid the marginalization and exclusion of children with disabilities.” (Azerbaijan CRC/C/AZE/CO/2, paras. 46 to 48)

In 1994, following five regional seminars, a World Conference on Special Needs Education, representing 92 Governments and 25 international organizations, was held and adopted “The Salamanca Statement and Framework for Action on Special Needs Education” (more than 300 participants were brought together by UNESCO and the Government of Spain). The Statement emphasizes that “those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting those needs; regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system”. The Statement calls on all Governments “to give the highest policy and budgetary priority to improve their education systems to enable them to include all children regardless of individual differences or difficulties”. (The Salamanca Statement and Framework for Action on Special Needs Education, UNESCO ED-94/WS/18, 1994)

The right of the disabled child to special care and assistance designed to promote the fullest possible social integration and individual development

Paragraphs 2 and 3 of article 23 acknowledge the need for positive action to equalize opportunities for children with disabilities. In its General Comment No. 9 on “The rights of children with disabilities”, the Committee observes in relation to these paragraphs:

“... (a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges the States Parties to make the special care and assistance to children with disabilities a matter of high priority

and to invest to the maximum extent of available resources in the elimination of the discrimination of children with disabilities and their maximum inclusion in society.

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and receive education, training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific areas of the Convention hereafter will elaborate on the measures necessary to achieve this.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 14)

The words “subject to available resources” reflect the general principle found in article 4, and a similar provision in article 27. Assistance must be requested and must be appropriate to the child’s condition and to the circumstances of parents or others caring for the child. It should be provided free “whenever possible, taking into account the financial resources of the parents and others caring for the child” (article 23(3)).

The purpose of the assistance is to ensure that the child has “effective access” to a range of services in a manner “conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”.

Avoiding institutionalization of children with disabilities

The Convention on the Rights of Persons with Disabilities reflects article 9 of the Convention on the Rights of the Child: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” And it adds: “In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.” Where the immediate family is unable to care for a child with disabilities, States shall “undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting” (article 23(4) and (5)). The emphasis in article 23 of the Convention on the Rights of the Child on “the fullest possible social integration” implies minimizing the institutionalization of children with disabilities. Article 20 also supports non-institutional placements for children deprived of their family environment (see page 278), and in the light of article 2 this must apply equally to children with disabilities.





The Committee on the Rights of the Child pursues de-institutionalization in its General Comment No. 9 on “The rights of children with disabilities”:

“The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of the lack of standards identified or lack of implementation and monitoring of these standards. Institutions are also a particular setting where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment... The Committee therefore urges States Parties to use the placement in institutions only as a measure of last resort, when it is absolutely necessary and in the best interests of the child... It recommends that the States Parties prevent the use of placement in institution merely with the goal of limiting the child’s liberty or freedom of movement. In addition, attention should be paid to transforming existing institutions, with a focus on small residential care facilities organized around the rights and needs of the child, to developing national standards for care in institutions, and to establishing rigorous screening and monitoring procedures to ensure effective implementation of these standards. “In addressing institutionalization, States Parties are therefore urged to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system. Parents and other extended family members should be provided with the necessary and systematic support/training for including their child back into their home environment.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 47 and 49)

Restriction of liberty of children with disabilities

Children who are detained because of mental illness should have the various safeguards provided by the Convention on the Rights of the Child and relevant United Nations rules and guidelines. Under article 37 of the Convention any restriction of liberty must be authorized by legislation, must not be arbitrary and must only be used as a measure of last resort and for the shortest appropriate time. Article 37(c) requires that every child deprived of liberty “shall be separated from adults unless it is considered in the child’s best interest not to do so”. The United Nations Rules for the

Protection of Juveniles Deprived of their Liberty has a similar provision. Its rule 29 applies equally to children detained because of mental illness. The Committee on the Rights of the Child has implied that in any institutional placement, children with disabilities should be separated from adults, and under article 25, it has also noted the importance of the regular review of placement and treatment (see also article 37, page 547).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty notes in rule 53: “A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.” The Rules also notes that any juvenile who “demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer” (rule 51).

International cooperation: article 23(4)

Article 23(4) requires States Parties to promote through international cooperation the exchange of information to improve their capabilities and skills in relation to children with disabilities, with particular account being taken of the needs of developing countries. The Committee’s General Comment No. 9 on “The rights of children with disabilities” notes that the international exchange of information between States Parties in the areas of prevention and treatment is quite limited:

“The Committee recommends that States Parties take effective, and where appropriate targeted, measures for an active promotion of information as envisaged by article 23, paragraph 4, in order to enable States Parties to improve their capabilities and skills in the areas of prevention and treatment of disabilities of children.

“It is often not clear how and to which degree the needs of developing countries are taken into account as required by article 23, paragraph 4. The Committee strongly recommends States Parties to ensure that in the framework of bilateral or multilateral development assistance particular attention is paid to children with disabilities and their survival and development in accordance with the provisions of the Convention, for example, by developing and implementing special programmes aiming at their inclusion in society and allocating earmarked budgets to that effect. States Parties are invited to provide information in their reports to the Committee on the activities and results of this

international cooperation.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 15 and 16)

The Convention on the Rights of Persons with Disabilities proposes extensive international cooperation, which States should ensure is “inclusive of and accessible to” persons with disabilities:

“States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, *inter alia*:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

“The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.” (Article 39)



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 23, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 23 is relevant to **all government departments, and any coordinating agency set up to consider disability issues**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 23 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 23 likely to include the training of **all those working with or for children with disabilities and their families, and parenting education**)?

• Specific issues in implementing article 23

- Does the State have a national coordinating committee or similar body to serve as a focal point for disability matters?
- Has the State reviewed legislation, policy and practice in the light of the Convention on the Rights of Persons with Disabilities?
- Has the State ratified the Convention and its Optional Protocol (open for signature from March 2007)?
- Has the State reviewed legislation, policy and practice in the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities?
- Is there anti-discrimination legislation covering discrimination against children with disabilities?
- Does legislation in the State guarantee the child with disabilities enjoyment of all the rights in the Convention without discrimination?



How to use the checklist, see page XIX

- Do all children with disabilities and their representatives have easy access to an independent mechanism for considering complaints relating to discrimination on the grounds of disability?
- Is special care and assistance available on application for all children with disabilities and for those caring for him/her in the State?

Is such special care and assistance provided

- free of charge in all cases?
- on a means-tested basis?
- Are there national and local arrangements to ensure that parents are given advice, financial assistance and practical help in bringing up a child with disabilities?

Do all children with disabilities have effective access to, and receive without discrimination in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

- pre-school care and education?
- education?
- training?
- health care services?
- rehabilitation services?
- recreation and play opportunities?
- cultural and artistic opportunities?
- preparation for employment?
- employment?

Are the following services provided for children with disabilities in an inclusive setting with children without disabilities

- education ?
- training?
- alternative care including institutional care?
- play and recreation?
- Are special arrangements made in the State to ensure respect for the participation rights of children with disabilities under articles 12, 13, 14 and 15?
- Do legislative and other measures ensure the equal right to life and maximum survival and development for the child with disabilities?

Are special measures taken to safeguard children with disabilities from all forms of violence and abuse,

- in the family?
- in alternative care?
- in the community?



How to use the checklist, *see page XIX*

- Has the State promoted the involvement of organizations of children with disabilities in planning, policy development and evaluation at all levels of government?
- Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to provision of services, etc. for children with disabilities?

Reminder: The Convention is indivisible and its articles interdependent.
Article 23 should not be considered in isolation

Particular regard should be paid to: The other general principles

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

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

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

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

Closely related articles

All articles of the Convention should be considered with a view to equalizing the opportunities of children with disabilities to exercise their rights.

Child's right to health and health services



Text of Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate prenatal and postnatal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Summary



Article 24 of the Convention builds on and develops the right to life and to survival and development to the maximum extent possible that is set out in article 6. Applying the Convention's non-discrimination principle (article 2) requires States to recognize the right of all children without discrimination to "the highest attainable standard of health" as well as to "facilities for the treatment of illness and rehabilitation of health". And States Parties must strive to ensure "that no child is deprived of his or her right of access to such health care services".

Paragraph 2 provides a non-exhaustive list of appropriate measures that States must take in pursuing full implementation of the right, including "to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care". The holistic nature of the Convention and the Committee's interpretation stress the obvious connections between realizing the child's health rights and the child's right to an adequate standard of living (article 27) and to education (article 28) as well as to protection from all forms of physical or mental violence (article 19).

Respect for the views of the child needs to be built into health care and into the design of health services (article 12, page 168), and respect for children's evolving capacities (article 5, page 78) underlines the need for full consideration of adolescent health issues.

Article 24, paragraph 3, requires action to abolish traditional practices "prejudicial to the health of children", drafted because of particular concern over female genital mutilation and requiring a review of all potentially harmful practices. Paragraph 4 asserts the importance of international cooperation (reflecting the general provision found in article 4) in achieving full realization of the right to health and health care services.

The Convention's health provisions developed from provisions in the Universal Declaration of Human Rights and the two International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – and from the formulation of definitions and principles by international organizations, in particular the World Health Organization (WHO) and UNICEF. The broad definition of health adopted by WHO in its Constitution – a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity – emphasizes again the holistic nature of the Convention and links to the broad definition of child development

the Convention promotes. In 2003, the Committee adopted General Comments on "Adolescent health and development in the context of the Convention on the Rights of the Child" and on "HIV/AIDS and the rights of the child". Other General Comments have implications for health rights. ■

Health rights in the International Bill of Human Rights

The Universal Declaration of Human Rights includes the right to care as part of everyone's right to "a standard of living adequate for the health and well-being of himself and of his family", adding: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." (Article 25)

The International Covenant on Economic, Social and Cultural Rights, in article 12, provides:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

The Committee on Economic, Social and Cultural Rights adopted a General Comment in 2000 on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) (see below). The Committee has also adopted General Comments on the right to adequate housing, the right to adequate food and the right to water; article 11 of the Covenant sets out the right of "everyone" to an adequate standard of living, including adequate food, clothing and housing (see article 27, page 393 and below, page 345).

Both the Universal Declaration and the International Covenant also assert the right to life (for further discussion see article 6, page 83).

The Convention on the Rights of the Child goes further in establishing a right of access to health care services, and providing a non-exclusive list of appropriate measures States should take.

In its General Comment on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights discusses the definition of health and makes a distinction between the right to health and the right to be healthy: “In drafting article 12 of the Covenant, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of the World Health Organization (WHO), which conceptualizes health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’. However, the reference in article 12.1 of the Covenant to ‘the highest attainable standard of physical and mental health’ is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.” (Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, “The right to the highest attainable standard of health [article 12 of the International Covenant on Economic, Social and Cultural Rights]”, HRI/GEN/1/Rev.8, para. 4, p. 87)

“The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

“The notion of ‘the highest attainable standard of health’ in article 12.1 takes into account both the individual’s biological and socio-economic preconditions and a State’s available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of

human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual’s health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health...

“The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.” (Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, HRI/GEN/1/Rev.8, paras. 8, 9 and 11, pp. 87 and 88)

In expanding on child-related elements in its definition of “the right to health”, the Committee continues: “‘The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child’ (art. 12(2)(a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.” (HRI/GEN/1/Rev.8, para. 14, p. 90) The General Comment also refers to the health rights of adolescents (see below, page 367).

Declaration on Primary Health Care

The World Health Organization includes in its Constitution (adopted at the International Health Conference in New York in 1946) a broad definition of “health”, and the same definition was used in the Declaration of Alma-Ata on Primary Health Care – the result of the 1978 International Conference on Primary Health Care, which met in Alma-Ata, (jointly sponsored by WHO and UNICEF). The Declaration of Alma-Ata defines primary health care, promoted as a priority in article 24 of the Convention on the Rights of the Child, as “essential health care based on practical, scientifically sound and socially acceptable methods and technology made universally





accessible to individuals and families in the community through their full participation and at a cost that the community and country can afford to maintain at every stage of their development in the spirit of self-reliance and self-determination. It forms an integral part both of the country's health system, of which it is the central function and main focus, and of the overall social and economic development of the community. It is the first level of contact of individuals, the family and community with the national health system bringing health care as close as possible to where people live and work, and constitutes the first element of a continuing health care process". (Declaration of Alma-Ata, paras. I and VI. For further details, see box below.)

The Declaration urges all governments to formulate national policies, strategies and plans of action to launch and sustain primary health care

as part of a comprehensive national health system (Declaration of Alma-Ata 1978, paras. I, VI, VII and VIII). The Declaration was endorsed by the United Nations General Assembly in a resolution – "Health as an integral part of development" – that reiterated WHO's appeal to the international community "to give full support to the formulation and implementation of national, regional and global strategies for achieving an acceptable level of health for all" (United Nations General Assembly resolution 34/58, 29 November 1979).

More recently, in 1998, the World Health Assembly reaffirmed the Alma-Ata principles in its policy paper *Health-for-all in the twenty-first century* (Fifty-first World Health Assembly, A51/5).

The Committee on the Rights of the Child has reinforced the Convention's emphasis on primary health care in its examination of reports from States Parties.

Declaration of Alma-Ata

The following is an extract from the text of the Alma-Ata Declaration on Primary Health Care:

"Primary health care:

1. Reflects and evolves from the economic conditions and sociocultural and political characteristics of the country and its communities and is based on the application of the relevant results of social, biomedical and health services research and public health experience;
2. Addresses the main health problems of the community, providing promotive, preventive, curative and rehabilitative services accordingly;
3. Includes at least: education concerning prevailing health problems and the methods of preventing and controlling them; promotion of food supply and proper nutrition; an adequate supply of safe water and basic sanitation; maternal and child health care, including family planning; immunization against the major infectious diseases; prevention and control of locally endemic diseases; appropriate treatment of common diseases and injuries; and provision of essential drugs;
4. Involves, in addition to the health sector, all related sectors and aspects of national and community development, in particular agriculture, animal husbandry, food, industry, education, housing, public works, communications and other sectors; and demands the coordinated efforts of all those sectors;
5. Requires and promotes maximum community and individual self-reliance and participation in the planning, organization, operation and control of primary health care, making fullest use of local, national and other available resources; and to this end develops through appropriate education the ability of communities to participate;
6. Should be sustained by integrated, functional and mutually supportive referral systems, leading to the progressive improvement of comprehensive health care for all, and giving priority to those most in need;
7. Relies, at local and referral levels, on health workers, including physicians, nurses, midwives, auxiliaries and community workers as applicable, as well as traditional practitioners as needed, suitably trained socially and technically to work as a health team and to respond to the expressed health needs of the community."

(Declaration of Alma-Ata, 1978, para. VII)

A World Fit for Children: follow-up to the 1990 World Summit for Children

The World Declaration on the Survival, Protection and Development of Children and the Plan of Action for implementing it, adopted at the World Summit for Children on 30 September 1990, provided both general and specific commitments for child health, related to the Convention's standards, which the Committee on the Rights of the Child has referred to in its examination of States Parties' reports.

The United Nations General Assembly's special session on children, held in May 2002 (see box, page 348), reviewed and built on the 1990 World Summit Declaration and Plan of Action and also the outcome of the World Summit for Social Development (Copenhagen, 1995) and its 2000 follow-up, when a special session of the United

Nations General Assembly reviewed progress and adopted a detailed resolution on further initiatives for social development.

The Millennium Declaration, adopted on 8 September 2000 (United Nations General Assembly resolution 55/2), provides the eight key development goals – the Millennium Development Goals – which include basic goals for child survival and development. These were reaffirmed at the 2005 World Summit (General Assembly, sixtieth session, October 2005, A/RES/60/1). The International Conference on Population and Development (Cairo, 1994), the Fourth World Conference on Women (Beijing, 1995) and its follow-ups in 2000 and 2005, include detailed recommendations on health, including particularly adolescents' health rights.

The Committee has urged States consistently to fulfil these goals (see box below).



The Millennium Development Goals

- To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.
- To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.
- By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.
- To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.
- To provide special assistance to children orphaned by HIV/AIDS.
- By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities without Slums" initiative.
- To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.
- To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.
- To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.
- To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.
- To ensure that the benefits of new technologies, especially information and communication technologies, in conformity with recommendations contained in the ECOSOC 2000 Ministerial Declaration, are available to all.

(Resolution 55/2 adopted by the General Assembly, United Nations Millennium Declaration, A/RES/55/2, 18 September 2000. For follow-up reports, see www.un.org/millenniumgoals/documents.html.)



A World Fit for Children

United Nations General Assembly's special session on children

Extract from Plan of Action: Promoting healthy lives

“Due to poverty and lack of access to basic social services, more than 10 million children under five years of age, nearly half of them in their neonatal period, die every year of preventable diseases and malnutrition. Complications related to pregnancy and childbirth and maternal anaemia and malnutrition kill more than half a million women and adolescents each year, and injure and disable many more. More than one billion people cannot obtain safe drinking water; 150 million children under five years of age are malnourished; and more than two billion people lack access to adequate sanitation.

“We are determined to break the intergenerational cycle of malnutrition and poor health by providing a safe and healthy start in life for all children; providing access to effective, equitable, sustained and sustainable primary health care systems in all communities, ensuring access to information and referral services; providing adequate water and sanitation services; and promoting a healthy lifestyle among children and adolescents. Accordingly, we resolve to achieve the following goals in conformity with the outcomes of recent United Nations conferences, summits and special sessions of the General Assembly, as reflected in their respective reports:

- (a) Reduction in the infant and under-five mortality rate by at least one third, in pursuit of the goal of reducing it by two thirds by 2015;
- (b) Reduction in the maternal mortality ratio by at least one third, in pursuit of the goal of reducing it by three quarters by 2015;
- (c) Reduction of child malnutrition among children under five years of age by at least one third, with special attention to children under two years of age, and reduction in the rate of low birth weight by at least one third of the current rate;
- (d) Reduction in the proportion of households without access to hygienic sanitation facilities and affordable and safe drinking water by at least one third;
- (e) Development and implementation of national early childhood development policies and programmes to ensure the enhancement of children's physical, social, emotional, spiritual and cognitive development;
- (f) Development and implementation of national health policies and programmes for adolescents, including goals and indicators, to promote their physical and mental health;
- (g) Access through the primary health care system to reproductive health for all individuals of appropriate ages as soon as possible and no later than 2015.

“To achieve these goals and targets, taking into account the best interests of the child, consistent with national laws, religious and ethical values and cultural backgrounds of its people, and in conformity with all human rights and fundamental freedoms, we will carry out the following strategies and actions:

1. Ensure that the reduction of maternal and neonatal morbidity and mortality is a health sector priority and that women, in particular adolescent expectant mothers, have ready and affordable access to essential obstetric care, well-equipped and adequately staffed maternal health care services, skilled attendance at delivery, emergency obstetric care, effective referral and transport to higher levels of care when necessary, post-partum care and family planning in order to, *inter alia*, promote safe motherhood.
2. Provide access to appropriate, user-friendly and high-quality health care services, education and information to all children.
3. Address effectively, for all individuals of appropriate age, the promotion of their healthy lives, including their reproductive and sexual health, consistent with the commitments and outcomes

of recent United Nations conferences and summits, including the World Summit for Children, the United Nations Conference on Environment and Development, the International Conference on Population and Development, the World Summit for Social Development and the Fourth World Conference on Women, their five-year reviews and reports.

4. Promote child health and survival and reduce disparities between and within developed and developing countries as quickly as possible, with particular attention to eliminating the pattern of excess and preventable mortality among girl infants and children.
5. Protect, promote and support exclusive breastfeeding of infants for six months and continued breastfeeding with safe, appropriate and adequate complementary feeding up to two years of age or beyond. Provide infant-feeding informed choices.
6. Special emphasis must be placed on prenatal and post-natal care, essential obstetric care and care for newborns, particularly for those living in areas without access to services.
7. Ensure full immunization of children under one year of age at 90 per cent nationally, with at least 80 per cent coverage in every district or equivalent administrative unit; reduce deaths due to measles by half by 2005; eliminate maternal and neonatal tetanus by 2005; and extend the benefits of new and improved vaccines and other preventive health interventions to children in all countries.
8. Certify by 2005 the global eradication of poliomyelitis.
9. Eradicate guinea worm disease.
10. Strengthen early childhood development by providing appropriate services and support to parents, including parents with disabilities, families, legal guardians and caregivers, especially during pregnancy, birth, infancy and early childhood, so as to ensure children's physical, psychological, social, spiritual and cognitive development.
11. Intensify proven, cost-effective actions against diseases and malnutrition that are the major causes of child mortality and morbidity, including reducing by one third deaths due to acute respiratory infections; reducing by one half deaths due to diarrhoea among children under the age of five; reducing by one half tuberculosis deaths and prevalence; and reducing the incidence of intestinal parasites, cholera, sexually transmitted infections, HIV/AIDS and all forms of hepatitis, and ensure that effective measures are affordable and accessible, particularly in highly marginalized areas or populations.
12. Reduce by one half the burden of disease associated with malaria and ensure that 60 per cent of all people at risk of malaria, especially children and women, sleep under insecticide-treated nets.
13. Improve the nutrition of mothers and children, including adolescents, through household food security, access to basic social services and adequate caring practices.
14. Support populations and countries suffering from severe food shortages and famine.
15. Strengthen health and education systems and expand the social security systems to increase access to integrated and effective health, nutrition and childcare in families, communities, schools and primary health care facilities, including prompt attention to marginalized boys and girls.
16. Reduce child injuries due to accidents or other causes through the development and implementation of appropriate preventive measures.
17. Ensure effective access by children with disabilities and children with special needs to integrated services, including rehabilitation and health care, and promote family-based care and appropriate support systems for parents, families, legal guardians and caregivers of these children.
18. Provide special help to children suffering from mental illnesses or psychological disorders.
19. Promote physical, mental and emotional health among children, including adolescents, through play, sports, recreation, artistic and cultural expression.





20. Develop and implement policies and programmes for children, including adolescents, aimed at preventing the use of narcotic drugs, psychotropic substances and inhalants, except for medical purposes, and at reducing the adverse consequences of their abuse as well as support preventive policies and programmes, especially against tobacco and alcohol.
21. Develop policies and programmes aimed at children, including adolescents, for the reduction of violence and suicide.
22. Achieve sustainable elimination of iodine deficiency disorders by 2005 and vitamin A deficiency by 2010; reduce by one third the prevalence of anaemia, including iron deficiency, by 2010; and accelerate progress towards reduction of other micronutrient deficiencies, through dietary diversification, food fortification and supplementation.
23. In efforts to ensure universal access to safe water and adequate sanitation facilities, pay greater attention to building family and community capacity for managing existing systems and promoting behavioural change through health and hygiene education, including in the school curriculum.
24. Address any disparities in health and access to basic social services, including health care services for indigenous children and children belonging to minorities.
25. Develop legislation, policies and programmes, as appropriate, at the national level and enhance international cooperation to prevent, *inter alia*, the exposure of children to harmful environmental contaminants in the air, water, soil and food.

(“A World Fit for Children”, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 35 to 37)

The World Health Organization developed the “Strategic Directions for Improving the Health and Development of Children and Adolescents” in response to a global call for renewed and intensified action to promote and protect the health and development of the 0-19 years age group. Preparations for the United Nations General Assembly’s special session on children called attention to the uneven progress that had been made in the achievement of the goals adopted in the 1990 World Summit for Children. The adoption of the development goals of the Millennium Declaration (MDGs) in 2000 provided further impetus to the need to develop a “road map for action”. The Strategic Directions were endorsed unanimously during the Fifty-sixth World Health Assembly, in May 2003.

In 2005, WHO dedicated its *World Health Report* to maternal, newborn and child health. The overview states: “Each year 3.3 million babies – or maybe even more – are stillborn, more than 4 million die within 28 days of coming into the world, and a further 6.6 million young children die before their fifth birthday. Maternal deaths also continue unabated – the annual total now stands at 529,000 often sudden, unpredicted deaths which occur during pregnancy itself (some 68,000 as a consequence of unsafe abortion), during

childbirth, or after the baby has been born – leaving behind devastated families, often pushed into poverty because of the cost of health care that came too late or was ineffective.” The report asks: “How can it be that this situation continues when the causes of these deaths are largely avoidable? And why is it still necessary for this report to emphasize the importance of focusing on the health of mothers, newborns and children, after decades of priority status and more than 10 years after the United Nations International Conference on Population and Development put access to reproductive health care for all firmly on the agenda?” (*The World Health Report 2005 – make every mother and child count*, WHO, Geneva, 2005, p. 4)

In September 2005, the Partnership for Maternal, Newborn and Child Health was launched in support of meeting MDGs for maternal and child health (goals four and five: reducing the rate of child death by two thirds and the ratio of maternal death by three quarters by 2015, from 1990 baseline). It merges three previous partnerships: The Partnership for Safe Motherhood and Newborn Health, the Child Survival Partnership and the Healthy Newborn Partnership. It brings together over 80 members representing United Nations and multilateral agencies, partner countries,

NGOs, health professional organizations, bilateral donors and foundations and academic and research institutions (see www.pmnch.org).

Progressive implementation of health rights

As with other economic, social and cultural rights, article 4 of the Convention on the Rights of the Child requires States Parties to implement article 24 “to the maximum extent of their available resources and, where needed, within the framework of international cooperation”. The right to life (article 6, para. 1) is a principle which must be respected in all circumstances, and is included in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (see page 84). Article 24 stresses the progressive nature of implementation: States Parties “shall strive to ensure” that no child is deprived of his or her right of access to health care services, “shall pursue full implementation of this right” (para. 2), and shall promote and encourage international cooperation “with a view to achieving progressively” full realization of the right (para. 4).

The Committee on the Rights of the Child has not yet commented in detail on the interpretation of article 24 and the obligations of States Parties. But in a key General Comment on the nature of States Parties’ obligations under the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights notes that the concept of progressive realization is, on the one hand, a necessary flexibility device, reflecting the realities of the real world. “On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être* of the Covenant which is to establish clear obligations for States Parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...

“... the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health

care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant ... even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints.” (Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, paras. 9 to 11, pp. 17 and 18. For further discussion, see article 4, page 52.)

In its more recent General Comment on the right to the highest attainable standard of health, referred to above (page 345), the Committee on Economic, Social and Cultural Rights defines core obligations to fulfil the right to health (see box, page 352).

The Committee on the Rights of the Child frequently expresses general concern at lack of access, and lack of free access, to health services, in particular for disadvantaged groups. It has commented on low investment, shortages and high cost of drugs. For example:

“The Committee is deeply concerned at low immunization rate, high levels of malnutrition and micro-nutrition deficiencies and extremely poor health conditions among children in general and particularly in camps. Further, the Committee is concerned at high mortality rates among children, high maternal mortality rates, at low investment in health care, the limited number of hospitals and health centres that are operational, the limited drug supply and relatively high cost of medicines, including generic drugs, and the concentration of medical professionals in Bujumbura city.

“The Committee urges the State Party to make significant increases in the health budget, to make every effort to improve public health, including primary health care, and to ensure adequate access for all children to health services, with particular regard to those living in rural communities and in camps. The Committee recommends that the State Party implement integrated policies and programmes for the management of childhood illnesses and measures to improve child and maternal health. The Committee recommends that the State Party seek the assistance of UNICEF and WHO in this regard.” (Burundi CRC/C/15/Add.133, paras. 54 and 55)

“The Committee commends the State Party’s developed health-care system and notes with appreciation the declining rates of infant and



States' core obligations to fulfil health rights under article 12 of the International Covenant on Economic, Social and Cultural Rights

Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000: extracts

“Read in conjunction with more contemporary instruments, such as the Programme of Action of the International Conference on Population and Development, the Alma-Ata Declaration provides compelling guidance on the core obligations arising from article 12. Accordingly, in the Committee’s view, these core obligations include at least the following obligations:

- (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services;
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.

“The Committee also confirms that the following are obligations of comparable priority:

- (a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;
- (b) To provide immunization against the major infectious diseases occurring in the community;
- (c) To take measures to prevent, treat and control epidemic and endemic diseases;
- (d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
- (e) To provide appropriate training for health personnel, including education on health and human rights.

“For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States Parties and other actors in a position to assist, to provide “international assistance and cooperation, especially economic and technical” which enable developing countries to fulfil their core and other obligations indicated in paragraphs 43 and 44 above.”

(Committee on Economic, Social and Cultural Rights, General Comment No. 14, “The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)”, 2000, HRI/GEN/1/Rev.8, paras. 43 to 45, pp. 97 and 98)

under-five mortality. However, it notes with concern that:

- (a) Disadvantaged families appear to lack equal access to quality health services;*
- (b) Regional disparities exist in the provision of health services and the national immunization programme;...*

“The Committee recommends that the State Party strengthen its efforts to reform the health sector and, particularly, to build the capacity of public health sector. It recommends that appropriate resources be allocated for the public health sector and that the State Party continue to develop and implement



comprehensive policies and programmes for improving the health situation of children, so as to fully implement the Convention, in particular articles 4, 6 and 24. It also recommends that the State Party facilitate equal access to quality primary health services for mothers and children in all areas of the country in order to end the disparities in health care provision between the different areas.” (Lebanon CRC/C/LBN/CO/3, paras. 52 and 53)

“Notwithstanding the various measures undertaken by the State Party to develop health care services, antenatal and post-natal care and make them accessible for free to all, the Committee remains concerned about:

- (a) Regional disparities in accessibility to health services;*
- (b) High infant mortality rates;*
- (c) Infant and maternal malnutrition;*
- (d) The sharp decrease in breastfeeding; and*
- (e) Limited access to clean and safe drinking water in Rodrigues.*

“The Committee recommends that the State Party:

- (a) Prioritize the allocations of financial and human resources to the health sector in order to ensure equal access to quality health care by children in all areas of the country;*
- (b) Continue its efforts to improve prenatal care, including training programmes for midwives and traditional birth attendants, and take all necessary measures to reduce infant mortality rates, especially in rural areas;*
- (c) Improve the nutritional status of infants, children and mothers;*
- (d) Ensure access to safe drinking water and sanitation in all areas of the country and particularly in Rodrigues; and*
- (e) Encourage exclusive breastfeeding for at least six months after birth with the addition of an appropriate infant diet thereafter.” (Mauritius CRC/C/MUS/CO/2, paras. 52 and 53)*

Discrimination in access to health/health care

Article 24 stresses that the State Party must recognize the right of the child to the enjoyment of the highest attainable standard of health and it must strive to ensure that no child is deprived of access to health care services. Article 24 read with article 2 requires that no child in the jurisdiction suffers discrimination in the implementation of the article – “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status”. According to the Declaration of Alma-Ata, “The existing gross inequality in the health status of the people particularly between developed and

developing countries as well as within countries is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.” (Declaration, para. II)

The Committee has linked concerns about health to discrimination issues in many cases. In particular, it has highlighted discrimination against children living in poverty, girls, children with disabilities, children living in rural areas and different regions of a State, ethnic groups, children of indigenous communities, asylum-seeking and refugee children and illegal immigrants (see also article 2, page 19). For example:

“The Committee is concerned that the country’s complex political structure and the lack of unified laws and policies make equitable access to health-care services for all children increasingly difficult... the Committee expresses serious concern that some 90 per cent of Roma have no health insurance, which results in their de facto exclusion from access to health care...”

“The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy the same access and quality of health services, with special attention to children belonging to vulnerable groups, especially Roma...” (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 47 and 49)

“The Committee recommends that the State Party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services, with special attention to children belonging to vulnerable groups, especially indigenous children and children living in remote areas. In addition, the Committee recommends that the State Party take adequate measures, within a set time period, to overcome the disparity in the nutritional status between indigenous and non-indigenous children.” (Australia CRC/C/15/Add.268, para. 48)

“The Committee reiterates its previous recommendations (see document CRC/C/15/Add.112, paras. 26 and 27), in particular, it recommends that the State Party implement all necessary measures to reduce the persistence of regional disparities in access to health care, the high rates of malnutrition among children under five years of age and those of school age, especially in rural and remote areas and among children belonging to indigenous groups...” (Mexico CRC/C/MEX/CO/3, para. 49)

Disability

Article 23 of the Convention on the Rights of the Child requires recognition of “the right of the disabled child to special care”; assistance provided “shall be designed to ensure that the disabled child has effective access to and receives ... health



care services, rehabilitation services ... in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”

The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, has a detailed article on health (article 25):

“States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and the elderly;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.”

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee notes that children with disabilities often lose out in relation to their right to health:

“Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility because of the

lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities. Another factor is the absence of targeted health care programmes that address the specific needs for children with disabilities. Health policies should be comprehensive and must address early detection of disabilities, early intervention, including psychological as well as physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids, and visual aids. “It is important to emphasize, though, that health services should be provided within the same public health system that provides for children with no disabilities, free of charge, whenever possible, and be as updated and modernized as possible. The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities. States Parties must ensure that health professionals working with children with disabilities are trained to the highest of standards possible and practice with a child-centred approach. In this respect, many States Parties would greatly benefit from international cooperation with international organizations as well as other States Parties.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 44 and 45)

Girls

In the report of its Day of General Discussion on “The girl child”, the Committee noted that

“... The son preference, historically rooted in the patriarchal system, often manifested itself by neglect, less food and little health care. Such a situation of inferiority often favoured violence and sexual abuse within the family, as well as problems associated with early pregnancy and marriage...” (Committee on the Rights of the Child, Report on the eighth session, January 1995, CRC/C/38, p. 49)

The Platform for Action of the Fourth World Conference on Women states: “Existing discrimination against the girl child in her access to nutrition and physical and mental health services endangers her current and future health. An estimated 450 million adult women in developing countries are stunted as a result of childhood protein-energy malnutrition...” (para. 266) The Platform for Action proposes that all barriers be eliminated to enable girls without exception to develop their full potential and skills through equal access to education and training, “nutrition, physical and mental health care and related information” (para. 272).

In the political declaration and further action and initiatives to implement the Beijing Declaration and Platform for Action (A/RES/S-23/3) adopted at the special session of the General Assembly



(2000), there are substantial sections summarizing achievements and obstacles since 1995 (paras. 11 and 12) and making detailed recommendations for States on health services generally (para. 72) and for adolescents in particular (para. 79).

The Committee on the Elimination of Discrimination against Women adopted a General Recommendation in 1999 on women and health (relating to article 12 of the Convention on the Elimination of All Forms of Discrimination against Women). It provides detailed recommendations relating to women's health rights, including reproductive and sexual health rights and emphasizes that for the purposes of the recommendation, "women" includes girls and adolescents". It stresses that "unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability". The recommendation proposes that States should implement a "comprehensive national strategy to promote women's health throughout their lifespan". (Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, 1999, HRI/GEN/1/Rev.8, pp. 331 *et seq.*)

Participation in relation to health rights

Article 12 requires that children's right to express their views and have them given due consideration, and to be heard in any judicial or administrative proceedings, is implemented in relation to health and health services. Consideration of participation is required both in relation to the overall planning, delivery and monitoring of health services relevant to the child, and also in relation to treatment of the individual child, and the child's right to consent or refuse consent to treatment (see article 12, page 168 for detailed discussion).

"States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...": article 24(2)

The wording indicates that the list of measures in paragraph 2 is not exclusive; other measures may be required to implement the right.

In its General Comment on "Implementing child rights in early childhood", the Committee emphasizes the importance of a healthy start to life:

"States Parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:

(a) States Parties have a responsibility to ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment. Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential. The same applies to obesity and unhealthy lifestyles;
(b) States Parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation. Priority should also be given to the provision of appropriate pre- and post-natal health care for mothers and infants in order to foster healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver) (art. 24(2)). Young children are themselves able to contribute to ensuring their personal health and encouraging healthy lifestyles among their peers, for example through participation in appropriate, child-centred health education programmes;..." (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 27)

"(a) To diminish infant and child mortality"

Article 6 requires recognition that "every child has the inherent right to life"; States must ensure "to the maximum extent possible" the survival of the child (see page 83). The infant mortality rate is the probability of dying between birth and exactly one year of age, expressed per 1,000 live births; the under-five mortality rate is the probability of dying between birth and exactly five years of age, expressed per 1,000 live births.

The under-five mortality rate is chosen by UNICEF as its single most important indicator of the state of a nation's children. In 2005, under-five mortality rates varied from 282 per 1,000 live births (Sierra Leone) to 3 or 4 per 1,000 live births (Andorra, Czech Republic, Finland, Iceland, Italy, Japan, Liechtenstein, Norway, San Marino, Singapore, Slovenia and Sweden).





The rate for sub-Saharan Africa is 169, down from 188 per 1,000 in 1990; for South Asia it is 84, down from 129 per 1,000 in 1990; and for industrialized countries it is 6, down from 10 per 1,000 in 1990. The world rate is 76, down 20 per cent from 95 per 1,000 in 1990 (*The State of the World's Children 2007*, UNICEF, pp. 138 *et seq.*). While the particular goals for international commitments are to reduce infant and under-five mortality rates, the Convention is concerned with reducing mortality throughout childhood, up to 18.

The Committee on the Rights of the Child has congratulated States that have made progress in reducing rates, and has expressed grave concern wherever rates have risen and also at situations in which rates vary in a discriminatory way. For example:

"The Committee is deeply concerned at the extremely high infant mortality rates and low life expectancy in the State Party. The Committee is concerned, in particular, at the high incidence of malaria and tuberculosis and their effects upon children, at the fragile health infrastructure, limited health awareness among the public and the limited implementation of the 1993 Health Policy and the 1994 Social Policy. The Committee is deeply concerned that implementation of health policies has been slow and that only limited progress has been achieved in this area.

"The Committee urges the State Party to ensure that access to primary health care services is increased, that national health infrastructure is strengthened and that public health education programmes are used to lower infant mortality rates and raise life expectancy in the State Party. The Committee recommends that the State Party seek assistance from the World Health Organization, UNICEF and the United Nations Development Programme in this regard." (Ethiopia CRC/C/15/Add.144, paras. 52 and 53)

The Committee repeated its concerns when it examined Ethiopia's Third Report:

"The Committee, while noting as positive the adoption of Health Sector Development Plans, regrets the lack of information on resources assigned to health services and is concerned as medical facilities are concentrated to the urban areas, resulting in exclusion of the majority of the population to necessary health services. In particular, the Committee is deeply concerned that infant, under-five and maternal mortality rates remain very high. It is also concerned at the low coverage of vaccinations, the prevalence of malaria, low breastfeeding rates and the high incidence of malnutrition.

"The Committee recommends that the State Party take all necessary measures to

strengthen its programmes for improving health care by supporting these programmes with adequate and clearly allocated resources, while paying particular and urgent attention to mortality rates, vaccination uptakes, nutrition status, breastfeeding rates and the management of communicable diseases and malaria. Specifically, the Committee recommends that the State Party pay further attention to the urban/rural divide." (Ethiopia CRC/C/ETH/CO/3, paras. 53 and 54)

There are diverse causes of infant and child mortality and the obligations of States to respond to these is pursued in the following subparagraphs of article 24(2), and in other articles of the Convention on the Rights of the Child – for example to provide appropriate support for parenting (article 18) and to protect children from various forms of violence, exploitation and abuse (articles 19 and 32 to 38).

"(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care"

Here again, emphasis is on "all children". The Committee's general concerns have focused on a lack of priority given to primary health care, reflecting the Declaration of Alma-Ata (see above, page 346).

"The Committee recommends that the primary health care system be improved regarding the effectiveness of, inter alia, antenatal care, health education, including sex education, family planning and immunization programmes..." (Russian Federation CRC/C/15/Add.4, para. 20)

When it examined the Russian Federation's Second Report, the Committee expressed concern at the persistence of a high infant mortality rate and the deteriorating health infrastructure and services. It recommended

"... that the State Party consider seeking technical assistance to continue its efforts to reverse the deterioration in primary health care..." (Russian Federation CRC/C/15/Add.110, para. 46)

Examining the Third Report, the Committee remained concerned at the standard of health:

"The Committee is also concerned that the services and programmes established under the reformed system are not fully in compliance with article 24 of the Convention, in particular with regard to the development of primary health care.

"The Committee encourages the State Party: (a) To enhance preventive interventions in primary health care;

(b) To increase public expenditure on health;
 (c) To pass the law on universal salt iodization and ensure its full implementation;
 (d) To continue efforts to reduce morbidity due to tuberculosis;
 (e) To consider creating a national breastfeeding committee, training medical professionals and improving breastfeeding practices.” (Russian Federation CRC/C/RUS/CO/3, paras. 52 and 53)

“(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution”

Again, this subparagraph emphasizes the framework of primary health care; the Committee’s comments have highlighted the basic issues of nutrition and clean water and the dangers of environmental pollution. Discrimination in provision and access to primary health care is often mentioned, particularly affecting children in rural areas and children living in poverty.

Nutrition. Nutrition is also mentioned in subparagraph (e) of article 24(2): States should ensure dissemination of basic knowledge of nutrition, particularly to parents and children. Article 27 of the Convention (adequate standard of living) requires States Parties in cases of need to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (see also article 27, page 393).

In the 1969 Declaration on Social Progress and Development, the “elimination of hunger and malnutrition and the guarantee of the right to proper nutrition” (article 10(b)) are listed as among the “main goals”. The Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services...” (article 25), and the International Covenant on Economic, Social and Cultural Rights similarly recognizes the right of everyone to an adequate standard of living... “including adequate food” and the fundamental right of everyone to be free of hunger (article 11(1)).

The International Conference on Nutrition (Rome, December 1992) prepared the World Declaration and Plan of Action for Nutrition, which recognizes that “access to nutritionally

adequate and safe food is a right of each individual”. The Declaration also affirmed “in the context of international humanitarian law that food must not be used as a tool for political pressure. Food aid must not be denied because of political affiliation, geographic location, gender, age, ethnic, tribal or religious identity.” (Declaration, paras. 1 and 15)

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food – “of crucial importance for the enjoyment of all rights”. “Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, *inter alia* because of poverty, by large segments of the world’s population.” The “core content” of the right to adequate food implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”. Accessibility must be “in ways that are sustainable and that do not interfere with the enjoyment of other human rights”. The Committee defines the right to adequate food as being realized when “every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger... even in times of natural or other disasters.”

The General Comment also notes that “Any person or group who is a victim of a violation of the right to adequate food should have access to effective juridical or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition, National Ombudsmen and human rights commissions should address violations of the right to food.” (Committee on Economic, Social and Cultural Rights, General Comment No. 12, 1999, HRI/GEN/1/Rev.8, pp. 65 *et seq.*)

The Committee on the Rights of the Child often expresses concern at malnutrition and emphasizes the need for a multisectoral approach to ending it.

The Committee has also noted obesity and the eating disorders anorexia nervosa and bulimia as a threat to children’s health:





“... The Committee notes with concern the increasingly poor nutrition practices and food choices, including within the school lunch programme, as well as the high incidence of overweight and obesity among children, especially those living in urban areas...”

“The Committee recommends that the State Party take all appropriate measures to promote and encourage healthy nutritional practices to prevent and address overweight and obesity among children.” (Palau CRC/C/15/Add.149, paras. 46 and 47)

“The Committee is concerned at the high incidence of anorexia nervosa and bulimia and by the prevalence of alcohol consumption among adolescents...”

“The Committee encourages the State Party to continue its efforts to address cases of anorexia nervosa and bulimia which are both medical and psychological problems.” (Norway CRC/C/15/Add.126, paras. 36 and 37)

It followed these concerns up when it examined Norway's Third Report:

“The Committee remains concerned about the high incidence of eating disorders (bulimia and anorexia nervosa). Furthermore, the Committee is concerned about the growing problems of overweight among children that results from low physical activity combined with poor diet.

“The Committee recommends that the State Party pay close attention to child and adolescent health, taking into account the Committee's General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child. In particular, the Committee recommends that the State Party strengthen measures to address the occurrence of eating disorders and promote a healthy lifestyle among adolescents.” (Norway CRC/C/15/Add.263, paras. 31 and 32)

Clean drinking water. In 2002, the Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to water, referring to articles 11 and 12 of the International Covenant for Economic, Social and Cultural Rights: “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” The elements of the right to water must be adequate for human dignity, life and health: “The adequacy of water should not be interpreted narrowly, by mere references to volumetric quantities and technologies. Water should be treated as a social and cultural good and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for

present and future generations.” The Committee goes on to emphasize availability, quality and physical and economic accessibility, non-discrimination and accessibility of information on water issues. States should take steps to ensure in particular that “Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency.” (Committee on Economic, Social and Cultural Rights, General Comment No. 15, 2002, HRI/GEN/1/Rev.8, see in particular paras. 1, 10 to 12, and 16(b), pp. 105 *et seq.*) The Committee sets out States' core obligations in para. 37.

Environmental pollution. The Committee on the Rights of the Child has highlighted the damaging effects on the realization of children's rights of environmental pollution, both in general and from specific incidents. It has mentioned contamination of water supplies, sea pollution, and air pollution. For example:

“The Committee is concerned, despite the legislative and other measures taken by the State Party, about environmental problems, such as air and water pollution and environmental degradation which have serious consequences for children's health and development. As regards access to safe drinking water and sanitation, the Committee is concerned about the regional disparities. Furthermore, poor knowledge of hygienic practices both among children and their parents give cause for concern.

“The Committee recommends that the State Party:

(a) Continue to strengthen its efforts to reduce pollution and environmental degradation by strengthening the implementation of domestic environmental laws, including Ecological Solid Waste Management Act (Republic Act No. 9003) and the Clean Air Act (Republic Act No. 8749);

(b) Increase children's knowledge of environmental health issues by introducing environmental health education programmes in schools;

(c) Take effective measures to improve access to safe drinking water and sanitation facilities, particularly in the remote areas of the country, as well as raise awareness on hygiene among children and their parents.” (Philippines CRC/C/15/Add.259, paras. 60 and 61)

“The Committee expresses its concern at the high incidence of environmental threats, including to the health of children, in particular in oil exploitation areas of the Amazonia region. In the light of

article 24(2)(c) of the Convention, the Committee recommends that the State Party take all appropriate measures, including seeking international cooperation, to prevent and combat the damaging effects of environmental degradation, including pollution, on children.” (Ecuador CRC/C/15/Add.93, para. 24)

It reiterated this concern when it examined Ecuador’s combined Second and Third Reports:

“The Committee recommends that the State Party effectively address the problem of pollution and environmental degradation, including by seeking bilateral agreements and international cooperation. It also recommends that the State Party strengthen its environmental health education programme.” (Ecuador CRC/C/15/Add.262, para. 54)

“(d) to ensure appropriate prenatal and postnatal health care for mothers”

The 1990 World Summit for Children Plan of Action notes: “... The causes of the high rates of infant mortality, especially neonatal mortality, are linked to untimely pregnancies, low birth weight and pre-term births, unsafe delivery, neonatal tetanus, high fertility rates, etc...” (Para. 16) Almost a fifth of under-five deaths are due to perinatal causes.

The outcome document of the United Nations General Assembly’s special session on children commits States to:

“Ensure that the reduction of maternal and neonatal morbidity and mortality is a health sector priority and that women, in particular adolescent expectant mothers, have ready and affordable access to essential obstetric care, well-equipped and adequately staffed maternal health-care services, skilled attendance at delivery, emergency obstetric care, effective referral and transport to higher levels of care when necessary, post-partum care and family planning in order to, *inter alia*, promote safe motherhood.” The Plan of Action suggests that “special emphasis must be placed on prenatal and post-natal care, essential obstetric care and care for newborns, particularly for those living in areas without access to services” (para. 37(1) and (6)).

As noted above (page 350), the new global Partnership for Maternal, Newborn and Child Health, launched in 2005, emphasizes the importance of focusing together on maternal and child health. The continuum of care approach promotes care for mothers and children from pregnancy to delivery, in the immediate postnatal period and on into childhood, recognizing that safe childbirth is critical to the health of both the mother and the newborn child.

The Committee has emphasized the importance of training for everyone involved in supporting birth, including traditional birth attendants. It has noted the particular threats to mortality rates and health early motherhood poses (see further discussion under article 24(2)(f) below – family planning education and services).

“(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents”

This paragraph of article 24 underlines the key importance of health education and information, and support, to achieving the child’s right to health and access to health care services, an idea echoed in the World Summit Declaration and Plan of Action, and the Platform for Action of the Fourth World Conference on Women. The link between health and access to basic education and achievement of literacy is acknowledged and reflected in goals in these and other plans. Article 17 of the Convention on the Rights of the Child promotes the potential role of the mass media in disseminating information of benefit to children (see article 17, page 219). Article 18 requires States to render appropriate assistance to parents in the performance of their child-rearing responsibilities, and the Committee on the Rights of the Child has frequently called for parenting and family education (see also article 18, page 235).

Breastfeeding. There are two aspects to the promotion of breastfeeding: the need for positive information, education and promotion of its advantages, and the need to challenge the negative impact of the commercial marketing of substitutes. A widely used standard for positive education is the 1989 WHO/UNICEF *Ten steps to successful breastfeeding*. These steps form the backbone of the worldwide Baby-Friendly Hospital Initiative, launched in 1991 by WHO and UNICEF.

In 1981 the International Code of Marketing of Breastmilk Substitutes was adopted by the World Health Assembly (WHA Resolution 34.22, 1981). The Code aims “to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution” (Code, para. 1).





In 1990, the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding included national action to implement the Code as one of its four operational targets for 1995. The World Health Assembly (WHA) has repeatedly reiterated its recommendation to Member States to adopt the Code and subsequent WHA resolutions in their entirety. The Code specifies that Member States “shall communicate annually to the Director-General information on action taken to give effect to the principles and aim of the Code”. The Director-General of WHO is required to report to the World Health Assembly in even years on the status of implementation of the Code, and to provide technical support on request to Member States (paras. 11.6 and 11.7).

The Global Strategy for Infant and Young Child Feeding, endorsed in 2002 by both the Fifty-fifth World Health Assembly (WHA55/2002/REC/1, Annex 2) and the UNICEF Executive Board, provides a framework for action to protect, promote, and support appropriate infant and young child feeding. The Global Strategy defines responsibilities for all concerned parties: to enable mothers and families to exclusively breastfeed their infants for six months, to introduce adequate complementary foods after six months with continued breastfeeding, and to implement the best feeding option for special circumstances, such as with low birth weight babies, infants of mothers living with HIV, and families living in emergency situations. The Global Strategy also recognizes the intricate links between maternal nutrition and child health outcomes, and promotes effective interventions to improve maternal nutritional status.

A follow-up Innocenti Declaration 2005 on Infant and Young Child Feeding acknowledges remarkable progress in 15 years – but states that “inappropriate feeding practices – sub-optimal or no breastfeeding and inadequate complementary feeding – remain the greatest threat to child health and survival globally. Improved breastfeeding alone could save the lives of more than 3,500 children every day, more than any other preventive intervention”. The 2005 Innocenti Declaration notes that the 1990 Declaration and the 2002 Global Strategy remain the foundation for action. It provides a detailed call for action, stating that the actions are urgent “for the best start in life for our children, for the achievement of the Millennium Development Goals and for the realization of the human rights of present and future generations”.

The International Baby Food Action Network (IBFAN) consists of public interest groups work-

ing around the world to reduce infant and young child morbidity and mortality. IBFAN aims to improve the health and well-being of babies and young children, their mothers and their families through the protection, promotion and support of breastfeeding and optimal infant feeding practices. IBFAN works for universal and full implementation of the International Code and WHO Resolutions (see www.ibfan.org).

The Committee has recognized that implementation of the Code by States Parties is a concrete measure towards the realization of parents’ right to objective information on the advantages of breastfeeding and, thus, to fulfilling the obligations of article 24. It consistently encourages compliance with the Code. For example:

“The Committee recommends that the ban of the commercial marketing of infant formula be implemented and that breastfeeding be promoted among mothers in health facilities...” (Lebanon CRC/C/15/Add.54, para. 34)

When it examined Lebanon’s Second Report, the Committee

“... notes the difficulties acknowledged by the State Party in enforcing a law prohibiting the free distribution of milk substitutes and notes that the commercial marketing of infant formula is still widespread...”

“The Committee recommends that the State Party: ... Strengthen its efforts to promote breastfeeding...” (Lebanon CRC/C/15/Add.169, paras. 44 and 45)

And following examination of the Third Report, it found:

“... Despite improvements, the rate of exclusive breastfeeding is still relatively low; ... “The Committee further recommends that the State Party: ... Encourage exclusive breastfeeding for six months after birth, with the addition of an appropriate infant diet thereafter, and take measures to improve the nutritional status of children through education and the promotion of healthy feeding practices;...” (Lebanon CRC/C/LBN/CO/3, paras. 52 and 53)

Mother-to-child transmission of HIV is another concern of the Committee. In 2000, WHO, on behalf of the Inter-Agency Task Team on prevention of mother-to-child transmission of HIV, convened a technical consultation which included discussions on HIV and infant feeding. Based on the recommendations from the consultation, revised and new guidance was developed, including the *HIV and Infant Feeding: Framework for Priority Action* (endorsed by all key United Nations agencies), a review of transmission of HIV through breastfeeding, guidelines for decision makers, as well as a guide for health-care

managers and supervisors, an operations research manual, tools for health workers and counselling training manuals. This guidance has been widely disseminated. A technical consultation in 2006 refined the guidance which continues to reflect a broad consensus on a public health approach based on universally recognized human rights standards.

In its General Comment No. 3 on “HIV/AIDS and the rights of the child” (see below, page 364), the Committee requests States to ensure implementation of the strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children. These include: (a) the primary prevention of HIV infection among parents-to-be; (b) the prevention of unintended pregnancies in HIV-infected women, (c) the prevention of HIV transmission from HIV-infected women to their infants; and (d) the provision of care, treatment and support to HIV-infected women, their infants and families. To prevent mother-to-child transmission of HIV, States Parties must take steps, including the provision of essential drugs, e.g., antiretroviral drugs, appropriate antenatal, delivery and post-partum care, and making voluntary counselling and testing services available to pregnant women and their partners.

States should provide support, including counselling on infant feeding options:

“Even in populations with high HIV prevalence, the majority of infants are born to women who are not HIV-infected. For the infants of HIV-negative women and women who do not know their HIV status, the Committee wishes to emphasize, consistent with articles 6 and 24 of the Convention, that breastfeeding remains the best feeding choice. For the infants of HIV-positive mothers, available evidence indicates that breastfeeding can add to the risk of HIV transmission by 10 to 20 per cent, but that lack of breastfeeding can expose children to an increased risk of malnutrition or infectious diseases other than HIV. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.” (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 27)

Accident prevention. Few reports from States have given much information on accident prevention, and there has been little comment from the Committee. Under article 3(2), States undertake to provide the protection and care necessary for

children’s welfare. While accident prevention is clearly part of parental responsibilities, there are aspects of it which can only be promoted adequately through state action (transport and environmental policies, provision of appropriate advice, financial support for domestic safety aids and so forth). Accidents are a major cause of child death and injury in many States.

In 2005, the World Health Organization and UNICEF issued *Child and adolescent injury prevention: a global call to action*. WHO and UNICEF are stepping up their work in the area of child and adolescent injury prevention. A world report and 5-10 year global strategy for child and adolescent injury prevention will form part of this effort. The report will provide a global picture of the patterns of child and adolescent injury, as well as recommendations and good practice for countries to adopt and follow. The “call to action” notes that every year, millions of children all over the world die from preventable causes. Injuries and violence are an important contributor. WHO estimates that, in 2002, around 875,000 children under the age of 18 years died as the result of an injury, although recent community-based studies conducted by UNICEF suggest that this number could be much higher. This places injuries among the leading causes of death in children who survive beyond their first birthday.

In addition to the high death toll, injuries during childhood and adolescence are also associated with high morbidity: for every injured child who dies, several thousand more survive with varying degrees of disability. The impact of these injuries on society is tremendous: every day, thousands of families are robbed of their children and thousands of children have to learn to cope with the consequences of their injury, which, in some cases, can be both long-lasting and profound.

Worldwide, road traffic accidents and drowning are the most common causes of injury deaths among children, followed by burns and falls. Deliberate violence also takes a substantial toll. Children from poor families are disproportionately affected by injuries. More than 95 per cent of all unintentional childhood injury deaths occur in low- and middle-income countries. Within the high-income countries there is also a strong socioeconomic gradient of child and adolescent injury, with children from poor families being considerably more likely to sustain an injury than their more affluent counterparts.

The call to action emphasizes: “Child injuries are not necessarily purely ‘accidental’ or random events; to a degree they are predictable and therefore largely preventable. As a public health





problem, injuries cannot, and indeed must not, be neglected any longer. Now is the time to challenge the notion that injuries are unavoidable and make room for a pro-active, preventive approach to reducing injury mortality worldwide. ... The United Nations resolved in 2000 to reduce the nearly 11 million deaths among the under-fives by two thirds by 2015 (Millennium Development Goal 4). Reducing injury and violence, a leading cause of death in children after their first birth year, will be an important contribution to achieving this goal.”

The challenge of HIV/AIDS

A global summary of the state of the AIDS epidemic – UNAIDS/WHO, *AIDS Epidemic Update: December 2006* – estimates that 2.3 million children aged 0-15 years are living with AIDS (between 1.7 million and 3.5 million); 530,000 were newly infected (between 410,000 and 660,000); and 380,000 died of AIDS (between 290,000 and 500,000). The grave threat which HIV/AIDS poses to the realization of children’s rights has been highlighted by the Committee, which held a Day of General Discussion in 1998 on “Children living in a world with AIDS” (CRC/C/80). Following the General Discussion, it formulated detailed recommendations and, in 2003, it issued its General Comment No. 3 on “HIV/AIDS and the rights of the child” (for summary, see box on page 364, and for full text see www.ohchr.org/english/bodies/crc/comments.htm).

The Joint United Nations Programme on HIV/AIDS (UNAIDS), established in 1996, is a co-sponsored programme that brings together 10 agencies: UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, ILO, UNESCO, WHO and the World Bank. It develops the priorities to be pursued in country programmes. In June 2001 a special session of the United Nations General Assembly was convened to review and address the problem of HIV/AIDS in all its aspects as well as to secure a global commitment to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner (see United Nations General Assembly resolution S-26/2 of 27 June 2001).

The Committee devotes significant and increased attention to HIV/AIDS in its examination of reports, with a separate section under “Basic health and welfare” in Concluding Observations. For example:

“While welcoming the establishment of the National AIDS Council, chaired by the president, the National AIDS Coordinating Council, the National Policy on HIV/AIDS, the Prevention of Mother-to-Child Transmission

Programme and the programme for AIDS orphans, the Committee shares the serious concern of the State Party at the still exceedingly high prevalence rate of HIV/AIDS, especially among women in their child-bearing years compounded, in part, by inappropriate traditional practices, stigmatization and lack of knowledge on prevention methods.

“In the light of General Comment No. 3 on HIV/AIDS and the rights of the child (CRC/GC/2003/3), the Committee urges the State Party to strengthen its efforts in combating the spread and effects of HIV/AIDS by, inter alia, training professionals, conducting education campaigns on prevention, improving the prevention of mother-to-child transmission programme, by providing free and universal antiretroviral medication and improving protection and support for AIDS orphans.” (Botswana CRC/C/15/Add.242, paras. 50 and 51)

The Committee also urged Botswana to allocate more resources to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to economically disadvantaged groups, including children and families infected and/or affected by HIV/AIDS:

“... the Committee also recommends that the State Party ensure that regional and other free trade agreements do not have a negative impact on the implementation of children’s rights and, more specifically, that these will not affect the possibility of providing children and other victims of HIV/AIDS with effective medicines for free or at the lowest price possible.” (Botswana CRC/C/15/Add.242, para. 20)

“While welcoming the launch of the National Anti-Aids Programme (2005-2008) and the adoption of Decree No. 2002/360 of 30 November 2002 establishing the National Anti-AIDS Council, the Committee remains concerned at the fact that only few HIV-positive children have access to antiretroviral drugs. The Committee is also concerned at the lack of comprehensive data and policy on paediatric HIV/AIDS and at the high level of mother-to-child transmission of HIV/AIDS.

“The Committee is further concerned at the fact that prevention is not sufficiently enforced among children and adolescents through their acquisition of the needed knowledge, and adoption of low-risk behaviours.

“The Committee recommends that the State Party:

- (a) Provide antiretroviral treatment to HIV-positive children and expand the coverage of voluntary HIV tests for pregnant women;*
- (b) Strengthen its measures to expand facilities and medical training for the diagnosis and treatment of HIV/AIDS;*
- (c) Strengthen its efforts by conducting campaigns and programmes to raise awareness about HIV/AIDS among adolescents,*

particularly among those belonging to vulnerable and high-risk groups as well as the population at large, so as to reduce discrimination against children infected and affected by HIV/AIDS;

(d) Adequately implement the National Anti-Aids Programme (2005-2008), including by providing it with the necessary funding; and

(e) Seek further technical assistance from, inter alia, the United Nations Joint Programme on HIV/AIDS and UNICEF.

"In this respect, the Committee wishes to draw the attention of the State Party to its General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, and on the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/137)." (Republic of the Congo CRC/C/COG/CO/1, paras. 60 to 63)

"(f) To develop preventive health care, guidance for parents, and family planning education and services"

Programmes of preventive health care, health promotion and guidance exist in all countries and are promoted by WHO, UNICEF and other agencies.

The Committee has promoted education for parenthood, including education on health matters. Article 18 requires States to render "appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and to ensure "the development of institutions, facilities and services for the care of children" (see article 18, page 231).

Immunization. Immunization is one particular aspect of preventive health care. The Committee on the Rights of the Child has expressed grave concern where immunization rates have fallen and has congratulated States that have achieved significant increases in their rates. Here again, discrimination is an issue.

In 2000 a new Global Alliance for Vaccines and Immunization (GAVI), the GAVI Alliance, was launched (www.gavialliance.org). By 2006, it reported that the GAVI Alliance resources had enabled the poorest countries to introduce new vaccines (hepatitis B, Hib, and yellow fever) and increased access to basic childhood vaccines (including polio, diphtheria, tetanus, pertussis, and measles). Approximately 138 million additional children had been protected with new vaccines and approximately 28 million additional children had been protected with basic vaccines (WHO Department of Immunization, Vaccines and Biologicals projection for year 2006, November 2006).

Family planning education and services.

Some States Parties made declarations or reservations with reference to subparagraph (f) of article 24. For example, "... the Argentine Republic considers that questions relating to family planning are the exclusive concern of parents in accordance with ethical and moral principles and understands it to be a State obligation, under this article, to adopt measures providing guidance for parents and education for responsible parenthood." The Holy See's reservation states "that it interprets the phrase 'family planning education and services' in article 24(2) to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning". And Poland's reservation states "With respect to article 24, paragraph 2(f), of the Convention, the Republic of Poland considers that family planning and education services for parents should be in keeping with the principles of morality." (CRC/C/2/Rev.8, pp. 13, 23 and 36) In each case, the Committee seeks withdrawal of the declarations or reservations (see article 1, page 2 for further discussion).

The Committee's General Comments, on "HIV/AIDS and the rights of the child" (see above, page 364) and on "Adolescent health and development in the context of the Convention on the Rights of the Child" (see below, page 368) emphasize adolescents' rights to accurate, uncensored information on sexuality and to access to appropriate services. The Committee has frequently expressed concern at high rates of teenage pregnancy, and has proposed health education and family planning programmes.

Family planning is of importance not only to prevent early or unwanted pregnancy but also to space and limit numbers of children, to enable mothers to meet the needs of existing children and to protect maternal health. Family planning issues should be of equal concern to boys and young men as to girls and young women.

The Report of the International Conference on Population and Development (Cairo, 1994) proposed as a Principle that "Reproductive health care should provide the widest range of services without any form of coercion..." (A/CONF.171/13, Principle 8) Special emphasis should be placed on men's shared responsibility and active involvement in sexual and reproductive behaviour, including family planning, prenatal, maternal and child health, prevention of sexually transmitted diseases, including HIV and prevention of unwanted and high-risk pregnancies (A/CONF.171/13, paras. 4.26 and 4.27).



HIV/AIDS and the rights of the child

Committee on the Rights of the Child, General Comment No. 3, 2003: summary

“The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities”. Bringing the impact of HIV/AIDS on children under control requires concerted and well-targeted efforts from all countries at all stages of development. The issue of children and HIV/AIDS has been perceived as mainly a medical or health problem, but it impacts so heavily that it affects all children’s rights – civil, political, economic, social and cultural. The Convention, and in particular the four general principles, provides a powerful framework for action.

Discrimination: The Committee interprets “other status”, in the list of grounds for discrimination under article 2, as including the HIV/AIDS status of children or their parents. Discrimination, particularly that based on gender and sexual orientation, is responsible for heightening the vulnerability of children to HIV/AIDS. Discrimination denies children access to information, education, health or social care services or community life.

Best interests: HIV/AIDS policies are generally designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration. The child’s rights and needs should be placed at the centre of the State’s response to the pandemic.

Right to life and maximum survival and development: Children have the right to benefit from economic and social policies that allow them to survive and develop. Effective prevention programmes acknowledge the realities of the lives of adolescents, and the State should give careful attention to children’s behaviours and lifestyles, including sexuality, even if these do not conform to prevailing cultural norms.

Right to participate: Interventions have been found to be most effective when children are actively involved in assessing needs, devising solutions and carrying them out, rather than being seen as objects for whom decisions are made.

Obstacles: “Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes”. Resource constraints should not be used by States to justify a failure to take necessary measures.

Right to information: Children have the right to adequate, appropriate and timely information related to HIV/AIDS prevention and care, through formal educational and media channels as well as informal channels (e.g., those targeting street children or institutionalized children). Effective prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information. Education plays a critical role in providing children with appropriate information, empowering children to protect themselves from infection, and preventing negative attitudes.

Child- and adolescent-sensitive health services: Children are more likely to use services that are friendly, supportive, geared to their needs, allow them to participate in decisions affecting their health, are accessible, affordable, confidential, non-judgemental, do not require parental consent and are not discriminatory.

HIV counselling and testing: States should ensure access to voluntary, confidential HIV counselling and testing for all children and prevent any form of mandatory testing. The evolving capacities of the child will determine whether consent is required directly from the child or from his or her parent or guardian; in either case, there must be adequate information to ensure an informed decision. States must protect the confidentiality of HIV test results, in line with the right to privacy under article 16; information on HIV status may not be disclosed to third Parties, including parents, without the child’s consent.



Mother-to-child transmission: Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States are requested to implement strategies recommended by the United Nations agencies, including the provision of essential drugs, e.g., antiretroviral drugs, appropriate antenatal, delivery and post-partum care, and making voluntary counselling and testing services available to pregnant women and their partners. Counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options.

Access to treatment: States must ensure that children have sustained and non-discriminatory access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services. States should negotiate with the pharmaceutical industry to make the necessary medicines locally available at the lowest costs possible.

Involvement of children in research: States must ensure that HIV/AIDS research programmes include studies that contribute to effective prevention, care and treatment for children. Children must not serve as research subjects until an intervention has been thoroughly tested on adults and proper consent has been obtained from child and/or parents based on full disclosure of the risks and benefits to the child.

Children needing special attention: The Committee highlights the acute vulnerability to HIV/AIDS of children living in refugee camps, detention and institutions, as well as children in situations of extreme poverty or armed conflict, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. Reducing vulnerability requires first and foremost that children, their families and communities be empowered to make informed choices.

Children affected and orphaned by HIV/AIDS: Special attention must be given to these children. Birth registration and proof of identity are often critical to securing rights. States must ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to gender-based discrimination. Efforts should be made to enable siblings to remain together and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore best way to care for orphans. When not available, States should provide family-type alternative care. Child-headed households should, when necessary, be supported. Institutionalized care for children should be a measure of last resort.

Vulnerability to sexual and economic exploitation: States must take bold action to protect children affected by HIV/AIDS from sexual and economic exploitation, trafficking and sale. States must also protect children from all forms of violence: abuse may increase the risk of children becoming HIV-infected, and they may be subjected to violence as a result of being infected or affected by HIV/AIDS. The relationship between HIV/AIDS and the abuse suffered by children in the context of armed conflict requires specific attention.

Substance abuse: The use of substances, including alcohol and drugs, may reduce the ability of children to control their sexual conduct and thus increase their vulnerability to infection. Injecting practices using unsterilized instruments further increase this risk. States must address the factors that expose children to substance abuse as well as providing treatment and support to children who are abusing substances.

Recommendations: The Committee reaffirms the recommendations which emerged at its Day of General Discussion on “Children living in a world with AIDS” (CRC/C/80). The General Comment also calls on States:

- (a) To adopt and implement national and local HIV/AIDS-related effective strategies and programmes that are child-centred and based on the rights of the child, taking into account the recommendations of this General Comment and those adopted at the United Nations General Assembly’s special session on children (2002);
- (b) To allocate financial, technical and human resources, to the maximum extent possible, to support national and community-based action, where appropriate with international cooperation;





- (c) To review existing laws or enact new anti-discrimination legislation, and in particular to expressly prohibit discrimination based on real or perceived HIV/AIDS status;
- (d) To include HIV/AIDS strategies in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure which responds specifically to complaints on violations of the rights of the child in relation to HIV/AIDS;
- (e) To reassess the State's HIV-related data collection and evaluation to ensure that they adequately cover children, are disaggregated by gender and age, ideally in five-year age groups, and include, as far as possible, children in need of special protection;
- (f) To include, in their reports under the Convention, information on national HIV/AIDS policies and programmes and the extent to which these explicitly recognize children and their rights; also to outline their planned programme of activities for the next five years.

The Committee calls on relevant United Nations agencies and other relevant international bodies to contribute systematically on this issue at the national level and also to continue to work with the Committee. States providing development cooperation are urged to ensure that HIV/AIDS strategies are designed to take fully into account children's rights. States should enable participation by the full range of civil society groups including of people living with HIV/AIDS, with particular attention to children, in the provision of HIV/AIDS services.

(Committee on the Rights of the Child, General Comment No. 3, "HIV/AIDS and the rights of the child", 2003, CRC/GC/2003/3. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

The Report also stressed that youth should be actively involved in the planning, implementation and evaluation of programmes: "This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse" (para. 6.15).

The Report urged support for "integral sexual education and services for young people, with the support and guidance of their parents and in line with the Convention on the Rights of the Child, that stress responsibility of males for their own sexual health and fertility and that help them exercise those responsibilities..."

One of the agreed objectives of the Cairo Conference was to substantially reduce all adolescent pregnancies (A/CONF.171/13, paras. 7.37 and 7.45).

The Platform for Action of the Fourth World Conference on Women states: "More than 15 million girls aged 15 to 19 give birth each year.

Motherhood at a very young age entails complications during pregnancy and delivery and a risk of maternal death that is much greater than average. The children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world..." In addition: "Sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children's health, and girls are more vulnerable than boys to the consequences of unprotected and premature sexual relations..." (Platform for Action, paras. 268 and 269)

The United Nations General Assembly's special session follow-up to Beijing (2000) has similar detailed proposals for development of services for adolescents. It suggests that governments should "Design and implement programmes with the full involvement of adolescents, as appropriate, to provide them with education, information and appropriate, specific, user-friendly and accessible services, without discrimination, to address effectively their reproductive and sexual health needs, taking into account their right to privacy, confidentiality, respect and informed consent, and the responsibilities, rights and duties of parents and legal guardians to provide in a manner consistent with the evolving capacities of the child appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention

on the Rights of the Child...” (A/RES/S-23/3, para. 79(f))

Adolescent health services. Responding to the recommendations of the various global conferences and United Nations agencies, the Committee has placed an increasing emphasis on development of appropriate health services for adolescents. In 2003 it adopted its General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child” (see box for summary, page 368 and full text at www.ohchr.org/english/bodies/crc/comments.htm).

In its examination of States Parties’ reports, the Committee almost invariably comments in detail on adolescent health issues. While reproductive and sexual health and the dangers of HIV/AIDS and sexually transmitted diseases is the overwhelming focus, the Committee also expresses concerns at often rising rates of youth suicide (for further discussion, see article 6, page 92) and increasing use of tobacco, alcohol and drugs. For example:

“The Committee takes note of the ruling by the Constitutional Court on the 10th of May 2006 to liberalize the criminalization of abortion in certain cases, which is likely to lower the maternal mortality rates among adolescent girls. Nevertheless, the Committee is seriously concerned over the high and increasing rate of teenage pregnancies and at the lack of adequate and accessible sexual and reproductive health services, also due to inadequate allocation of resources in these sectors. In addition to causing risks to physical and mental health, the incidence of adolescent pregnancies also limit the personal development of the individual, have a detrimental affect on young women’s ability to sustain themselves financially and create a poverty trap with overall negative effects for society. Furthermore, the Committee is concerned over the rate of adolescent suicides. “The Committee recommends that the State Party promote and ensure access to reproductive health services for all adolescents, including sex and reproductive health education in schools as well as youth-sensitive and confidential counselling and health care services, taking into due account the Committee’s General Comment No. 4 on adolescent health and development in the context of the Convention (CRC/GC/2003/4). Given the ruling of the Constitutional Court on the 10th of May 2006 to allow abortions in certain cases, the Committee encourages the State Party to ensure that safe medical facilities are available for such instances. Furthermore, the Committee recommends that an appropriate strategy dedicate adequate

resources to awareness raising, counselling services and other measures in order to prevent adolescent suicides.” (Colombia CRC/C/COL/CO/3, paras. 70 and 71)

“While noting the State Party’s efforts to address adolescent health issues, in collaboration with international agencies such as the United Nations Population Fund (UNFPA), WHO, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and UNICEF, the Committee is concerned about the limited access by teenagers to reproductive health education and services, as well as inadequate sex education at schools. In this light, the Committee welcomes all new measures targeted at young people, such as the establishment of a ‘youth-friendly’ centre as a pilot project in the capital. The Committee notes with appreciation that the State Party has finalized its National Strategic Plan on AIDS 2003-2006 and that HIV incidence remains low in the State Party. As regards the aftermath of the long period of political violence in Algeria, the Committee notes with appreciation the State Party’s efforts to respond to the needs of traumatized children, for example by implementing a National Programme of Mental Health. Despite these steps taken, the Committee is concerned at the increasing rate of suicides among adolescents.

“Taking into account its General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, the Committee recommends that the State Party strengthen its efforts to promote adolescent health, including sex and reproductive health education in schools, and to provide adolescents with youth-sensitive and confidential counselling and health-care services. In addition, it recommends that further efforts, both financial and human, be undertaken for the prevention and care of adolescents’ mental health problems.” (Algeria CRC/C/15/Add.269, paras. 58 and 59)

“While acknowledging measures and new legislation to address the high levels of alcohol and tobacco consumption, the Committee is concerned at the level of tobacco and alcohol consumption among adolescents and notes that there is insufficient promotion of good health practices in the State Party, with little targeting of nutrition, smoking, alcohol, fitness and personal hygiene.

“The Committee is also concerned at the insufficient information concerning adolescent health, in particular with regard to reproductive health. The Committee is also concerned that contraceptives are not within the financial reach of all, thus limiting their use in the State Party, and that there is a high incidence of teenage pregnancies and abortions.



Adolescent health and development in the context of the Convention on the Rights of the Child

Committee on the Rights of the Child, General Comment No. 4, 2003: summary

Adolescents up to 18 are holders of all the rights in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights. The Committee on the Rights of the Child notes that States Parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. The General Comment aims to raise awareness and provide guidance and support to States.

Parents and others legally responsible for adolescents need to fulfil their responsibilities with care: “Adolescents need to be recognised by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction”. To enable adolescents to exercise their right to participation, public authorities, parents and others working with or for children need to create an environment “based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents participating equally, including in decision-making processes”.

In the context of adolescents’ rights to health and development, States must set a minimum age for sexual consent and marriage, the same for boys and girls. Adolescents must have easy access to individual complaint systems as well as judicial and appropriate non-judicial redress mechanisms that guarantee fair and due process.

States are encouraged to respect strictly adolescents’ right to privacy and confidentiality, including in relation to advice and counselling on health matters. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.

Adolescents must be protected from all forms of discrimination, violence, neglect and exploitation, paying increased attention to forms of violence that particularly affect this age group (and to the particular vulnerability of adolescents with disabilities); protection measures must be in line with the Convention.

Systematic, disaggregated data collection is required to monitor the health and development of adolescents; where appropriate, adolescents should participate in the analysis to ensure the information is understood and utilised in an adolescent-sensitive way.

Legislation, policy and programmes should be developed and implemented in a manner consistent with adolescents’ evolving capacities. This should include providing parents with appropriate assistance, information and support to facilitate relationships of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found, respecting the adolescent’s rights. Adolescent parents should be provided with support and guidance for their own and their children’s well-being.

All adolescents have a right to receive accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

The Committee also emphasizes the importance of taking into consideration both individual behaviours and environmental factors (such as poverty, armed conflict or social exclusion, political, social and economic instability and all types of migration) which increase adolescents’ vulnerability and risk. By investing heavily in preventive policies, States can drastically reduce vulnerability and risk and provide cost-effective ways for society to help adolescents develop harmoniously in a free society.



States Parties have the following obligations:

- (a) To create a safe and supportive environment for adolescents, including within their family, in schools, in all types of institutions in which they may live, within their workplace and/or in the society at large;
- (b) To ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices;
- (c) To ensure that health services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns, are available to all adolescents;
- (d) To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;
- (e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards;
- (f) To protect adolescents from all forms of intentional and unintentional injuries, including those resulting from violence and road traffic accidents;
- (g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;
- (h) To ensure that adolescents belonging to especially vulnerable groups are fully taken into account;
- (i) To implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

States must provide health services sensitive to the particular needs and human rights of all adolescents, paying attention to the following:

- (a) *Availability*. Primary health care should include services sensitive to the needs of adolescents, with special attention given to sexual and reproductive health and mental health;
- (b) *Accessibility*. Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all adolescents, without discrimination. Confidentiality should be guaranteed, when necessary;
- (c) *Acceptability*. While fully respecting the provisions and principles of the Convention, all health facilities, goods and services should respect cultural values, be gender sensitive, be respectful of medical ethics and be acceptable to both adolescents and the communities in which they live;
- (d) *Quality*. Health services and goods should be scientifically and medically appropriate, which requires personnel trained to care for adolescents, adequate facilities and scientifically accepted methods.

States are encouraged to adopt a multisectoral approach, calling for systematic collaboration and coordination within Government. Public health and other services utilized by adolescents should also be encouraged and assisted to collaborate with, *inter alia*, private and/or traditional practitioners, professional associations, pharmacies and organizations that provide services to vulnerable groups of adolescents. A multisectoral approach will not be effective without international cooperation. So States are encouraged, when appropriate, to seek cooperation with United Nations specialized agencies, programmes and bodies, international NGOs and bilateral aid agencies, international professional associations and other non-state actors.

(Committee on the Rights of the Child, General Comment No. 4, "Adolescent health and development in the context of the Convention on the Rights of the Child", 2003, CRC/GC/2003/4. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)





“The Committee recommends that the State Party pay close attention to adolescent health, taking into account General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child; and strengthen its efforts to promote adolescent health, including by providing sexual and reproductive health education in schools and introducing school health services, including youth-sensitive and confidential counselling and care. In order to decrease tobacco smoking and alcohol consumption among adolescents, the Committee recommends that the State Party initiate campaigns designed especially for adolescents on healthy behavioural choices.” (Russian Federation CRC/C/RUS/CO/3, paras. 54 to 56)

“... The Committee recommends that the State Party increase its efforts in promoting adolescent health policies, particularly with respect to accidents, suicide and violence, and in strengthening reproductive health education and counselling services. In this regard, the Committee also recommends the inclusion of men in all training programmes on reproductive health. The Committee further suggests that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy as well as the special situation of children infected with, affected by or vulnerable to HIV/AIDS and STDs. Additionally, it is recommended that the State Party undertake further measures, including the allocation of adequate human and financial resources, to develop youth-friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without parental consent, where in the best interests of the child...” (Benin CRC/C/15/Add.106, para. 25)

It reinforced these recommendations when it examined Benin’s Second Report:

“The Committee is concerned that insufficient attention has been paid to adolescent health issues, including developmental, mental and reproductive health concerns. The Committee is specifically concerned at the situation of girls due to the high percentage of unwanted pregnancies and complications due to unsafe abortions, as these have a negative impact on their health and development, and notes the limited availability of programmes and services in the area of adolescent health at school. While noting information provided by the delegation on the existence of a drug abuse centre, the Committee is concerned at the lack of information and data on the level of drug abuse and alcohol consumption in the State Party and that these practices are not prohibited.

“The Committee recommends that the State Party, taking into account the Committee’s General Comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child:

- (a) Undertake a comprehensive study to assess the nature and extent of adolescent health problems and, with the participation of adolescents, use it as a basis to formulate adolescent health policies and programmes with a particular focus on the prevention of early pregnancies and sexually transmitted infections (STIs), especially through reproductive health education;*
- (b) Strengthen adolescent-sensitive mental and reproductive health counselling services and make them known and accessible to adolescents;*
- (c) Strengthen measures to address the problem of alcohol consumption and drug abuse among children and ensure that the drug abuse centre receives adequate human and financial resources for its proper functioning; and*
- (d) Seek technical assistance from UNICEF, WHO and UNFPA.”* (Benin CRC/C/BEN/CO/2, paras. 55 and 56)

Mental health. The Committee has commented on the lack of mental health services – long waiting lists and lack of child psychiatrists and psychologists – in various States (an issue also addressed in its General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child”). For example:

“The Committee is concerned at the lack of mental health assistance for children and at the situation of mental health among children and adolescents, particularly in the context of widespread family instability and the armed mutinies.

“The Committee recommends that the State Party ensure the availability of mental health assistance to children, taking into consideration the developmental needs of children and addressing in particular those children affected by family instability, HIV/AIDS and the armed mutinies.” (Central African Republic CRC/C/15/Add.138, paras. 62 and 63)

When it examined Norway’s Second Report, it was concerned about various adolescent mental health problems, and a lack of appropriate services:

“The Committee joins the State Party in expressing concern at the long waiting list and delayed access to mental health services and professionals for children which are due to an insufficient number of psychologists and psychiatrists.

“The Committee encourages the State Party to explore ways of providing children with more timely access to mental health services,

and to address in particular the shortage of psychiatrists and psychologists.” (Norway CRC/C/15/Add.126, paras. 40 and 41)

It pursued the same issues when it examined Norway’s Third Report:

“While welcoming measures taken to strengthen the mental health services for children and young people, the Committee is concerned at the remaining challenges, such as the waiting time for assistance and care. The Committee is also concerned at the shortage of child and adolescent psychiatrists and psychologists.

“The Committee encourages the State Party to speed up the development of mental health care so as to ensure that adequate treatment and care are provided to all children and young people in need without undue delay.

“The Committee remains deeply concerned at the high incidence of suicide among adolescents, which accounts for about one out of every four deaths among young women and men.

“The Committee urges the State Party to strengthen the health service resources for people in suicidal crisis and to take measures to prevent suicide among groups that are at risk.” (Norway CRC/C/15/Add.263, paras. 33 to 36)

The Committee has become concerned about over-prescription of drugs in relation to diagnoses of “attention deficit disorder” and hyperactivity in children, proposing to several States that other forms of treatment/management should be considered:

“... The Committee is also concerned at the information that attention deficit hyperactivity disorder (ADHD) and attention deficit disorder (ADD) are being misdiagnosed and therefore psychostimulant drugs overprescribed, despite the growing evidence of the harmful effects of these drugs.

“The Committee recommends that further research be undertaken on the diagnosis and treatment of ADHD and ADD, including the possible negative effects of psychostimulants on the physical and psychological well-being of children, and that other forms of management and treatment be used as much as possible to address these behavioural disorders.” (Australia CRC/C/15/Add.268, paras. 49 and 50. See also Finland CRC/C/15/Add.272, paras. 38 and 39.)

“States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”: article 24(3)

Article 24(3) – together with article 19 (which requires protection from all forms of physical

or mental violence, see page 249) and the non-discrimination principle in article 2 – requires a review in all States of any traditional practices that involve violence and/or are prejudicial to the health of children. The health risks of practices which involve some invasion of the child’s bodily integrity may be intensified by their performance by people with no medical training, and in unhygienic conditions. The lack of appropriate anaesthesia intensifies the suffering of children.

Article 24(3) states unequivocally that appropriate measures should be taken with a view to abolishing traditional practices prejudicial to health. Presumably, mature children should have the same rights, if any, as adults have under the law in each society to consent to practices that involve a degree of violence but are not significantly prejudicial to health.

The proposal that the Convention should protect children from traditional practices harmful to health was made by the *ad hoc* NGO group during the drafting of the Convention (E/CN.4/1986/39, pp. 10 and 11; Detrick, p. 350). Various country representatives proposed that the provision should refer in particular or for example to the practice of female genital mutilation of girls and young women, which was opposed on the grounds that it would be wrong to single out one practice. One other specific practice – that of preferential care of male children – was referred to during the drafting discussions of the Working Group on the Convention (E/CN.4/1987/25, pp. 8 to 10; Detrick, p. 351).

Several representatives concurred that the term traditional practices would include all those outlined in the 1986 Report of the Working Group on Traditional Practices affecting the Health of Women and Children (E/CN.4/1986/42). The Report refers to female circumcision, other forms of mutilation (such as facial scarification), forced feeding of women, early marriage, the various taboos or practices that prevent women from controlling their own fertility, nutritional taboos and others. There was also discussion of other traditional practices, including dowries in certain regions of the world, crimes of honour and the consequences of preferential treatment for male children (E/CN.4/1986/42, para. 18). The Committee has consistently condemned early marriage, and discrimination in the legal age for marriage. The Committee strongly recommends that States Parties review, and where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. (General Comment No. 4, on “Adolescent





health and development in the context of the Convention on the Rights of the Child”, 2003, CRC/GC/2003/4. For further discussion, see article 1, page 8.)

The Working Group notes that the availability of amniocentesis and other techniques which enable the sex of the foetus to be determined are leading to selective abortion on grounds of gender in some areas of the world. The report emphasizes the importance of recording and analysing infant and child mortality rates by gender (para. 164; for discussion, see article 6, page 92).

The Committee on the Elimination of Discrimination against Women, in a General Recommendation in 1990, expresses concern at the continuation of “the practice of female circumcision and other traditional practices harmful to the health of women”, and proposes that States Parties should “take appropriate and effective measures with a view to eradicating the practice of female circumcision”.

The General Recommendation also proposes that States Parties “include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel including traditional birth attendants to explain the harmful consequences of female circumcision.” (Committee on the Elimination of Discrimination against Women, General Recommendation No. 14, 1990, HRI/GEN/1/Rev.8, p. 298)

In December 2001 the General Assembly adopted a resolution on traditional or customary practices affecting the health of women or girls. It includes detailed recommendations to States, including:

“To collect and disseminate basic data about the occurrence of traditional or customary practices affecting the health of women and girls, including female genital mutilation;

“To develop, adopt and implement national legislation, policies, plans and programmes that prohibit traditional or customary practices affecting the health of women and girls, including female genital mutilation, and to prosecute the perpetrators of such practices;

“To establish, if they have not done so, a concrete national mechanism for the implementation and monitoring of relevant legislation, law enforcement and national policies;

“To establish or strengthen support services to respond to the needs of victims by, *inter alia*, developing comprehensive and accessible sexual and reproductive health services and by provid-

ing training to health care providers at all levels on the harmful health consequences of such practices;

“To address specifically in the training of health and other relevant personnel traditional or customary practices affecting the health of women and girls, also addressing the increased vulnerability of women and girls to HIV/AIDS and other sexually transmitted infections due to such practices;...” (United Nations General Assembly resolution, A/RES/56/128, 19 December 2001)

The 1994 Programme of Action of the International Conference on Population and Development notes that: “In a number of countries, harmful practices meant to control women’s sexuality have led to great suffering. Among them is the practice of female genital cutting, which is a violation of basic rights and a major lifelong risk to women’s health” (para. 7.35; see www.unfpa.org/index.htm). The Programme of Action urges “Governments and communities (to)... urgently take steps to stop the practice of female genital cutting and protect women and girls from all such similar unnecessary and dangerous practices. Steps to eliminate the practice should include strong community outreach programmes involving village and religious leaders, education and counselling about its impact on girls’ and women’s health, and appropriate treatment and rehabilitation for girls and women who have suffered cutting. Services should include counselling for women and men to discourage the practice.” (Para. 7.40)

The United Nations Secretary-General’s Study on Violence Against Children (2006) quotes a WHO estimate that between 100 million and 140 million girls and women in the world have undergone some form of female genital mutilation/cutting. The Study report, submitted to the General Assembly in October 2006, recommends prohibition of all forms of violence against children, including all harmful traditional practices, and sets Governments the goal of achieving this by 2009 (Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, paras. 98 and 116). The *World Report on Violence against Children* states: “Bringing an end to FGM requires clear prohibition, education and awareness-raising within families and communities and community mobilization. Triggering changes in community knowledge, beliefs, attitudes and practices is the key to success. This requires an advocacy strategy in which religious and

community leaders, health professionals and a variety of actors participate; persuading individual parents or mothers is not sufficient.” The report also emphasizes that many other practices causing violence and harm to children need exposure and campaigning as part of the efforts to prevent them (Paulo Sérgio Pinheiro, *World Report on Violence against Children*, United Nations, Geneva, 2006, Chapter 3, pp. 88 to 90).

Practices which should be reviewed in the light of the Convention’s principles include:

- all forms of genital mutilation and circumcision;
- binding, scarring, burning, branding, coin-rubbing, tattooing, piercing;
- initiation ceremonies involving, for example, forced holding under water;
- deliberate discriminatory treatment of children involving violence and/or prejudicial to health – for example, preferential feeding and/or care of male children; lack of care for children with disabilities, or children born on certain days; food taboos; etc.;
- beliefs that children are witches or possessed by evil spirits;
- forms of discipline which are violent and/or prejudicial to health;
- early marriage and dowries.

The Committee has expressed grave concern about persisting harmful traditional practices, usually highlighting female genital mutilation/cutting (FGM/C), and recommended various actions in its Concluding Observations on successive reports. For example:

“The Committee welcomes the promulgation of Act No. 98-106 prohibiting female genital mutilation. However, the Committee is deeply concerned at its persistence along with other practices harmful to the health of children, particularly the girl child, including forced and early marriages, dowry disputes, initiation rites such as scarification, and rites regarding girls training in voodoo priesthood.

“While noting the measures taken to combat harmful traditional practices, the Committee recommends that the State Party:

- (a) Evaluate the campaign against female genital mutilation undertaken in 1998 in collaboration with the Division for the Advancement of Women and UNICEF;*
- (b) Strengthen existing measures and adopt further measures, including by establishing and implementing international and bilateral agreements and programmes with neighbouring States and by working with*

traditional and religious leaders, to ensure that harmful traditional practices are effectively banned;

(c) Using the media, raise awareness within the family and extended family and among traditional and religious leaders of the harmful impact of female genital mutilation and other harmful traditional practices on the psychological and physical health and welfare of the girl child as well as her future family;

(d) Assist and empower practitioners of female genital mutilation to find an alternative source of income;

(e) Continue discussions with voodoo priests to ensure that the best interests of the girl child are protected at all times;

(f) Continue and strengthen its cooperation in this regard with, among others, UNICEF and the Division for the Advancement of Women.” (Togo CRC/C/15/Add.255, paras. 56 and 57)

“The Committee welcomes the introduction of a bill on violence against women in Parliament in May 2003, aimed to prohibit forms of violence such as harmful traditional practices and domestic violence, including marital rape. However, it reiterates its concern at the widespread and continuing existence of harmful traditional practices in the State Party, most notably the practice of female genital mutilation, as well as scarification and ritual killing of children which pose very serious threats to children, in particular the girl children.

“The Committee is concerned at the lack of legal prohibition and sufficient interventions on the part of the State Party to address harmful traditional practices. The Committee is also concerned at the lack of support services available to protect girls who refuse to undergo FGM and of services to rehabilitate girl victims of the practice.

“The Committee recommends that the State Party, as a matter of urgency, take all necessary measures to eradicate all traditional practices harmful to the physical and psychological well-being of children, by strengthening awareness-raising programmes. The Committee further recommends the State Party to adopt federal legislation prohibiting such practices and encourage further legal changes at the state level, in particular, female genital mutilation, as well as measures to provide support for girls at risk and girls who refuse to undergo FGM, and provide recovery services for victims of this harmful traditional practice.” (Nigeria CRC/C/15/Add.257, paras 56 to 58)

“The Committee notes with concern that certain harmful traditional practices continue to prevail in the State Party, most notably the caste system and traditions such as the Deuki, Kumari, Jhuma, Badi, Kamlari and Chaupadi, causing extreme insecurity, health hazards





and cruelty to girl children. The Committee regrets the absence of legal prohibition and sufficient interventions on the part of the State Party to address the harmful effects of these traditional practices on the enjoyment of rights by children who are affected by these practices.

"The Committee recommends that the State Party, as a matter of urgency, take all necessary measures to eradicate all traditional practices harmful to the physical and psychological well-being of children, by strengthening awareness-raising programmes. The Committee further recommends the State Party to adopt legislation prohibiting such practices." (Nepal CRC/C/15/Add.261, paras. 67 and 68)

"The Committee notes with appreciation the efforts undertaken by the State Party to address the practice of female genital mutilation (FGM), including a number of programmes in cooperation with UNFPA. However, it remains concerned that FGM is not specifically prohibited by law and is still widely practised in the State Party. Concern is also expressed about the persistence of other harmful traditional practices, including early marriage.

"The Committee recommends that the State Party adopt legislative measures to prohibit FGM and conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls. The Committee recommends that the State Party introduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes and discourage harmful practices, engaging with the extended family and the traditional and religious leaders. It further recommends that the State Party provide retraining, where appropriate, for practitioners and support them in their efforts to find alternative sources of income." (Uganda CRC/C/UGA/CO/2, paras. 55 and 56)

The Committee notes that, because of migration, female genital mutilation occurs throughout the world:

"While welcoming the legal measures to prohibit and prosecute cases of female genital mutilation (FGM), the Committee is concerned that this practice involving girls and young women in the context of immigrant communities still occurs in Austria and abroad where certain children are taken to perform the procedure and brought back.

"The Committee recommends that the State Party strengthen its efforts to prevent and eliminate this practice by conducting well-targeted and appropriate educational

campaigns in the context of religious communities and by considering the possibility of making punishable by law the acts of those involved in the performance of FGM outside Austria." (Austria CRC/C/15/Add.251, paras. 43 and 44)

It has proposed extraterritorial legislation:

"The Committee welcomes the efforts made and understands the difficulties faced by the State Party in protecting girls within its jurisdiction from female genital mutilation carried out outside its territory. Nevertheless, the Committee urges the State Party to undertake strong and effectively targeted information campaigns to combat this phenomenon, and to consider adopting legislation with extraterritorial reach which could improve the protection of children within its jurisdiction from such harmful traditional practices." (Netherlands CRC/C/15/Add.114, para. 18)

The Committee has expressed concern at male circumcision carried out in unsafe or unhygienic conditions:

"The Committee is concerned that male circumcision is carried out, in some instances, in unsafe medical conditions... The Committee recommends that the State Party take effective measures, including training for practitioners and awareness-raising, to ensure the health of boys and protect against unsafe medical conditions during the practice of male circumcision." (South Africa CRC/C/15/Add.122, para. 33)

"The Committee also recommends that the State Party address health risks associated with male circumcision." (Lesotho CRC/C/15/Add.147, para. 44)

The Committee has expressed concern at virginity testing in South Africa:

"The Committee is also concerned about the traditional practice of virginity testing which threatens the health, affects the self-esteem, and violates the privacy of girls... The Committee also recommends that the State Party undertake a study on virginity testing to assess its physical and psychological impact on girls. In this connection, the Committee further recommends that the State Party introduce sensitization and awareness-raising programmes for practitioners and the general public to change traditional attitudes and discourage the practice of virginity testing in light of articles 16 and 24 (3) of the Convention." (South Africa CRC/C/15/Add.122, para. 33)

**“States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries”:
article 24(4)**

WHO, UNICEF and many other United Nations and United Nations-related agencies are particularly engaged in promoting international cooperation. Cooperation includes aid, advice and technical assistance, collaboration on research, and so on (see also article 4, page 69).

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 24, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 24 is particularly relevant to **departments of health, welfare, education, planning and environment**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 24 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 24 likely to include the training of **health workers, social workers and teachers, and also parenting education and health promotion for children and adolescents**)?

• Specific issues in implementing article 24

- Has the State undertaken measures to implement article 24 to the maximum extent of available resources?

Does legislation in the State provide for the respect for article 12 (1) and (2) (the views of the child) in relation to

- the planning and development of all health care services?
- decision-making in relation to individual health treatment of the child?

Do all children in the jurisdiction

- have the right to enjoyment of the highest attainable standard of health?
- have access to facilities for the treatment of illness and the rehabilitation of health?

- Do all children with disabilities have the right to the same level of health care in the same system as other children?
- Do girls have equal rights to health care?



How to use the checklist, *see page XIX*

Is adequate information collected to ensure accuracy of

- infant mortality rates?
- under-five mortality rates?
- mortality rates for older children?
- to provide disaggregated data in order to consider issues of discrimination?
- Is there a consistent and continuing reduction in the infant and child mortality rates in the State?
- Has the State developed a definition of necessary medical assistance and health care for the child?
- Do all children in the jurisdiction have access to necessary medical assistance and health care?
- Do children have access to appropriate confidential health services, including information, counselling and supplies?
- Are adolescents directly engaged in the design of health services for their use?
- Is the development of primary health care adopted as a priority?

Has the State set appropriate targets for the full attainment of the child's right under article 24 in relation to

- infant, under-five, under-18 and maternal mortality rates?
- access by all women to prenatal care, trained attendants during childbirth and referral facilities for high-risk pregnancies and emergencies?
- access by all couples to information and services to ensure that pregnancies are not too early, too closely spaced, too late or too many?
- reduction of severe and moderate malnutrition among children?
- reduction of rate of low birth weight?
- reduction of iron-deficiency anaemia?
- elimination of vitamin A deficiency?
- access to safe drinking water?
- access to sanitary means of excreta disposal?
- elimination of guinea worm disease?
- protection from environmental pollution?
- eradication of poliomyelitis?
- elimination of neonatal tetanus?
- elimination of measles?
- maintenance of high levels of immunization coverage?
- reduction in deaths due to diarrhoea and the diarrhoea incidence rate?
- reduction in deaths due to acute respiratory infections?

Has the State ensured adequate access to health education, health promotion and support to the public and in particular to parents and children on

- child health and nutrition?
- advantages of breastfeeding?
- hygiene and environmental sanitation?
- prevention of accidents?



How to use the checklist, see page XIX

- preventive health care?
- family-planning education and services, including appropriate services for adolescents?
- HIV/AIDS-related prevention education and information?
- Has the State taken appropriate action to ensure implementation of the Inter-Agency Guidelines for Breastfeeding in areas affected by HIV/AIDS?
- Has the State taken appropriate action to ensure implementation of the International Code of Marketing of Breastmilk Substitutes?
- Has the State reviewed all traditional practices involving children in all sectors of the population to ensure that none is prejudicial to health or incompatible with other articles in the Convention (in particular articles 3, 6, and 19)?
- Has the State taken effective and appropriate measures to abolish all traditional practices prejudicial to the health of children or incompatible with other provisions of the Convention?
- Is the State involved in international cooperative exercises to exchange information and improve capacity and skills in relation to realizing the health rights of children?

Reminder: The Convention is indivisible and its articles interdependent. Article 24 should not be considered in isolation.

Particular regard should be paid to: The other general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 24 include:

Article 5: parental guidance and the child's evolving capacities

Article 17: access to appropriate information and role of the media

Article 18: parental responsibilities and state assistance

Article 19: protection from all forms of violence

Article 23: rights of children with disabilities

Article 25: right to periodic review of treatment

Article 27: right to adequate standard of living

Article 28: right to education

Article 29: aims of education

Articles 32 to 36: protection from various forms of exploitation

Article 39: recovery and reintegration for child victims

Child's right to periodic review of treatment

article

25

Text of Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 25 requires periodic review of the treatment and circumstances of children who have been placed by the authorities for the purposes of care, protection or treatment of their health. This includes placements in families or institutions (private or state-run) for children deprived of their family environment, adopted children, refugee children, children with disabilities, sick or mentally disordered children, children placed in residential schools, children deprived of their liberty, children being provided with rehabilitative care or in other placements for offending behaviour. Reviews should consider both the appropriateness of the placement and the progress of the treatment or care.

In its quiet way article 25 is a very important right under the Convention on the Rights of the

Child because it provides safeguards against one of the most serious forms of child abuse – abuse by the State. Children in all parts of the world suffer neglect and mistreatment in a wide variety of residential placements, having been put there by the State in the sincere belief that this is in their best interests.

Article 25 is also important because it offers great potential for developing enforceable legal rights and safeguards. Regulations governing “periodic review of treatment” can establish high standards, goals and best practice for all professionals working with children in placements and can secure children’s rights, for example to be heard, to be in touch with the outside world and to have access to an effective complaints procedure. ■

Summary

“... a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health”

The word “competent” means that the authorities have the appropriate competence to act and is not a qualitative judgement on professional abilities. The forms of placement falling within the scope of this article may be run by the State or privately. In the Day of General Discussion held on “The private sector as service provider and its role in implementing child rights”, the Committee noted that:

“... article 25 of the Convention specifically calls for a periodic review of the treatment and the circumstances of children who have been placed by the authorities for the purpose of care, protection or treatment of their health, including private facilities, thus establishing obligations for the State Party for the setting of standards and monitoring vis-à-vis the private sector...” (Committee on the Rights of the Child, Report on the thirty-first session, September/October 2002, CRC/C/121, para. 653)

The placements include foster and adoptive families, children’s homes and institutions, immigration and refugee detention centres, hospitals, health units and wards, therapeutic centres, boarding schools, detention centres and prisons. Residential schools must be included even though “education” is not mentioned among the purposes listed in article 25, since the point of a boarding placement is to secure the care of children as well as their education. “Punishment” is also not one of the purposes, but detention centres and other placements for offending behaviour all provide care for children as well as punishment.

Though it covers state placements in private institutions, article 25 does not appear to include placements privately arranged by parents. At one stage in the drafting procedure, it was proposed that a specific exemption should be made of placements arranged by parents. Although this exemption did not appear in the final text, there was general agreement that placements by parents were not included (E/CN.4/1986/39, pp. 11 to 13; Detrick, p. 360). Exactly why privately arranged placements should not be periodically reviewed was not made clear, since the children concerned are, if anything, more vulnerable than those who are placed by the State. The Committee has nonetheless encouraged States to check on the welfare of privately placed children:

“Independent monitoring should be set up for public and private care institutions. In the light of article 25 of the Convention, the Committee further suggests the State Party to

systematically review the conditions of children living in an informal type of placement.” (Guinea CRC/C/15/Add.100, para. 21)

“The Committee is also concerned about the conditions of children living in informal types of placement (intra-family ‘adoption’), whose situation is not periodically reviewed in accordance with article 25 of the Convention... In the light of article 25 of the Convention, the Committee further suggests that the State Party undertake a study to review the conditions of children living in an informal type of placement.” (Chad CRC/C/15/Add.107, para. 22)

Article 3(3) requires States to secure standards in all institutions, services and facilities. Both articles 3(3) and 25 are about monitoring. The difference between them is that 3(3) concerns the monitoring of institutions and staff, and article 25 the monitoring of the individual progress of each child in the institution. The Committee often encourages States to “monitor” the rights of children in institutions and foster care, which, under the Convention, must mean both the systems and the individual children concerned.

Article 12, requiring that the views of children are heard, is also relevant in that children’s voices should be heard in their reviews (see page 166). The Committee stressed the importance of this in its Day of General Discussion on “Children without parental care”:

“The Committee is concerned at the fact that children are not often heard in the separation and placement processes. It is also concerned that decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child’s life and future...”

“In the light of article 12 of the Convention, the Committee recommends that all stakeholders continue and strengthen their efforts to take into consideration the views of the child and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in the out-of-home care and during the transition process. It recommends that children should be heard throughout the protection measure process, before making the decision, while it is implemented and also after its implementation. For this purpose, the Committee recommends an establishment of a special mechanism which values children as partners.” (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 663 and 664)

The Committee has also made recommendations along these lines to reporting countries, for example proposing that Poland:



“Ensure periodic review of placement of children in institutions which takes into account the views and best interests of the child while aiming, whenever possible, at reintegrating them into their families, with appropriate counselling and support, or at finding other forms of care than institutionalization;...” (Poland CRC/C/15/Add.194, para 37)

The Committee sees effective complaints mechanisms as an integral part of effective monitoring:

“The Committee recommends that the State Party provide additional training, including in children’s rights, for social and welfare workers, ensure the periodic review of placements in institutions and establish an independent complaints mechanism for children in alternative care institutions.” (Grenada CRC/C/15/Add.121, para. 18)

First and foremost the Committee has been anxious that there is a regular review of placement of children in institutional care:

“... the Committee recommends that the State Party... ensure that the placement of children in institutional care is always assessed by a competent, multidisciplinary group of authorities and that the placement is done for the shortest period of time and subject to judicial review and that it is further reviewed in accordance with article 25 of the Convention.” (Mongolia CRC/C/15/Add.264, para. 34)

“The Committee recommends that the State Party adopt and fully implement the State Programme on De-Institutionalization and Alternative Care and promote measures alternative to institutionalization. The Committee further recommends that the State Party take all necessary measures to ensure that children in institutions enjoy all rights of the Convention and in particular ... that their placement in institution is subject to periodic review with a view to returning them to their families of origin or to placing them in family-type forms of alternative care.” (Azerbaijan CRC/C/AZE/CO/2, para. 39)

Foster placements must also be checked regularly:

“The Committee ... notes that the regular monitoring focuses more on the quality of placement of children in foster care than on the need to review the placement decision as such, in accordance with article 25 of the Convention. The Committee is concerned that the efforts to provide permanence and stability for children in care may on occasion lead to a premature decision that family reunification is no longer possible.” (Barbados CRC/C/15/Add.103, para. 21)

“While welcoming the efforts of the Ministry of Children and Family Affairs, the Committee is concerned about the insufficient periodic review of children placed in foster homes due to a lack of sufficient numbers of supervisors and lack of training of supervisors.” (Norway CRC/C/15/Add.263, para. 26)

“... a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement”

What is to be considered in the review and how often it should occur will necessarily depend on individual circumstances, but States should establish minimum requirements in their legislation. In its Day of General Discussion on “Children without parental care”, the Committee emphasized the “principle of individualization”:

“In the context of children separated from their parents, the Committee wishes to emphasize the principle of individualization. Every child is unique and the separation from parents and the placement into out-of-home care should always be looked at case by case. There is no one solution which fits all situations. The individualization of solutions means more tailored solutions based on the actual situation of the child, including her/his personal, family and social situation. This provides better opportunities for the assessment of the child’s long-term development and it respects the principle of the best interests of the child, e.g., what are the actual needs of the child, how to keep a close relationship with the biological family... “The Committee recommends that all decisions regarding the separation from parents and the placement into out-of-home care as well as the periodic review of the placement should always be based on the principle of individualization of solutions...” (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, paras. 667 and 669)

The child’s “treatment” encompasses not only clinical treatment for health purposes but also all other aspects of the child’s institutional experience, including, for example, measures used to control the child, the child’s access to the outside world and how the child’s education is affected. In addition “... all other circumstances relevant to his or her placement” must essentially include the reason and justification for the placement. In the report on its Day of General Discussion on the “Administration of juvenile justice” the Committee commented:

“Concern was expressed at the placement of children in institutions, under a welfare



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

Different sorts of review may be required, for example:

- Reviews by judicial or administrative authorities to monitor the appropriateness of compulsory placements (the Committee, for example, recommended that Bulgaria consider establishing a “guardian ad litem” system for children in institutional care (Bulgaria CRC/C/15/Add.66, para. 27)). Where deprivation of liberty is concerned, article 37 requires that its use be “as a measure of last resort and for the shortest appropriate time” (see page 556). Rule 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty states: “The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.” If children are to have the possibility of early release before expiration of a determinate sentence then some form of periodic review will be necessary to determine whether such early release is possible.
- The Committee stressed that even interim placements must have proper approval and periodic review, for example in its Concluding Observations to Costa Rica:

“The Committee ... is concerned at the considerable duration of interim placement, which in some cases may last over three years, before the matter is brought before a judge for a decision on the final placement of these children. “The Committee recommends that interim placement is done for the shortest period of time and regularly reviewed in accordance with article 25 of the Convention. The Committee further recommends that the matter be brought before a judge at the initial phase of the separation of the child from his or her parents.” (Costa Rica CRC/C/15/Add.266, paras. 33 and 34)
- Reviews by the involved professionals to assess progress of the treatment. The Committee suggests a multidisciplinary assessment will be necessary.

- Reviews by independent persons as a safeguard against abuse and to check on the general welfare of the child. An essential component of the last form of review is that children should have the opportunity to speak in private about their treatment. The Committee proposes a dedicated mechanism for this:

“... the Committee recommends that the States Parties establish an independent and effective monitoring mechanism for children without parental care. Such a body should have a mandate to receive, investigate and address complaints from children and do so in a child-sensitive and expeditious manner.” (Committee on the Rights of the Child, Report on the fortieth session, September 2005, CRC/C/153, para. 684)

How often should the periodic review occur? While this is at the discretion of the State Party, it can be assumed that the more involuntary the placement is and the more extreme the treatment, the more frequently a review will be required. The Committee expressed concern about Luxembourg’s indeterminate placements and long review periods:

“While the Committee notes that placements are reviewed every three years and that Youth Court judges frequently visit minors in institutions, it is concerned that decisions to place young people either in ‘open centres’ (State Socio-Educational Centres) or in ‘closed centres’ (Luxembourg Prison) are given for indeterminate periods and that review intervals are very long.

“The Committee recommends that the State Party introduce the rule that placement of children in foster care or in institutions may only be ordered for a fixed period, e.g. one year, with the possibility of prolonging the placement for another fixed period, which should provide for a regular review of the conditions of and the need for placement.” (Luxembourg CRC/C/15/Add.250, paras. 36 and 37)

However, although recommending an individualized approach, the Committee stresses that *all* children are entitled to have their placements reviewed at regular intervals, regardless of the success or otherwise of this placement:

“The Committee notes with concern that few institutions undertake a regular review of children placed there. The Committee is further concerned that psychological review is only taken when it is evident that the child’s behaviour has changed.

“The Committee recommends that the State Party adopt a comprehensive mechanism of periodic review of children placed in institutions.” (Mauritius CRC/C/MUS/CO/2, paras. 43 and 44)



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 25, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 25 is relevant to the **departments of justice, social welfare, education and health**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 25 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 25 likely to include the training of **social workers, lawyers, judiciary, child advocates, teachers, institutional staff, medical personnel (including mental health)**)

• Specific issues in implementing article 25

Are legal and/or formal administrative measures adopted to ensure the periodic review of each child who has been placed for the purposes of care and protection, including

- foster care?
- adoption?
- child care institutions?
- boarding schools?
- prisons and detention centres?

and for the treatment of his or her physical or mental health, including

- hospitals?
- health units?
- psychiatric wards?
- therapeutic centres?

How to use the checklist, see page XIX



Are such reviews required to consider

- the treatment of the child (including all aspects of his or her care)?
- the placement of the child (including whether its continuation is necessary)?
- the views of the child (ascertained in private)?
- Are such reviews at sufficient intervals to secure the child's protection and welfare?

Reminder: The Convention is indivisible and its articles interdependent.
Article 25 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 25 include:

Article 20: children deprived of their family environment

Article 21: adoption

Article 22: refugee children

Article 23: children with disabilities

Article 24: health services

Article 28: education services

Article 37: deprivation of liberty

Article 39: rehabilitative measures

Article 40: juvenile justice systems

Child's right to benefit from social security

article

26

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. Children are usually economically dependent upon adults. However, when the adults with responsibility for children are unable to provide for them, either because they are unable to find gainful employment or because their circumstances (illness, disability, child bearing, old age and so on) prevent them from working, then the State has an obligation to ensure that the child has some form of financial support, either paid directly to the child or via a responsible adult. This obligation is upheld in article 26.

Article 26 is subject to the proviso of article 4: "... With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." During the drafting of article 26, proposals were made to make the right to social security explicitly dependent on the availability of national resources, but

this was perceived to be unnecessary in view of article 4 (E/CN.4/1984/71, pp. 16 to 18; Detrick, pp. 364 to 367).

Article 9 of the International Covenant on Economic, Social and Cultural Rights provides: "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." The Convention on the Rights of the Child alters these words in that the child has a right to "benefit from" social security rather than a right "to" social security. This reflects the fact that children's economic security is generally bound up with that of their adult caregivers. This dependence also led to the drafting of the second paragraph of article 26, making social security contingent on the caregiver lacking resources – concerns were expressed that, otherwise, ratifying States might have to grant benefits to all children, including those of wealthy parents. The drafters did, however, agree to make clear that children could apply for benefits directly (E/CN.4/1984/71, pp. 16 to 18; Detrick, p. 367). ■

Summary

Child's right "to benefit from social security, including social insurance"

ILO Social Security (Minimum Standards) Convention (No.102) sets out the basic elements of social security, which includes medical care and benefit for families and old people and when maternity, sickness, unemployment, employment injuries and invalidity prevent adults from working.

The early years of the Convention, the first half of the 1990s, were marked by a worldwide economic recession. This recession, allied with crippling national debts and a prevailing economic philosophy calling for restraints in social security expenditure, often under aid-linked 'structural adjustment' programmes, led to many ratifying countries freezing or cutting back social security for children. The Committee's Concluding Observations during this period often expressed deep concern about the catastrophic impact of these cutbacks on children.

Since then, governments, donor countries and international financial institutions began to realize that unless the State supports basic services to all the population, a market-oriented strategy was not likely to succeed. The 1995 World Summit for Social Development in Copenhagen recommended strong social security safety nets. Copenhagen's follow-up General Assembly special session, five years later, reported on some progress in eradicating poverty, for example in programmes supporting microcredit, but also marked new threats to the poor, such as the increasing strength of the multinational corporations (United Nations General Assembly, twenty-fourth special session, A/RES/S-24/2, 15 December 2000). In the same year, the United Nations issued the Millennium Declaration which set time-bound goals, the first of which was to "eradicate extreme hunger and poverty". The specific targets within this goal do not actually aim for total eradication, but are nonetheless ambitious: "To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger..." (General Assembly resolution, fifty-fifth session, September 2000, A/RES/55/2, para. 19, p. 5). In 2006 the United Nations published a report on progress on the goals. It noted on the first target:

"In 1990, more than 1.2 billion people – 28 per cent of the developing world's population – lived in extreme poverty. By 2002, the proportion decreased to 19 per cent. During that period, rates

of extreme poverty fell rapidly in much of Asia, where the number of people living on less than \$1 a day dropped by nearly a quarter of a billion people. Progress was not so rapid in Latin America and the Caribbean, which now has a larger share of people living in poverty than South-Eastern Asia and Oceania. Poverty rates in Western Asia and Northern Africa remained almost unchanged between 1990 and 2002 and increased in the transition economies of South-Eastern Europe and the Commonwealth of Independent States. These two regions had previously nearly eradicated the worst forms of poverty, and recent survey data suggest that their poverty rates are again dropping. In sub-Saharan Africa, although the poverty rate declined marginally, the number of people living in extreme poverty increased by 140 million. Many sub-Saharan countries are now showing potential for long-term growth that could bring up standards of living."

And on the target to reduce hunger:

"Chronic hunger – measured by the proportion of people lacking the food needed to meet their daily needs – has declined in the developing world. But progress overall is not fast enough to reduce the number of people going hungry, which increased between 1995-1997 and 2001-2003. An estimated 824 million people in the developing world were affected by chronic hunger in 2003.

"The worst-affected regions – sub-Saharan Africa and Southern Asia – have made progress in recent years. But their advances have not kept pace with those of the early 1990s, and the number of people going hungry is increasing. Of particular concern is Eastern Asia: in the early 1990s, the number of hungry people declined; but again it is on the rise." (*The Millennium Development Goals Report 2006*, United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, pp. 4 and 5)

In 2002 the United Nations General Assembly also held a special session devoted to children. In the resulting report – *A World Fit for Children* – the General Assembly called on "all members of society" to join in a global movement to secure a number of objectives, including the total eradication of poverty:

"... We reaffirm our vow to break the cycle of poverty within a single generation, united in the conviction that investments in children and the realization of their rights are among the most effective ways to eradicate poverty."

It observed:

"Chronic poverty remains the single biggest obstacle to meeting the needs, protecting and pro-



moting the rights of children. It must be tackled on all fronts, from the provision of basic social services to the creation of employment opportunities, from the availability of microcredit to investment in infrastructure, and from debt relief to fair trade practices. Children are hardest hit by poverty because it strikes at the very roots of their potential for development – their growing bodies and minds. Eradication of poverty and reduction of disparities must therefore be a key objective of development efforts. The goals and strategies agreed upon at recent major United Nations conferences and their follow-ups, in particular the Millennium Summit, provide a helpful international framework for national strategies for poverty reduction to fulfil and protect the rights and promote the well-being of children.

“We recognize that globalization and interdependence are opening new opportunities through trade, investment and capital flows and advances in technology, including information technology, for the growth of the world economy, development and improvement of living standards around the world. At the same time, there remain serious challenges, including serious financial crises, insecurity, poverty, exclusion and inequality within and among societies. Considerable obstacles to further integration and full participation in the global economy remain for developing countries, in particular the least developed countries, as well as for some countries with economies in transition. Unless the benefits of social and economic development are extended to all countries, a growing number of people in all countries and even entire regions will remain marginalized from the global economy. We must act now in order to overcome those obstacles affecting peoples and countries and to realize the full potential of opportunities presented for the benefit of all, in particular children. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system. Investment in, *inter alia*, education and training will assist in enabling children to partake of the benefits of the breakthroughs in information and communication technologies. Globalization offers opportunities and challenges. The developing countries and countries with economies in transition face special difficulties in responding to those challenges and opportunities. Globalization should be fully inclusive and equitable, and there is a strong need for policies and measures at the national and international levels, formulated and implemented with the full and effective participation of developing countries and countries with economies in transition to help them respond effectively to those chal-

lenges and opportunities, giving high priority to achieving progress for children.” (*A World Fit for Children*, outcome document of the 2002 United Nations General Assembly’s special session on children, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 7, 18 and 19)

During the recession some countries endeavoured to protect children’s access to social security. The Committee commended them but often qualified this by a concern that, nonetheless, children from the poorest and most vulnerable groups were falling through the social security net. Few countries can afford to be complacent about their social security systems. For example, though the Committee has commended those Scandinavian countries that have the lowest levels of child poverty in the world, it has raised a new concern, when responding to Second Reports, that decentralization is leading to inequitable distribution of welfare benefits. For example:

“Although the State Party has one of the widest public support systems, disparities between municipalities and social strata seem to be widening, resulting in social exclusion and tension and poor services being delivered to the economically disadvantaged groups. The Committee recommends that all appropriate measures be taken, in accordance with articles 2, 26, 27 and 30 of the Convention, to ensure universal access to social benefits, in particular for the poorer families, and that the public be better informed of their rights in this regard.” (Sweden CRC/C/15/Add.101, para. 18)

And when examining Sweden’s Third Report, the Committee regretted that this concern had still not been adequately addressed (Sweden CRC/C/15/Add.248, para. 4).

While it is undoubtedly more shameful that children in rich nations are suffering unacceptable levels of poverty, the Committee has made clear that even the poorest nations have obligations under article 26 that cannot be excused. For example, the Committee told Nepal:

“The Committee expresses concern about the high level of prevailing poverty in the State Party, which hampers the respect for, and fulfilment of, the rights of children, particularly those living in rural areas, those living in slums and squats, and among the lower castes and ethnic minorities, and the ability of their families to provide them with adequate protection.

“In view of the significant proportion of children living in poverty, the Committee notes with regret the paucity of information concerning the rights of the child to benefit





from social security, and expresses concern at the absence of a comprehensive legislative and regulatory social security system that is in full compliance with article 26 of the Convention. "In accordance with articles 26 and 27 of the Convention, the Committee recommends that the State Party:

- (a) Strengthen its strategy to combat poverty, with due emphasis on monitoring the impact on the rights of children and that it allocate sufficient human and financial resources, including through international assistance, to ensure the implementation of its strategy;
- (b) Reinforce its efforts to provide support and material assistance to economically disadvantaged families, notably those living in rural areas, slums and squats and to guarantee the right of children to an adequate standard of living;
- (c) Establish poverty indicators and an official poverty line, which will enable the State Party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty and improving the standard of living for children in the State Party;
- (d) Establish a social security policy along with a clear and coherent family policy, as well as effective strategies for using the social safety net benefits to further the rights of children and provide adequate financial resources to the social security system.

"The Committee therefore recommends that the State Party make efforts to revise and/or establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using the social safety net benefits to further the rights of children." (Nepal CRC/C/15/Add.261, paras 71 to 74)

The duty to "take the necessary measures to achieve the full realization of this right in accordance with their national law"

Social security legislation contains many pitfalls. A common one is that it fails to ensure that resources go to those most in need. Careful monitoring and planning is needed to surmount this difficulty. The Committee, for example, expressed concern at Nigeria's weaknesses in collecting and evaluating information:

"In view of the high proportion of children living in poverty in the State Party, the Committee notes with concern the lack of reliable information regarding the coverage of the social security plans in place vis-à-vis the needs of children and their families. The Committee reiterates that such data is crucial for the monitoring and evaluation of progress achieved and impact assessment of policies

with respect to children. The Committee is also concerned that the social security system currently in place in the State Party is not in full compliance with article 26 of the Convention.

"The Committee recommends that the State Party:

- (a) Upgrade its system of data collection on the coverage of the social security plans currently in place, and ensure that all data and indicators are used to evaluate and revise these plans whenever necessary; and
 - (b) Make efforts to revise or/and establish a social security policy along with a clear and coherent family policy in the framework of poverty reduction strategy, as well as effective strategies for using the social safety net benefits to further the rights of children."
- (Nigeria CRC/C/15/Add.257, paras. 59 and 60)

States must also anticipate the possibility of cyclical recessions or financial crises and lay contingency plans for protecting their most important asset: children. Article 26 also implies that States Parties must take active measures to ensure that there is full take-up of social security entitlements where appropriate for or on behalf of children. Resources should therefore be given to public information campaigns on benefit entitlements, effective administrative systems and "applicant-friendly" benefit offices, forms and procedures. Article 26 is not prescriptive as to how social security should be delivered, but States must ensure that everyone who is entitled to receive it is able to do so without discrimination or social stigma or loss of any other right and with respect for their privacy.

The Committee's examination of States' implementation of article 26 often reveals discrimination in the delivery of social security, for example:

"The Committee notes that the limits for receiving social benefits for children are extended beyond the age of 18 years for persons attending full-time education; however, it notes that the age is not the same for males and females.

"The Committee encourages the State Party to ensure that social benefits for girls and boys are equal so that this is not a factor in their decisions relating to higher education." (Cyprus CRC/C/15/Add.205, paras. 49 and 50)

"The Committee takes notice of the reform of the family allowance system, including an evident increase of benefits for children. The Committee remains concerned about the high number of families living in poverty and the even higher number of single-parent families, families with three or more children and families caring for a child with severe

disabilities. In particular the Committee is concerned about the predominance of the Roma population amongst the poor and the difficulty for this population to evade economic hardship because of unemployment, segregated settlements and educational deficits caused to a large extent by discrimination.

“The Committee recommends that the State Party:

(a) Thoroughly examine the effects of the new family allowance system with a view to ensure that every child enjoys the right to an adequate standard of living;

(b) Strengthen, if necessary, the efforts to improve the standard of living of disadvantaged children, particularly those living in single-parent families, families with three or more children and families caring for a child with severe disabilities; and

(c) Provide material assistance and support capacity-building programmes in order to protect children against the detrimental impact of deficient living conditions.” (Hungary CRC/C/HUN/CO/2, paras. 45 and 46)

“The Committee ... remains concerned at the large number of children who do not benefit from social security, such as children of unemployed or self-employed parents.” (Mexico CRC/C/MEX/CO/3, para. 54)

In addition, children may be unable to claim because they are deemed “too old” (see article 1, definition of the child, page 3). The Committee raised this issue with Iceland and Georgia:

“Noting that a child is defined as a person under 18 years in Icelandic legislation (e.g. the 1997 Majority Act), the Committee is concerned that inconsistencies with this definition remain in other laws (e.g. child benefits are payable until age 16).” (Iceland CRC/C/15/Add.203, para. 20)

“The Committee ... regrets that social benefits for children with disabilities are discontinued when they reach 16 years.” (Georgia CRC/C/15/Add.222, para. 52)

“... taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child”

The Convention underlines the financial as well as caring responsibilities of parents and others with child-rearing responsibilities. Article 27(4) specifically provides for the State to recover maintenance when necessary (see page 401).

In addition, means-testing of child social security is generally regarded as desirable, given the need

to target limited resources effectively. It should, however, be noted that some degree of financial support for **all** children, regardless of their parents’ circumstances, is neither unreasonable nor unviable. The State has good cause to invest in children, since they represent its future security, and families with children can be encouraged and supported by tax rebates or direct benefits. Universal benefits to all children have the added advantage of ensuring full take-up rates with very low administrative costs, since no means-testing is involved.

Where benefits are means-tested, great care has to be taken to ensure that the eligibility terms are non-discriminatory and non-stigmatizing to the families concerned.

Applications for benefits to be made “by or on behalf of the child”

This right emphasizes the fact that while it is important to ensure that those with legal responsibility for children are entitled to claim benefits on their behalf, it is equally important to ensure that children are directly eligible in their own right where necessary. The Netherlands entered a reservation to article 26, relating to this aspect: “The Kingdom of the Netherlands accepts the provisions of article 26 of the Convention with the reservation that these provisions shall not imply an independent entitlement of children to social security, including social insurance.” (CRC/C/2/Rev.8, p. 31) In its Initial Report, the Netherlands indicated that: “Although, in the Netherlands, a child may in certain circumstances (in its capacity as employee or resident) have an individual entitlement to social security benefits, what tends to happen in practice is that the child’s rights to social security are derived from those of the parents,” and therefore indicated it would not withdraw the reservation. (Netherlands CRC/C/51/Add.1, para. 223) Nevertheless, the Committee encouraged withdrawal of this reservation (Netherlands CRC/C/15/Add.114, para. 7 and CRC/C/15/Add.227, paras. 10 and 11).

The need for an autonomous claim by the child may occur if parents are for some reason disqualified from claiming or are unable to claim.

The Committee noted such a problem in Lebanon, suggesting:

“... that a health insurance card be issued for children whose parents are not entitled to social security benefits.” (Lebanon CRC/C/15/Add.54, para. 34)





It expressed concern that in Greece:

"... the system of financial 'allowances' provided by the State to assist in the care of children under certain circumstances, such as low family income, are not provided to children themselves but rather to mothers, irrespective of whether they are caring for their children;...

"... the Committee recommends that the State Party... amend the procedures for the disbursement of family allowances to ensure that this financial support is provided to the person(s) currently caring for the children intended to benefit from the allowances..."

(Greece CRC/C/715/Add.170, paras. 48 and 49)

Children's access to benefits need not – arguably, should not – be dependent only on their adult caregivers. Denmark, for example, places a duty on "persons in public offices or public service" to inform the relevant authorities if they believe that anybody, including children, may be in need of social assistance (Denmark CRC/C/8/Add.8, para. 50). Norway

reported that it made provision for older children to apply directly for social assistance in special circumstances, such as not receiving the necessary support from their parents (Norway CRC/C/70/Add.2, para. 273).

It should also be noted that flawed social benefit systems for adults can have unintended consequences for children, as the Committee pointed out to China when examining its Initial Report:

"It is the Committee's view that inadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the right of girls and disabled children..."

"It is the Committee's view that remedial measures should be sought to avoid families' over-dependence on their children, in particular providing them with care in their old age." (China CRC/C/15/Add.56, paras. 12 and 32)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 26, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 26 is relevant to the **departments of social security, finance, employment, justice, housing and social welfare**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 26 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 26 likely to include the training of **benefits administrators, social workers and the judiciary**)?

• Specific issues in implementing article 26

- Does every child in need have a potential right to benefit from social security (including social insurance)?
- Are measures taken to ensure that legal entitlements to social security are made known to children and their families?
- Are measures taken to ensure that take-up of benefits is made as easy as possible (for example by automatic payments, simple application forms, accessible benefit offices and officers)?
- Are measures taken to ensure that the process of applying for benefits does not discriminate against any children (for example those in remote areas or of illiterate parents)?
- Do systems for the delivery of social security respect the child's right to privacy?
- Are children able to make applications for social security in their own right?

How to use the checklist, see page XIX



- Are those responsible for children's maintenance able to make applications on their behalf?
- Are third parties (that is, those not directly responsible for children's maintenance) able to make applications on their behalf?

Reminder: The Convention is indivisible and its articles interdependent. Article 26 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 26 include:

Article 3(2): State to ensure child necessary protection and care

Article 18: parents having joint responsibility

Article 23: rights of children with disabilities

Article 24: right to health care services

Article 27: right to an adequate standard of living and to maintenance from parents and others

Article 28: right to education

Child's right to an adequate standard of living



Text of Article 27

- 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*
- 4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.*

Article 27 provides children with the right to an adequate standard of living for their full development. Parents have primary responsibility for securing this right; States must if necessary assist parents in doing so and in cases of need must provide material supports to the child, such as food, clothing and housing. States shall also take appropriate measures to recover maintenance from parents.

Article 27 links two essential principles of the Convention on the Rights of the Child, also found in other articles. The first, set out in paragraph (1) of article 27, is the right of each child to “development”, which, as the Convention elsewhere makes clear, must be to “the maximum extent” (article 6) or to the child’s “fullest potential” (article 29). The second, set out in paragraphs (2) and (4) of article 27, is that parents have primary responsibility for securing this development, with

Summary



the assistance of the State. This principle is also asserted in articles 5, 7 and 18.

Article 27 recognizes that the child's development cannot be divorced from his or her conditions of living. By listing the different components of full development – physical, mental, spiritual, moral and social – article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are. There are very few countries that have reported to the Committee that can claim to be using their available resources to the maximum extent possible to alleviate child need – some of the wealthiest nations of the globe have children experiencing unacceptable levels of deprivation. ■

Background

The Universal Declaration of Human Rights provides that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” (Article 25)

The International Covenant on Economic, Social and Cultural Rights develops this: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement to living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” (Article 11(1))

The reporting guidelines for the Covenant, with particular reference to “the continuous improvement of living conditions”, asks countries to report on whether the standard of living of all social groups has improved over time, for example over the last five or ten years. It also asks for reports on the per capita GNP of the poorest 40 per cent and for information on any “poverty line” definition, as well as for a great deal of detailed information about the “food security” of the population and the country's housing situation (*Manual on Human Rights Reporting*, 1997, p. 120).

The Committee on Economic, Social and Cultural Rights has also made a significant General Comment in relation to the nature of States Parties' obligations, quoted at length in article 4

(page 52). This accepts that not all countries will be able to meet economic and social rights in full, a fact which is explicitly recognized in the Convention on the Rights of the Child). However the goal of full implementation is set and the Covenant on Economic, Social and Cultural Rights “... imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources...

“... the Committee [on Social, Economic and Cultural Rights] is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or even of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant...” (Committee on Economic, Social and Cultural Rights, General Comment No. 3, 1990, HRI/GEN/1/Rev.8, para. 10, p. 17)

When examining States' reports, the Committee on the Rights of the Child sometimes expresses support for particular findings of the Committee on Economic, Social and Cultural Rights, recognizing its particular expertise in analysing levels of poverty and imbalances in the distribution of resources.

“... the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”

Article 6, identified by the Committee as one of the Convention's general principles, gives States the responsibility to “ensure to the maximum extent possible the survival and development of the child”. Article 27(3) spells out three vital contributions to children's physical development – nutrition, clothing and housing. Article 24 enlarges on these, for example stressing the need for clean drinking water, health education, good hygiene and sanitation, breastfeeding, and preventive action in relation to environmental pollution, child accidents and harmful traditional practices. Articles 29 and 31 focus on children's rights to have opportunities to develop their physique, amongst other things, through sport

and play – perhaps particularly important for urban children.

The civil rights of children under articles 12 to 17, the rights to enjoy their culture and religion within the security of family and community (articles 5, 7, 8, 9, 18, 20, 21 and 30) and the aims of education in article 29, all contribute to the development of children's social, moral, mental and spiritual development.

In its General Comment No. 7 on “Implementing child rights in early childhood”, the Committee observes:

“The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation. Growing up in relative poverty undermines children’s well being, social inclusion and self esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children’s survival and their health, as well as undermining the basic quality of life. States Parties are urged to implement systematic strategies to reduce poverty in early childhood as well as combat its negative effects on children’s well being. All possible means should be employed, including ‘material assistance and support programmes’ for children and families (art. 27(3)), in order to assure to young children a basic standard of living consistent with rights. Implementing children’s right to benefit from social security, including social insurance, is an important element of any strategy...” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, para. 26)

“The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development”

The primary responsibility of parents and other carers to meet the child’s needs reflects the principles stated in article 3(2), article 5 and article 18. Where provision for the child’s development is concerned under article 27, parental responsibility is expressly qualified by the proviso “within their abilities and financial capacities”. This is an important reminder that, where parents lack the requisite skills or resources, the State must assist the parents in meeting their responsibilities, including the provision of material assistance such as food, clothing and housing.

The Committee commented to the Democratic Republic of the Congo that:

“The Committee agrees with the State Party in expressing deep concern that the State seems increasingly to be shifting its duties and responsibilities onto parents and persons effectively or legally responsible for a child’s upbringing...” (Democratic Republic of the Congo CRC/C/15/Add.153, para. 36)

As discussed below, in relation to maintenance under paragraph 4 of article 27 (page 401), legislation can be very precise about what is expected from parents by defining “parental responsibility” in law in terms of meeting the child’s material, emotional, developmental and intellectual needs. That such legislation might be hard to enforce is not the point; the law has an important educational function as well.

“States Parties, in accordance with national conditions and within their means...”

When parents are unable to ensure an adequate standard of living for their child, the State should step in. Article 27 also puts explicit qualifications on the State’s obligations – “in accordance with national conditions and within their means”. These words reflect a general nervousness of governments about financial commitments and control over government expenditure (including wealthy governments – it was the delegate of the United States of America who introduced the phrase “in accordance with national conditions” and the United Kingdom delegate, “within their means” (E/CN.4/1985/64, pp. 8 to 10; Detrick, pp. 374 and 375)). However, it is doubtful whether these qualifications dilute the overarching obligation to meet the economic rights of the child “to the maximum extent of ... available resources” under article 4. “Available” implies “in accordance with national conditions and within... means”. Certainly no country has yet argued to the Committee that the provisions of article 4 do not apply to rights under article 27.

The recession in the first half of the 1990s, together with the structural adjustment of countries making a transition to a market economy, brought restraints on public expenditure everywhere. The result was an increasing impoverishment of children from population groups dependent on state aid for their survival. Some of the more extreme economic policies have now been reconsidered by international donors and financial institutions.

The 2002 United Nations General Assembly’s special session on children confirmed that national and international economic measures must focus





on poverty reduction, and that the market must not operate to the detriment of children. States resolved to:

“Mobilize new and substantial additional resources for social development, both at national and international level, to reduce disparities within and among countries, and ensure the effective and efficient use of existing resources. Further, ensure to the greatest possible extent, that social expenditures that benefit children are protected and prioritized during both short-term and long-term economic and financial crises.” (United Nations, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 52)

Concern about disparities in wealth is also reflected in the Committee’s Concluding Observations, for example in relation to Brazil and Colombia:

“While taking into account the high priority given by the State Party in implementing policies and programmes with a view to fighting hunger and poverty, the Committee notes that Brazil is a country with a relatively high level of development, and shares the concerns of the Committee on Economic, Social and Cultural Rights related to the persistent and extreme inequalities and imbalances in the distribution of wealth and resources ... The Committee is concerned that the lives of a great number of children are marked by poverty, difficult access to, and deficient quality of, public services.” (Brazil CRC/C/15/Add.241, para. 56)

“The Committee is seriously concerned over the growing gaps in the standard of living and the increasing number of children living in poverty or extreme poverty, also evidenced through the rising Gini coefficient, an international standard used to measure levels of inequality... The inequalities in the standard of living present a serious obstacle to the equal enjoyment of the rights in the Convention. “The Committee recommends that the State Party prioritize and allocate sufficient funds in order to counteract the increasing inequality and effectively reduce the discrepancies in the standard of living, inter alia, between urban and rural areas...” (Colombia CRC/C/COL/CO/3, paras. 65 and 66)

An important element of the Committee’s recommendations in relation to article 27 is that countries – both rich and poor – should undertake holistic analyses of the extent, origin and cross-relationships of all forms of child deprivation. Poverty should be mapped and its root causes addressed. For example:

“... the Committee recommends that the State Party engage NGOs in dialogue, especially

organizations working with family and children’s issues, and civil society in general, in the development of social policies in order to better understand the reasons for exclusion and to stimulate new ideas to raise the standard of living of vulnerable groups of children.” (Hungary CRC/C/HUN/CO/2, para. 47)

“In the light of article 27 of the Convention, the Committee recommends that the State Party:

- (a) Continue to take measures to raise the standard of living among its population, particularly rural populations living in poverty and those living in urban ‘poverty pockets’, for example, through formulating and implementing a comprehensive and time-bound national development strategy and social programmes aiming at reducing poverty and strengthening community development;*
- (b) Consider preparing a poverty reduction strategy with special emphasis on vulnerable children and their families, and strengthen community mobilization, including the participation of children, for poverty reduction at the local level; and*
- (c) Strengthen its efforts to provide support and material assistance to disadvantaged children and their families.” (Lebanon CRC/C/LBN/CO/3, para. 62)*

Governments must also ensure that corruption or corporate interests do not undermine effective social services:

“... the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights... that the inadequacy of the social safety nets during the restructuring and privatization process has negatively affected the enjoyment of economic, social and cultural rights, disproportionately affecting the most disadvantaged and marginalized groups. “The Committee recommends that the State Party ensure that the provisions of the Convention are taken into account in the privatization process and that all children residing on the territory of the State Party equally enjoy social benefits.” (Czech Republic CRC/C/15/Add.201, paras. 52 and 53)

“The Committee is also concerned at reports of widespread practices of corruption, which are believed to have an adverse effect on the level of resources available for the implementation of the Convention.

“The Committee recommends that the State Party... take all measures to investigate allegations of practices of corruption and to prevent and eradicate corruption.” (Uzbekistan CRC/C/UZB/CO/2, paras. 52 and 53)

The Committee does not underestimate the responsibilities of the donor community, for example in relation to Bolivia. In responding to its Initial Report the Committee observed:

“The Committee notes that economic factors, including a high level of external debt, have made the full application of the Convention more difficult. In this respect, the Committee notes with concern that the long-term considerations embodied in many structural adjustment policies have not adequately taken into account the needs of today’s children. While the State is responsible for implementation of the Convention on the Rights of the Child, the Committee recognizes that additional international assistance will be needed to more effectively address the challenge of improving the situation of children living in poverty, particularly those from the rural areas of the country.” (Bolivia CRC/C/15/Add.1, para. 5)

By the time Bolivia submitted its Second Report, international financial institutions had introduced a process to provide debt reduction to some of the poorest countries :

“While the Committee is aware of the efforts undertaken by the State Party to allocate substantial financial resources for the benefit of children, it reiterates its concern ... that the stringent budgetary measures and external debt, as well as the persistence of widespread poverty and uneven income distribution, are still having a negative impact on the situation of children in the State Party... the Committee encourages the State Party ... to continue ensuring that sufficient budgetary allocation is provided to social services for children and that particular attention is paid to the protection of children belonging to vulnerable and marginalized groups ... the Committee encourages the State Party to continue with its efforts to reduce the burden of its external debt, including the measures taken within the framework of the World Bank/International Monetary Fund’s initiative ‘Highly Indebted Poor Countries’.” (Bolivia CRC/C/15/Add.95, para. 15)

While the Committee may commend energetic action taken by richer nations to reduce poverty, it will still encourage more action, as with Canada:

“The Committee is concerned by the emerging problem of child poverty, especially among vulnerable groups. It is also worried by the increasing number of children who are brought up by single-parent families, or in other problematic environments. While appreciating the programmes already set up, the Committee emphasizes the need for special programmes and services to provide the necessary care, especially in terms of education, housing and nutrition, for such children...”

“While recognizing the steps already taken, the Committee notes with concern the special problems still faced by children from vulnerable and disadvantaged groups, such as aboriginal children, with regard to the

enjoyment of their fundamental rights, including access to housing and education.” (Canada CRC/C/15/Add.37, paras. 12 and 17)

“States Parties ... shall take appropriate measures to assist parents and others responsible for the child ... and shall in case of need provide material assistance and support programmes...”

Article 27’s emphasis on the State assisting parents in the exercise of their primary responsibility to secure children’s living conditions, rather than directly assisting the child, is both self-protective and principled: self-protective, because the drafting nations were anxious not to be placed under duties to support the children of rich parents, or to allow parents generally to offload their responsibilities onto the State; principled, because – as the Convention stresses – children have a right wherever possible to be cared for by their parents and kept within a family environment. Article 27 reaffirms the principle established in article 18 that while both parents have primary responsibility for their children, the State also has obligations to support parents in the role of protecting and promoting the well-being of their children.

The Committee has expressed concern that States might not recognize that some parents were unable to undertake their responsibilities and needed support:

“... Further steps should be taken to strengthen the system of assistance to both parents in the performance of their child-rearing responsibilities, in particular in the light of articles 18 and 27 of the Convention. It is further suggested that the problem of single parenthood be studied and that relevant programmes be established to meet the particular needs of single parents.” (Poland CRC/C/15/Add.31, para. 33)

“The Committee welcomes the adoption of the Preliminary Poverty Reduction Strategy in April 2002 and other efforts to support families, but remains concerned at the deteriorating living standards affecting in particular families with children, the inadequate social security system and the large number of parents migrating abroad to find work.

“The Committee recommends that the State Party:

(a) Undertake all necessary measures to support parents and families, including single-parent families, in their child-rearing responsibilities as part of its full implementation of the National Strategy for Children and Families;



(b) Fully implement the Preliminary Poverty Reduction Strategy, inter alia with a view to providing an adequate level of food security and social protection for children at risk and to improving and making transparent the payments of allowances to families with children.” (Moldova CRC/C/15/Add.192, paras. 39 and 40)

Support for parents is also discussed under articles 18 and 26 (see pages 237 and 386).

“particularly with regard to nutrition”

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment on the right to adequate food. This affirms that the right to adequate food under article 11 of the International Covenant on Economic, Social and Cultural Rights is “indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights”. The Committee on Economic, Social and Cultural Rights defines the core content of the right to adequate food supplies as implying: “The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.” The General Comment provides detailed discussion of the implications of implementation (Committee on Economic, Social and Cultural Rights, General Comment No. 12, 1999, HRI/GEN/1/Rev.8, para. 8, p. 65).

The World Summit for Social Development (Copenhagen, 1995) agreed the goal of: “Achieving food security by ensuring a safe and nutritionally adequate food supply, at both the national and international levels, a reasonable degree of stability in the supply of food, as well as physical, social and economic access to enough food for all, while reaffirming that food should not be used as a tool for political pressure” (World Summit for Social Development, Programme of Action, A/CONF.166/9, p. 51). The World Summit follow-up General Assembly special session, five years later, reported that the goal of reducing malnutrition in under-fives by 2000 had not been achieved (United Nations General Assembly, twenty-fourth special session, 2000, A/RES/S-24/2, p. 5). The 2006 report on the Millennium Development Goals also reported little real progress in reducing hunger (*The Millennium Development Goals Report 2006*, United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, pp. 4 and 5).

The United Nations General Assembly’s special session on children in 2002 resolved to reduce the rate of low birthweight and child malnutrition among children under five by at least one third before 2010 (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 36).

The Committee on the Rights of the Child has expressed deep concern at any evidence of child malnutrition. Children will fail to make any significant progress in their “physical, mental, spiritual, moral and social development” if they are malnourished, so nutrition will always be at the top of any list of priorities for children.

Where children are threatened with malnutrition, the Committee has on occasion recommended a “National Nutritional Policy for children”, for example:

“Further steps should be taken in the area of health and welfare services. In particular concerted efforts are needed to combat malnutrition and ensure the implementation of a National Nutritional Policy for children.” (Bangladesh CRC/C/15/Add.74, para. 41)

However, the Committee often subsumes malnutrition under general concerns about “poverty” and “health” in relation to impoverished groups of children (see article 24(2)(c), page 357). This may occur because no evidence has been submitted to it on child malnutrition – the country may have failed to amass data on, for example, birthweight or infant undernourishment. Thus, the Committee advised Guatemala:

“... The Committee shares the concern expressed by the representative of the State Party at the widespread severe malnutrition and at the inadequacies of data and statistics monitoring nutrition.” (Guatemala CRC/C/15/Add.58, para. 17)

“housing”

The 2002 United Nations General Assembly’s special session on children declared:

“Adequate housing fosters family integration, contributes to social equity and strengthens the feeling of belonging, security and human solidarity, which are essential for the well-being of children. Accordingly, we will attach a high priority to overcoming the housing shortage and other infrastructure needs, particularly for children in marginalized peri-urban and remote rural areas” (A/S-27/19/Rev.1, para. 27).



In the same year the Commission on Human Rights appointed a Special Rapporteur on Adequate Housing, who visits countries, works with government and other bodies and reports to the Commission on housing rights.

The Committee on Economic, Social and Cultural Rights issued a long General Comment on the right to adequate housing under article 11 of the Covenant, which details requirements such as security of tenure, availability of basic services, affordability and accessibility of housing (Committee on Economic, Social and Cultural Rights, General Comment No. 4, 1991, HRI/GEN/1/Rev.8, para. 8, p. 20). It also issued a General Comment specifically

on forced evictions, pointing out that evictions frequently violate people's rights even when they are justifiable, and in particular have a disproportionate impact on children and other vulnerable individuals (Committee on Economic, Social and Cultural Rights, General Comment No. 7, 1997, HRI/GEN/1/Rev.8, para. 10, p. 48). General Comment No. 4 was endorsed by the Committee on the Rights of the Child in its Statement to the Second United Nations Conference on Human Settlements (Habitat II, Istanbul, 1996) supporting the Expert Seminar on children's rights and housing (see box). The Committee commented:

"The Committee believes that... the right to housing should not be interpreted in a narrow



Children's rights and housing

In February 1996, a group of experts from UNICEF, the United Nations Centre for Human Settlements (UNCHS) and others met to establish the relevance of the Convention on the Rights of the Child to the goals of Habitat II. Their declaration includes the following:

"Within the home environment

- The child's need for a secure, safe, healthy environment begins in the prenatal period.
- A healthy home includes a safe and sufficient water supply, safe and accessible sanitation and waste management; also protection from traffic and other hazards, freedom from exposure to pollution, radiation and disease, and from excessive noise and overcrowding.
- The home environment should facilitate caregiving, and should meet children's basic physical, social and psychological needs.
- Children of both sexes should be provided with equal opportunities and challenges for play and learning in the home and its immediate surroundings.
- Particular attention should be given to the home-based needs of disabled and other vulnerable children.

Within the neighbourhood and community

- A supportive environment for children includes healthy, crime free, and peaceful communities. It is essential that conditions promote social justice, gender equality and participation in community life.
- Childhood and adolescence must be recognized as unique stages in human cultural development, requiring the respect and understanding of the community and society. Street children and others in difficult circumstances should not be excluded.
- Health care, education, and child-care services of high quality must be available and accessible within the community.
- It is essential that children have safe, secure, and protected environments within the community where they can play, participate and learn about their social and natural world. Adolescents, too, need places where they can be together, experience autonomy, and feel a sense of belonging.
- Children have a special interest in the creation of sustainable human settlements that will support long and fulfilling lives for themselves and future generations. They require opportunities to participate and contribute to a sustainable urban future."

(Children's Rights and Habitat – Declaration and Report of the Expert Seminar, UNICEF, UNCHS/Habitat, 1996)

or restrictive sense, but has to be interpreted as a right to live somewhere in security, peace and dignity...

"It is important to emphasize that the rights to housing of children are interrelated to and interdependent with nearly every other right contained in the Convention. This underlines the comprehensive and holistic thrust of the Convention, as well as of its process of implementation and monitoring." (Committee on the Rights of the Child, Report on the eleventh session, January 1996, CRC/C/50, pp. 77 and 79)

The Committee has occasionally asked countries to report on what measures they have taken under Habitat II. For example it raised the issue, as well as concerns about forced evictions, with India:

"The Committee is concerned at the high percentage of children living in inadequate housing, including slums, and their inadequate nutrition and access to safe drinking water and sanitation. The Committee is concerned at the negative impact on families and the rights of children of structural adjustment projects.

"In accordance with article 27 of the Convention, the Committee recommends that the State Party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children's access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State Party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services." (India CRC/C/15/Add.115, paras. 52 and 53)

The Committee returned to this concern when India submitted its Second Report:

"In spite of the growth of the gross domestic product, the Committee is concerned about the widespread poverty in the State Party and the still high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines. The Committee is further concerned at the negative consequences of displacement and rehabilitation projects which intend to improve living conditions but which remove children from their habitat to a new environment often not prepared for children's needs.

"In accordance with article 27 of the Convention, the Committee recommends that the State reinforce its efforts to provide support and material assistance to economically disadvantaged families and to guarantee the right of children to an adequate standard of living. In the light of its previous recommendations (Ibid., para. 53),

the Committee further recommends that the State Party prevent any occurrence of forced relocation, displacement and other types of involuntary population movements." (India CRC/C/15/Add.228, paras. 62 and 63)

In its Statement to Habitat II, the Committee mentions children's right to participate in decisions relating to housing (article 12). Although "housing" is singled out in article 27, any consideration of housing has to encompass the whole of the built environment – children's needs and views are equally crucial in relation to areas used primarily by them, such as schools, play areas, residential institutions, clinics and hospitals.

Habitat II declares: "The needs of children and youth, particularly with regard to their living environment, have to be taken fully into account. Special attention needs to be paid to the participatory processes dealing with the shaping of cities, towns and neighbourhoods; this is in order to secure the living conditions of children and of youth and to make use of their insight, creativity and thoughts on the environment. Special attention must be paid to the shelter needs of vulnerable children, such as street children, refugee children and children who are victims of sexual exploitation." (United Nations Conference on Human Settlements (Habitat II), A/CONF.165/14, p. 15)

Detailed information by countries on the housing situation of children or detailed comment by the Committee is rare but occasionally arises, for example in relation to Kyrgyzstan and Latvia:

"The Committee... is... concerned that migrants with no formal residence permits also live in very precarious housing conditions, without access to basic infrastructure and in fear of forced eviction." (Kyrgyzstan CRC/C/15/Add.244, para. 63)

"The Committee recognizes that children and their families are severely impacted by the economic and social transformation process that was initiated after Latvia regained independence... The Committee is, however, particularly concerned that assistance to families is not sufficient to prevent the circumstances related to evictions of families with children from their places of residence by court order, which often further deteriorates the living conditions of children and their families..."

"The Committee recommends that the State Party ensure that ... Disadvantaged families are provided with adequate and affordable housing, and that adequate alternative housing arrangements are available in the event of their evictions." (Latvia CRC/C/LVA/CO/2, paras. 48 and 49)



In addition the Committee has consistently expressed concern about the group of children termed “street children”, whom, following the recommendation of the Human Rights Commission (resolution 1994/93), it prefers to describe as: “children who, in order to survive, are forced to live and/or work on the streets”. Though many such children have families with whom they are in touch, they often do not live with them and are forced to sleep on the streets or in unacceptable forms of accommodation. This topic is discussed in article 20 (page 286).

While homelessness is common in poor countries, it is also prevalent in many of the most prosperous countries, for example Canada:

“The Committee is encouraged to learn that homelessness was made a research priority by the Canada Mortgage and Housing Corporation, as the sources of data are limited. However, the Committee shares the concerns of the Committee on Economic, Social and Cultural Rights ... which noted that the mayors of Canada’s 10 largest cities have declared homelessness to be a national disaster and urged the Government to implement a national strategy for the reduction of homelessness and poverty.” (Canada CRC/C/15/Add.215, para. 40)

The child’s right to maintenance: article 27(4)

The provisions of article 27(4), relating to the financial maintenance of children by parents and others legally responsible for them, are undoubtedly important for many children whose conditions of living can be greatly improved by recovery of maintenance from an absent parent (usually the father).

However, maintenance is a 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 principle of article 3, that the best interests of the child must be a primary consideration (ideally the paramount consideration) when maintenance legislation and procedures are drawn up.

Nonetheless, the maintenance of children often carries wider social benefits than simply improving the living standards of individual children. In particular it addresses the increasingly important issue of the absent father and the worldwide growth of female-headed single-parent families (both unmarried and divorced), discussed under article 18 (see page 235). Good maintenance recovery procedures can deter men from taking irresponsible attitudes to family planning and fatherhood, and can encourage them to play a more active role in children’s upbringing.

The Committee expressed concern to Côte d’Ivoire and Zambia that, despite the existence of legal provisions for maintenance, there was widespread ignorance of the law:

“The Committee recommends that the State Party make widely known the provisions of domestic legislation concerning maintenance allowance, notably to women who are illiterate, and that it ensure that professional groups dealing with this issue are adequately trained and that the courts are stricter regarding the recovery of allowances from solvent parents who refuse to pay.” (Côte d’Ivoire CRC/C/15/Add.155, para. 33)

“While domestic legislation includes provisions for maintenance allowance... the Committee is concerned at the lack of implementation of these provisions, mainly because of widespread ignorance of the law and limited enforcement of maintenance orders...”

“The Committee recommends that the State Party:

- (a) Make widely known the provisions of domestic legislation concerning maintenance allowance, especially among mothers who are illiterate, and to support them if necessary in understanding legal actions; and*
- (b) Ensure that professional groups dealing with this issue are adequately trained and courts implement more strictly the provisions regarding the recovery of allowances, particularly in case of solvent parents who refuse to pay...” (Zambia CRC/C/15/Add.206, paras. 40 and 41)*

In addition, the Committee draws attention to any deficiencies in maintenance systems, for example regretting the long delays “sometimes lasting several years” that occur in the Ukraine (Ukraine CRC/C/15/Add.191, para. 42) and the discrimination against mothers of older children or against unmarried mothers in Saint Vincent and the Grenadines:

“Mothers are only able to claim child maintenance for a child aged over 5 if the claim process was initiated before the child reached the age of 5, and there are disparities between the child maintenance awards made to the children of unmarried



mothers (domestic court) and married mothers (magistrates court)." (Saint Vincent and the Grenadines CRC/C/15/Add.184, para. 30)

As well as improving procedures the Committee has suggested that the State provides a financial safety net while maintenance is sought, and that it should be possible to deduct maintenance from the responsible parent's salary:

"In the light of article 27 and the principle of the best interests of the child (art. 3), the Committee recommends that the State Party take all effective measures to enforce child maintenance obligations based on a court order or agreements between Parties in a manner that does not stigmatize the child or his or her custodial parent. For instance, the State Party might consider establishing a national fund to ensure payment of overdue child maintenance obligations to the custodial parent while enforcement measures are enacted, or introducing a system in which child support payments are automatically deducted from salaries of those employees with child maintenance obligations." (Republic of Korea CRC/C/15/Add.197, para. 47)

Legal definitions of 'maintenance' can also be a method of spelling out parental and family responsibilities. For example the Committee was informed that parents in Argentina are under a legal duty to meet their children's needs in terms of sustenance, education, leisure, clothing, housing, assistance and expenditure on account of illness (Argentina CRC/C/8/Add.2, paras. 56 to 58). The law on the duties of parents in Bolivia goes even further, specifying responsibility to ensure that children acquire a trade or profession for the future, if necessary by covering the cost of training (Bolivia CRC/C/3/Add.2, para. 99). Costa Rica's legislation establishes a precedence of financial responsibility for the child within the family – parents, elder siblings, grandparents and great-grandparents, in that order (Costa Rica CRC/C/3/Add.8, para. 155).

Recovery of maintenance from abroad. Article 27(4) was introduced during the drafting sessions of the Convention by Finland's representative in a draft that referred only to the effective recovery of maintenance from abroad, because of difficulties both children and States had experienced in this area. The recovery of maintenance from within the State was an afterthought (E/CN.4/1988/28, p. 17; Detrick, p. 378).

International conventions have established rules governing where, from whom and how children

may claim maintenance in circumstances where children change their country of habitual residence and where one or both parents live or move abroad – these include the United Nations Convention on the Recovery Abroad of Maintenance (New York, 1956) and the Reciprocal Enforcement of Maintenance Orders, Hague Convention Countries Order 1993. In addition, there are a number of bilateral and regional treaties and reciprocal enforcement agreements relating to maintenance orders. In countries where there is a lot of fluidity across borders, it is particularly important for these agreements to be ratified and made easily enforceable.

With increasing numbers of women migrating from their home country to find work, the Committee has highlighted the need for effective and enforceable international maintenance agreements, for example to Belize and the Philippines:

"The Committee is concerned that recovery of maintenance is not sufficiently ensured in practice. It is concerned at the actual implementation and, in some cases, the absence of bilateral agreements for reciprocal enforcement of maintenance orders...."

"In the light of article 27, paragraph 4, of the Convention, the Committee recommends ... that the State Party effectively implement and conclude bilateral agreements for reciprocal enforcement of maintenance orders and reconsider establishing a fund to provide support to parents waiting for the decision regarding the maintenance of their child." (Belize CRC/C/15/Add.252, paras. 44 and 45)

"While noting the high number of Philippine children with a parent or both parents working overseas, the increasing number of Philippine children born abroad during overseas migration and the cases where paternity has not been established, the Committee is concerned that the State Party has not sufficiently ensured the recovery of maintenance in practice. The Committee is concerned ... at the actual implementation of, and in some cases, the absence of bilateral agreements for reciprocal enforcement of maintenance orders."

"... As regards parent(s) working abroad, the Committee encourages the State Party to conclude bilateral agreements for reciprocal enforcement of maintenance orders and consider establishing a fund to secure the payment of maintenance in those cases where the recovery of maintenance fails." (Philippines CRC/C/15/Add.259, paras. 46 and 47)

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 27, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 27 is relevant to the **departments of justice, home affairs, housing, social welfare and housing**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 27 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 27 likely to include the training of **community developers, environmental planners, emergency aid personnel, court officers, social workers, health workers and those involved in parent education**)?

• Specific issues in implementing article 27

- Has the State identified the minimum standard of living necessary to secure the child's development?

Are appropriate measures taken to assist parents and others responsible for the child in securing the conditions of living necessary for the child's

- physical development?
- mental development?
- spiritual development?
- moral development?
- social development?
- Are measures taken to make parents fully aware of these responsibilities?
- Are legal or administrative criteria in place to determine whether parents have the ability and financial capacities to meet their responsibilities?



How to use the checklist, see page XIX

- Are measures and procedures taken in order to identify all children within the State who are in need because their parents are unable to secure adequate standards of living for them?
- Are measures adopted to analyze why children's conditions of living are insufficient for their proper development?
- Where children are in need, whether with their parents or otherwise, are they provided with necessary material assistance and support programmes to secure their proper development?
- Does the State take measures (including budgetary allocations) to ensure that every child is well nourished?

Does the State take measures to ensure that every child is housed in accommodation that is:

- secure?
- well-serviced (particularly as regards water, sanitation and fuel)?
- safe?
- healthy?
- appropriately located (particularly as regards hospitals, schools and recreation)?
- in accordance with measures recommended by Habitat II?
- Are the views of children taken into account when shaping the environment in which they live?
- Does the State take measures to ensure that every child is adequately clothed?
- Where the State has insufficient resources available to secure an adequate standard of living for all children, do its economic plans include securing such standards as an explicit goal?
- Are appropriate applications made for international aid and technical assistance where there are insufficient resources to secure children's standard of living?

Maintenance

- Is legislation implemented to ensure that children can recover maintenance from both parents and from any others who have responsibility for their conditions of living?
- Does such legislation make the child's best interests a primary or paramount consideration?
- Is such legislation simple and cheap for the child or child's caregiver to enforce?
- Does it include measures to obtain income or assets from those who default on their maintenance responsibilities?
- Has the State acceded to all appropriate international or bilateral agreements and treaties relating to the recovery of maintenance abroad?



Reminder: The Convention is indivisible and its articles interdependent.
Article 27 should not be considered in isolation.

**Particular regard should be paid to:
The general principles**

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 27 include:

Article 3(2): State to ensure child necessary protection and care, taking into account parents' rights

Article 5: parental responsibilities and child's evolving capacities

Article 18: parents having joint responsibility, state support for parents

Article 24: right to health and health services

Article 26: right to social security



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. This must be achieved "on the basis of equal opportunity", reflecting the fact that huge num-

bers of children suffer discrimination in access to education, particularly girls, children with disabilities, minorities and children from rural communities. Education is expensive and elements of the right may need to be achieved

Summary



“progressively”. However, article 28 states the core minimum: free, compulsory primary education for all, and different forms of secondary education and vocational guidance “available and accessible” to all. Higher education must be accessible “on the basis of capacity”.

The article also addresses the form of education, in so far as States must take measures to reduce school drop-out rates and to ensure that school discipline respects the child’s rights. It also encourages international cooperation on education, which should be readily forthcoming, given education is both a core human right and an engine for economic growth. ■

Background

The 1948 Universal Declaration of Human Rights states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit” (article 26).

This Declaration was enhanced in the International Covenant on Economic, Social and Cultural Rights: “Primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education” (article 13(2)). The International Covenant goes on to provide that any ratifying State that does not provide free compulsory primary education shall undertake “within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all” (article 14). During the drafting of article 28 on the Convention on the Rights of the Child, concern was expressed by State representatives that the Convention should neither be weaker nor stronger than the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1985/64, pp. 11 to 15; Detrick, pp. 383 to 386). In 1999, the Committee on Economic, Social and Cultural Rights adopted two General Comments on education – General Comment No. 11 on plans of action for primary education (article 14 of the Covenant)

and General Comment No. 13 on the right to education (article 13 of the Covenant).

The 1990 World Summit for Children declared: “At present, over 100 million children are without basic schooling, and two thirds of them are girls. The provision of basic education and literacy for all is among the most important contributions that can be made to the development of the world’s children” (para. 13). The World Summit set a goal: “By the year 2000 ... universal access to basic education and achievement of primary education by at least 80 per cent of primary school-aged children”. That goal was not achieved. A decade later, noting that at least 113 million children were still out of school, world leaders set a new goal: “to achieve universal primary education”.

The United Nations *Millennium Development Goals Report 2006* report shows there has been some progress towards this goal:

“Net enrolment ratios in primary education have increased to 86 per cent in the developing world, ranging from 95 per cent in Latin America and the Caribbean to 64 per cent in sub-Saharan Africa. Although the sub-Saharan region has made significant progress since 1990/1991, in Burkina Faso, Djibouti, Eritrea, Ethiopia, Mali and Niger, fewer than half the children of primary school age are enrolled in school. Faster progress will also be needed if Oceania and Western Asia are to achieve universal education. Southern Asia, in contrast, has made great strides, especially over the period 1999-2004, when enrolment rose from 72 to 89 per cent – largely as a result of progress in India.” (*The Millennium Development Goals Report 2006*, United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, p. 6. See also www.mdgs.un.org.)

The 1990 World Declaration on Education for All (the “Jomtien Declaration”) states: “Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet his basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to improve the quality of their lives, to make informed decisions, and to continue learning” (article 1(1)). In 2000 the World Education Forum, held in Dakar, set out a framework for state action on achieving education for all. The 2002 General Assembly’s special session on children endorsed Dakar, recognizing the central importance of education.

General Assembly targets and strategies for education: An education system fit for children

“As agreed at the World Education Forum in Dakar, which reconfirmed the mandated role of the United Nations Educational, Scientific and Cultural Organization in coordinating Education For All partners and maintaining their collective momentum within the process of securing basic education, we will accord high priority to ensuring by 2015 that all children have access to and complete primary education that is free, compulsory and of good quality. We will also aim at the progressive provision of secondary education. As a step towards these goals, we resolve to achieve the following targets:

- (a) Expand and improve comprehensive early childhood care and education, for girls and boys, especially for the most vulnerable and disadvantaged children;
- (b) Reduce the number of primary school-age children who are out of school by 50 per cent and increase net primary school enrolment or participation in alternative, good quality primary education programmes to at least 90 per cent by 2010;
- (c) Eliminate gender disparities in primary and secondary education by 2005; and achieve gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in basic education of good quality;
- (d) Improve all aspects of the quality of education so that children and young people achieve recognized and measurable learning outcomes especially in numeracy, literacy and essential life skills;
- (e) Ensure that the learning needs of all young people are met through access to appropriate learning and life skills programmes;
- (f) Achieve a 50 per cent improvement in levels of adult literacy by 2015, especially for women.

To achieve these goals and targets, we will implement the following strategies and actions:

1. Develop and implement special strategies to ensure that schooling is readily accessible to all children and adolescents, and that basic education is affordable for all families.
2. Promote innovative programmes that encourage schools and communities to search more actively for children who have dropped out or are excluded from school and from learning, especially girls and working children, children with special needs and children with disabilities, and help them enrol, attend, and successfully complete their education, involving governments as well as families, communities and non-governmental organizations as partners in the educational process. Special measures should be put in place to prevent and reduce drop out due to, *inter alia*, entry into employment.
3. Bridge the divide between formal and non-formal education, taking into account the need to ensure good quality of the educational services, including the competence of providers, and acknowledging that non-formal education and alternative approaches provide beneficial experiences. In addition, develop complementarity between the two delivery systems.
4. Ensure that all basic education programmes are accessible, inclusive and responsive to children with special learning needs and for children with various forms of disabilities.
5. Ensure that indigenous children and children belonging to minorities have access to quality education on the same basis as other children. Efforts must be directed to providing this education in a manner that respects their heritage. Efforts must also be directed at providing educational opportunities so that indigenous children and children belonging to minorities can develop an understanding of, and sustain their cultural identity, including significant aspects such as language and values.
6. Develop and implement special strategies for improving the quality of education and meeting the learning needs of all.
7. Create, with children, a child-friendly learning environment, in which they feel safe, are protected from abuse, violence and discrimination, and are healthy and encouraged to learn.





Ensure that education programmes and materials fully reflect the promotion and protection of human rights and the values of peace, tolerance and gender equality, using every opportunity presented by the International Decade for a Culture of Peace and Non-Violence for the Children of the World (2001-2010).

8. Strengthen early childhood care and education by providing services, developing and supporting programmes directed to families, legal guardians, caregivers and communities.
9. Provide education and training opportunities to adolescents to help them acquire sustainable livelihoods.
10. Design, where appropriate, and implement programmes that enable pregnant adolescents and adolescent mothers to continue to complete their education.
11. Urge the continued development and implementation of programmes for children, including adolescents, especially in schools, to prevent/discourage the use of tobacco and alcohol; detect, counter and prevent trafficking, and the use of narcotic drugs and psychotropic substances except for medical purposes, by, *inter alia*, promoting mass media information campaigns on their harmful effects as well as the risk of addiction and taking necessary actions to deal with the root causes.
12. Promote innovative programmes to provide incentives to low-income families with school-age children to increase the enrolment and attendance of girls and boys and to ensure that they are not obliged to work in a way that interferes with their schooling.
13. Develop and implement programmes that specifically aim to eliminate gender disparities in enrolment and gender-based bias and stereotypes in education systems, curricula and materials, whether derived from any discriminatory practices, social or cultural attitudes or legal and economic circumstances.
14. Enhance the status, morale, training and professionalism of teachers including early childhood educators, ensuring appropriate remuneration for their work and opportunities and incentives for their development.
15. Develop responsive, participatory and accountable systems of educational governance and management at the school, community and national levels
16. Meet the specific learning needs of children affected by crises, by ensuring that education is provided during and after crises, and conduct education programmes to promote a culture of peace in ways that help to prevent violence and conflict and promote the rehabilitation of victims.
17. Provide accessible recreational and sports opportunities and facilities at schools and in communities.
18. Harness the rapidly evolving information and communication technologies to support education at an affordable cost, including open and distance education, while reducing inequality in access and quality.
19. Develop strategies to mitigate the impact of HIV/AIDS on education systems and schools, students and learning.

(“A World Fit for Children”, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, paras. 39 and 40)

Its outcome document, *A World Fit for Children*, calls for universal primary education “that is free, compulsory and of good quality as a cornerstone of an inclusive basic education. Gender disparities in primary and secondary education must be eliminated.” (*A World Fit for Children*, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly,

2002, A/S-27/19/Rev.1, para. 7) It noted that, despite all the preceding efforts: “Education is a human right and a key factor to reducing poverty and child labour and promoting democracy, peace, tolerance and development. Yet more than 100 million children of primary school age, the majority of them girls, are not enrolled in school. Millions more are taught by untrained and underpaid

teachers in overcrowded, unhealthy and poorly equipped classrooms. And one third of all children do not complete five years of schooling, the minimum required for basic literacy.” (Para. 38) The box on page 409 sets out the targets and strategies for meeting the United Nations objectives.

In 1998 the United Nations Commission on Human Rights appointed a Special Rapporteur on the right to education. The mandate is a large one: to report on the status of the right to education throughout the world and the difficulties in implementing this right, with particular attention to gender inequality, and to assist Governments in securing progressive implementation, including collaboration with the relevant international agencies and identifying sources of funding for assistance (General Assembly resolution 1998/33). The Rapporteur submits annual reports to the Commission on Human Rights (now the Human Rights Council); previous reports include special issues on girls’ education, privatization, the impact of international trade and the justiciability of education rights (see www.ohchr.org/english/issues/education/rapporteur/annual.htm).

During the drafting of the Convention on the Rights of the Child, members of the Working Group were keen to include the principle established in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights that States should respect parents’ rights to ensure that the education of their children is in conformity with their own religious and moral convictions. However, this was rejected on the grounds that parents’ overall rights and responsibilities were dealt with elsewhere in the Convention. (E/CN.4/1985/64, pp. 11 to 15 and E/CN.4/1989/48, pp. 79 to 84; Detrick, pp. 384 and 394)

The Holy See was sufficiently concerned by this omission to enter a reservation: “That it interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular in so far as those rights concern education (articles 13 and 28)” (CRC/C/Rev.8, p. 23). The Convention does not safeguard “primary and inalienable” rights of parents in education. These rights are subject, for example, to the best interests of the child, the evolving capacities of the child (article 5, page 77, article 12, page 150 and article 18, page 232) and the child’s own rights under the Convention, including the right to an education that promotes tolerance and respect for others (article 29, page 447). Article 29 does however safeguard the rights of parents and others to establish schools outside the state system, and article 30 provides that children of minority cultures should not be denied rights to practise their language, religion and culture.

The Committee urged the Holy See to review its reservations, expressing concern:

“... in particular with respect to the full recognition of the child as a subject of rights.” (Holy See CRC/C/15/Add.46, para. 7)

The “right of the child to education” to be achieved “progressively”

The child’s basic right to education is enshrined in the first paragraph of article 28. Subparagraphs (a) to (e), which detail particular duties for States Parties in this respect, are governed by the initial statement, which provides that States Parties shall achieve the right to education “progressively and on the basis of equal opportunity.” Some countries include a specific right of children to education in their constitutions or education legislation, others imply such a right by placing duties on parents to secure their children’s education. India reported to the Committee that: “... the inability of the State to provide free compulsory education for all children within a period of 10 years from the commencement of the Constitution has compelled the Supreme Court to declare the right to education to be part of the fundamental right to personal liberty (article 21), as without education, life cannot be lived with dignity” (India CRC/C/28/Add.10, para. 75). When examining India’s Second Report, the Committee welcomed

“... the adoption of the Constitution (86th Amendment) Act, 2002, providing for free and compulsory education to all children 6-14 years old.” (India CRC/C/15/Add.228, para. 3)

“Education”

The Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms, adopted by the General Conference of UNESCO at its 18th session (November 1974) states: “The word ‘education’ implies the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge. This process is not limited to any specific activities.” (Article I(a))

The definition of “education” in the Convention is not limited to instruction delivered within schools, and there is increasing recognition of the value of informal education, for example conducted in the home or in street-based programmes or through the Internet. However the reference in subparagraph (e) to “attendance at schools” and in article 29(2) to private “educational institutions” implies





that children will normally attend school. Article 28 mentions “vocational education”, “the elimination of ... illiteracy” and “access to scientific and technical knowledge”, and article 29 sets out the broad aims of education, but the Convention on the Rights of the Child does not attempt to define the detail of a basic curriculum.

The Committee on the Rights of the Child has, however, made clear that education must include the basic skills of literacy and numeracy, for example expressing concern to Brazil

“... about the low quality of education in many schools to the extent that there are many children who, despite several years of school attendance, cannot read and write or do basic calculations.” (Brazil CRC/C/15/Add.241, para. 58)

The only information directly relating to education content currently required by the *Guidelines for Periodic Reports (Revised 2005)* are the State’s literacy rates for children and adults (see page 703). Otherwise, the Committee has tended to focus on the relevance of the curriculum to the child’s life (as discussed in relation to subparagraph (e) below, page 426) rather than examining whether, for example, children’s curricula includes adequate scientific or technical instruction. However article 28 does require States to take measures to combat drop-out, which means that States must think about the content as well as the delivery of education (see page 426). The Committee urges governments to focus on the quality of education as well as its universal availability, as, for example, in its recommendation to Armenia to:

“Allocate the required resources (human, technical and financial) to ensure access to quality education for all children, including the most vulnerable groups... [and]... develop indicators for quality education and ensure that the quality of education is monitored and guaranteed...” (Armenia CRC/C/15/Add.225, para. 55)

The Convention does not define how much time education should take up in a child’s life. The Committee has indicated that a minimum of nine years education (primary and secondary) is expected, that free and compulsory primary education should comprise at least six years and that States should respect the “international standard” of a school year of 180 days (see, for example, the Committee’s Concluding Observations to Turkmenistan (CRC/C/TKM/CO/1, paras. 59 and 60). It is also critical of “shift systems” operating in education, which inevitably reduce the school hours of individual pupils.

“Progressively”

Some developing nations may lack the resources to ensure that secondary education, or even

primary education, is accessible to all children, and even rich nations claim difficulties in ensuring that higher education is available to all young people on the basis of capacity. Nonetheless, all ratifying nations must plan for progressive provision of education, and, in line with article 4, they must ensure that this is done “to the maximum extent of available resources”. The General Comment by the Committee on Economic, Social and Cultural Rights on what “progressively” realizing rights means is obviously significant (see article 4, page 52).

In 1999 the Committee on Economic, Social and Cultural Rights issued a General Comment to remind States Parties that, under article 14 of the International Covenant, if they have not been able to secure compulsory, free primary education, they have an obligation to develop and adopt, within two years, a detailed plan of action for the progressive implementation within a specified number of years of compulsory primary education free of charge for all. The Comment notes that the clear and unequivocal obligation under article 14 needs to be “scrupulously observed”.

It can be assumed that the Committee on the Rights of the Child expects to see all education budgets increasing, or at any rate not decreasing, in order to comply with the expectation inherent in the word “progressively”, in line with the approach of the Committee on Economic, Social and Cultural Rights. For example the Committee recommended that China:

“... Increase the allocation of resources to education in step with increases in GDP, as directed by the Education Law, and target those resources towards ensuring that all children, in particular girls, children with learning difficulties, and ethnic minority and migrant children, complete nine years of compulsory education and have equal access to early childhood education and development programmes...” (China CRC/C/CHN/CO/2, para. 77)

And expressed “deep concern” that in Pakistan:

“(a) The public expenditure on education (as a percentage of the gross domestic product) in the State Party is extremely low and has been sinking in recent years;
(b) The considerable amounts of international aid invested in the State Party for the purpose of promoting education have not been used in an efficient or adequate way;
(c) School enrolment and literacy rates are very low;
(d) Drop-out rates are very high and secondary education enrolment rates have decreased;
(e) Gender and geographical disparities remain very high;
(f) The quality of education is poor...” (Pakistan CRC/C/15/Add.217, para. 60)

The word “progressively” does not only relate to financial expenditure, it also relates to the administration of education, with recommendations from the Committee that countries take a step back and review the whole of their education systems rather than tinker with specific aspects. For example:

“... it is strongly recommended that the State Party undertake, within two years, to elaborate, adopt and submit to the Committee a detailed plan of action for the progressive implementation, within a reasonable number of years, of compulsory education free of charge for all. The Committee further recommends that the State Party undertake a study of the educational system with a view to improving access to education at all levels of the system, increasing the enrolment rate of girls, particularly at the secondary level, introducing local languages as additional tools of instruction, and improving the overall quality of education. The Committee also recommends that a public education campaign be undertaken to promote the importance of education and to influence cultural attitudes positively in this regard.” (Vanuatu CRC/C/15/Add.111, para. 21)

“The Committee encourages that the national legislation be amended to clearly reflect the right to free primary education and also recommends the State Party to:

- (a) devote more resources to education in the national budget and substantially increase the percentage of fund for the public sector;*
- (b) develop a rights-based National Strategy of Education;*
- (c) focus on an overall improvement of the quality of education provided, in particular in rural areas;*
- (d) increase efforts to eliminate the discrimination in access to education by monitoring the effective abolishment of enrolment fees and other costs in order to counteract high drop-out and low completion rates. The Committee recommends the usage of proactive measures, such as additional support to compensate for hidden costs, in order to combat the pervasive discrimination and social exclusion which affect vulnerable groups, such as children in rural areas, internally displaced, Afro-Colombian and indigenous children...” (Colombia CRC/C/COL/CO/3, para. 77)*

The Committee also encourages States to have one central authority in charge of education (see, for example, Lebanon CRC/C/LBN/CO/3, para. 63) and has expressed concern about States which have little effective control, such as Haiti:

“... the Committee is concerned that education is principally run by the private sector... while supervision by the State through the National

Partnership Commission is very limited.” (Haiti CRC/C/15/Add.202, para. 52)

In 2002 the Committee held a Day of General Discussion on “The private sector as service provider and its role in implementing child rights”, following which it recommended that:

“... States Parties... undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitations on the rights of beneficiaries in general and children in particular. Such assessments should determine in particular the manner in which the availability, accessibility, acceptability and quality of the services will be affected...” (Committee on the Rights of the Child, Report on the thirty-first session, September/October 2002, CRC/C/121, para. 11)

The Committee also recommends that local providers and consumers of education are involved in its progressive development, as, for example, it recommended to Sri Lanka:

“... the Committee recommends that the State Party... provide additional information on the reforms and adequate material resources for their implementation to principals, teachers and parents in rural and conflict-affected areas ... [and] ... establish a participatory mechanism for monitoring and evaluating the implementation of the education reforms which involves principals, teachers, parents and students...” (Sri Lanka CRC/C/15/Add.207, para. 43)

The right to education to be achieved “on the basis of equal opportunity”

“On the basis of equal opportunity” stresses the general principle of article 2 on non-discrimination (page 17).

The foremost bar to equality of opportunity in education is, usually, the lack of resources – either in terms of a low government budget applied to education so that education is not made available to all members of the population, or in terms of families’ poverty so that children have to be withheld or withdrawn from education.

In addition, the Committee on the Rights of the Child has expressed concern that specific groups of children are discriminated against in education, both in terms of the definition of UNESCO’s 1960 Convention against Discrimination in Education: “... Of depriving any person or group of persons of access to education of any type or at any level ... [or] ... limiting any person or group of persons to education of an inferior standard” (article 1) and through less direct forms of



discrimination. The Committee has identified various groups as being particularly prone to suffer discrimination in education, as summed up in its Concluding Observations to China:

"... While noting efforts made by the State Party in mainland China, the Committee is concerned about remaining disparities in access to and availability of education, which negatively affect girls, children with learning difficulties, ethnic minority children, children living in rural areas and western provinces, and migrant children." (China CRC/C/CHN/CO/2, para. 75)

These forms of discrimination are discussed below.

Girls

The 1990 World Summit for Children estimated that two thirds of the world's 100 million children without basic education were girls and set goals for increasing the education of female children. These goals were endorsed by the 1995 World Conference on Women, in Beijing, which attributed the disproportionately low numbers of girls in education to "customary attitudes, child labour, early marriages, lack of funds and lack of adequate schooling facilities, teenage pregnancies and gender inequalities in society at large as well as in the family ... In some countries the shortage of women teachers can inhibit the enrolment of girls. In many cases, girls start to undertake heavy domestic chores at a very early age and are expected to manage both educational and domestic responsibilities, often resulting in poor scholastic performance and an early drop-out from schooling". The Conference called for governments to "Increase enrolment and improve retention rates of girls by allocating appropriate budgetary resources and by enlisting the support of the community and parents through campaigns and flexible school schedules, incentives, scholarships, access programmes for out-of-school girls and other measures". (The Fourth World Conference on Women, Platform for Action, Beijing, 1995, A/CONF.177/20/Rev. 1, paras. 263 and 279)

Five years later the United Nations General Assembly held a special session to follow up the Beijing Conference. It noted some progress, but charted the continuing obstacles to improving the education of girls: lack of resources, insufficient political will, persisting gender discrimination and gender stereotyping, lack of child-care facilities, inadequate links between education and women's labour markets and inadequate teacher salaries (United Nations General Assembly, twenty-third special session, 10 June 2000, A/RES/S-23/3,

paras. 9 and 10). A further 10-year follow-up was hosted by the United Nations Commission on the Status of Women in 2005, which linked the Beijing Declaration with the Millennium Development Goals (Economic and Social Council, Commission on the Status of Women, Report on the forty-ninth session, February/March 2005, E/CN.6/2005/11).

In the first half of the new millennium's first decade, the figures for the percentage of girls enrolling in primary and secondary education have increased in some countries, but in others girls still lag behind their male peers and, once enrolled, are much more likely to drop out of school. The *Millennium Development Goals Report 2006* noted:

"Globally, more than one in five girls of primary-school age is not in school, compared to about one in six boys. Oceania, Western Asia and Southern Asia are the regions where the gender gap is most evident. Of particular concern is the wide gender gap in sub-Saharan Africa and Southern Asia, where almost 80 per cent of the world's out-of-school children live." (*The Millennium Development Goals Report 2006*, United Nations Department of Economic and Social Affairs, DESA, New York, June 2006, p. 7)

The Special Rapporteur on the right to education reports:

"As the year 2005 draws to close, we know for a fact that the goal of gender equality established in the Millennium Development Goals has not been met in 94 of the 149 countries for which information is available.

"There are 86 countries unlikely to achieve gender parity even by the year 2015, while 76 countries have not even achieved gender parity in primary education, and girls continue to suffer from the disparities.

"Had the goal been attained, there would now be 14 million more girls in primary school, but the reality is that in 41 countries – together accounting for 20 million girls not attending school – the gender gap is growing wider or is narrowing so slowly that parity will not be achieved before the year 2040, while 115 countries (of the 172 on which information is available) still report disparities in secondary education.

"In any event, the concept of 'parity', implying as it does mere quantification of the girls registered for school, does not reflect the substantive idea of 'gender equality' as contemplated in the 1995 Beijing Declaration and Platform of Action, so it is useless for evaluating improvements



in the quality of education.” (United Nations, Economic and Social Council, Commission on Human Rights, sixty-second session, Girls’ right to education, Report submitted by the Special Rapporteur on the right to education, February 2006, E/CN.4/2006/45, paras. 58 to 61, p. 10)

The Committee has taken up the issue of girls’ education with many countries. For example, Mozambique and the Islamic Republic of Iran were told:

“The Committee recommends the State Party... make greater efforts to ensure that girls have the same opportunities as boys to attend formal education; take steps to ensure that the education of girls is seen, by parents, families and communities, as equally important as that of boys and that education is seen as a right of all children; address traditional and other practices, such as excessive domestic work, which prevent girls from attending formal education; ensure that pregnancy does not lead to the banning of girls’ attendance at school; consider recruiting and training more women teachers; make particular efforts to support girls seeking higher education; make every effort to implement its own policies; seek technical assistance from UNICEF in this regard;...” (Mozambique CRC/C/15/Add.172, para. 57)

“The Committee is also concerned about the disparity that continues to exist between boys and girls; the high drop-out rates of girls in rural schools upon reaching puberty; the lack of female teachers in rural areas; long distances between homes and schools, which keep girls at home, particularly after primary school.

“... the Committee ... recommends that the State Party... ensure that all children... have equal educational opportunities on all levels of the educational system without discrimination based on gender, religion, ethnic origin, nationality or statelessness; ... eliminate all disparities in resources provided to schools in urban and rural areas in order to guarantee equal educational opportunities throughout the country;... better equip schools with textbooks, other materials, and well-trained teachers, particularly female teachers, and introduce active, creative and cooperative learning methods in schools to promote children’s capacities in a knowledge-based economy and society...” (Islamic Republic of Iran CRC/C/15/Add.254, paras. 60 and 61)

The Committee has also noted that high rates of early pregnancy or early marriage were linked to low school attendance and high drop-out rates of girls, and recommends that State laws should prohibit school expulsion of pregnant pupils (see, for example, United Republic of Tanzania

CRC/C/TZA/CO/2). It has also expressed concern that girls were sometimes the victims of sexual harassment by teachers, another reason why girls drop out of school.

It should perhaps be noted in passing that, because of changing work patterns and social attitudes, the education of boys appears likely to become one of the problems confronting both developed and developing nations in the twenty-first century, particularly as regards drop-out rates and under-achievement. This phenomenon has also been noted by the Committee:

“The Committee recommends that all appropriate measures be taken to prevent and discourage truancy and further to encourage children, especially boys, to stay in school, particularly during the period of compulsory education. The Committee urges the State Party to undertake a study on the academic under-achievement of boys, with a view to understanding the scope and nature of the problem and to enhancing the academic achievement of boys, particularly in the Caribbean Territories and the Falkland Islands.” (United Kingdom – Overseas Territories CRC/C/15/Add.135, para. 44)

“The Committee ... is further concerned at ... the growing number of children who drop out of school, particularly among boys.” (Saint Lucia CRC/C/15/Add.258, para. 61)

Rural children

Within the developing world there are often striking discrepancies between the education of rural and urban-based children, recognized as one of the significant challenges in fulfilling the Millennium Development Goals:

“High rates of poverty in rural areas limit educational opportunities because of demands for children’s labour, low levels of parental education and lack of access to good quality schooling. Based on household surveys in 80 developing countries, 30 per cent of rural children of primary-school age do not attend school, compared to 18 per cent in urban areas. And because rural areas have larger populations of children, they account for 82 per cent of children who are not in school in developing countries.” (*The Millennium Development Goals Report 2006*, p. 7)

Poor educational opportunities for children in rural areas arise from a combination of factors, including the administrative cost and difficulty of servicing remote and scattered farms and villages, a dearth of teachers prepared to live in the countryside, the dependence of poor farming communities on children as labourers and the apparent irrelevance of schools and the curriculum to rural lives.





The Committee, for example, asked Uzbekistan to *"... guarantee that the cotton harvest does not compromise children's rights to education."* (Uzbekistan CRC/C/UZB/CO/2, para. 58)

And expressed concern to Mongolia *"... about the remaining difficulties encountered by children, especially in rural areas of the country, in their access to education and attendance in school. The high number of primary school-aged children not enrolled in school, including gender and regional disparities in school enrolment, the increasing rates of illiteracy and the high rate of school drop-outs, especially in rural areas, give cause for serious concerns."*

"The Committee reiterates its concern about boys belonging to herder families and living in rural areas who are at a higher risk of drop-out from school and being involved in child labour." (Mongolia CRC/C/15/Add.264, paras. 51 and 52)

The Committee has recommended the introduction of mobile schools and distance learning programmes for nomadic families and an increase in small neighbourhood schools for rural children.

Minority groups

Particular groups within populations are also liable to suffer discrimination in educational opportunities, such as children of minority cultures, indigenous peoples, gypsies, immigrants, refugees and children caught up in armed conflict.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration underlines "the links between the right to education and the struggle against racism, racial discrimination, xenophobia and related intolerance and the essential role of education, including human rights education and education which is sensitive to and respects cultural diversity, especially amongst children and young people, in the prevention and eradication of all forms of intolerance and discrimination" (Declaration, para. 97).

The Programme of Action of the World Conference makes detailed recommendations for education, urging States to commit themselves to ensuring access without discrimination, including access to free primary education for all children, both girls and boys. States should ensure equal access to education for all, in law and in practice, and refrain from any legal or other measures leading to imposed racial segregation in access to schooling (Programme of Action, A/CONF.189/12, paras. 121 and 122).

Failure to take up educational opportunities is sometimes attributed to the group itself, for

example because they speak a minority language or pursue a nomadic lifestyle, but such discriminatory explanations are unacceptable to the Committee. Equality of educational opportunity can only be achieved if education is recognized as a right for all children, irrespective of their background. It has expressed consistent concern about the education of Roma (or gypsy) children in European and Commonwealth of Independent States' countries, noting, for example, that only 33 per cent of Roma children attend primary school in Bosnia and Herzegovina (CRC/C/15/Add.260, para. 57) and expressing concern to the Czech Republic and Hungary:

"... The Committee welcomes the secondary school for Roma children established on the initiative of the Roma people themselves. However, the Committee is concerned that the implementation of the reform of the education system remains insufficient and that in-service teacher training in this respect is lacking. The Committee is further concerned that Roma children continue to be over-represented in so-called 'special schools' and at the discrimination in access to education of illegal migrants and refugees who are denied asylum." (Czech Republic CRC/C/15/Add.201, para. 54)

"... that the non-attendance of a number of children is not adequately controlled or prevented and that many Roma children leave the school system before graduation, although the Government has established programmes and scholarships in order to further the learning performance of Roma children. The Committee, while recognizing certain efforts to reduce segregated education, is concerned that many Roma children are still arbitrarily placed in special institutions or classes. Furthermore, the Committee is concerned that the quality of schools suffers from regional disparities and that access to pre-schools is reportedly limited in regions where poverty is high and Roma population is dominant." (Hungary CRC/C/HUN/CO/2, paras. 48 and 49)

The Committee on the Elimination of Racial Discrimination published a General Recommendation on discrimination against Roma which called on States to take measures:

- "To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.
- "To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to

raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.

- “To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education.
- “To act with determination to eliminate any discrimination or racial harassment of Roma students.
- “To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.
- “To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.
- “To take urgent and sustained measures in training teachers, educators and assistants from among Roma students.
- “To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.
- “To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.
- “To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them.” (Committee on the Elimination of Racial Discrimination, General Recommendation XXVII, 2000, HRI/GEN/1/Rev.8, paras. 17 to 26, pp. 261 and 262)

Equality of educational opportunity can only be achieved if education is recognized as a right for all children, irrespective of their background. The Committee has noted with concern that immigrant and asylum-seeking children often do not have the same access to education as other children in the country, for example in Canada:

“The Committee nevertheless reiterates the concern of the Committee on the Elimination of Racial Discrimination (A/57/18, para. 337) about allegations that children of migrants with no status are being excluded from school in some provinces.” (Canada CRC/C/15/Add.215, para. 44)

The provision of education in the child’s mother tongue is obviously important, as is, equally, teaching migrant children the local language (this is also discussed in relation to article 30, page 464). For example the Committee welcomed the Philippines’ ‘Lingua Franca Project’ which uses the local vernacular as a teaching medium, and encouraged it to:

“... provide indigenous children and children belonging to minority groups with equal access to quality education which respects their distinct cultural patterns and uses local indigenous and minority languages in education through, inter alia, the Lingua Franca Project.” (Philippines CRC/C/15/Add.259, para. 70)

And it both commended and expressed concern about the situation in Luxembourg:

“The Committee notes with satisfaction that refugee and asylum-seeking children have free access to the school system in Luxembourg and that the Ministry of Education has appointed intercultural mediators in order to facilitate the integration of foreigners in the educational system. However, the Committee is still concerned that a large number of foreign children (more than 40 per cent of the school population) are often disadvantaged by the educational programme and teaching methods in Luxembourg, including language problems.

“The Committee recommends that the State Party consider all possible measures through which foreign children and children of asylum seekers can be granted equal access to the same standard of services in the field of education. The Committee also encourages the State Party to ensure that language does not become an obstacle in education and recommends any initiative, including support classes, to help children to learn the needed languages.” (Luxembourg CRC/C/15/Add.250, paras. 50 and 51)

Although language is a vital issue for many of these children, attitudes and access can be even greater obstacles, as the Committee raised with Greece:

“... the Committee remains concerned about a variety of problems that still exist, such as... reports of xenophobia among teachers and students;... difficulties in gaining access to education for some groups of children, including asylum-seeking and refugee children





who experience difficulties in registering for school and obtaining education certificates; ... the poor quality of education in many schools that teach in languages other than Greek, including the use of outdated textbooks and late term starting dates; the very high estimated illiteracy rates among Roma children; the low proportion of children from distinct ethnic, religious, linguistic or cultural groups who attend secondary school and that some children, particularly from these groups, are accepted in school only as auditors and not permitted to gain academic credit for their studies;...

"The Committee recommends that the State Party... ensure the access to education for all children in the State Party, including increasing the enrolment and reducing the drop-out rates, giving particular attention to children in rural communities, children from Roma and other distinct ethnic, religious, linguistic or cultural groups, and children from disadvantaged backgrounds, including through the use of information campaigns targeting parents and local authorities;... encourage and support increases in the numbers of children from distinct ethnic, religious, linguistic or cultural groups attending secondary school;... expand the practice of recruiting second teachers who speak languages other than Greek to cover all relevant schools and major languages;... continue and strengthen existing programmes of training and information for all teachers on multicultural concerns, with a view to the effective integration into the State Party's school system of children from all distinct ethnic, religious, linguistic or cultural groups and other backgrounds..." (Greece CRC/C/15/Add.177, paras. 66 and 67)

The Committee lays particular emphasis on the need to provide education to unaccompanied asylum-seeking and immigrant children in its General Comment No. 6 on "Treatment of unaccompanied and separated children outside their country of origin":

"States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered ... Such access should be granted without discrimination and, in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

"The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and

separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return."

(Committee on the Rights of the Child, General Comment No. 6, 2005, CRC/GC/2005/6, paras. 41 and 42)

State education systems which fail to provide secular or multi-denominational schools are likely to be discriminatory:

"The Committee reiterates the concern raised by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/2) that non-denominational or multid denominational schools represent less than 1 per cent of the total number of primary education facilities.

"The Committee encourages the State Party to take fully into consideration the recommendations made by the Committee on the Elimination of Racial Discrimination (CERD/C/IRL/CO/2, para. 18) which encourages the promotion of the establishment of non-denominational or multi-denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions." (Ireland CRC/C/IRL/CO/2, paras. 60 and 61)

Children with disabilities and children with, or affected by, HIV/AIDS

All children, no matter how seriously disabled they are, are entitled to education that maximizes their potential. Any law or practice that limits this right, for example by deeming certain children "uneducable" or by entitling them to "health treatment" rather than "education", breaches articles 2 and 28. Moreover, the education of children with disabilities should be provided "in a manner conducive to the child's achieving the fullest possible social integration" (article 23(3)) which means that States should aim to provide effective and appropriate education for children with disabilities in mainstream schools alongside children without disabilities (see page 337).

The Convention on the Rights of Persons with Disabilities, adopted in December 2006, emphasizes the importance of full participation in all aspects of life, including education. It requires States Parties to provide children with disabilities with a full education, as defined in the Convention

Convention on the Rights of Persons with Disabilities

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:
 - The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
 - Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - Reasonable accommodation of the individual’s requirements is provided;
 - Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.



on the Rights of the Child, and specifically to provide necessary mobility and learning aids and to “ensure an inclusive education system at all levels” (article 24, see box for full text of article).

The Committee’s General Comment No. 9 on “The rights of children with disabilities” explains how States should tackle the discriminatory segregation of children with disabilities in education:



“... At its core, inclusive education is a set of values, principles, and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This goal can be achieved by different organizational means which respect the diversity of children. Inclusion may range from full-time placement of all students with disabilities into one regular classroom or placement into the regular classroom with varying degree of inclusion including a certain portion of special education. It is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular educators is essential. Schools’ curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, para. 67)

As regards children with, or affected by, HIV/AIDS, the Committee’s General Comment No. 3 on “HIV/AIDS and the rights of the child” states:

“... the Committee wishes to remind States Parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school and the number of teachers and other school employees lost to AIDS is limiting and threatening to destroy the ability of children to access education. States Parties must make adequate provision to ensure that children affected by HIV/AIDS can stay in school and ensure the qualified replacement of sick teachers so that children’s regular attendance at schools is not affected, and that the right to education (art. 28) of all children living within these communities is fully protected.” (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para.18)

The Committee has expressed concern about educational discrimination against disabled and ill children, for example:

“The Committee ... is concerned that education is provided to mentally and physically disabled persons only in residential

institutions, and that their number has significantly increased from 1997 to 2000, despite the general decline in the population.” (Georgia CRC/C/15/Add.222, para.56)

“The Committee is... concerned at the labelling of some schools as ‘sensitive’ and at the lack of meaningful child participation in decision-making processes within schools. Furthermore, it is concerned that thousands of children with disabilities are deprived of their right to education.

“The Committee urges the State Party... to pursue its efforts to ensure that all children enjoy the right to education consistent with articles 28 and 29 of the Convention, and that children with disabilities are integrated into mainstream education as far as possible, in keeping with article 3 of the Convention...” (France CRC/C/15/Add.240, paras. 48 and 49)

“The Committee is concerned that... students with some chronic diseases including asthma, anaemia, hepatitis, skin diseases and HIV/AIDS can be excluded from mainstream schooling because of their health problems.” (Azerbaijan CRC/C/AZE/CO/2, para. 57)

“The Committee ... notes with concern the high rate of illiteracy among Palestinian refugee children with disabilities, despite the fact that many of these children could benefit from school mainstreaming.” (Lebanon CRC/C/LBN/CO/3, para. 65)

Children in forms of detention

These children are also often denied rights to education or to appropriate education. Rules 13 and 38 to 47 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty specify in great detail high standards of education for these children, including the provision of higher, vocational, special and physical education (see article 37, page 548). The Committee generally addresses this issue under article 37, but sometimes includes them in concerns about education provision, for example, in recommending that El Salvador and Latvia:

“... ensure that juvenile offenders have access to adequate educational and vocational programmes in detention centres and that teachers who educate juvenile offenders receive adequate specialized training...” (El Salvador CRC/C/15/Add.232, para. 58)

“... take immediate steps to allocate appropriate financial and human resources... to ensure that all children from all areas of the country, without distinction, including children in pre-trial custody and detention, have equal access to quality education, including human rights education...” (Latvia CRC/C/LVA/CO/2, para. 51)

“(a) Make primary education compulsory and available free to all”

During the drafting of the Convention on the Rights of the Child there was some discussion about the word “free” (which had already appeared in other related treaties). Objections were made that cost-free education is an illusion since someone always pays, either directly or indirectly through taxes. A representative from Japan proposed that the word “free” should be interpreted to mean that education “could be made accessible to all children and not to mean that free education was a measure which States Parties were obliged to adopt” (E/CN.4/1989/48, pp. 79 to 84; Detrick, p. 393).

Subparagraph (a) does, however, clearly state that “free” education at the primary stage is a measure that States Parties are obliged to secure for all children, not just low-income children or other categories of children. Three countries entered reservations to this subparagraph – Samoa, Singapore and Swaziland.

Samoa’s reservation states: “The Government of Western Samoa whilst recognizing the importance of providing free primary education as specified under article 28(1)(a) of the Convention on the Rights of the Child, and being mindful of the fact that the greater proportion of schools within Western Samoa that provide primary level education are controlled by bodies outside the control of the Government ... the Government of Western Samoa thus reserves the right to allocate resources to the primary sector of education in Western Samoa in contrast to the requirement of article 28(1)(a) to provide free primary education.” (CRC/C/2/Rev.8, p. 36) This reservation suggests a misunderstanding of the requirements of subparagraph (a), which does not refer to States “providing” free primary education but to them “making” it free, that is, ensuring that the provision is made but not necessarily providing it themselves. Thus, if the Samoan Government is satisfied that the “bodies outside the control of the Government” which provide primary education are providing it free of charge to all (and that the education provided is in conformity with the rest of the Convention) then the Government is not obliged to duplicate this funding. The Committee recommended that Samoa withdraw this reservation (Samoa CRC/C/WSM/CO/1, para. 7).

The reservation of Swaziland also seems superfluous: “The Convention on the Rights of the Child being a point of departure to guarantee child rights; taking into consideration the pro-

gressive character of the implementation of certain social, economic and cultural rights as recognized in article 4 of the Convention, the Government of the Kingdom of Swaziland would undertake the implementation of the right to free primary education to the maximum extent of available resources and expects to obtain the cooperation of the international community for its full satisfaction as soon as possible.” (CRC/C/2/Rev.8, p. 38) Even if Swaziland was not able to secure free primary education for all, so long as it did genuinely deploy its available resources to the maximum extent to this end and had adopted a strategic plan for the progressive implementation of article 28, it need not enter such a reservation.

However, Singapore’s reservation clearly seeks to abrogate its duty to secure free compulsory primary education for all children within the jurisdiction, and as such may fall foul of article 51(2) (which does not permit reservations “incompatible with the object and purpose of the present Convention”):

“With respect to article 28(1)(a), the Republic of Singapore:

- (a) does not consider itself bound by the requirement to make primary education compulsory because such a measure is unnecessary in our social context where in practice virtually all children attend primary school; and
- (b) reserves the right to provide primary education free only to children who are citizens of Singapore.” (CRC/C/2/Rev.8, p. 37)

When delivering its Concluding Observations on Singapore’s Initial Report the Committee expressed concern that not all children within the jurisdiction of Singapore had access to free primary education and recommended both that the government should ensure that primary education is provided free to all children and that the reservation is withdrawn (Singapore CRC/C/15/Add.220, paras. 6, 7, 42 and 43).

General Comment No. 11 of the Committee on Economic, Social and Cultural Rights on plans of action for primary education, states in relation to the right to primary education “free of charge”:

“The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. They are also often highly regressive in effect. Their elimination is a





matter which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category.” (Committee on Economic, Social and Cultural Rights, General Comment No. 11, 1999, HRI/GEN/1/Rev.8, para. 7, p. 62)

The right to compulsory free primary education is so clearly stated in the Convention that any failure to meet this standard is a major source of concern to the Committee. For example it was critical of Colombia’s Constitution:

“The Committee notes that free education during nine years in school is enshrined as a constitutional right, however with the reservation that costs be levied upon those who can afford to pay. In practice this provision has created a discriminatory educational system marked by arbitrary fees and social exclusion. The Committee continues to have a number of serious concerns with regards to the implementation of the right to education, including [that] ... budget allocations remain insufficient and unequally distributed between the private and public sector ... [and] ... the persistence of hidden costs for administrative fees and costs for uniforms, materials and transport. This is demonstrated in a high and increasing drop-out rate among vulnerable groups in society, in particular in rural areas...” (Colombia CRC/C/COL/CO/3, para. 76)

Of Myanmar’s hidden costs:

“... Free primary education is not guaranteed in practice, as parents are required to cover the costs of uniforms, textbooks, stationery and other supplies...” (Myanmar CRC/C/15/Add.237, para. 62)

And of the Republic of the Congo’s open costs:

“The Committee is also concerned at the common practice of parents’ associations having to support the functioning of the educational system by contributing to the salaries of teachers, as well as to the operating and investment expenditure of schools, such as building and furnishing of classroom facilities...” (Republic of the Congo CRC/C/COG/CO/1, para. 68)

And Nicaragua’s ‘voluntary’ costs:

“... the Committee expresses concern at the information that the majority of public schools require students to pay a ‘voluntary quota’ for their inscription fee, which, added to the expenses incumbent on families for clothing, food, school supplies and transportation, makes education of children for poor families virtually impossible.” (Nicaragua CRC/C/15/Add.265, para. 57)

Nor is it enough to ensure that primary education is free, it should also be compulsory – the Committee therefore expressed regret that, though primary education had been made free in Ethiopia, it was not yet compulsory (Ethiopia CRC/C/15/Add.67, para. 7). It should perhaps be noted that it is not necessary to make attendance at school compulsory in order to fulfil this obligation under the Convention. Education and school are not synonymous – children can be educated without schools, though this is unusual, and, sadly, attendance at school does not necessarily mean the child is being educated.

“(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need”

The wording of the right to secondary education is less absolute, and less clear, than that relating to primary education. The weaker phrasing does not reflect any doubt about the usefulness of secondary education to children but rather acknowledges that free compulsory secondary education for all is at present beyond the resources of a number of countries. The phrase “take appropriate measures such as the introduction of free education and offering financial assistance in case of need” suggests that the availability and accessibility of education could be means-tested so that richer families pay while poor children attend free of charge or are awarded scholarships. However, such an approach can too easily lead to situations where secondary education is not, in fact, “available and accessible to every child”.

The Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to education which defines “available and accessible” as follows: “Accessibility – educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:

- Non-discrimination – education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds...;

- Physical accessibility – education has to be within safe physical reach, either by attendance at some reasonably convenient geographical location (e.g., a neighbourhood school) or via modern technology (e.g., access to a ‘distance learning’ programme);
- Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13(2) in relation to primary, secondary and higher education; whereas primary education shall be available ‘free to all’, States Parties are required to progressively introduce free secondary and higher education;

“... The phrase ‘generally available’ signifies, firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all... The phrase ‘every appropriate means’ reinforces the point that States Parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.” (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 13, p. 74)

The Committee on the Rights of the Child has raised concerns about the expense of secondary education:

“The cost to families of secondary education are leading to an increasing drop-out rate for girls, particularly in rural areas. The Committee notes with concern the growing disparity within the education system owing to the parallel systems of private and public schools which results ultimately in racial segregation at school on the basis of the economic status of parents.” (Zimbabwe CRC/C/15/Add.55, para. 19)

“The Committee is ... concerned that insufficient resources are allocated to human development projects and the emerging gaps developing between those who can afford private education ... and those who cannot ... In relation with the growing role of private educational ... institutions, the Committee recommends that a stronger emphasis be placed on public education ... by the Government with a view to ensuring that all children subject to the jurisdiction of the State Party enjoy these fundamental rights, as well as to prevent any risk of discrimination.” (Lebanon CRC/C/15/Add.54, paras. 12 and 30)

When Lebanon submitted its Second Report the Committee reiterated its concern that *“public education is not entirely free”*

and that there was a risk of discrimination in the *“growing role of private educational institutions”* (Lebanon CRC/C/15/Add.169, paras. 48 and 49).

This latter concern was again repeated in the Committee’s Third Concluding Observations, though the Committee welcomed the proposal to raise the age for compulsory education from 12 to 15 (Lebanon CRC/C/LBN/CO/3, para. 63).

“Offering financial assistance in case of need” can also be interpreted to mean giving grants to families who would otherwise depend on their children’s labour as a source of income, thus withdrawing them from school.

Subparagraph (b) of article 28 refers to “different forms of secondary education, including general and vocational education”. The Convention singles out vocational education for obvious reasons. Education must have relevance to the child’s current and future life; vocational and work-related training is both educational in its own right and provides a strong inducement for the child to stay in school (see “preventing drop-out” below, page 426). But the Committee has also encouraged States to develop “alternative educational programmes” which suggests that countries must have flexible curricula and delivery systems to respond to the needs of the child within his or her social setting. Burundi was particularly encouraged to ensure that children with disabilities had access to vocational opportunities (Burundi CRC/C/15/Add.133, para. 65). However, care must be taken not to use selection at the secondary stage to blight children’s life chances. The Committee raised this concern with several countries:

“The Committee ... is ... concerned about the determination of the child’s academic ability at the early age of 11 ... The Committee recommends that the State Party increase its efforts in educational reform, including through careful study of the impact of secondary school entrance exams at the age of 11...” (Barbados CRC/C/15/Add.103, para. 27)

“The Committee is also concerned that, owing to the entrance examination system, not all students are guaranteed entry into the free public secondary schools.

“The Committee recommends that the State Party... take further measures to facilitate access to education by children from all groups in society by, inter alia, building more schools, improving the provision of school materials, and abolishing the entrance examination system so as to guarantee all students access to public secondary schools...” (Antigua and Barbuda CRC/C/15/Add. 247, paras. 57 and 59)





"The Committee is concerned that [proposed reforms] may introduce an element of unfair classification in accessing the national secondary schools based upon a high cut-off mark..." (Mauritius CRC/C/MUS/CO/3, para. 60)

The purpose of vocational opportunities is to increase opportunity, as the Committee stressed to Costa Rica:

"The Committee takes note of new projects which provide opportunities of education for children who have left school before completion. Although courses and institutions for technical and vocational training were expanded, the Committee regrets that not more children between the ages of 15 and 18 receive vocational training in order to facilitate their transition to qualified labour..." (Costa Rica CRC/C/15/Add.266, para. 45)

At what point secondary education begins and ends is unclear; ages vary from country to country. But, given the common age of entry to primary education is six years old, and the Committee has indicated that primary and secondary education should last in total at least nine years, then secondary school would normally end at the age of 15. This accords with provisions relating to the minimum age for employment. Under article 2 of the ILO Minimum Age Convention, 1973 (No.138) this minimum age "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years". Failure to synchronize school-leaving age and the minimum age for employment is a frequent cause of concern. For example:

"... the legislative discrepancy between the age for completion of mandatory education and the minimum age for admission to employment may lead to encourage adolescents to drop out from the school system." (Tunisia CRC/C/15/Add.39, para. 9)

"... the failure to provide for an age for the completion of compulsory education as required by the Constitution of Guatemala as well as by article 2 of ILO Convention No.138 is a matter of considerable concern to the Committee ...

The Committee ... recommends that the State Party set the age for completion of compulsory schooling at 15 and consider raising the minimum age of employment to 15." (Guatemala CRC/C/15/Add.58, paras. 15 and 26)

"The Committee notes that education is compulsory for children between the ages of 7 and 12 years and that the legal minimum age for employment is 14 years. The Committee is concerned that insufficient legal and other measures have been taken to protect adequately the rights of children between the ages of 12 and 14 years, who are beyond the

age of compulsory education but too young to be legally employed.

"The Committee recommends that the State Party raise the legal maximum age of compulsory education from 12 to at least 14 years to protect the rights of those children between the ages of 12 and 14 years, who are beyond the age of compulsory education but too young to be legally employed." (Suriname CRC/C/15/Add.130, paras. 23 and 24. See also article 32, page 479.)

Early years; pre-school education

The Convention does not specifically mention States' duties to provide for children before the age of primary education. However, the Committee has increasingly taken note of educational provision for pre-school-aged children and now asks States to provide the percentage of children who attend pre-school education in their Periodic Reports (see page 703). The Committee's General Comment No. 7 on "Implementing child rights in early childhood" explains the importance it gives to pre-school provision:

"... The Committee recognizes with appreciation that some States Parties are planning to make one year of pre-school education available and free of cost for all children. The Committee interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development (art. 6(2)). Linking education to development is elaborated in article 29(1): 'States Parties agree that the education of the child shall be directed to ... the development of the child's personality, talents and mental and physical abilities to their fullest potential'. General Comment No. 1 on 'The aims of education' explains that the goal is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self esteem and self confidence' and that this must be achieved in ways that are child centred, child friendly and reflect the rights and inherent dignity of the child (para. 2). States Parties are reminded that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (art. 2).

"... The Committee calls on States Parties to ensure that all young children receive education in the broadest sense... which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions. Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term

social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between ‘care’ and ‘education’ services have not always been in children’s best interests, the concept of ‘Educare’ is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood.” (Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1, paras. 28 and 30)

The Committee, for example commended “with great appreciation” the fact that 90 per cent of Costa Rican children attend pre-school (Costa Rica CRC/C/15/Add.266, para. 45) and that in Jordan:

“As regards pre-school education, the Committee notes with satisfaction that the percentage of children enrolled in kindergartens has risen and that the State Party has taken several measures, including the preparation of a national interactive curriculum for kindergartens, to respond to the growing needs of pre-school education.” (Jordan CRC/C/JOR/CO/3, para. 75)

And it has expressed regret that:

“... at least one year of pre-school was not made compulsory.” (Albania CRC/15/Add.249, para. 6)

“... no central authority is in charge of the pre-school education.” (Lebanon CRC/C/LBN/CO/3, para. 63)

“... necessary resources have not been allocated to ensure that pre-schools will have sufficient human and material resources to be free and accessible to all by 2008/9.” (Mexico CRC/C/MEX/CO/3, para. 56)

The Committee has made clear that it expects States to provide early childhood education for children below the age of compulsory primary education:

“The Committee recommends that the State Party ... raise awareness of the importance of early childhood education and introduce it into the general framework of education...” (India CRC/C/15/Add.228, para. 65)

“The Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to... provide access to early childhood education for every child and raise awareness and motivation of parents with respect to pre-schools and early-learning opportunities, by taking into account the Committee’s General Comment No. 7 (2005) on implementing child rights in early childhood and establishing a national mechanism to promote, develop

and coordinate early childhood education...” (Lebanon CRC/C/LBN/CO/3, para. 64)

“(c) Make higher education accessible to all on the basis of capacity by every appropriate means”

Although, by and large, higher education is pursued after the age the Convention defines as “childhood”, the Convention correctly includes access to higher education as an integral part of children’s rights, albeit one exercisable “on the basis of capacity”. The Committee has not spent much time considering how countries have implemented their obligations under article 28(1)(c) but has occasionally taken note of forms of discrimination in this regard. For example:

“The Committee remains concerned... that political background, opinions and activities can have an influence on admission to higher education...” (Democratic People’s Republic of Korea CRC/C/15/Add.239, para. 54)

“The Committee is... concerned about well-documented information that a large number of Baha’i students were not admitted to university on the grounds of their religious affiliation.” (Islamic Republic of Iran CRC/C/15/Add.254, para. 59)

In order to meet higher education obligations under the Convention, States should at the least introduce measures enabling poor children to take entrance examinations to higher education courses and to be awarded grants or scholarships if they succeed, on the basis of equality of opportunity. The Committee expressed concern that in Japan:

“... Excessive competition for entry into higher education means that public school education must be supplemented by private tutoring, which is not affordable for children from poorer families.” (Japan CRC/C/15/Add.231, para. 49)

The phrase “on the basis of capacity” should not be focused solely on success in examinations, arguably a teachable skill that can lead to a distortion in favour of high-income families and private education, but should include other measures of capacities. It may be noted that higher education for girls may have the secondary, positive effect of postponing early marriage and early motherhood.

“(d) Make educational and vocational information and guidance available and accessible to all children”

Again, the Committee has not focused on this right directly and, to an extent, it could be





assumed that if all children are to have access to education and vocational training then they will be informed and guided as to what is available. Nonetheless, it is not something that should be taken for granted. Schools, communities and families may be fixed in narrow expectations about what children will do in their future lives or be poorly informed about changing opportunities and requirements in terms of vocations. Children can only develop their potential if a range of opportunities are available and they know how to obtain information about them.

“(e) Take measures to ensure regular attendance at schools and the reduction of drop-out rates”

The phenomenon of children dropping out of school is worldwide. Poverty may be the driving motivation in many societies – the child may need to work or the expense of education may be the disincentive. But even in developing countries, children drop out of school for other reasons, for example, because the curriculum is too dull, difficult or irrelevant; because the teaching is poor or not delivered in the child’s first language; because school discipline is over-punitive and disrespectful of dignity; because learning disabilities have not been identified and helped. Compelling children to repeat years has been found to be both wasteful of resources and likely to cause children to drop out of school.

Subparagraph (e) is, therefore, extremely important because it extends the State’s responsibilities beyond simply channelling sufficient resources into schools and passing laws compelling children to attend those schools – States must also take steps to ensure that what happens in school is sufficiently useful and attractive to keep children there.

The Committee has taken a keen interest in States’ implementation of this obligation, not least because the children who drop out often come from the groups generally discriminated against in education – namely girls, children from rural areas, children from minority groups, children in difficult circumstances and children with disabilities. The Committee has encouraged countries to give priority to a variety of measures combating school drop-out, including careful analysis of its causes. These can be various, as the Committee pointed out to Estonia:

“The Committee... appreciates the acknowledgment by the State Party that there are challenges facing the right to education. In this regard, it shares the concern that more

than 5,000 children do not attend school, and repetition and drop-out rates are high. Possible reasons for drop-outs include: lack of security from bullying, overcrowded classrooms, poor school environment as a result of diminished extra-curricular activities, overburdened teachers and closure of schools in rural areas for economic reasons.” (Estonia CRC/C/15/Add.196, para. 42)

One crucial factor is, of course, the ability of teachers to inspire children to learn. The Committee is often concerned about the quality of teaching, and teachers’ conditions:

“With a view to assuring a better quality of education, the Committee further urges the State Party to encourage trained teachers who have left the State Party to return, to strengthen teacher training courses so as to increase the number and standard of teachers, and to invest sufficient resources in the education system to provide adequate school facilities, materials and salaries for teachers...” (Sierra Leone CRC/C/15/Add.116, para. 66)

“The Committee recommends ... that the State Party continue to take measures to improve its education system by increasing budget allocations for the education sector; providing training to upgrade teachers’ skills; making the school curricula more relevant to children’s needs; expanding opportunities for vocational training and non-formal education, including at pre-school and secondary levels; and establishing an evaluation system to measure the effectiveness of the education system.” (Cambodia CRC/C/15/Add.128, para. 55)

“The Committee is concerned about... the lack of adequate training of teachers, teachers’ low salaries, which may lead to loss of motivation, high turnover rates, migration abroad and little interest in professional development...” (Nicaragua CRC/C/15/Add.265, para. 54)

The *Guidelines for Periodic Reports (Revised 2005)*, unusually, asks States to “specify the nature and extent of cooperation with local and national organizations of a governmental or non-governmental nature, such as teachers’ associations, concerning implementation of this part of the Convention [articles 28, 29 and 31]” (CRC/C/58/Rev.1, para. 34, see page 701).

Measures to combat school drop-out rates include recognizing the financial circumstances of the children. For example, the Committee commented to Honduras in relation to its “high incidence of school drop-out”:

“... In this regard, the Committee takes note of the suggestion of the Government which has not yet been implemented to organize the school year around the agricultural seasons

with a view to organizing school vacations at sowing and harvesting periods. Equally, the Committee would like to suggest that the State Party give consideration to the provision of meals and to complement the provision of health care through the schools.” (Honduras CRC/C/15/Add.24, para. 31)

Guatemala was encouraged to:

“... implement the ‘Food for Education Programme’ as an incentive for children to attend school.” (Guatemala CRC/C/15/Add.58, para. 36)

And Kyrgyzstan to:

“... Take measures to create more favourable conditions at schools (e.g. improvement of heating and electricity facilities as well as more friendly and less abusive environments) in order to tackle the high drop-out rates...” (Kyrgyzstan CRC/C/15/Add.244, para. 54)

The Committee has suggested improvements to schooling to reduce drop-out rates, especially to the “appropriateness” of education. The Committee recommended that the Seychelles:

“... Undertake a study of the reasons why students drop out of school in order to develop solutions that ensure their continuing educational or vocational training, and further opportunities for employment and integration into society...” (Seychelles CRC/C/15/Add.189, para. 49)

Making school more attractive is often seen in terms of better vocational education, for example the Committee recommended that China:

“Promote the development of flexible learning systems so that children who have dropped out of school, in particular because of poverty or migration, are able to complete compulsory education and earn appropriate accreditation through non formal channels, and also ensure the availability and accessibility of suitable technical and vocational education and training...” (China CRC/C/CHN/CO/2, para. 78)

And Costa Rica:

“Provide more demand-driven technical and vocational training and organize vocational counselling for children; provide opportunities for children outside schools and working children so that they can get as much education as possible by specific programmes tailored to their life conditions; ensure the provision of adequate financial and human resources for the effective implementation of the educational programmes and expand scholarship and other programmes of assistance to students; [and] seek technical assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNICEF.” (Costa Rica CRC/C/15/Add.265, para. 56)

Where high drop-out rates are found within minority groups, solutions may need to be found through, for example, programmes which show respect for minority and indigenous cultures and languages, and which accommodates nomadic or otherwise different lifestyles. Such an approach encourages pupils’ self-esteem and thus their motivation:

“The Committee ... is concerned at ... the high drop-out rates, particularly among adolescents as well as rural, indigenous and migrant children; and the low quality of teaching. The insufficient bilingual intercultural education in indigenous areas is also a cause of concern as it negatively affects the drop-out rate in these areas.

“The Committee recommends that the State Party... strengthen measures to reduce the high drop-out rate among indigenous children, inter alia by providing them with bilingual and bicultural education; ... take measures to identify the causes of the high drop-out rate in schools, particularly in rural areas and in secondary schools, and to take steps to address the situation... strengthen educational and vocational programmes, in particular for children who do not attend regular school education, especially migrant children...” (Mexico CRC/C/MEX/CO/3, paras. 56 and 57)

The drop-out rates of Roma children in a number of European States has concerned the Committee, for example in Finland’s first, second and third examinations:

“The Committee reiterates its concern at the high rates of school drop-outs among Roma children.” (Finland CRC/C/15/Add.53, para. 18)

“The Committee notes the measures undertaken by the State Party to develop special education and prevent social exclusion, such as strengthening the status of the Roma language in school teaching, developing teaching material in the Roma language and training teachers, and recommends they be implemented. It requests the State Party to continue its efforts in this area and to provide information on the impact of these measures on Roma children in the next periodic report to the Committee.” (Finland CRC/C/15/Add.132, para. 60)

“While noting the State Party’s efforts in this regard, the Committee expresses concern at the high drop-out rate from school among Roma children and at their difficulties in accessing education, which negatively impact their development and future access to employment. In addition the Committee also notes with concern the lack of teachers and pre-school teaching material in the Roma language.” (Finland CRC/C/15/Add.272, para. 42)





One strategy encouraged by the Committee is the involvement of ethnic minorities in education administration:

"... the Committee recommends the State Party to promote the participation of parents and communities, especially ethnic minorities, in school governance, to improve enrolment rates and monitor the quality of education." (Tajikistan CRC/C/15/Add.136, para. 43)

As discussed above, girls often drop out of school. Girls' physical safety may also be a factor:

"However, the Committee is concerned that ... school drop-out rate is high and that gender-based discrimination persists within schools. Other concerns include reports of abuse and sexual molestation, especially of girls,..." (Bangladesh CRC/C/15/Add.221, para. 63)

The Committee has also noted the negative effect on education of teenage pregnancy:

"The Committee is concerned about the high rate of early pregnancy, which has negative effects on the health of the mothers and the babies, and on the mothers' enjoyment of their right to education, hampering the school attendance of the girls concerned and causing high numbers of school drop-outs..."
"With regard to the high rate of early pregnancy prevailing in Uruguay, the Committee recommends that measures be adopted to provide appropriate family education and services for young people within the school and health programmes implemented in the country." (Uruguay CRC/C/15/Add.62, paras. 12 and 22)

The Committee was concerned that teenage mothers were not able to re-enter the educational system in one of the islands of Saint Kitts and Nevis. It also raised the issue of boys' drop-out rates :

"While recognizing the efforts made by the State Party in the area of education, the Committee remains concerned at the high drop-out rate for males in the upper grades of primary school, the poor reading ability of primary school males, the high incidence of truancy, lack of relevant learning material, insufficient numbers of trained and qualified teachers, and the tendency towards teaching methods that are almost exclusively exam-oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance ... The Committee further recommends that the State Party seek to implement additional measures to encourage children, especially boys, to stay in school, particularly during the period of compulsory education." (Saint Kitts and Nevis CRC/C/15/Add.104, para. 28)

The Committee also identified the active participation of children in their schooling as a strategy to reduce high drop-out rates:

"... further steps should be taken to develop guidelines for the participation of all children in the life of the school." (Nigeria CRC/C/15/Add.61, para. 38)

"The Committee ... is ... concerned that children do not have the right to participate in the evaluation of their school achievements. The Committee recommends that education in the State Party be directed towards the development, with the active participation of the child, of the child's personality, talents and mental and physical abilities to their fullest potential, in accordance with article 29 of the Convention." (Slovakia CRC/C/15/Add.140, paras. 45 and 46)

As discussed under article 12 (page 167), the consideration of children's views on their education is, in any event, an obligation under the Convention, but it is also an effective method of reducing pupil disaffection. Above all, as the Committee encouraged Georgia, schools should be "child friendly" (Georgia CRC/C/15/Add.124, para. 53).

The right to school discipline "consistent with the child's human dignity and in conformity with the present Convention"

Paragraph (2) of article 28 does not have precedent in other treaties relating to education, although of course there are provisions preventing degrading and inhuman treatment generally. The Committee on the Rights of the Child has made clear that all forms of corporal punishment, however light, are unacceptable forms of discipline in schools or elsewhere (see article 19, page 264).

It confirms this in its General Comment No. 8 on "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", in which the Committee states:

"... the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).

“Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.

“The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States Parties...” (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, paras. 20 to 22)

The phrase in article 28 that discipline must be “in conformity with the present Convention” underlines the fact that the obligation in article 19 to protect the child from “all forms of physical or mental violence, injury or abuse” applies to schools and other educational establishments as well as the family home and child-care institutions.

In addition, among the agreed aims of education under article 29 are respect for others and education “in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples” (article 29(1)(d)). The Committee’s first General Comment on “The aims of education” provides:

“... education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its Concluding Observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29(1) clearly requires that schools be child friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.” (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

In its 1999 General Comment on the right to education, the Committee on Economic, Social and Cultural Rights also confirmed: “In the

Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law... A State Party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States Parties which actively encourage schools to introduce ‘positive’, non-violent approaches to school discipline.” (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 41, p. 79)

The 2006 United Nations Secretary-General’s Study on Violence Against Children reports that 102 States have banned corporal punishment in schools, though enforcement is uneven (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, p. 28). Countries that have not banned it effectively in all schools are thus likely to have the matter raised by the Committee. For example Pakistan:

“... the Committee remains deeply concerned that ... the code of conduct for teachers does not prohibit corporal punishment, nor does it deal with the problem of violence against children in school.

“The Committee is very concerned about reports of violence and sexual abuse within madrasas.

“The Committee recommends that the State Party... take proactive measures to eliminate violence against children in schools, notably by including in the code of conduct for teachers the prohibition of corporal punishment and by limiting the role of school counsellors to those functions that help the pupil and revoking their disciplinary functions.” (Pakistan CRC/C/15/Add.217, paras. 60, 61 and 63)

Guatemala was recommended to adopt “a campaign against corporal punishment” in schools and elsewhere (Guatemala CRC/C/15/Add.58, para. 33). Zimbabwe was informed that

“... the Committee stresses the incompatibility of corporal punishment with the provisions of ... article ... 28 paragraph 2”.

The Committee recommended that Zimbabwe

“... adopt appropriate legislative measures to forbid the use of any form of corporal punishment within the family and in school.” (Zimbabwe CRC/C/15/Add.55, paras. 18 and 31)

The prohibition of corporal punishment does not just relate to state-funded schools – the practice must be banned in private schools as well. The Committee raised concerns that in the United Kingdom,





“... privately funded and managed schools are permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2”.

The Committee recommended that legislation be introduced to ban its use in private schools, a Committee member commenting: “... The right not to receive corporal punishment was a fundamental right, and one could not therefore lay down a different regime according to whether the school was public or private, all the more so as that would give rise to the question of discrimination and the application of article 2 of the Convention to the education system, since whether a child was sent to a state or private school was generally linked to the family’s standard of living.” (United Kingdom CRC/C/15/Add.34, para. 16 and CRC/C/SR.206, para. 5) The United Kingdom subsequently took steps to prohibit corporal punishment in private schools (United Kingdom CRC/C/83/Add.3).

Nor is it enough to legislate against corporal punishment – measures should be taken to make sure it does not occur even when against the law, as in Hungary:

“The Committee is concerned that corporal punishment in schools, despite being prohibited by the Hungarian Child Education Act, continues to occur.

“The Committee recommends that the State Party undertake measures, including corrective ones, in order to sensitize professionals within the educational system, in particular teachers, about their obligation to refrain from resorting to corporal punishment. In addition, the Committee recommends that awareness-raising campaigns be implemented in order to inform children of their rights.” (Hungary CRC/C/HUN/CO/2, paras. 54 and 55)

And measures must be available for children to protect themselves:

“The Committee recommends the State Party... provide children with a safe school environment by, inter alia, taking all necessary steps to prevent abuse and exploitation of children by school personnel, taking effective disciplinary measures against school personnel who have committed those offences and reporting these incidences to the competent authorities, notably through child-sensitive structures for complaints...” (Malawi CRC/C/15/Add.174, para. 56)

Corporal punishment is not the only form of school discipline to breach article 28: public humiliation, for instance, is not consistent with the child’s human dignity (see the Committee’s

full definition of corporal punishment and other forms of cruel or degrading punishment, article 19, page 262). And care should be taken not to violate other rights under the Convention. For example, punishments that stop children’s access to their parents or friends, which deny children’s rest or leisure or that interfere with their right to enjoy their language or culture would be in breach of rights under the Convention and of article 28(2). The Committee reminded the Holy See that

“... teaching methods used in schools should reflect the spirit and philosophy of the Convention.” (Holy See CRC/C/15/Add.46, para. 12)

The Committee on Economic, Social and Cultural Rights confirms this in its General Comment on the right to education after condemning corporal punishment: “Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food.” (Committee on Economic, Social and Cultural Rights, General Comment No. 11, 1999, HRI/GEN/1/Rev.8, para. 41, p. 79)

The ultimate sanction used by schools against troublesome pupils is their expulsion. The procedures for doing so ought to conform to the principles of natural justice and, particularly, should not discriminate; nor may the child be denied education as a result of a disciplinary exclusion. The Committee raised these matters with Ireland and the United Kingdom:

“The Committee is concerned about the situation of children who are excluded from schools because of sanctions imposed by teachers and the adverse effect generated which may sometimes impact on drop-out rates and school attendance.” (Ireland CRC/C/15/Add.85, para. 22)

“... the Committee recommends that the State Party... take appropriate measures to reduce temporary or permanent exclusion, ensure that children throughout the State Party have the right to be heard before exclusion and to appeal against temporary and permanent exclusion, and ensure that children who are excluded do continue to have access to full-time education...” (United Kingdom CRC/C/15/Add.188, para. 48)

Discipline should also reflect the principles of article 12, including the child’s right to complaints procedures:

“It is recommended that the State Party encourage child participation within the school environment, including in disciplinary matters.” (Suriname CRC/C/15/Add.130, para. 52)

“... the Committee recommends that the State Party... ensure that legislation throughout the State Party reflects article 12 and respects children’s rights to express their views and have them given due weight in all matters concerning their education, including school discipline;...” (United Kingdom CRC/C/15/Add.188, para. 48)

“The Committee recommends that the State Party ... provide children with a safe school environment by, inter alia, taking all necessary steps to prevent abuse and exploitation of children by school personnel, taking effective disciplinary measures against school personnel who have committed those offences and encouraging the reporting of these incidences to the competent authorities, notably through child-sensitive structures for complaints...” (Zambia CRC/C/15/Add.206, para. 57)

Bullying

Part of effective school discipline is ensuring that pupils, as well as teachers, refrain from violence. Bullying between pupils has always occurred in schools, but is increasingly being exposed and challenged as unacceptable; States now accept that they have an obligation to protect children from violence from their peers as well as from adults. The Committee often expresses concern about bullying:

“The Committee is concerned at the frequency and level of violence in schools, especially the widespread use of corporal punishment and the existence of numerous cases of bullying among students. While legislation prohibiting corporal punishment and such measures as hot lines for victims of bullying do exist, the Committee notes with concern that current measures have been insufficient to prevent school violence.

“... the Committee recommends that a comprehensive programme be devised and its implementation closely monitored in order to prevent violence in schools, especially with a view to eliminating corporal punishment and bullying.” (Japan CRC/C/15/Add.90, paras. 24 and 45)

“... The Committee welcomes the measure taken to combat bullying in schools, such as the National Safe School Framework and the ‘Bullying. No Way!’ website, but it shares the State Party’s concern regarding the impact that this pervasive practice has on the affected children, especially on their psychological health, educational achievements and social development.

“The Committee recommends that the State Party... continue to take appropriate measures to combat the phenomenon of bullying in schools, including by carrying out periodic surveys among students, staff and parents

to learn more about the peer relations being fostered by the school.” (Australia CRC/C/15/Add.268, paras. 60 and 61)

“The Committee welcomes the measures taken by the State Party to tackle violence and bullying in schools, including the requirement that every school has to develop an action plan against bullying and violence, but is concerned that these behaviours are still quite common, especially towards children with disabilities and children with disabled parents.

“The Committee recommends that the State Party continue to take appropriate measures to combat the phenomenon of bullying and violence in schools with the full involvement of children, including by carrying out periodic surveys among students, staff and parents about the quality of peer relations being fostered by the school. There should be special focus on bullying and violence towards children with disabilities and children with disabled parents.” (Finland CRC/C/15/Add.272, paras. 46 and 47)

“The Committee notes with deep concern reports that violence (bullying) in schools is widespread, particularly among students. “The Committee recommends that the State Party develop a comprehensive strategy addressing the culture of violence and its correlation with high levels of bullying amongst schoolchildren. The Committee also recommends that the State Party establish adequate programmes and activities with a view to creating an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large.” (Lithuania CRC/C/LTU/CO/2, paras. 56 and 57)

There are, of course, no easy answers to endemic violence in schools and institutions, since simplistic punitive responses are likely to make the situation worse, or penalize children who may be victims of violence as well as perpetrators. The Committee recommends that States implement carefully thought-through measures which take into account the views of children themselves, as in its recommendations to Slovenia and Italy:

“The Committee recommends that the State Party... take measures to set up adequate mechanisms and structures with the participation of children to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies; ensure that legislation throughout the State Party reflects article 12 of the Convention and respects children’s rights to express their views and have them given due weight in all matters concerning their education, including school discipline.” (Italy CRC/C/15/Add.198, para. 44)





“The Committee notes with concern the high incidence of violence in schools on the part of teachers or staff and peer violence and bullying, including inappropriate and offensive attitudes on the part of some teachers towards pupils. It welcomes in this regard the appointment of the Commission for Analysis of the Problem of Violence in Slovene Education in 2003 charged with providing proposals for measures to deal with cases of violence, including regular additional training for teachers.

“The Committee recommends that the State Party take all measures to ensure that discipline in schools is upheld in a manner that respects the human dignity of the child. It also encourages the State Party to ensure that the commission appointed by the Minister of Education to analyse the problem of violence in Slovene education be given adequate support. Furthermore, the Committee recommends that the State Party strengthen measures to address the general problem of violence among adolescents, inter alia, through education and awareness-raising campaigns.” (Slovenia CRC/C/15/Add.230, paras. 38 and 39)

The promotion of international cooperation in education, particularly taking account

of the needs of developing countries

Education has been shown to be one of the key components of development, both for individual children and for countries as a whole. Educational advances bring benefits to all, with positive correlations shown between educational progress and improvements to children’s life chances, national economic performance, agricultural productivity and birth rates. Both UNICEF and UNESCO have invested extensive expertise, resources and energy in education. In addition countries should learn from each other on how best to educate children.

A significant proportion of development aid should, therefore, be directed at assisting education programmes. In addition, countries should learn from each other how best to educate children, including the scientific know-how and modern teaching methods mentioned in paragraph 3 of article 28. The *Manual on Human Rights Reporting*, 1997, advises that “programmes of international technical cooperation should therefore include in their agenda the training of teachers, their acquisition of modern pedagogic skills and the improvement of their competence. They may in fact play an instrumental role in fostering the role of education.” (*Manual*, p. 465)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 28, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 28 is relevant to the **departments of education and labour**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 28 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 28 likely to include the training of **teachers, education administrators and vocational guidance personnel**)?

• Specific issues in implementing article 28

- Do budget allocations aim for a progressive increase in education provision and a progressive development of the quality of education?
- Does education policy ensure progress towards maximum take-up of educational opportunities by all children (up to the age of 18)?
- Is there an established time-frame for achieving this policy?
- Has the State adopted mechanisms to measure the effectiveness of its education provision in terms of take-up and outcomes for all children within the jurisdiction?

Are active measures taken to ensure that all children have equal educational opportunities, including all

- girls?
- children from rural areas?
- children from minority cultures and indigenous groups?
- children with disabilities?
- sick, including hospitalized, children?



How to use the checklist, see page XIX

- immigrant and refugee children?
 - children living away from their families?
 - nomadic or gypsy children or children in temporary accommodation?
 - children excluded from school?
 - children in all forms of detention?
 - Is primary education compulsory?
 - If not, is there a national plan for ensuring that all children receive free and compulsory primary education?
 - Is primary education free to all children?
 - Are all aspects of this education free (for example books, equipment or uniform (if any))?
 - Are different forms of secondary education, including vocational and general education, available to every child?
 - Are these free?
 - If not, are measures being taken to develop the accessibility of secondary education to every child, for example by offering financial assistance to those in need?
 - Are the legal ages for completion of compulsory education and admission to employment the same?
 - Where this age is below 15, are steps being taken to raise this age?
 - Is higher education accessible to all children on the basis of capacity?
 - Is educational and vocational information and guidance made available and accessible to all children?
 - What measures have been adopted to encourage school attendance and prevent school drop-out?
- Do these measures take into account
- the child's home circumstances (such as a need to secure an income, to do domestic chores or to work at harvest time)?
 - the appropriate geographical location of schools and their hours and times of opening?
 - the relevance of the curriculum to the child's life and the provision of vocational education?
 - the appropriateness of the curriculum to the child's intellectual development?
 - the child's first language?
 - any special needs of the child (such as disability, sickness or pregnancy)?
 - respect for cultural or religious traditions and gender difference?
 - respect for the child's views?
 - respect for the child's dignity?
 - identification of learning difficulties and help provided to avoid exam failure or forced repetition of grade years or classes?
 - the need to involve the local community in the delivery of education and the need to involve schools in the life of the community?



How to use the checklist, see page XIX

- the effectiveness of teacher recruitment and training in preventing school disaffection?
 - Have all appropriate measures been taken to ensure that all forms of school discipline are consistent with the child's human dignity?
 - Is corporal punishment and other cruel or degrading forms of punishment prohibited by law in all schools?
 - Have all appropriate measures been taken to ensure that corporal punishment and other cruel or degrading punishments are never used?
- Do all forms of school discipline conform with the Convention, including the child's right
- not to be discriminated against?
 - to be treated in a manner consistent with his or her evolving capacities?
 - to maintain direct contact with both parents on a regular basis (save where contrary to best interests)?
 - to freedom of expression, thought, conscience and religion?
 - to freedom of association (save where it is necessary to protect others)?
 - to privacy?
 - to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation?
 - to his or her identity, culture and language?
 - to rest and leisure?
 - to social inclusion and reintegration?
- Are schools required to maintain measures to combat bullying?
 - Is an appropriate level of development aid sought for, or directed at, educational programmes?
- Do programmes of international technical cooperation include
- teacher training methods?
 - access to scientific and technical knowledge?
 - the effective delivery of primary and secondary education?

Reminder: The Convention is indivisible and its articles interdependent.
Article 28 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

How to use the checklist, *see page XIX*



Closely related articles

Articles whose implementation is particularly related to that of article 28 include:

- Article 13: freedom of expression
- Article 14: freedom of thought, conscience and religion
- Article 15: freedom of association
- Article 16: protection of privacy
- Article 17: access to information and role of media
- Article 19: protection from all forms of violence
- Article 23: children with disabilities
- Article 24: health (including health education)
- Article 29: aims of education
- Article 30: children of minorities or of indigenous peoples
- Article 31: rest, leisure, play, recreation and culture
- Article 32: child labour

The aims of education

article

29

Text of Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 29(1) reflects a consensus of world opinion about the fundamental purposes of education and is the subject of the Committee's first General Comment (see box for summary, page 439). It does not detail the tools of learning, such as

literacy, numeracy, factual knowledge, problem-solving and so forth, but addresses learning's basic aims:

"... to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a

Summary

culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.” (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 2)

Article 29(2) explicitly preserves the rights of individuals and groups to arrange their own forms of education, so long as these fulfil the aims of education as set out in the article, respect the child’s other rights under the Convention and any national minimum standards. ■

Background

Article 26 of the Universal Declaration of Human Rights provides that: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

Those words were adapted in the International Covenant on Economic, Social and Cultural Rights, with the italicized additions: “[States Parties] agree that education shall be directed to the full development of the human personality *and the sense of its dignity*, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that *education shall enable all persons to participate effectively in a free society*, promote understanding, tolerance and friendship among all nations and all racial, *ethnic* or religious groups, and further the activities of the United Nations for the maintenance of peace.” (Article 13(1))

The Convention on the Rights of the Child uses these provisions as a starting point and significantly develops them, as discussed below. In early drafts, the aims of education were originally conceived as “the aims of education and upbringing” but this was discarded as too broad and ill-defined a concept. Several countries were concerned about the absence of explicit reference to parents’ rights to choose their children’s school and to ensure children’s education is in conformity with the parents’ religious and moral convictions, a principle set out in article 13(3) of the Covenant on Economic, Social and Cultural Rights and article 18(4) of the Covenant on Civil and Political Rights (E/CN.4/1985/64, pp. 15 to 19; Detrick, p. 399; E/CN.4/1989/48, pp. 84 to 87; Detrick, pp. 405 to 407). As discussed in article 28 (see page 407) parental rights are implicitly recognized elsewhere within the Convention (art-

icles 5, 18 and 30) but operate within the framework of the child’s own rights and freedoms.

International agreement on the aims of education

The governing phrase or *chapeau* of article 29(1) on the aims of education starts, uniquely: “States Parties agree...” Textually, this can, of course, be traced to the article’s source in the International Covenant on Economic, Social and Cultural Rights, but it is significant that the phrase was retained for this Convention. The wording emphasizes that there is international consensus as to the aims of education which surmounts the often hostile boundaries of religion, nation and culture erected across so many parts of the world.

Two countries have reservations to article 29. Indonesia’s states: “With reference to the provisions of articles... 29... the Government of the Republic of Indonesia declares that it will apply these articles in conformity with its Constitution.” (CRC/C/2/Rev.8, p. 25) When Indonesia was asked to explain this reservation to the Committee, the Government representative said that there were difficulties in implementing the article in view of existing legislation (Indonesia applies a national curriculum), but that it was hoped the reservation could be withdrawn with new legislation currently in draft. The reservation has not yet been withdrawn, but Indonesia informed the Committee, when its Second Report was being examined, that this would be done shortly. (Indonesia CRC/C/15/Add.223, para. 11)

And Turkey’s: “The Republic of Turkey reserves the right to interpret and to apply the provisions of articles 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923.” (CRC/C/2/Rev.8, p. 41)

The Committee commented that this reservation “... *may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin*”

and urged Turkey to withdraw the reservation (Turkey CRC/C/15/Add.152, paras. 11 and 12).

There are also those countries that have entered reservations to article 14, concerning the child’s right to “freedom of thought, conscience and religion”, which may be exercised under the direction of parents in a manner consistent with the child’s evolving capacities (see page 185). Some (for example Belgium and the Netherlands) are



The aims of education

Committee on the Rights of the Child, General Comment No. 1, 2001: summary

Article 29 paragraph 1, setting out the agreed aims of education, not only adds a qualitative dimension to the rights of education recognized in article 28, it also insists on education being child-centred, child-friendly and child-empowering. The goal is to develop the child's skills, learning and other capacities, human dignity, self-esteem and self-confidence. Children's education should be directed to a wide range of values. At first sight some of these might be thought to be in conflict with each other. For example education designed to promote understanding, tolerance and friendship among all peoples might not be compatible with education designed to develop respect for the child's own cultural identity and for the national values of the country in which the child is living. But part of the importance of the article lies in its recognition of the need for a balanced approach which aims to reconcile diverse values through dialogue and respect for difference. Children are capable of playing a unique role in bridging differences that have historically separated groups of people.

Article 29 highlights the following:

1. The Convention's provisions are interconnected, so that Article 29 cannot be properly understood in isolation from them. In addition to the general principles, other relevant aspects of the Convention include the responsibilities of parents (arts. 5 and 18), freedom of expression and thought (arts. 13 and 14), the right to information, health education and education (17, 24 and 28), the rights of children with disabilities (23) and those of minority cultures (30).
2. Education must promote the enjoyment of rights, not only within the curriculum but also through teaching methods and the education environment. Children do not lose their human rights by virtue of passing through the school gates. The inherent dignity of the child must be respected, including strict limits placed on school discipline; for example the Committee has repeatedly made clear that corporal punishment is a violation of the child's rights. The child's views must be freely expressed. The creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted.
3. The key goal of education is the development of every child's personality, talents and abilities, recognizing that each individual has unique characteristics, interests, abilities and learning needs. The curriculum must be of direct relevance to the child's life and to his or her present and future needs; no child should leave school without being equipped to face all of life's challenges. Basic skills include not only literacy and numeracy but also the ability to make well-balanced decisions, to resolve conflicts in a non-violent manner and to develop a healthy lifestyle, good relationships, social responsibility, creative talents, critical thinking and other life skills. In particular, the education system must combat all forms of discrimination. For example, the curriculum must be consistent with the principle of gender equality and education environments made safe and friendly to girls; similarly children with disabilities or with HIV/AIDS must not experience direct or hidden forms of discrimination. Racism, xenophobia and cultural intolerance thrive where there is ignorance: education is the reliable antidote and should be given the highest priority in campaigns against these evils. Racist behaviour is not something only engaged in by "others". Children should be taught about how it occurred historically and how it manifests itself today, with particular focus on the child's own community.
4. Education must balance the child's physical, mental, spiritual and emotional development and balance intellectual, social and practical skills; it must focus both on the child now and on the child's future life. The overall objective is to maximize the child's ability to participate fully and responsibly in a free society. Education should be humane, inspiring and motivating. It should not give disproportionate weight to the accumulation of knowledge, which may create burdens of work and forms of competition harmful to the child's overall development.
5. Education must be designed to reinforce all the ethical values enshrined by the Convention, including education for peace, tolerance and respect for the natural environment. This may



require a multidisciplinary approach and should be rooted in the child's own community, both by identifying local problems and by engaging the child in community-based projects.

6. Children's capacity to enjoy their human rights and to participate fully in a free society can be impaired, not only by denying them access to education, but by that education failing to promote the values set out in article 29.

Article 29 calls for education to develop respect for human rights. Education should provide information on the content of human rights treaties, but children should also learn by seeing human rights standards implemented in practice. These values are relevant to children living in zones of peace but they are even more important for children living in situations of conflict or emergency. Education programmes must promote mutual understanding, prevent violence or conflict and include education about international humanitarian law.

The fact that Article 29's provisions are expressed in general terms seems to have led States to assume that they need not appear in legislation or administrative directives, which may mean they fail to inform education policies. The Committee therefore calls on all States Parties to incorporate the principles of article 29 into law and policy at all levels.

Article 29 requires the reworking of curricula, systematic revisions of textbooks and other teaching materials and changes to school policies. Pre-teaching and in-service training schemes reflecting its values are also essential. The school environment must promote human rights: a school which allows bullying or other violent and exclusionary practices violates the requirements of article 29. States should facilitate the role of children as defenders of their rights. The media also plays a vital role in disseminating (or undermining) the values of article 29.

The Committee calls on States Parties to develop a national plan of action to realize and monitor the objectives of article 29(1). This could be a part of larger plans relating to children or human rights goals. Governments should devise means to measure implementation, for example by regular surveys of all those affected – children in and out of school, teachers, parents, youth leaders and educational administrators. Where there are major violations of rights, such as racist attacks involving children, it can be assumed the Government has not done all it could in respect of article 29.

States Parties should also consider establishing procedures for reviewing complaints about violations of the Convention, which should help inform the identification of priority issues under article 29. The Committee requests that periodic reports include how these issues will be tackled by States Parties. Resource constraints are not a justification for failing to take the measures required in this respect.

(Committee on the Rights of the Child, General Comment No. 1, "The aims of education", 2001, CRC/GC/2001/1. For full text see www.ohchr.org/english/bodies/crc/comments.htm.)

declarations which emphasize the child's autonomous rights in relation to religion, but others are concerned with either parental authority to determine the child's religious upbringing or with the fact that a state religion governs the education curriculum (see article 14, page 188).

"The development of the child's personality, talents and mental and physical abilities to their fullest potential"

The degree to which an education system develops all children's potential depends in part upon the availability of education to all children on the basis of equality of opportunity, discussed under article 28 (see page 413) and the degree to which

it inspires and motivates the individual child (see also article 28, in relation to school drop-out, page 426). It also vitally concerns the adequacy of educational provision for children with disabilities and learning difficulties, discussed under article 23 (see page 321).

In order to implement article 29(1) the Committee calls on States Parties to develop a "comprehensive national plan of action", adding:

"If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29(1) and does so from a child-rights perspective."



This is because:

"The effective promotion of article 29(1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29(1) are thus essential for teachers, educational administrators and others involved in child education." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, paras. 23 and 18)

Article 29(1)(a) expands on the role of education, taking it beyond just the development of children's intellectual abilities, traditionally perceived as the responsibility of schools. Education should also embrace children's "talents", including talents in the creative and performing arts, crafts, sports and vocational skills; their "physical abilities", ranging from basic motor coordination skills to physical activities such as swimming, gymnastics, bicycling and ball-control; and development of their "personality". This is perhaps the greatest challenge to schools and educators. How do children learn to be kind and generous, for example, as well as literate and numerate?

Not surprisingly, the Committee has rarely been able to examine how countries fulfil these aims of education, except in terms of statistical measures such as how many children are enrolled in schools, drop out or repeat classes. Current international research on comparable standards in, for example, mathematics or science shows striking variations which do not correspond to the countries' wealth or economic investment in education. Similar comparisons could be sought on the less academic aspects of education, for example the values endorsed by article 29.

The Committee points out that article 29:

"... emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 9)

The Committee encouraged the Philippines to *"... develop and upgrade the infrastructure of the educational system by ... developing textbooks and other school supplies, enhancing teacher training and adopting innovative and interactive learning methods tailored for children with different learning prerequisites..."* (Philippines CRC/C/15/Add.259, para. 70)

And expressed concern that in the Syrian Arab Republic

"... the system of public education continues to emphasize rote learning rather than analytical skills development and is not child centred,"

recommending that the State Party taking into account the Committee's General Comment No. 1 on "The aims of education":

"... (a) Undertake a process of curriculum and teaching methodology reform – with the full participation of children – which stresses the importance of critical thinking and problem-solving-skills development; (b) Direct education towards the development of the child's personality, talents and mental and physical abilities to their fullest potential..." (Syrian Arab Republic CRC/C/15/Add.212, para. 46)

General Comment No. 1 on "The aims of education" also points out that schools can be overly academic and competitive:

"It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 12)

On occasion the Committee has raised such concerns with reporting States, for example expressing concern to Japan that:

"... The excessively competitive nature of the education system has a negative effect on the children's physical and mental health and hampers the development of the child to his or her fullest potential." (Japan CRC/C/15/Add.231, para. 49)

It recommended that Thailand should:

"Enhance the quality of education in a manner that seeks to reduce the competitiveness of the education system and promotes active learning capacities and strengthen efforts to promote the development of children's personality, talents and abilities to their fullest potential, including through the promotion of cultural life, the arts, play and recreational



activities in schools... [and] ... provide sports and recreational activities as part of the curriculum... (Thailand CRC/C/THA/CO/2, para. 63)

And to Jordan:

"The State Party should undertake a process of curriculum reform which stresses the importance of critical thinking and the development of problem-solving skills." (Jordan CRC/C/15/Add.125, para. 54)

"The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations"

The second aim of education under subparagraph (b) includes, alongside human rights and fundamental freedoms, "the principles enshrined in the Charter of the United Nations" (see box opposite).

In 1995, UNESCO endorsed a Declaration and Integrated Framework of Action on Education for Peace, Human Rights and Democracy. The Framework sets out policies, objectives and action strategies to combat discrimination, violence and xenophobia, and to develop students' self-esteem, stressing the last as "essential to social integration... The reduction of failure must be a priority." (Para. 22)

The Committee originally focused its attention on whether educational curricula include the teaching of the Convention on the Rights of the Child, given that article 42 of the Convention requires States to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike". Inclusion of the Convention in curricula means that knowledge of rights is a continuous process for succeeding generations of children, not just a once-only dissemination. It noted that in Slovenia the subject

"is not included at university level for future teachers"

and recommended human rights be part of the university curricula (Slovenia CRC/C/15/Add.230, paras. 52 and 53).

In recent years the Committee has stressed the need for broader "human rights education", which it sees as a tool for social change. It celebrated Armenia's efforts:

"The Committee welcomes that a special curriculum for teaching human rights as the foundations of democracy and civil society has been introduced in primary education and that teachers have received training on how to teach this subject." (Armenia CRC/C/15/Add.225, para. 53)

The Committee urged the Syrian Arab Republic and Hungary to use human rights education to combat discrimination:

"The Committee recommends that the State Party... include human rights education, including children's rights, in school curricula, particularly with respect to the development of and respect for human rights, tolerance and equality of the sexes and of religious and ethnic minorities. Religious leaders must be mobilized in this regard." (Syrian Arab Republic CRC/C/15/Add.212, para. 47)

"The Committee recommends that an obligatory component of human rights education be introduced in the curriculum as it may play a central role in the endeavours to change discriminatory attitudes." (Hungary CRC/C/HUN/CO/3, para. 53)

Nor is the curriculum the only way in which values are transmitted in schools. The aim is not simply to teach children "human rights"; in terms of the content of human rights treaties, the aim is "the development of respect for human rights". There is a hidden curriculum in the messages transmitted by the way teachers and pupils behave towards each other. Children cannot be taught respect for rights unless members of the school community practise what is preached.

As the Committee puts it:

"Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 8)

The administrative systems, behaviour codes and teaching methods of schools should, therefore, also reflect the principles of the Convention; children's attitudes and behaviour in the school should be appraised as carefully outside the classroom as in it.

The Committee recommended that Finland:

"... examine the extent to which human rights education is available in schools and ensure that all children are not only taught human rights, but are also involved in projects where human rights standards and values are implemented in practice, whether at home, in school, or within the community." (Finland CRC/C/15/Add.272, para. 45)



Charter of the United Nations

The text of the Preamble and Chapter 1, dealing with Purposes and Principles, of the United Nations Charter reads as follows:

Preamble

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Chapter 1

PURPOSES AND PRINCIPLES

Article 1

The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends...

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.





1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

(Charter of the United Nations, June 26, 1945)

"The development of respect for the child's parents..."

Little comment has been passed on this particular right. Allegations are sometimes made that the Convention does not support parents' rights and that it encourages children to be disrespectful of parents, so it may be useful to draw this right to the attention of those who are suspicious of the Convention.

Children should, of course, be taught to respect everyone, including other children. Throughout history, all cultures have asserted that children are disrespectful of their parents, which is perhaps why parents are accorded special mention here. It is also true that teachers can sometimes be dismissive or scornful of parents, particularly if the parents are poorly educated or come from a minority culture. Children's identity is inevitably closely bound up with their parents', and an education which is disrespectful about pupils' parents is likely to be damaging to the children's own self-esteem. The Committee has encouraged States to involve parents in school government.

One starting point is for States to encourage schools to involve parents in the school community. The Committee recommended that Japan overcome the fact that:

"... Communication and cooperation between parents and teachers with regard to children's

problems and conflicts at schools is very limited." (Japan CRC/C/15/Add.231, para. 49)

"The development of respect for the child's... own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own"

Many education systems actively promote patriotism in schoolchildren, sometimes at the expense of inculcating respect for different cultures, particularly minority and indigenous cultures living within the country. Occasionally, concern is expressed in some countries that teaching respect for national values has been abandoned as old-fashioned. The importance of the wording of this subparagraph is that equal weight is given to the value systems both of the ratifying State and of other States or cultures, with a particular focus on schoolchildren who are immigrants or of a minority culture. The Committee points out that, although there is potential for conflict between values

"... in fact, part of the importance of this provision lies precisely in its recognition of the

need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.”

(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 4)

It should be noted that the word “respect” implies more than just tolerance and understanding. It means acknowledging the equal worth of peoples of all cultures, without condescension.

The Committee expressed deep concern to Algeria about

“... the findings of the Special Rapporteur on freedom of religion or belief during his visit to Algeria in 2002 (see E/CN.4/2003/66/Add.1), in particular that teachers were said to have taught very young children how to stone an adulterous woman, that curricula were said to have conveyed a distorted notion of Algerian history and a degrading image of women, and that pupils were encouraged to spurn other religions, which were presented merely as those of colonial settlers. At the same time, concerns were expressed that children could not speak out freely in class and ask questions about Islam for fear of being labelled as troublemakers.”

It recommended

“... that the State Party review school curricula with a view to instilling in pupils and students tolerance and respect for others. The Committee urges the State Party to give priority to building the capacity of teachers and to raise their awareness and responsibility in this regard. In addition, the Committee recommends that the promotion of religious tolerance and dialogue between different religions and beliefs be included in the reform of the educational system.” (Algeria CRC/C/15/Add.269, paras. 68 and 69)

Education on values should permeate the whole of schooling, as the Committee commented to Lebanon:

“... the teaching of values is an important dimension that should be incorporated in the curricula at all levels of schooling. School curricula materials should be revised accordingly.” (Lebanon CRC/C/15/Add.54, para. 33)

The following subparagraph sets out some of the principles underlying the teaching of values: “the spirit of understanding, peace, tolerance... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”. Article 30 also protects the rights of minorities

and indigenous peoples “to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language” (see page 455).

The Committee noted with satisfaction Saudi Arabia’s efforts

“... to respond to the needs of foreign expatriate communities by allowing an establishment of foreign schools which follow the set curricula and system of schooling used in the country of origin.” (Saudi Arabia CRC/C/SAU/CO/2, para. 65)

Other countries, for example Japan, have been encouraged to make better provision in this respect:

“The Committee recommends that the State Party... expand opportunities for children from minority groups to enjoy their own culture, profess or practise their own religion and use their own language.” (Japan CRC/C/15/Add.231, para. 50)

“The preparation of the child for responsible life in a free society...”

This is a vital aim of education, in that it emphasizes the importance of teaching the less “academic” subjects such as health and sex education, politics, budgeting, citizenship and social relationships. Above all, students must feel that their education is not divorced from real life – a sure path to disaffection, failure and high drop-out rates (see article 28, page 426).

The Committee has raised such concerns, for example with Grenada:

“... the Committee remains concerned with the high incidence of truancy (in particular for boys), limited access to secondary education, lack of relevant learning material, insufficient numbers of trained qualified teachers, and the tendency towards the use of teaching methods that are almost exclusively examination-oriented... The Committee recommends that the State Party review its educational programme with a view to improving its quality and relevance and ensuring that students are taught an adequate mix of academic subjects and life skills, including communication, decision-making and conflict resolution skills.” (Grenada CRC/C/15/Add.121, para. 25)

And suggested to Benin:

“... the Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to ... design and implement a programme of activities providing alternative educational



Health education

International Conference on Population and Development: recommendations

“Youth should be actively involved in the planning, implementation and evaluation of development activities that have a direct impact on their daily lives. This is especially important with respect to information, education and communication activities and services concerning reproductive and sexual health, including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child. In addition, there is a need for educational programmes in favour of life planning skills, healthy lifestyles and the active discouragement of substance abuse...”

“To be most effective, education about population issues must begin in primary school and continue through all levels of formal and non-formal education, taking into account the rights and responsibilities of parents and the needs of children and adolescents. Where such programmes already exist, curricula should be reviewed, updated and broadened with a view to ensuring adequate coverage of such important concerns as gender sensitivity, reproductive choices and responsibilities, and sexually transmitted diseases, including HIV/AIDS...”

(International Conference on Population and Development, Cairo, 1994, A/CONF/171/13, paras. 6.15 and 11.9)

opportunities for non-enrolled children and drop-outs, include gender issues, life skills and knowledge/awareness on HIV/AIDS...” (Benin CRC/C/BEN/CO/2, para. 62)

Article 33 requires States to take educational measures to protect children from the illicit use of narcotic drugs (which includes the consumption of alcohol under the legal age limit) and article 24 requires them to ensure “all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health” and “to develop... family planning education and services”.

In its General Comment No. 4 on “Adolescent health and development in the context of the Convention on the Rights of the Child”, States are urged to “initiate and support measures, attitudes and activities that promote healthy behaviour by including relevant topics in school curricula” (para. 17). The Committee points out:

“... It is the obligation of States Parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

“In order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as how to plan and prepare nutritionally balanced meals and proper personal hygiene habits, and skills for dealing with particular social situations such as interpersonal communication, decision-making, and coping with stress and conflict. States Parties should stimulate and support opportunities to build such skills through, inter alia, formal and informal education and training programmes, youth organizations and the media.

“... States Parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs)... States Parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media.” (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 26, 27 and 28)

The Committee was concerned about the situation in the United Kingdom whereby:

“... parents in England and Wales have the possibility of withdrawing their children from parts of the sex education programmes in schools”,



commenting that this gave insufficient attention to the child's own rights to have his or her opinions given due weight under article 12 (United Kingdom CRC/C/15/Add.34, para. 14). In discussions with El Salvador, a Committee member commented: "As far as sex education was concerned, while welcoming the fact that some sex education was provided, the Committee found it regrettable that girls could not take the initiative and request the necessary information." (El Salvador CRC/C/SR.86, para. 61) When examining El Salvador's Second Report the Committee regretted the lack of sex education and recommended in particular that the Government

"... strengthen sexual and reproductive health education for adolescents, especially in school, with a view to reducing the incidence of STIs [sexually transmitted infections] and teenage pregnancies..." (El Salvador CRC/C/15/Add.232, para. 52)

Another important part of children's health education relates to HIV/AIDS. Failure by schools to provide factual information on this subject can be literally fatal to children; failure to challenge discriminatory and ill-informed social attitudes can lead to the ostracizing of children who are affected by HIV/AIDS.

The Committee's General Comment No. 3 on "HIV/AIDS and the rights of the child" also emphasizes the importance of health education:

"... children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child-targeted media) as well as informal channels (e.g. those targeting street children, institutionalized children or children living in difficult circumstances). States Parties are reminded that children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States Parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality." (Committee on the Rights of the Child, General Comment No. 3, 2003, CRC/GC/2003/3, para. 16)

As discussed under article 12 (page 167), "responsible life in a free society..." implies the teaching of social responsibility and active participation in the processes of democracy. This is not easily taught to children if it is not practised at the same time. As a Committee member commented to representatives from China: "... the Convention's advocacy of the right of children to participate in all aspects of society and express their views demanded not just that children should be trained to act in such a way, but that adults and professionals working with children should be trained to develop participatory attitudes in children." (China CRC/C/SR.299, para. 33)

"... in the spirit of understanding... tolerance... and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin"

The Committee comments:

"Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. ... Racist behaviour is not something engaged in only by 'others'. It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance." (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 10)

Confronted with countries scarred by civil conflicts and racial tensions, and with the rise in xenophobic and racist attitudes in some industrialized countries, the Committee has urged States Parties to take action under this provision. For example:

"The Committee would also like to suggest that measures to teach about children's and human rights could be used as a tool to advocate further the purposes of the European Youth Campaign, and the parallel Nordic





campaign to combat racism, xenophobia, anti-Semitism and intolerance. It is also the view of the Committee that it is equally important that the teaching methods used in schools should reflect the spirit and philosophy of the Convention and the aims of education laid down in its article 29.” (Denmark CRC/C/15/Add.33, para. 29)

“The Committee suggests further that the curricula in all schools should include a greater focus on the personal development and vocational training of students and on inter-ethnic tolerance. The Committee recommends that the State Party seek technical assistance from UNICEF in this regard.” (The former Yugoslav Republic of Macedonia CRC/C/15/Add.118, para. 45)

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) reflects the Committee’s views in its Declaration and Programme of Action. It underlines the importance of human rights education, urging States “to introduce and, as applicable, to reinforce anti-discrimination and anti-racism components in human rights programmes in school curricula, to develop and improve relevant educational material, including history and other textbooks, and to ensure that all teachers are effectively trained and adequately motivated to shape attitudes and behavioural patterns, based on the principles of non-discrimination, mutual respect and tolerance.”

The Programme of Action calls upon States “to undertake and facilitate activities aimed at educating young people in human rights and democratic citizenship and instilling values of solidarity, respect and appreciation of diversity, including respect for different groups. A special effort to inform and sensitize young people to respect democratic values and human rights should be undertaken or developed to fight against ideologies based on the fallacious theory of racial superiority.” (Programme of Action, A/CONF.189/12, paras. 129 and 130)

The Final Document of the International Consultative Conference on School Education in relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination (held in Madrid, Spain, in November 2001) affirmed the need for education systems simultaneously to respect religious belief (including atheism and the right not to have any religion) and to encourage tolerance and respect for other beliefs, and proposes steps that States can take to achieve this. The Vice-Chairperson of the Committee on the Rights of the Child stated in support of this Conference:

“Discrimination is learned, observed, experienced, suffered and acquired through life. Therefore, education can play an essential role not only in combating discrimination, but also in preventing it. Education is a process that takes place within the family and the community as well as in schools. If education deliberately aims to prevent and combat racism and intolerance instead of condoning them or contributing to their development, it will make the greatest possible contribution to improving respect for human rights.” (Committee on the Rights of the Child, Report on the twenty-ninth session, January/February 2002, CRC/C/114, p. 191)

Tolerance and friendship should be offered to all people, including those who are from the same cultural background but are in some way different – for example if they are homosexual or their looks do not conform to the local stereotype of beauty or they are disabled. The new Convention on the Rights of Persons with Disabilities, adopted in December 2006, calls for measures: “... to nurture receptiveness to the rights of persons with disabilities... to promote positive perceptions and greater awareness towards persons with disabilities” and for “fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities...” (Article 8)

The Committee on the Elimination of Racial Discrimination has published a number of General Recommendations which recommend that States introduce teacher training, curricula and textbooks that celebrate and respect minority cultures – see, for example, its recommendations relating to Roma (pages 416 and 417) or the following recommendation on discrimination on the basis of descent, in which it calls on States to “Review all language in textbooks which conveys stereotyped or demeaning images, references, names or opinions concerning descent-based communities and replace it by images, references, names and opinions which convey the message of the inherent dignity of all human beings and their equality of human rights.” (Committee on the Elimination of Racial Discrimination, General Recommendation XXIX, 2002, HRI/GEN/1/Rev.8, p. 272)

“... in the spirit of... equality of sexes”

As discussed under article 28 (page 414), there is global concern about discrimination against girls in terms of access to schooling and high drop-out rates (see also article 2, pages 27 to 29). The causes of this phenomenon mostly relate to social and family demands on girl children, but school

life and curricula can also act as a disincentive. Once in school, it is important that the curriculum be as relevant to female life as to male life; that girls are encouraged in traditionally “male” subjects of mathematics, science, engineering and computing; that schools do not act in a sexist or discriminatory manner; and that the particular needs of girls are met.

The Committee’s first General Comment on “The aims of education” concludes that:

“... gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation.” (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 10)

As the Platform for Action of the 1995 Beijing Fourth World Conference on Women observes: “Gender-biased educational processes, including curricula, educational materials and practices, teachers’ attitudes and classroom interaction, reinforce existing gender inequalities” (para. 261). Strategic actions recommended for government include:

“Develop and adopt curricula, teaching materials and textbooks to improve the self-image, lives and work opportunities of girls, particularly in areas where women have traditionally been underrepresented, such as mathematics, science and technology ... Encourage educational institutions and the media to adopt and project balanced and non-stereotyped images of girls and boys ... Promote human rights education in educational programmes and include in human rights education the fact that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights ... Develop training programmes and materials for teachers and educators, raising awareness about their own role in the educational process, with a view to providing them with effective strategies for gender-sensitive teaching ... Provide education and skills training to increase girls’ opportunity for employment and access to decision-making processes ... Provide education to increase girls’ knowledge and skills related to the functioning of economic, financial and political systems ... Promote the full and equal participation of girls in extracurricular activities, such as sports, drama and cultural activities...” (Platform for Action, 1995, A/CONF.177/20/Rev.1, paras. 276, 277, 279 and 280)

The United Nations General Assembly’s special session “Beijing plus five” in 2000 noted some progress in education for girls, but still discrimination at all levels (General Assembly, twenty-third special session, 2000, A/RES/S-23/3).

The Committee’s recommendations include:

“The Committee ... recommends that the State Party...sensitize the general public and children in particular to ensure that traditional gender stereotypes do not dictate the subjects studied by male and female pupils.” (Democratic People’s Republic of Korea, CRC/C/15/Add.239, para. 55)

“... the Committee recommends that the State Party continue to allocate adequate financial, human and technical resources in order to reinforce the implementation of the Essential Learning Package to accelerate girls education and take effective measures to reduce the growing gender disparity in literacy levels, including measures aimed at altering cultural conceptions that literacy is aimed primarily at boys.” (Benin CRC/C/BEN/CO/2, para. 62)

“The Committee recommends that the State Party, taking into account the Committee’s General Comment No. 1 on ‘The aims of education’ (CRC/GC/2001/1), expedite the inclusion of human rights education in the curriculum of all schools, including religious and foreign schools, and ensure that children’s rights, particularly with respect to tolerance and equality of religious minorities, are a core element. As regards the situation of girls in education, it recommends that the State Party take measures to break down stereotypical attitudes about the roles and responsibilities of women and men and to critically review its school curricula with a view to abolishing all discriminatory practices in education, including girls’ limited access to vocational education and training.” (Saudi Arabia CRC/C/SAU/CO/2, para. 66)

“in the spirit of... peace”

An education delivered in the spirit of peace clearly supports the principle of non-violent methods of school discipline, as discussed under articles 19 and 28 (pages 264 and 428). Education also plays a part in the objectives of articles 38 and 39, on armed conflict and rehabilitation of child victims (see pages 573 and 589). The Committee makes the point in its first General Comment on “The aims of education”:

“The values embodied in article 29(1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes,





it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.”

(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 16)

The Committee has recommended conflict resolution and peace education programmes, for example, to States with recent histories of conflict such as Algeria, Sierra Leone and Croatia:

“The Committee recommends that appropriate measures be adopted with a view to preventing to the maximum possible extent the negative impact of prevailing violence, through education and information campaigns in schools on peaceful cohabitation and peaceful resolution of conflicts.” (Algeria CRC/C/15/Add.76, para. 41)

“The Committee encourages the State Party in its efforts to integrate peace education, civil education and human rights into its teacher training programmes and school curricula, and recommends that the State Party continue this process, expanding it to include child rights, and ensure that every child receives such education.” (Sierra Leone CRC/C/15/Add.116, para. 67)

“The Committee recommends that the State Party... in the light of article 29 on aims of education, establish adequate programmes and activities with a view to create an environment of tolerance, peace and understanding on cultural diversity to prevent intolerance, bullying and discrimination in schools and society at large.” (Croatia CRC/C/15/Add.243, para. 58)

It also seeks to remedy potential conflicts, for example expressing concern about the possible provocation caused by Japanese school history textbooks:

“The Committee notes the State Party’s efforts to reform the education system and bring it into greater conformity with the Convention; however, it is concerned that... despite review procedures, some history textbooks are incomplete or one-sided.

“The Committee recommends that the State Party... strengthen review procedures for textbooks to ensure that they present a balanced view.” (Japan CRC/C/15/Add.231, paras. 49 and 50)

States are just beginning to wake up to their obligations to identify and prevent bullying in schools (see page 431). Often this stems from intolerant attitudes towards “difference”, for

example towards disabled or homosexual children or children of different cultures or religions. The Committee recommended that Lithuania, for example, tackle “the culture of violence” in its schools as a means for creating environments of tolerance, peace and understanding of cultural diversity:

“The Committee recommends that the State Party develop a comprehensive strategy addressing the culture of violence and its correlation with high levels of bullying amongst schoolchildren. The Committee also recommends that the State Party establish adequate programmes and activities with a view to creating an environment of tolerance, peace and understanding of cultural diversity shared by all children to prevent intolerance, bullying and discrimination in schools and society at large.” (Lithuania CRC/C/ILT/2002/2, para. 57)

“The development of respect for the natural environment”

This provision is unique to the Convention on the Rights of the Child and reflects the growing urgency of concern about the environment. The 1992 Rio Declaration on Environment and Development (Agenda 21) stresses that all people, including children, should be made aware of the need for sustainable development and care for the natural environment. Principle 10 provides: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level”, and Principle 21: “The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.”

Agenda 21 recommendations reflect the aims of article 29: “Relevant authorities should ensure that every school is assisted in designing environmental activity work plans, with the participation of students and staff. Schools should involve schoolchildren in local and regional studies on environmental health, including safe drinking water, sanitation and food and ecosystems and in relevant activities, linking these studies with services and research in national parks, wildlife reserves, ecological heritage sites etc.” (Agenda 21, chapter 36, para. 36.5 e))

Agenda 21 also states: “Governments, according to their strategies, should take measures to ... establish procedures allowing for consultation and possible participation of youth of both genders, by 1993, in decision-making processes with regard to the environment, involving youth

at the local, national and regional levels ... and ... establish task forces that include youth and youth non-governmental organizations to develop educational and awareness programmes specifically targeted to the youth population on critical issues pertaining to youth. These task forces should use formal and non-formal educational methods to reach a maximum audience.” (*Agenda 21*, chapter 25, para 25.9 (a) and (f))

The Committee emphasizes that environmental education must not be solely theoretical:

“Education must link issues of environmental and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.” (Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 13)

Freedom to establish schools outside the state system that conform to the aims of education under the Convention and any minimum standards laid down by the State

This right repeats, more or less word for word, article 13(4) of the International Covenant on Economic, Social and Cultural Rights. Despite the Committee’s concern about the discriminatory impact private education may have on state education and on poor families (see article 28, page 407), the right to opt out of state education is an important one, not only to protect individual

freedoms, but also, particularly because there is no blueprint for “good education”, and education systems should allow for diversity and flexibility.

The two conditions in article 29(2) are essential fetters on this freedom – that private education should conform to the aims of education as set out in article 29(1) and that it should conform to any minimum mandatory standards. They prevent, for example, the existence of religious schooling focusing only on doctrinal texts, or schools that fail to equip children for “responsible life” by not teaching them basic skills. The Committee on Economic, Social and Cultural Rights comments: “Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty... does not lead to extreme disparities of educational opportunity for some groups in society.” (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 30, p. 77)

The paragraph is formulated as a right of individuals rather than as an obligation of the State Party. The State Party is not required, under this article, to lay down “minimum standards”. However, article 3(3) provides: “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.” In addition to States having to ensure that private schools meet the health and staffing standards mentioned in article 3(3), they must also ensure these schools’ curricula and teaching methods fulfil the aims set out in article 29.



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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 29, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 29 is relevant to the **departments of education, health and the environment**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 29 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 29 likely to include the training of **teachers, education administrators, vocational guidance personnel**)?

• Specific issues in implementing article 29

- Have the aims of education been reviewed in the light of the Committee's General Comment (2001)?

Do all forms of education provided for children within the country aim to

- develop their personalities to their fullest potential?
- develop their talents to their fullest potential?
- develop their mental abilities to their fullest potential?
- develop their physical abilities to their fullest potential?
- Is the Convention on the Rights of the Child incorporated in school curricula?
- Are children taught about other human rights principles?
- Do administrative systems in schools conform to the principles of the Convention?
- Do teaching methods conform to the principles of the Convention?



How to use the checklist, see page XIX

Do education institutions, materials and services and educational curricula develop children's respect for

- their parents?
- their own cultural or national identity, language and values?
- the national values of the ratifying country?
- the national values of the country from which they originated?
- the national values of other civilizations?
- Do all forms of education aim to prepare children for responsible life in a free society?
- Do schools practise democratic procedures?
- Are children given responsibilities and opportunities to practise choice, decision-making and independence?

Are children educated about

- health promotion?
- sexuality and reproductive health?
- social relationships, including mediation and negotiation skills and non-violent conflict resolution?
- money management and budgeting?
- the law?
- responsibilities of community life and citizenship?
- Does education encourage understanding, tolerance and friendship among all people?

Are measures taken to combat sex discrimination in

- the curriculum?
- educational materials?
- teaching attitudes?
- school ethos?
- Are the children taught non-violent values in the spirit of peace?
- Do educational institutions prevent all expressions of violence, whether by pupils or teachers?
- Are measures adopted to combat bullying?
- Do all forms of education include strategies to develop children's respect for the natural environment?
- Are private schools permitted?

Do minimum standards require that private schools

- do not discriminate?
- develop their pupils' abilities to their fullest potential?
- teach and practise the values laid out in article 29(1)?
- respect the rights of the child under the Convention?
- have sufficient and appropriately skilled staff and comply with health and safety requirements?
- Are measures, such as inspection and regulation procedures, adopted to ensure that the education in all private schools conforms to these standards?



Reminder: The Convention is indivisible and its articles interdependent.
Article 29 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 29 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 15: freedom of association

Article 16: protection of privacy

Article 17: access to information and role of media

Article 24: health (including health education)

Article 28: right to education

Article 30: children of minorities or of indigenous peoples

Article 31: rest, leisure, play, recreation and culture

Article 33: protection from drug abuse

Article 38: children and armed conflict

Children of minorities or of indigenous peoples

article

30

Text of Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 30 protects the rights of children from minority or indigenous groups to enjoy their culture, practise their religion and use their language together with other members of their group.

It might be asked: Why is article 30 necessary? Articles 7 and 9 prevent unreasonable separation from parents; article 8 secures the right of the child “to preserve his or her identity”; article 14 safeguards children’s freedom of religion with direct reference to their parents’ role in this respect; article 16 prevents arbitrary or unlawful interference with the child’s family; article 17 requires States to encourage the mass media to have particular regard to the linguistic needs of children from minority or indigenous groups; article 20 ensures that where the child is deprived of his or her family environment “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”; article 21 reaffirms this in respect of intercountry adoption; article 29 includes respect for the child’s own culture, language and values in the aims

of education and upholds the child’s right to be educated outside the state system; and article 40 requires the use of interpreters if the child cannot understand the language used in the administration of juvenile justice. In addition articles 10 and 22 require special measures regarding immigrant and refugee children. Overarching all, is article 2, securing all the rights of the Convention without discrimination of any kind “irrespective of the child’s or his or her parent’s or legal guardian’s race, colour,... language, religion, ... national, ethnic or social origin ... or other status”.

In the light of this, the provisions of article 30 might seem redundant. However, the overwhelming evidence of serious and continuing discrimination against minority and indigenous populations justifies mention of their rights in a separate article, to make certain that States pay adequate attention to them. Additionally, cultural rights of minorities may include rights not addressed in the Convention, such as a relationship with territory.

The Convention lays proper stress on the right of children to be protected from the harmful prac-

Summary

tices of their parents, families and communities. It is equally important for the Convention to stress the right of peaceful enjoyment of practices and faiths that are not harmful, no matter how strange or alien they may seem to others. Article 30 affirms the rich diversities of cultures that are practised within a framework of human rights. ■

Background

Article 27 of the International Covenant on Civil and Political Rights states: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Article 30 of the Convention on the Rights of the Child thus repeats, with special reference to children, more or less word for word, the Covenant on Civil and Political Rights save for the addition of “persons of indigenous origin”. Article 30 emanated from a proposal by a non-governmental organization called the Four Directions Council, supported by Mexico, to dedicate an article of the Convention to the rights of indigenous children. The drafting Working Group quickly agreed that this should embrace the rights of all minority children and concluded that it would not be helpful to introduce wording which departed from that of the International Covenant on Civil and Political Rights (E/CN.4/1986/39, p. 13; Detrick, p. 408).

The *Manual on Human Rights Reporting*, 1997, also points out that “by replacing the plural used in the Covenant ‘persons belonging to such minorities’ by a reference to the **child**, it has emphasized the individual nature of the rights recognized in this article, even if they are to be enjoyed ‘in community with other members’ of the child’s group”. (*Manual*, p. 489)

These are clearly improvements that do not detract from the originating principles of the Covenant. In addition, it should perhaps be noted that in some countries majority populations have been denied rights (for example in South Africa during apartheid) and that there are some minority groups which cannot claim to be “ethnic, religious or linguistic” (for example some “traveller” communities in Europe) but whose rights to enjoy their culture have been unreasonably denied.

General Comment No. 23 by the Human Rights Committee, on article 27 of the International Covenant on Civil and Political Rights, makes the following points:

- the right to enjoy culture is not a collective right of self-determination and does not prejudice the sovereignty and territorial integrity of a State Party. At the same time, the right may consist of “a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority”, including “such traditional activities as fishing or hunting or the right to live in reserves”;
- international or domestic obligations not to discriminate, and to treat everyone equally, do not mean that minorities cannot be recognized;
- the right applies to everyone within the territory, not just citizens or people with permanent residence;
- the right to use a minority language is to be distinguished from freedom of expression and the right of accused people to an interpreter: it upholds the rights of minorities to use that language amongst themselves;
- the formulation of the right in negative terms “not to be denied the right...” nevertheless does recognize the existence of a right. This obliges the State Party to take positive measures both in terms of its own actions and against the acts of other persons in the country, in order to protect the minority group’s cultural identity, language or religion;
- such positive measures must not thereby discriminate against any other group or individual or breach any other article of the Covenant;
- the aim is to ensure the survival and continual development of minorities “thus enriching the fabric of society as a whole”.

(Human Rights Committee, General Comment No. 23, 1994, HRI/GEN/1/Rev.8, pp. 198 to 200)

The negative formulation of the phrase “shall not be denied the right ...” in article 27 of the Covenant (repeated in article 30 of the Convention on the Rights of the Child) was not repeated in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992. In this text the rights of persons belonging to minorities are stated in positive rather than negative terms (for example, “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories...”) and the obligation of States to implement these rights is also



clearly stated (“... and shall encourage conditions for the promotion of that identity... States shall adopt appropriate legislative and other measures to achieve those ends”) (article 1).

In 1991 the International Labour Organization adopted ILO Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries, with a view to “removing the assimilationist orientation of earlier standards” and calling for special measures to protect the culture and rights of such people, and encouraging the use of their customs “to the extent compatible with the national legal system and internationally recognized human rights” (preamble and article 9). The Committee on the Elimination of Racial Discrimination has, in addition, adopted a General Recommendation on the rights of indigenous peoples, calling on States Parties to “recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation”, especially in terms of recognizing their rights to land and to provide them with “conditions allowing for a sustainable economic and social development compatible with their cultural characteristics”. (Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, 1997, HRI/GEN/1/Rev.8, para. 4, p. 256)

In 2002, the United Nations Permanent Forum of Indigenous Peoples, an advisory body to the Economic and Social Council, held its first meeting. In 2006 the Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples, in recognition of the particular vulnerability of indigenous populations (Report to the General Assembly on the first session of the Human Rights Council, A/HRC/1/L.10, 30 June 2006, p. 63). The Declaration asserts the right of indigenous people to autonomous life within the dominant culture without prejudicing their equal right to participate in the political, social and economic life of the country. As regards culture, article 31(1) of the Declaration provides:

“Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”

Because countries distinguish between the rights of citizens and those residing in the country, the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 is also important. This Convention protects the rights of migrant workers to manifest their religion (article 12); States Parties “shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin” (article 31) and secure policies for teaching children both the local languages and their mother tongue (article 45).

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, September 2001) in its Declaration reiterates the text of article 30 (Declaration, para. 73). The Programme of Action urges States “to adopt, where applicable, appropriate measures to ensure that persons belonging to national or ethnic, religious and linguistic minorities have access to education without discrimination of any kind and, where possible, have an opportunity to learn their own language in order to protect them from any form of racism, racial discrimination, xenophobia and related intolerance that they may be subjected to.” (Programme of Action, A/CONF.189/12, para. 124. The Programme of Action also contains detailed recommendations relating to indigenous peoples.)

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

“Ensure that indigenous children and children belonging to minorities have access to quality education on the same basis as other children. Efforts must be directed to providing this education in a manner that respects their heritage. Efforts must also be directed at providing educational opportunities so that indigenous children and children belonging to minorities can develop an understanding of, and sustain their cultural identity, including significant aspects such as language and values.” (Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, p. 17)

Minority cultures and human rights

In its first General Comment on “The aims of education” (article 29), the Committee on the Rights of the Child points out that the requirement of article 29 to teach respect both for the child’s own culture and for other cultures is deliberate:





“... in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.”

(Committee on the Rights of the Child, General Comment No. 1, 2001, CRC/GC/2001/1, para. 4)

However, the right of any group to practise their culture and religion is not unlimited. Both majority and minority cultures must be practised within the framework of human rights, and no religion is exempt from these constraints. The Committee points this out in its General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”:

“Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity. Freedom to practise one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.” (Committee on the Rights of the Child, General Comment No. 8, 2006, CRC/C/GC/8, para. 29)

The Committee therefore occasionally points out to States their obligation to ensure that human rights are respected by minority cultures, as well as tackling the oppression and discrimination they experience:

“The Committee recommends that the State Party strengthen its efforts to improve the equal enjoyment of all rights of children belonging to minorities and indigenous peoples, in particular, by prioritizing effective measures to reduce poverty among them. The Committee also recommends that the

State Party take measures to promote respect for the views of children, especially girls, belonging to minorities and indigenous peoples and facilitate their participation in all matters affecting them.” (Belize CRC/C/15/Add.252, para. 73)

“As regards the child’s right to use his/her own language, the Committee encourages the State Party to continue its efforts to address the linguistic needs of indigenous and minority children. In addition, the Committee recommends that the State Party seek, in close collaboration with indigenous and minority communities and their respective leaders, effective measures to abolish traditional practices prejudicial to the health and well-being of indigenous and minority children, such as early marriage.” (Philippines CRC/C/15/Add.259, para. 94)

Reservations

Turkey and France have entered reservations in respect of article 30.

Turkey states: “The Republic of Turkey reserves the right to interpret and to apply the provisions of [articles] 17, 29 and 30 of the Convention on the Rights of the Child according to the letter and spirit of the Constitution of the Republic of Turkey and of the Treaty of Lausanne of 24 July 1923.” (CRC/C/2/Rev.8, p. 41)

The Committee noted that this reservation *“... may have a negative impact on children belonging to ethnic groups which are not recognized as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin”*

and encouraged its withdrawal (*Turkey CRC/C/15/Add.152, para. 11*).

France states: “The Government of the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 30 is not applicable in so far as the Republic is concerned.” (CRC/C/2/Rev.8, p. 21) France’s explanation of this in its Initial Report does not take the matter much further: “France entered one reservation and two interpretative declarations. The reservation concerns article 30. Having regard to article 2 of the Constitution of the French Republic (‘France is a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion. It shall respect all beliefs...’), France considers that article 13 (article 30 of the Convention) is not applicable in so far as the Republic is concerned. Indeed, on the basis of these principles of equality and non-discrimination, the existence of minorities cannot be recognized in France in the sense of groups enjoying a special status. France made a similar reservation

in respect of article 27 of the International Covenant on Civil and Political Rights.” (France CRC/C/3/Add.15, paras. 46 to 48)

When examining France’s Initial Report the Committee noted the reservation

“... with concern. The Committee wishes to emphasize that the Convention on the Rights of the Child seeks to protect and guarantee the individual rights of children, including the rights of children belonging to minorities.” (France CRC/C/15/Add.20, para. 11)

And when examining France’s Second Report the Committee urged France to withdraw the reservation and observed:

“The Committee welcomes information provided in the State Party’s report that all children in France are equal before the law and have a right to freedom of religion, expression in their own language in private affairs and right to cultural activities. However, the Committee remains concerned that equality before the law may not be sufficient to ensure equal enjoyment of rights by certain minority groups, such as the Roma, among others, who may face de facto discrimination. The Committee regrets that the State Party has not considered reviewing its position and withdrawing its reservation to article 30 of the Convention.

“The Committee encourages the State Party to continue measures to prevent and combat racism, xenophobia, discrimination and intolerance, by, inter alia, ensuring follow-up to the recommendations of the United Nations treaty bodies and the European Commission against Racism and Intolerance (ECRI), in particular as concerns children.” (France CRC/C/15/Add.240, paras. 60 and 61)

France’s explanation is difficult to understand since article 30 does not accord minority groups “special status”; it simply protects their civil rights, as does the French Constitution. The General Comment by the Human Rights Committee on article 27 of the Covenant addresses the French position: “The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2(1) and 26. The entitlement, under article 2.1, to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law, and non-discrimination in respect of rights granted and obligations imposed by the States. It governs the exercise of all rights, whether protected under the Covenant or not,

which the State Party confers by law on individuals within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States Parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities.” (Human Rights Committee, General Comment No. 23, 1994, HRI/GEN/1/Rev.8, para. 4, p. 198)

In addition, two other countries, Canada and Venezuela, have made declarations relevant to article 30 of the Convention on the Rights of the Child.

Canada’s “Statement of understanding” provides: “It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfilment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practise their religion and to use their own language.” (CRC/C/2/Rev.8, p. 16) If this declaration means that Canada might give article 30 a superior status to other rights under the Convention, this would be contrary to the “indivisibility” of these rights; but if it is simply, as it were, a reminder to the Canadian Government to pay particular attention to the provisions of article 30, then the declaration is not in conflict with the principles of the Convention. Canada also entered a specific reservation to article 21 in relation to article 30, in so far as it allows aboriginal practices in adoption which might not be compatible with article 21, which the Committee “noted with concern” (Canada CRC/C/15/Add.37, para. 10). When Canada submitted its Second Report, the Committee regretted that Canada had no intention of withdrawing this reservation and invited it to “continue its dialogue with the Aboriginals with a view to the withdrawal of the reservation” (Canada CRC/C/15/Add.215, paras. 6 and 7).

Venezuela states: “The Government of Venezuela takes the position that article 30 must be interpreted as a case in which article 2 of the Convention applies.” (CRC/C/2/Rev.8, p. 44) The Committee did not comment on this declaration when responding to Venezuela’s Initial Report, but the General Comment by the Human Rights Committee, quoted in regard to France’s reservation, is relevant.



“a child belonging to... a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her culture”

Article 30 is not about the fact that a great many minority and indigenous groups suffer from discrimination in terms of education, health and employment opportunities and from social prejudice or outright harassment. It is about cultural, religious and linguistic rights rather than economic or political rights. Nonetheless, the entitlement “not to be denied the right ... to enjoy [their] own culture” is often disturbed by social, economic or political forms of persecution. For example:

“The Committee notes with concern that, despite constitutional recognition of indigenous customary rights, indigenous communities still suffer from institutional neglect, historic abandonment and indiscriminate pillaging of natural resources, especially in the Caribbean region.” (Nicaragua CRC/C/15/Add.265, para. 75)

“The Committee welcomes the legal steps taken to recognize ethnic diversity, autonomy and collective land rights of minorities, in particular the Afro-Colombian and indigenous peoples. However, it notes that in practice the above groups confront serious challenges and threats to the enjoyment of their rights. Both the regular armed forces and the armed groups distinct from the State armed forces block vital supplies of food and medicines, resulting in high levels of malnutrition and disease. In particular, the Committee is concerned over the threats against indigenous leaders, the over-representation of ethnic minority children among those displaced, victims of landmines and those forcefully recruited by illegal armed groups. The Committee is also concerned that among children of ethnic minorities, birth registration rates are low and access to basic health services is lacking. Despite an established programme for bilingual education (etnoeducación) the coverage is limited and illiteracy rates high. The Committee is concerned that, despite affirmative legal provision, children of ethnic minorities are victims of social exclusion and racial discrimination. Additionally, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people highlighted in his 2004 mission report on Colombia (E/CN.4/2005/88/Add.2) that several indigenous peoples in Amazonia are facing extinction.” (Colombia CRC/C/COL/CO/3, para. 94)

“The Committee notes the absence of information on ethnic minorities in the State Party’s report and is concerned over the situation of children belonging to minorities, in particular Oromo and Anuak, as they suffer stigmatization and persecution by the armed forces, including torture, rape and killings, due to the presence of opposition groups within their territories.” (Ethiopia CRC/C/ETH/CO/3, para. 79)

Indigenous children. Across the world aboriginal or indigenous peoples, particularly, have been reduced to pitiful states as the incoming culture has dominated, corrupted and exploited these groups’ culture and traditional activities. As the Human Rights Committee points out, cultural rights are often bound up with survival rights of territory, fishing and hunting. Special measures may have to be taken by the State Party to ensure that health and education services are supplied without interfering with cultural practices.

In 2003 the United Nations Permanent Forum on Indigenous Issues (UNPFII), an advisory body to the Economic and Social Council, made indigenous children and youth the focus of its second meeting. This called for new indicators to be developed by the United Nations to target the extreme problems faced by indigenous children across the world and for many of the United Nations agencies to pursue the very high levels of discrimination and exploitation these children suffer (Economic and Social Council, Permanent Forum on Indigenous Issues, second session, “Indigenous children and youth”, 2003, E/C.19/2003/L.1/Rev.1, May 2003). The Forum also welcomed the fact that indigenous children was the theme of a Day of General Discussion by the Committee on the Rights of the Child in the same year.

In the Day of General Discussion on “The rights of indigenous children”, the Committee noted:

“... although indigenous children are disproportionately affected by specific challenges such as institutionalization, urbanization, drug and alcohol abuse, trafficking, armed conflict, sexual exploitation and child labour... [they] are not sufficiently taken into consideration in the development and implementation of policies and programmes for children.” (Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, preamble, p. 133)

It called on States to sharpen their focus on these children and reminded them of their duties in relation to culture, for example to allow indigenous parents “to give their child a name of their own choosing” (para. 15). Among its recommen-



dations were those relating to education. States were asked to:

“... (a) review and revise school curricula and textbooks to develop respect among all children for indigenous cultural identity, history, language and values in accordance with the Committee’s General Comment No. 1 on ‘The aims of education’; (b) implement indigenous children’s right to be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as well as in the national language(s) of the country in which they live; (c) undertake measures to effectively address the comparatively higher drop-out rates among indigenous youth and ensure that indigenous children are adequately prepared for higher education, vocational training and their further economic, social and cultural aspirations; (d) take effective measures to increase the number of teachers from indigenous communities or who speak indigenous languages, provide them with appropriate training, and ensure that they are not discriminated against in relation to other teachers; (e) allocate sufficient financial, material and human resources to implement these programmes and policies effectively.”

(Committee on the Rights of the Child, Report on the thirty-fourth session, September/October 2003, CRC/C/133, para. 19, p. 136)

One of the difficulties facing indigenous populations, even today, is that the State, representing the dominant majority, sometimes believes that full integration is in their best interests, regardless of the effect this may have on their culture. Forced integration is a breach of rights and the Committee has recommended that States with significant indigenous populations adopt enforceable legislation to protect their rights. The Committee raised this concern with Brazil:

“The Committee welcomes the fact that social organization, customs, languages, creeds and traditions are recognized to indigenous communities in the Constitution of 1988. However, as noted by the State Party, the Indian Statute promotes for an integration which is not in accordance with the principle of respect for diversity of cultures. The Committee also welcomes the fact that, according to law 10.406/02, indigenous people are no longer considered ‘relatively incapable citizens’. It also welcomes the efforts made by the State Party to stimulate bilingual education. However, the Committee is deeply concerned by the low standard of living of indigenous children, low educational opportunities and quality of health services, and malnutrition.

“The Committee urges the State Party to pursue measures to effectively address the gap in life opportunities of indigenous children. Training and awareness-raising activities should be provided to break social prejudice, in order to revert the historical logic of colonization, which jeopardizes any chance of attaining genuinely equal treatment.

“The Committee also recommends that the State Party take adequate measures in order to provide protection for the rights of indigenous children, in particular their rights to preserve historical and cultural identity, customs, traditions and languages in accordance with the Constitution, and taking into account the recommendations adopted by the Committee on its day of general discussion on the rights of indigenous children in September 2003.” (Brazil CRC/C/15/Add.241, paras. 71 to 73)

The Committee suggested enforceable legislation to protect the rights of indigenous children to Mexico (where there are 56 officially recorded indigenous groups):

“Principles relating to ... the prohibition of discrimination in relation to children should be incorporated into domestic law, and it should be possible to invoke them before the courts.” (Mexico CRC/C/15/Add.13, para. 15)

In responding to Mexico’s Second Report, the Committee acknowledged that some progress had been made on behalf of indigenous children but reiterated that more effective measures must be taken (Mexico CRC/C/15/Add.112, paras. 18 and 29). When Mexico submitted its Third Report, the Committee again noted some progress but expressed its “deep concern” at these children’s continuing plight, recommending:

“... that the State Party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. The Committee further recommends that the State Party provide indigenous communities, with sufficient information, in their own language as well as in a child friendly format, regarding birth registration procedures, child labour, education and health, HIV/AIDS, child abuse and neglect, including corporal punishment, and on themes covered by the Optional Protocols to the Convention. In this regard, the Committee refers the State Party to its recommendations adopted following its day of general discussion on the rights of indigenous children at its thirty-fourth session in 2003 and to the recommendations issued by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, contained in his report E/CN.4/2004/80/Add.2.” (Mexico CRC/C/MEX/CO/3, para. 73)





Roma children. While not every country has an indigenous population, most countries these days have minority population of some sort. For example, in almost every European country the circumstances of Roma children have aroused the Committee's concern, particularly with regard to inadequate and discriminatory education:

"The Committee is concerned that there exists extensive discrimination regarding access to education by ethnic and/or national minorities, especially Roma (only 33 per cent of whom attend primary school)..."

"While the Committee welcomes the Law on the Protection of National Minorities, adopted by Parliament of Bosnia and Herzegovina on 1 April 2003, as well as the establishment of the Roma Committee, it remains concerned about the fact that continuing problems of ethnic discrimination and intolerance, including instances of violence and of daily discrimination, have a huge impact on the full enjoyment of the rights enshrined in the Convention by children belonging to ethnic minorities, especially Roma." (Bosnia and Herzegovina CRC/C/15/Add.260, paras. 57 and 75)

"The Committee notes with concern that most Roma children attend special schools because of real or perceived language and cultural differences between the Roma and the majority; that the School Act does not offer instruction in the Roma language; and the negative, stereotypical description of the Roma and their children in general, but especially in the initial report." (Slovakia CRC/C/15/Add.140, para. 47)

The Committee on the Elimination of Racial Discrimination's General Recommendation on racial discrimination against Roma emphasizes the need for changes to States' education policies (see page 416), and for States to respect Roma communities' wishes as to their culture and lifestyle, rather than trying to make them conform to the prevailing culture. It encourages initiatives to give Roma access to the media and to participate in public life. (Committee on the Elimination of Racial Discrimination, General Recommendation XXVII, 2000, HRI/GEN/1/Rev.8, pp. 259 *et seq.*)

Children in armed conflict. In its Day of General Discussion on "Children in armed conflict", the Committee on the Rights of the Child stressed *"the need to preserve the children's cultural environment"* (Report on the second session, September/October 1992, CRC/C/10, p. 23). Doing so may be difficult if, for example, a State is receiving refugee children from a different culture to its own. However, children suffering the trauma of war and displacement particularly need

the reassurance of familiar cultural practices. Securing their rights under article 30 is therefore of paramount importance.

State initiatives

The Committee encourages States to take active measures, including comprehensive strategies, to tackle negative attitudes towards minority cultures and to secure their rights under article 30. For example:

"In accordance with articles 2 and 30 of the Convention, the Committee recommends that the State Party:

(a) Initiate campaigns, at all levels and in all regions, aimed at addressing the negative attitudes towards the Roma in society at large, in particular among authorities such as the police and professionals providing health care, education and other social services;

(b) Based on the evaluation of previous strategies, develop and implement a comprehensive strategy for improving access to primary health care, education and social welfare services, in cooperation with Roma NGO partners, and targeting the whole Roma child population;

(c) Develop curriculum resources for all schools, including in relation to Roma history and culture, in order to promote understanding, tolerance and respect for Roma in Romanian society." (Romania CRC/C/15/Add.199, para. 65)

"The Committee recommends that the State Party take effective measures to protect the full enjoyment of the rights of children belonging to ethnic minority groups and undertake special measures to stimulate a process of reconciliation and confidence building, including wide-ranging educative and awareness-raising campaigns." (Bosnia and Herzegovina CRC/C/15/Add.260, para.76)

"The Committee recommends that the State Party... amend the draft Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo, so as to ensure that it explicitly covers all areas of the Convention on the Rights of the Child..." (Republic of the Congo CRC/C/COG/CO/1, para. 89)

The Committee has also welcomed state initiatives in recent years, for example those developed to redress past injustices to minority groups:

"The Committee welcomes the Statement of Reconciliation made by the Federal Government expressing Canada's profound regret for historic injustices committed against Aboriginal people, in particular within the residential school system. It also notes the priority accorded by the Government to improving the lives of Aboriginal people across Canada and by the numerous initiatives,

provided for in the federal budget, that have been embarked upon since the consideration of the initial report..." (Canada CRC/C/15/Add.215, para. 58)

"The Committee notes the national inquiry carried out in 1997 by HREOC [Human Rights and Equal Opportunities Commission] into the separation of Aboriginal and Torres Strait Island children ('Bringing Them Home'), which acknowledged the past policies whereby indigenous persons were deprived of their identity, name, culture, language and family. In this respect, the Committee welcomes the activities undertaken by the State Party to assist family reunification and improve access to records to help indigenous persons trace their families.

"The Committee encourages the State Party to continue and strengthen as much as possible its activities for the full implementation of the recommendations of the 1997 HREOC report, 'Bringing Them Home', and to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships." (Australia CRC/C/15/Add.268, paras. 31 and 32)

"The Committee welcomes various measures undertaken by the State Party, including the Working Group on Improved Integration and the campaign 'All young people are needed', which aim to ensure that all young people, irrespective of their ethnic background, enjoy equal opportunities in the Danish education system." (Denmark CRC/C/DNK/CO/3, para. 48)

"... to profess and practise his or her own religion"

Many minority groups are able to practise their religion without interference, but this is not always the case. This topic is also addressed under article 14 – the child's right to freedom of thought, conscience and religion (article 14, see page 185). Article 30 focuses on the violation of the rights of whole communities, of which the child is one member. In recognition of these violations the United Nations Commission on Human Rights appointed a Rapporteur to combat religious intolerance. The Special Rapporteur on freedom of religion or belief visits countries, sends communiques to States on urgent violations and reports annually to the Commission. Her 2006 report carried an in-depth analysis on various State prohibitions on the wearing of religious dress and symbols (E/CN.4/2006/5).

Article 11(1) of the Declaration on the Rights of Indigenous Peoples states: "Indigenous peoples

have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature." (Report to the General Assembly on the first session of the Human Rights Council, A/HRC/1/L.10, 30 June 2006, p. 63) The Committee on the Rights of the Child pursues violations of minorities' religious freedom, for example in the case of China where such interference has caused the Committee deep concern:

"In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population...

"The Committee recommends that the State Party seek a constructive response to [these] concerns..." (China CRC/C/15/Add.56, paras. 20 and 41)

When China submitted its Second Report, the Committee reiterated its concern:

"While noting the adoption of the Regional Ethnic Autonomy Act in 2001, which guarantees freedom of religion for ethnic minorities in mainland China, the Committee is concerned about reports that children, in particular Tibetan Buddhist, Uighur and Hui children, have been restricted in studying and practising their religion, and in some cases have been detained for participating in religious activities. It is also concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions, including re-education through labour..." (China CRC/C/CHN/CO/2, para. 44)

China was asked to explicitly guarantee children freedom of religion "not tied to a limited number of recognized faiths" and to repeal all existing bans on religious practices (CRC/C/CHN/CO/2, para. 45).

In the case of Indonesia, which "officially recognizes" five religions (Islamic, Catholic, Christian, Hindu and Buddhist), the Committee expressed its concern that

"... limiting official recognition to certain religions may give rise to practices of discrimination". (Indonesia CRC/C/15/Add.25, para. 13)



When examining Indonesia's Second Report the Committee welcomed:

"... the adoption of the 1999 Human Rights Act, which recognizes the right to freedom of religion and worship of everyone. However, the Committee is still concerned that the rights of children belonging to a minority or ethnic group are not recognized by the 1999 Human Rights Act..." (Indonesia CRC/C/15/Add.223, para. 90)

The Committee follows up findings of the Special Rapporteur on freedom of religion or belief, for example in relation to Algeria (see page 445).

"... to use his or her own language"

This right is about being able to speak a minority language without interference. Children's right to "use" their own language does not necessarily entitle them to be taught entirely in that language, though initially this may be necessary for refugee or immigrant children; the right may also involve positive measures to ensure that children are taught to speak their mother tongue in schools.

UNICEF reports that schooling in children's mother tongue "is the norm in most high-achieving countries. Contrast this with the situation in most Lusophone and Francophone African countries where instruction in the earliest grades is not in the mother tongue: these are the very countries with the lowest enrolment rates in the world" (S. Mehrotra, J. Vandemoortele, E. Delamonica, *Basic services for all?*, UNICEF, Innocenti Research Centre, 2000, p. 27). Equally, measures may be needed to ensure that children who speak a minority language are not impeded by 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.

Article 28 of ILO Convention (No.169), however, provides that: "Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to adopting measures to achieve this objective", as well as adopting measures to ensure fluency in the national language. This accords with article 14 of the Declaration on the Rights of Indigenous Peoples, which provides that States should take "effective measures" to ensure that children have access to education in their own language:

"1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language." (Report to the General Assembly on the first session of the Human Rights Council, 30 June 2006, A/HRC/1/L.10, p. 64)

The Committee on the Rights of the Child has suggested that States teach in minority languages:

"In the light of article 30, the Committee is concerned at the lack of measures taken to provide school education in all the existing languages and dialects." (Morocco CRC/C/15/Add.60, para. 14)

"The Committee ... recommends that the State Party allocate resources to translate school materials into minority languages with the objective to encourage, in the appropriate regions, schools and teachers to provide education in minority languages." (Myanmar CRC/C/15/Add.69, para. 39)



“The Committee ... welcomes the provision in the 1992 Constitution that in the early years of schooling teaching shall be in the student’s native language, the provision of instruction in both Spanish and Guaraní...”

“The Committee is concerned that adequate measures have not yet been taken to fully guarantee in practice the right of indigenous students to education in their native language, Guaraní...”

“The Committee recommends that the authorities take all appropriate measures to guarantee the full implementation of the right of the child to be educated in his/her language.” (Paraguay CRC/C/15/Add.75, paras. 3, 24 and 46)

It has also suggested the teaching of a minority language:

“The Committee also suggests that the State Party provide further support to the teaching of the Irish language in schools in Northern Ireland...” (United Kingdom CRC/C/15/Add.34, para. 33)

However, sometimes teaching children solely in their mother tongue may not be to their advantage, because it may ultimately disadvantage them. For example, the Committee took up this question with Estonia, which has a large Russian-speaking population:

“While welcoming the Programme on Integration in Estonian Society, 2000-2007, the Committee notes the tension arising around the question of the language of instruction of children belonging to minority groups in Estonia.

“The Committee recommends that the State Party:

(a) Take all measures to implement effectively Regulation No. 209 for mother tongue instruction for students whose mother tongue is not Estonian;

(b) Implement the Programme on Integration in Estonian Society in such a way that all the children of Estonia will be taught about the culture, history and identity of the various groups living in Estonia and that exchanges are organized between pupils of different schools in order to foster contacts, friendships and mutual respect among children from all groups of society;

(c) Guarantee the quality of instruction of the Estonian language to children belonging to minority groups so as to ensure that minority-language-speaking children can participate on a more equal level with Estonian-speaking children, in particular at higher education levels.” (Estonia CRC/C/15/Add.196, paras. 52 and 53)

Similarly, the Committee raised concerns with China

“... about reports that school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that the quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may disadvantage Tibetan and other minority pupils applying to secondary and higher level schools...”

The Committee suggested

“... that a review be undertaken of measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing.” (China CRC/C/15/Add.56, paras. 19 and 40)

The concept of “bilingual intercultural education” is proposed, for example to Panama:

The Committee... recommends that the State Party pay particular attention to guarantee the preservation of the identity of indigenous and Afro-Panamanian children, e.g. by the implementation of the national plan to develop bilingual intercultural education.” (Panama CRC/C/15/Add.233, para. 64)

Whichever course is adopted, teachers must be appropriately trained:

“In the light of article 30 of the Convention, [the Committee] is also worried about the insufficient number of teachers capable of working with minority children...”

“... and encourages the relevant authorities to undertake all appropriate measures... to ensure that sufficient teachers for minority children are available in all regions of the country.” (Finland CRC/C/15/Add.53, paras. 18 and 28)

“With respect to indigenous communities, the Committee takes note of the State Party’s efforts to increase the number of schools providing bilingual education. It is however concerned at the insufficient number of indigenous teachers and schools, and at the fact that education does not fully take into account indigenous culture.

“The Committee recommends that the State Party continue to increase the number of indigenous schools and adequately trained indigenous teachers, and ensure the right of indigenous children to learn to read and write in their own language through methods adapted to their own culture....” (Costa Rica CRC/C/15/Add.266, paras. 57 and 58)





The Committee has taken particular pains to recommend that the provisions of the Convention and other human rights are translated into all minority languages, for example:

“In view of the State Party’s willingness to develop a culture of human rights and to change attitudes towards children in general and the indigenous population in particular, the Committee recommends that information and education about children’s rights be disseminated among children and adults alike. It is also recommended that consideration be given to the translation of such information into the main indigenous languages and that appropriate measures be adopted to spread such information in such a way that it reaches groups affected by a high level of illiteracy. In the light of the considerable experience of the United Nations Children’s Fund and other organizations in responding to such challenges, it is recommended that international cooperation be sought in this regard.” (Guatemala CRC/C/15/Add.58, para. 29)

“The Committee recommends that the State Party take all necessary measures to protect the rights of indigenous children

against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. The Committee further recommends that the State Party provide indigenous communities with sufficient information, in their own language as well as in a child-friendly format, regarding birth registration procedures, child labour, education and health, HIV/AIDS, child abuse and neglect, including corporal punishment, and on themes covered by the Optional Protocols to the Convention...” (Mexico CRC/C/MEX/CO/3, para. 73)

The Committee has also recommended the translation of the State’s Periodic Reports and the Committee’s Concluding Observations (which of course include important statements relating to specific minority groups). For example:

“The Committee recommends that the report of the State Party, the records of the dialogue held between itself and the State delegation and the Concluding Observations adopted by the Committee be widely disseminated throughout the nation in all minority languages as well as in Croatian...” (Croatia CRC/C/15/Add.52, para. 28)

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

Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 30, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 30 is relevant to the **departments of education, home affairs, social welfare, health, media and communications**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 30 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 30 likely to include the training of **teachers, social workers and police**)?

• Specific issues in implementing article 30

- Are measures taken to identify population groups of children belonging to an ethnic, religious or linguistic minority or who are of indigenous origin?
- Are measures taken to ensure that such children are not denied the right to enjoy their own culture in community with members of their group?
- Are measures taken to ensure that such children are not denied the right to profess or practise their own religion in community with members of their own group?
- Are measures taken to ensure that such children are not denied the right to use their own language in community with members of their group?

Do these measures include action taken

- in school?
- in the mass media?
- when children are separated for any reason from their parents, family or community?
- in legal proceedings?
- Where such children are taught in their mother tongue, are they also taught the majority language?

How to use the checklist, see page XIX



- Where such children are, for whatever reason, not fluent in the language used by their minority group, are measures available for teaching them this language?
- Are the provisions of the Convention, the Initial and Periodic Reports and all proceedings of and with the Committee on the Rights of the Child translated into all minority languages?
- Are children's rights against interference in their culture, religion and language under this article protected and enforceable in law?
- Has the State considered the implications for law policy and practice of the Declaration on the Rights of Indigenous People?
- Are Government-sponsored campaigns initiated, where necessary, to combat prejudice against minorities or indigenous groups?
- Have children from these groups been asked whether the measures taken under this article are appropriate or sufficient?

Reminder: The Convention is indivisible and its articles interdependent. Article 30 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 30 include:

Article 5: respect for responsibilities of extended family or community for the child

Article 8: right to preserve identity

Article 16: protection from arbitrary interference in family and home

Article 20: continuity of ethnic, religious, cultural and linguistic background if placed away from family

Article 21: intercountry adoption only to be considered if the child cannot be cared for in his or her own country

Article 22: special protection for refugee children

Article 24: protection from traditional practices prejudicial to health

Article 28: education to be provided on the basis of equal opportunity

Article 29: education to be directed to development of respect for all cultures and friendship between all peoples

Article 40: right to an interpreter in the juvenile justice system

Child's right to leisure, play and culture



Text of Article 31

- 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.*
- 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.*

Article 31 concerns the child's rights to rest, leisure, play and recreational activities and to participate in cultural and artistic life.

The words "rest", "leisure", "play" and "recreational activities" appear on one level to be synonymous, because they are all about not working. But although not working is a unifying factor, the four words contain important differences. "Rest" includes the basic necessities of physical or mental relaxation and sleep, "leisure" is a wider term implying having the time and freedom to do as one pleases, "recreational activities" embrace the whole range of activities undertaken by choice for the purposes of pleasure (including a number which can simultaneously be termed work, such as sports, arts, crafts and scientific or agricultural pursuits) and "play" is arguably the most interesting in terms of childhood, in that it includes children's activities which are not controlled by

adults and which do not necessarily conform to any rules.

Children's right to play is sometimes referred to as the "forgotten right", perhaps because it appears to the adult world as a luxury rather than a necessity of life, and because children always find ways and means of playing, even in the most dire circumstances. But play is an essential part of development: children who are unable to play, for whatever reason, may lack important social and personal skills.

Children's cultural rights include both their right of access to cultural and artistic events, and their right to undertake such activities themselves – both to join with adults in appropriate cultural and artistic pursuits and to enjoy their own. (The word "culture" in the rest of the Convention is used to refer to traditions and customs; in article 31 the word "cultural" appears to be used in its artistic sense.) ■

Summary

Background

Principle 7 of the 1959 Declaration of the Rights of the Child states: “The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.” Article 31 of the Convention on the Rights of the Child noticeably does not prescribe the purpose of play and recreation. Children are just as entitled as adults to forms of play and recreation which appear purposeless to others, though adults do have responsibilities to prevent them from engaging in leisure pursuits which are actively harmful.

The *Manual on Human Rights Reporting*, 1997, comments that the Convention’s article 31 “should also be considered in combination with other relevant articles of the Convention, which will lead to recognition that the right to play and recreation should be taken into account in the framework of the right to education, thus contributing to the development of the child’s abilities to their fullest potential. Similarly, in those specific circumstances, activities and ages under which children below 18 may work, in the light of article 32, the right to rest and leisure should be equally and necessarily ensured. In situations covered by article 39 relating to the recovery and social reintegration of the child victim of any form of neglect, exploitation and abuse, torture or armed conflicts, the engagement in play and recreational activities may further gain an instrumental and healing role by promoting the child’s self-esteem and trust and his or her growing participation in life.” The *Manual* also points out that sports activities and competitions in leisure pursuits “which may seem to be primarily designed to promote the child’s well-being” should not damage the child’s physical or psychological development (*Manual*, p. 468; see also article 36, page 543).

In its General Comment No. 7 on “Implementing child rights in early childhood”, the Committee notes that

“... insufficient attention has been given by States Parties and others to the implementation of the provisions of article 31.”

The General Comment continues:

“... Play is one of the most distinctive features of early childhood. Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is often hindered

by a shortage of opportunities for young children to meet, play and interact in child-centred, secure, supportive, stimulating and stress-free environments. Children’s right-to-play space is especially at risk in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. Children’s right to play can also be frustrated by excessive domestic chores (especially affecting girls) or by competitive schooling. Accordingly, the Committee appeals to States Parties, non-governmental organizations and private actors to identify and remove potential obstacles to the enjoyment of these rights by the youngest children, including as part of poverty reduction strategies. Planning for towns, and leisure and play facilities should take account of children’s right to express their views (art. 12), through appropriate consultations. In all these respects, States Parties are encouraged to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play.” (Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 34)

Children’s right to “rest and leisure”

Rest is almost as important to children’s development as the basics of nutrition, housing, health care and education. Indeed, over-tired children may be unable to learn and are more susceptible to illness. A primary responsibility of ratifying States is, therefore, to ensure that children who work have adequate time for sleep and relaxation. The ILO Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79) and the ILO Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90) protect children from working at night. The ideal principle set out in these provisions is that children under the age of 14 or in full-time education should have a consecutive period of 14 hours to rest including the period between eight o’clock in the evening and eight o’clock in the morning (article 2(1) of ILO Convention (No.79)), that all children under the age of 16 should have 12 hours’ rest (article 3 of Convention (No.79) and article 2 of Convention No.90)), and 16- to 18-year-olds at least seven hours (article 2 of Convention (No.90)).

These are qualified safeguards – for example, States are permitted to exempt children from these Conventions if they are in domestic service or are working in non-hazardous occupations with their families; and yet millions of children



across the world work long hours in conditions of near slavery as domestic workers, and many more are forced by their family circumstances to work in family enterprises without adequate rest or education throughout most of their childhood.

The right to leisure encompasses more than just having sufficient time to sleep at night. Discussion under articles 29 and 32 explores the problems engendered by children's need to work and the complex relationship between children's work and education. Article 31 is necessary as a reminder that, in addition, children need some space for themselves between work and education (article 16, the right to privacy, may also be relevant).

In the drafting sessions Canada proposed an amendment requiring "parents, States Parties, educational institutions and others caring for children" to make "reasonable limitations on school and working hours" (E/CN.4/1983/62, Annex II; Detrick, p. 415). Countries have very different legal interpretations of how many hours compulsory education should take up in a year and very different practices relating to homework (school work done at home). Some countries have customs and laws reserving one day of the week and additional religious festivals as free from work; others have regulations which ensure that children are only permitted to work for remuneration on one day of each weekend and only a portion of school holidays; others ensure that the school day has frequent rest periods. Children in compulsory schooling are, after all, already working full time if homework is taken into account – indeed, often being forced into overtime in adult terms. If they undertake paid work in addition to schooling, they may rarely have a minute off for months on end.

During discussion of El Salvador's Initial Report, a Committee member stated: "As far as the employment of children was concerned, while legislation appeared to draw a balance between work and school, access to education did not only mean school attendance. It also meant ensuring that a child had the time to think about what he was learning, to do homework, and also to have the time to play and be a child." (El Salvador CRC/C/SR.86, para. 62)

The Committee raised such concerns with, for example, Japan and Lithuania:

"The Committee notes the State Party's efforts to reform the education system and bring it into greater conformity with the Convention; however, it is concerned that... the excessively competitive nature of the education system has a negative effect on the children's

physical and mental health and hampers the development of the child to his or her fullest potential..." (Japan CRC/C/15/Add.231, para. 49)

"The Committee notes with concern that the State Party has not given adequate consideration to the rights of children to rest and leisure ... [and] ... at the increase in the school workload, which causes stress and tension among students.

"The Committee recommends that the State Party pay adequate attention to planning leisure and cultural activities for children, taking into consideration the physical and psychological development of the child... Furthermore, the Committee recommends that the State Party review the school programmes to reduce the stress level of students and help them deal with its effects." (Lithuania CRC/C/LTU/CO/2, paras. 58 and 59)

Lack of rest and leisure time is not just a problem for rich countries. Children in poor countries are often, of course, exposed to overwork and related stress. For example, the Committee raised its concerns with Benin:

"... that the right to rest is not systematically recognized to children in informal education or to working children." (Benin CRC/C/BEN/CO/2, para. 63)

Children's participation in adult forms of recreation can be extremely taxing and brutal as, for example, the Committee pointed out to the United Arab Emirates:

"Despite noting some efforts by the State Party, the Committee is seriously concerned at the hazardous situation of children involved in camel racing. In particular, it is concerned that very young children are sometimes involved; that children are trafficked, particularly from Africa and South Asia, for this purpose; that children are denied education and health care; and that such involvement produces serious injuries, even fatalities. It concurs with the ILO Committee of Experts on the Application of Conventions and Recommendations, which has previously indicated to the State Party that the employment of children as camel jockeys constitutes dangerous work under article 3, paragraph 1, of ILO Convention No.138." (United Arab Emirates CRC/C/15/Add.183, para. 40)

Right to "engage in play and recreational activities appropriate to the age of the child"

As discussed above, play and recreational activities can be distinguished from each other in so far as play is unstructured and free from adult direction (although it may be facilitated and overseen by adults), whereas recreational activities





Declaration of the Child's Right to Play

The International Association for the Child's Right to Play (IPA, given consultative status with UNESCO and UNICEF) adopted a *Declaration of the Child's Right to Play*, which states a deep concern about:

“... a number of alarming trends and their negative impact on children's development:

- Society's indifference to the importance of play;
- Over-emphasis on theoretical and academic studies in schools;
- Increasing numbers of children living with inadequate provisions for survival and development;
- Inadequate environmental planning, which results in a lack of basic amenities, inappropriate housing forms, and poor traffic management;
- Increasing commercial exploitation of children and the deterioration of cultural traditions;
- Lack of access for third world women to basic training in child care and development;
- Inadequate preparation of children to cope with life in a rapidly changing community;
- Increasing segregation of children in the community;
- The increasing numbers of working children, and their unacceptable working conditions;
- Constant exposure of children to war, violence, exploitation and destruction;
- Over-emphasis on unhealthy competition and 'winning at all costs' in children's sports.”

The Declaration calls for action by five government departments: health, education, welfare, leisure and planning, for more play-oriented professionals and for fewer commercial or violent games and toys.

are largely defined by adults and, indeed, include many elements of a school curriculum – sports, performing and creative arts, mathematics and technology and so forth. However, one of the defining characteristics of both play and recreation is that they are not compulsory.

Few countries give adequate priority to children's right to “play”. The haphazard, anarchic nature of play contributes nothing obvious to the nation's economy or international profile. However, play does contribute a great deal to children's physical and psychological health. Many social skills, such as negotiation, sharing and self-control, are gained through unsupervised play with other children. In terms of physical development, it is essential that children spend time exercising their bodies.

Although the range of children's play is enormous and ever-changing, children's basic play needs are relatively simple. All that is required is safe, accessible space for children's use, preferably containing possibilities for creating or changing things, for exploring and physical exertion.

The Committee has therefore encouraged governments to promote children's play:

“The Committee is concerned that children living in urban centres have very few areas, such as parks, in which they can play safely and that the State Party itself notes in its report the absence of parks in the country...”

“The Committee recommends that the State Party... ensure the existence of areas, such as parks, within urban centres, which may be used by children for leisure activities; [and] ... consider the adoption of legislation or administrative rules, and the allocation of an appropriate budget, to ensure that leisure areas for children are maintained as a priority in urban planning decisions.” (Guinea Bissau CRC/C/15/Add.177, paras. 46 and 47)

“The Committee recommends that the State Party improve respect for the right of children to leisure and cultural activities, including by promoting these rights among parents, teachers and community leaders. The Committee recommends that the State Party seek assistance from UNESCO and UNICEF in this regard.” (Rwanda CRC/C/15/Add.234, para. 59)

“The Committee shares the concern expressed in the State Party's report that much of the cultural and recreational infrastructure does not function in Albania, and that playgrounds are almost non-existent.”

“The Committee recommends that the State Party consider the need for playgrounds and child-friendly parks in city planning and increase efforts to provide more appropriate spaces for children allowing them to enjoy the right to leisure, recreation and cultural activities.” (Albania CRC/C/15/Add.249, paras. 62 and 63)

Children’s recreational activities tend to be similar to adult recreational pursuits – sports, games, films, crafts and so forth. The questions to be asked here are: do children have equal access to recreational facilities? Are resources for recreational activities equitably distributed between children and adults? And there is also the question: are some children’s activities genuinely recreational? Children can be coerced into activities called recreation but which they would not choose to do if left to themselves, and which give them little pleasure. Modern agricultural methods, spiralling traffic demands and poor city planning are all the enemy of children’s play. Television and computer games, though providing culture and entertainment, must also be seen as sometimes inimical to play and recreation “appropriate to the age of the child”. The Committee has expressed concern about the modern threat of childhood obesity; medical organizations in the developed world are reporting with alarm the “coronary time bomb” arising from the new phenomenon of children spending too much time inside schools, homes and cars, in front of televisions and computers. For example the Committee observed to Mexico:

“The Committee is concerned about the lack of recreational activities, in particular sport facilities and playgrounds, and about the insufficiency of resources and infrastructure to guarantee the right to sport and leisure. The Committee notes with concern the relation between the lack of implementation of this right and the increase of children obesity. “The Committee recommends that the State Party ensure that all children have access to sport and recreational activities by;

- (a) Increasing the hours and quality of sport programmes in schools;*
- (b) Developing specific sports and leisure programmes for children and adolescents;*
- (c) Increase allocation of resources for the development of infrastructure and of recreational and cultural activities.” (Mexico CRC/C/MEX/CO/3, paras. 58 and 59)*

Children’s right “to participate freely in cultural life and the arts”

This right encompasses both the right of children to join with adults in their cultural and

artistic pursuits and the right to child-centred culture and arts; it also includes the right of children to be both consumers and producers of arts and culture. The Committee has suggested a range of activities to which children should have access:

“The Committee recommends that the State Party organize cultural after-school activities such as drawing, plastic arts, dance and music, in participation with children, and make available free and accessible public sports facilities.” (Netherlands Antilles CRC/C/15/Add.186, para. 55)

Thus, children should not be barred from adult events or performances without good reason (for example, because the child might be psychologically harmed or because young infants might disrupt a performance). In addition, children should be given opportunities to participate in all forms of cultural and artistic activity as well as enjoy performances and exhibitions designed specifically for their pleasure.

This right obviously relates to children’s rights under article 13 (freedom of expression), article 15 (freedom of association), article 17 (access to the media and to children’s books) and article 30 (enjoyment of minority cultures). And, given the essentially voluntary and pleasurable nature of the right, the principles of article 12 (taking account of children’s views) should be given high priority. It should be noted that children’s views of what they want in recreational pursuits are often energetically sought by the commercial world for marketing purpose; these views do, indeed, determine what children get, but, unfortunately, often in terms of the lowest common denominator. Children’s participation should be sought by those planning more creative and stimulating cultural activities.

States Parties’ obligations to promote and encourage opportunities for children’s participation in cultural, artistic, recreational and leisure activities

Because children tend to lack power and money, they are usually dependent on the adult world, including the government, for their access to recreational, sporting and cultural opportunities. Mongolia painted a bleak picture to the Committee of the leisure activities of children in its post-communist period, which highlights the need for active state measures: “We could say that before 1990 there existed a complex system of activities for children to be involved in during their leisure time. But with the political and economic reform,





the change in the administrative units of Mongolia and the reorganization of public organizations, certain changes have transpired with regard to their functions, structure and activities. With privatization, many of the cultural clubs, libraries, cinema houses, sport halls and museums were closed down over the last three years; many of the establishments designed to conduct children's activities have changed their orientation. As a result, the number of children attending leisure-time activities has necessarily been decreased. The decline in the number of children participating in these activities is closely linked to the introduction of fees for all these courses and activities. There is a new demand to conduct activities linked with production of marketable goods..." (Mongolia CRC/C/3/Add.32, para. 200)

Ten years after this report the situation had worsened:

"The Committee notes with concern the insufficient number of recreational and cultural activities and facilities for children living in cities and that many playgrounds built for them have been destroyed during the last decade.

"In the light of article 31 of the Convention, the Committee recommends that the State Party pay attention to the right of the child to engage in play and increase its efforts to promote and protect the right of the child to rest, leisure, cultural and recreational activities by allocating adequate human and financial resources to the implementation of this right, including by designing and building safe playgrounds for children living in cities." (Mongolia CRC/C/15/Add.264, paras. 54 and 55)

Analysis of government spending on culture, sports and the arts often reveals an unjustifiably small proportion of resources being used for children's benefit. The Committee is increasingly stressing the importance of States taking an active role in the implementation of article 31:

"The Committee is concerned that while the child's right to leisure, recreation, and cultural activities is recognized within the principles of legislation guiding service development, this right is not ensured explicitly within such legislation. The Committee further notes that existing recreational facilities are not always accessible to all children." (Saint Lucia CRC/C/15/Add.258, para. 64)

"While welcoming initiatives such as the National Play Policy which contains several activities and responsibilities for a number of government departments, local authorities and health boards and enhances the opportunities for children to enjoy leisure, recreation and cultural activities, the Committee is concerned that little political and

financial importance is given to the creation of recreational facilities and that increasing housing demands may further hamper the developments of playgrounds and public space.

"The Committee recommends that the State Party place more emphasis on the creation of facilities for children to enjoy leisure, recreation and cultural activities." (Ireland CRC/C/IRL/CO/2, paras. 62 and 63)

Equal opportunities

Along with many of the Convention's provisions, certain categories of children need more attention and resources in order to enjoy their rights under article 31. Poor children are not necessarily deprived of leisure and culture – children from the poorest communities of the world have some of the richest lives in these terms. But poverty of environments, particularly in urban ghettos, the cost of many modern recreational activities and the need to work are obvious obstacles to the exercise of article 31's rights. State measures in this area may, therefore, have to be targeted on poorer children. The Committee has expressed concern about discrimination in relation to article 31:

"The Committee notes with concern that many children, especially in Black communities, do not enjoy the right to leisure, recreation and cultural activities... In the light of article 31, the Committee recommends that the State Party take effective measures to ensure that children, especially those in Black communities, enjoy the right to leisure, recreation and cultural activities." (South Africa CRC/C/15/Add.122, para. 34)

"Notwithstanding the State Party's efforts to develop and organize sports and cultural activities for children, the Committee notes with concern the insufficient number of recreational and cultural activities and facilities for children and the discrepancies between barangays in this respect. The Committee is concerned that there are several groups of children, such as children not involved in primary education, child labourers and street children, who neither have equal right to enjoy their right to rest and leisure nor to engage in play, sport, recreational and cultural activities. In the light of article 31 of the Convention, the Committee recommends that the State Party make all necessary efforts to protect the right of the child to rest, leisure, cultural and recreational activities. The Committee recommends that the State Party strengthen its efforts to promote the right of the child to engage in play by providing children with creative play facilities. It requests the allocation of adequate human and financial resources to the implementation of this right

and the payment of particular attention to vulnerable groups of children, such as children outside of the educational system, child labourers and street children.” (Philippines CRC/C/15/Add.259, paras. 71 and 72)

Resources should be directed towards children of all ages. Infants and younger children are as much in need of the stimulation and enjoyment of recreation as are older children, as was pointed out to Belize :

“The Committee expresses its concern at the lack of policies and programmes aimed at mother and child interaction activities within the home to promote leisure and creative play for children, particularly those under the age of two years. The Committee notes that such activities have a crucial bearing on the development of the child’s cognitive abilities and their social and emotional development. In the light of article 31 of the Convention, the Committee recommends that the State Party undertake studies on play involving mother and child interaction with a view to developing adequate programmes and policies in this regard.” (Belize CR/C/15/Add.99, para. 23)

In addition, children with disabilities need particular assistance in gaining access to or using recreational facilities and particular stress needs to be given to inclusive forms of recreation. Children with disabilities may still be receiving special education separately from their peers (contrary to their human rights, see article 23, page 321); so recreation may be the only opportunity for integrated activities and is thus particularly important. The Convention on the Rights of Persons with Disabilities, adopted in December 2006, provides:

“1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) Enjoy access to cultural materials in accessible formats;
- (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance...

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities,

States Parties shall take appropriate measures:

- (a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- (c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- (d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- (e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.” (Article 30)

In its General Comment No. 9 on “The rights of children with disabilities”, the Committee states:

“... Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

“Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

“Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive form whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have exclusive games and activities where they can compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities.” (Committee on the Rights of the Child, General Comment No. 9, 2006, CRC/C/GC/9, paras. 44 to 46)



Children in closed institutions, such as hospitals or forms of detention, will also require special measures. The Committee told Hong Kong that it *“... notes with appreciation the initiatives taken to make hospitals more baby- and child-friendly, including the measures being taken to... provide play areas for children in paediatric wards.”* (United Kingdom dependent territory: Hong Kong CRC/C/15/Add.63, para. 7)

As regards children whose liberty has been restricted, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty is quite clear on their rights:

“18(c). Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice...

“47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which

time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.”

Finally, although not specifically raised by the Committee, the discrimination against girls in this area should be mentioned, since it is an almost universal phenomenon that domestic chores give girls less time to play than boys, and that where play space is available boys take up an unequal amount. Adults cooperating with children can usually remedy this, but measures are needed.

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 31, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 31 is relevant to the **departments of culture and sport, education, labour, health, welfare and planning**)
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 31 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 31 likely to include the training of **play workers, town and environment planners, employment inspectors, administrators of art and culture, artists, teachers and social workers**)?

• Specific issues in implementing article 31

- Are necessary measures taken to secure the right of the child to rest and leisure?
- Do such measures include prohibitions on children working at night or working throughout all school holiday periods?
- Have ILO Conventions Nos.79 and 90 been ratified?
- Do compulsory school hours and homework regimes allow for rest and leisure periods?
- Does environmental planning take into account the play needs of children?
- Does this planning take account of children's views of what is needed?
- Are play and recreational opportunities appropriate to all ages of children (including preschoolers and teenagers) available without discrimination?
- Are resources allocated for sports, culture and the arts divided fairly between adults and children?
- Do all children have reasonable access to all cultural and artistic events?

How to use the checklist, see page XIX



- Are there any limitations on the participation of all children in cultural life and the arts?
- Are cultural and artistic events organized specially for children?
- Are children given access to cultural and artistic events through financial concessions or discounts?
- Do children with disabilities have access to integrated recreational, cultural and artistic activities?
- Do children in hospital have opportunities for play and recreational activities?
- Do children in institutions have opportunities for play, sports and recreational, artistic and cultural activities?
- Do children whose liberty has been restricted have opportunities for physical exercise, recreation and artistic or cultural activities?
- Are measures taken to ensure that girls have as equal an opportunity as boys for rest, leisure, play and recreation and to enjoy cultural and artistic activities?

Reminder: The Convention is indivisible and its articles interdependent.
Article 31 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 31 include:

Article 13: freedom of expression

Article 14: freedom of thought, conscience and religion

Article 15: freedom of association

Article 16: protection of privacy

Article 17: access to information, role of the media

Article 23: children with disabilities

Article 28: aims of education

Article 30: respect for minority or indigenous culture

Article 32: child labour

Article 36: protection from exploitation

Child labour

article

32

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 Organization (ILO) Conventions and Recommendations, including in particular the Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour Convention, 1999 (No.182) (see pages 729 and 759). The Committee on the Rights of the Child consistently encourages States Parties to ratify these Conventions. ■

Summary

International instruments and standards concerning child labour

The International Labour Organization (ILO)

In its 2006 Global Report, *The end of child labour: Within reach*, ILO reports: “In 2004 there were 218 million children trapped in child labour, of whom 126 million were in hazardous work. Although the participation of girls in child labour and hazardous work is on a par with that of boys in the youngest age group (5-11 years), boys predominate considerably at older ages in both categories. However, the number of child labourers globally fell by 11 per cent over the last four years, while that of children in hazardous work decreased by 26 per cent. For the age group of 5-14 years the decline in hazardous work was even steeper – by 33 per cent. The global picture that emerges is that child work is declining, and the more harmful the work and the more vulnerable the children involved, the faster the decline.

“Latin America and the Caribbean are making the greatest progress – the number of children at work has fallen by two-thirds over the last four years, with just 5 per cent of children now engaged in work. The least progress has been made in sub-Saharan Africa, where the rates of population growth, HIV/AIDS infection and child labour remain alarmingly high.” (Report of the Director-General, *The end of child labour: Within reach*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 95th Session, 2006, Report I (B), Executive Summary, p. XI)

These estimates do not cover children who are engaged in regular non-economic activities, including those who provide services of a domestic nature on a full-time basis in their parents’ or guardians’ households. While a majority are in developing countries, there are pockets of child labour in industrialized countries. Data suggests that more boys than girls work. The International Conference of Labour Statisticians (ICLS) to be held in 2008 will discuss the international guidance for statistical measurement of child labour, including the issue of non-economic activities. ILO has also developed the Statistical Information and Monitoring Programme (SIMPOC) to assist individual States in generating comprehensive quantitative and qualitative data on child labour (see www.ilo.org/public/english/standards/ipecc/simpoc/index.htm).

In its 2002 first Global Report, *A future without child labour*, ILO reported: “Millions of children worldwide are engaged in labour that is hindering their education, development and future livelihoods; many of them are involved in the worst forms of child labour that cause irreversible physical or psychological damage, or that even threaten their lives. This situation represents an intolerable violation of the rights of individual children, it perpetuates poverty and it compromises economic growth and equitable development.” (Report of the Director-General, *A future without child labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 90th Session, 2002, Report I (B), Executive Summary, p. IX)

The Report clarifies the boundaries of child labour for abolition. The term “child labour”, as used here, does not encompass all work performed by children under the age of 18, but that which violates international standards. Many children, in very different national circumstances, carry out work that is entirely consistent with their education and full physical and mental development. Drawing on the provisions of Conventions No.138 and No.182, the Report identifies three categories of child labour to be abolished:

- (1) Labour performed by a child who is *under a minimum age* specified in national legislation in line with international standards for that kind of work.
- (2) Labour that jeopardizes the physical, mental or moral well-being of a child, known as *hazardous work*.
- (3) The *unconditional worst forms of child labour*, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution and pornography and illicit activities. (Executive Summary, p. X)

The Report notes the difficulties of monitoring and assessing the extent of child labour: “Regardless of the economic sector in which it occurs, and almost by definition, child labour is associated closely with the unregulated informal economy, which is largely beyond the reach of formal institutions, including labour inspection services. Although media coverage has tended to focus public attention on certain groups of child labourers, such as street children, those in export-oriented manufacturing and those in commercial sexual exploitation by foreign tourists, such groups are numerically in the minority. The majority of working children, some 70 per cent, are in reality



to be found in the agricultural sector, most often on small-scale family holdings, but also on commercial agricultural plantations. While this work may in some cases be natural, many aspects of it – for example, long hours, and use of poisonous chemicals or inappropriate or dangerous equipment – can be extremely hazardous.

“Children in developing countries are not the only ones affected by the hazards of agricultural work. The report shows that in some industrialized countries this sector accounts for the largest number of occupational fatalities of those under 18.

“Some child labourers are highly visible, such as street children working in the urban informal economy. Others, such as child domestic workers, are effectively hidden from public view and are thus particularly vulnerable, including to physical, emotional and sexual abuse. Rather than working in formal sector establishments that produce for export, the majority of child labourers in manufacturing toil in supply chains producing for the domestic market, for example, in the production of fireworks, matches or incense sticks. A reported increase in home-based production of these and other goods, in response to heightened competitive pressures, brings with it an increased potential for exploitation of child labour. Such hidden groups of children present particular challenges for research and effective action.” (Executive Summary, p. XI)

Having reviewed children’s participation in what are generally legitimate sectors of economic activity, in which the type or conditions of work transform it into unacceptable child labour, *A future without child labour* addresses the unconditional “worst forms of child labour”, which in all cases represent extreme violations of children’s rights. Labour practices such as child trafficking, debt bondage and forced recruitment into armed conflict, as well as child labour in prostitution, pornography and illicit activities such as the drugs trade, are tragically all too prevalent today. Although it is impossible to know the extent of such activities with any degree of precision, their devastating effects on their child victims are obvious and increasingly being brought to the world’s attention.

The Report says that available estimates of children’s involvement in the unconditional “worst forms of child labour” indicate (in 2000) a global total of at least 8.4 million girls and boys of all ages. “The majority of these (two-thirds of the total) is thought to be trapped in forms of forced and bonded labour. Approximately one-fifth,

nearly 2 million children, is believed to be exploited through prostitution and pornography.” (*A future without child labour*, Part I, para. 51, p. 17)

International labour conventions

Since 1919, the International Labour Organization has adopted a number of international conventions concerning child labour (see box, page 482), which are supplemented by recommendations. The Minimum Age (Industry) Convention, 1919 (No.5) prohibits children under the age of 14 from working in industrial establishments. Subsequently, other sectoral conventions on the minimum age of admission to employment were adopted, applying to industry, agriculture, trimmers and stokers, maritime work, non-industrial employment, fishing and underground work. Many other ILO standards contain provisions setting minimum ages for various activities. Furthermore, general international labour conventions regarding freedom of association, non-discrimination, the abolition of forced labour, wages and safety and health apply to all workers regardless of age. Conventions (No.138) and (No.182) are considered as fundamental and form part of the principles to be respected by all ILO Member States under the ILO Declaration on the Fundamental Principles and Rights at Work (1998).

ILO Minimum Age Convention (No.138) and Recommendation (No.146)

The most comprehensive ILO instrument on child labour is the Minimum Age Convention, 1973 (No.138), supplemented by Recommendation (No.146). Convention (No.138), in particular, has been upheld by the Committee on the Rights of the Child as a relevant standard, and States Parties that have not already ratified it have been urged to do so by the Committee (see below, page 495). The Minimum Age Convention is a consolidation of principles that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether the children are employed for wages or not (for details, see “ages” below, page 495). According to ILO: “The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to





ILO Conventions particularly relating to children

Minimum Age (Industry) Convention, 1919 (No.5);
Night Work of Young Persons (Industry) Convention, 1919 (No.6);
Minimum Age (Sea) Convention, 1920 (No.7);
Minimum Age (Agriculture) Convention, 1921 (No.10);
Minimum Age (Trimmers and Stokers) Convention, 1921 (No.15);
Forced Labour Convention, 1930 (No.29);
Minimum Age (Non-Industrial Employment) Convention, 1932 (No.33);
Minimum Age (Sea) Convention (Revised), 1936 (No.58);
Minimum Age (Industry) Convention (Revised), 1937 (No.59);
Minimum Age (Non-industrial Employment) Convention (Revised), 1937 (No.60);
Medical Examination of Young Persons (Industry) Convention, 1946 (No.77);
Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.78);
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No.79);
Night Work of Young Persons (Industry) Convention (Revised), 1948 (No.90);
Minimum Age (Fishermen) Convention, 1959 (No.112);
Minimum Age (Underground Work) Convention, 1965 (No.123);
Medical Examination of Young Persons (Underground Work) Convention, 1965 (No.124);
Minimum Age Convention, 1973 (No.138);
Worst Forms of Child Labour Convention, 1999 (No.182).

attain the objectives. Recommendation (No.146), which supplements Convention (No.138), provides the broad framework and essential policy measures for both the prevention of child labour and its elimination.” (*Child labour: Targeting the intolerable*, International Labour Conference, 86th Session, 1998, ILO, Geneva, first published in 1996, p. 19)

By August 2007, 150 countries had ratified Convention (No.138).

ILO 1999 Worst Forms of Child Labour Convention (No.182)

On 17 June 1999, the Worst Forms of Child Labour Convention (No.182), together with the Worst Forms of Child Labour Recommendation (No.190), were adopted by the General Conference of the ILO.

The Convention requires Member States which ratify it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (article 1). The Convention applies to all persons under 18, without exception. The “worst forms of child labour” are defined in article 3 (see box, page 487). The definition includes work “likely to harm the health, safety or morals of children”. It is left to States to determine what types of work fall within this part of the definition (article 3(d)), in consultation with employers’ and workers’ organizations and taking into account international standards. Member States must design and implement programmes of action to eliminate the “worst forms of child labour” as a priority, design appropriate mechanisms for monitoring implementation, take time-bound measures for prevention, provide support for the removal of children from the “worst forms of child labour” and for their rehabilitation and access to free basic education or vocational training. It calls for international cooperation or assistance with implementation, including support for economic development, poverty eradication and education.

The supplementing Recommendation (No.190) offers a wide range of guidelines for action for implementation, including on international cooperation, wide social mobilization (including consulting with the children directly affected by the “worst forms of child labour”) and enforcement (see box, page 483).

The Convention came into force on 19 November 2000. By August 2007, it had been ratified by 165 countries. Under the provisions of the ILO Constitution, each Member State has to make an annual report on the application of the conventions to which it is a party. The Constitution also provides for representations alleging non-observance to be made by workers’ or employers’ organizations (national or international) to a commission established by the Governing Body of ILO. Also complaints may be made by a State alleging non-observance by another State (where both are parties to the Convention). These general procedures cover the child labour Conventions (No.138) and (No.182), even though there is no provision on international monitoring within either Convention.

ILO Worst Forms of Child Labour Recommendation (No.190)

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and

Having adopted the Worst Forms of Child Labour Convention, 1999, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;

Adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as “the Convention”), and should be applied in conjunction with them.

I. Programmes of action

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers’ and workers’ organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, *inter alia*:
 - (a) identifying and denouncing the worst forms of child labour;
 - (b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;
 - (c) giving special attention to:
 - (i) younger children;
 - (ii) the girl child;
 - (iii) the problem of hidden work situations, in which girls are at special risk;
 - (iv) other groups of children with special vulnerabilities or needs;
 - (d) identifying, reaching out to and working with communities where children are at special risk;
 - (e) informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

II. Hazardous work

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, *inter alia*, to:
 - (a) work which exposes children to physical, psychological or sexual abuse;
 - (b) work underground, under water, at dangerous heights or in confined spaces;
 - (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;





- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
 - (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.
4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

III. Implementation

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.
- (2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.
- (3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.
6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.
7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.
8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.
9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.
10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.
11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:
- (a) gathering and exchanging information concerning criminal offences, including those involving international networks;
 - (b) detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;
 - (c) registering perpetrators of such offences.
12. Members should provide that the following worst forms of child labour are criminal offences:
- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and
 - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.
13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.
14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.
15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:
- (a) informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;
 - (b) involving and training employers' and workers' organizations and civic organizations;
 - (c) providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;
 - (d) providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;
 - (e) simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;
 - (f) encouraging the development of policies by undertakings to promote the aims of the Convention;
 - (g) monitoring and giving publicity to best practices on the elimination of child labour;
 - (h) giving publicity to legal or other provisions on child labour in the different languages or dialects;
 - (i) establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;
 - (j) adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;
 - (k) as far as possible, taking into account in national programmes of action:
 - (i) the need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and
 - (ii) the need for sensitizing parents to the problem of children working in such conditions.
16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:
- (a) mobilizing resources for national or international programmes;
 - (b) mutual legal assistance;



- (c) technical assistance including the exchange of information;
- (d) support for social and economic development, poverty eradication programmes and universal education.

(Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No.190), adopted by the Conference at its eighty-seventh session, Geneva, 17 June 1999)



At its 86th session in June 1998 the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, which declares that all Members, even if they have not ratified specific conventions, have an obligation to respect, promote and realize the fundamental rights which are the subject of the conventions, including the elimination of all forms of forced or compulsory labour and the effective abolition of child labour, together with freedom of association and non-discrimination.

ILO's International Programme on the Elimination of Child Labour

ILO's International Programme on the Elimination of Child Labour (IPEC) currently has operations in 88 countries in five regions of the world. Initiated in 1992, it assists countries in elaborating and implementing comprehensive policies and targeted programmes and projects. Sixty-one of these countries have signed a "Memorandum of Understanding" with the ILO, under which national steering committees are established (for details, see www.ilo.org/child-labour).

Inspired by the requirement of Convention (No.182) to take effective time-bound measures against the worst forms of child labour, ILO/IPEC has developed a "Time-Bound Programme" (TBP) approach to assist countries. TBPs are designed as a comprehensive framework that governments can use to chart a course of action with well-defined targets. They comprise a set of integrated and coordinated policies and interventions with clear goals, specific targets and a defined time frame, aimed at preventing and eliminating a country's worst forms of child labour. They emphasize the need to address the root causes of child labour, linking action for its elimination to national development policy, macro-economic trends and strategies, and demographic and labour market processes and outcomes, with particular emphasis on economic and social policies to combat poverty and to promote universal basic education and social mobilization. The guiding principles are: country ownership; a comprehensive and integrated approach; broad-based participation; flexibility; planning based on solid data collection and analysis; and systematic

programme monitoring and evaluation (for more details, see *TBP Manual for Action Planning*, International Training Centre of the ILO, Turin, Italy, 2003).

Optional Protocols to the Convention on the Rights of the Child

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted by the United Nations General Assembly on 25 May 2000 (for full commentary, see page 669). Its Preamble refers to ILO Convention (No.182). It requires States which ratify the Optional Protocol to ensure, as a minimum, that various acts and activities are fully covered under their criminal or penal law, "whether these offences are committed domestically or transnationally or on an individual or organized basis". These acts and activities include: "offering, obtaining, procuring or providing a child for child prostitution" (defined as "the use of a child in sexual activities for remuneration or any other form of consideration"); and "producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes, child pornography" (defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose". Among the acts and activities related to sale of children is "the offering, delivering, or accepting by whatever means a child for the purpose of ... engagement of the child in forced labour" (article 3(1)).

The other Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict, is also relevant to the issues of the "worst forms of child labour" (for full commentary, see page 659).

International Bill of Human Rights and child labour

The International Bill of Human Rights – the Universal Declaration of Human Rights and the two International Covenants, on Economic, Social and Cultural Rights and on Civil and

Defining the worst forms of child labour

For the purposes of this Convention, the term “the worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

(Article 3, *ILO Convention on the Worst Forms of Child Labour, 1999 (No.182)*. For full text see Appendix 4, page 759.)



Political Rights – includes various provisions relevant to child labour.

The Universal Declaration of Human Rights asserts: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (article 4). Article 8 of the International Covenant on Civil and Political Rights expands on this:

- “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term ‘forced or compulsory labour’ shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening

the life or well-being of the community;

- (iv) Any work or service which forms part of normal civil obligations.”

Article 23 of the Universal Declaration of Human Rights asserts the right to work:

- “1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.”

The International Covenant on Economic, Social and Cultural Rights also asserts in more detail the right to work and to just and favourable conditions of work (articles 6 and 7). Paragraph 3 of article 10 of the Covenant requires “special measures of protection and assistance” for all children and young persons: “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

In a General Comment on the right to education, the Committee on Economic, Social and Cultural Rights emphasizes: “States Parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7(2) of the Worst Forms of Child Labour Convention, 1999 (No.182).” (Committee on Economic, Social and Cultural Rights, General Comment No. 13, 1999, HRI/GEN/1/Rev.8, para. 55, p. 82)

In relation to traffic in children and child prostitution, in addition to other articles of the Convention on the Rights of the Child (in particular article 33, page 503, article 34, page 513, and the Optional Protocol on the sale of children, child prostitution and child pornography, page 669), there are various other relevant conventions, including in particular:

- International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by General Assembly resolution 317(IV) of 2 December 1949 (entered into force on 25 July 1951), requires: (article 1) States to agree to punish “any person who, to gratify the passions of another: 1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; 2. Exploits the prostitution of another person, even with the consent of that person”;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956 (entered into force on 30 April 1957), article 1(d): “Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”
- United Nations Convention against Transnational Organized Crime, 2000, with its Protocol to Prevent, Suppress and Punish

Trafficking in Persons, Especially Women and Children (see article 35, page 531).

A World Fit for Children – follow-up to 1990 World Summit for Children

In 1990, world leaders committed themselves to “work for special protection of the working child and for the abolition of illegal child labour...” (World Summit for Children, 30 September 1990, World Declaration on the Survival, Protection and Development of Children Declaration, para. 20(7)). Progress since the World Summit for Children was reviewed at the United Nations General Assembly’s special session on children in 2002, when new goals were set. States committed themselves to “take immediate and effective measures to eliminate the worst forms of child labour as defined in ILO Convention (No.182), and elaborate and implement strategies for the elimination of child labour that is contrary to accepted international standards” (*A World Fit for Children*, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 43(d); for details from Plan of Action, see box opposite).

In its 2006 Global Report, *The end of child labour: Within reach*, ILO notes: “Fortunately, development efforts in many countries are now being channelled within the context of various complementary frameworks such as the Millennium Development Goals (MDGs), the Poverty Reduction Strategy Papers (PRSPs) process, the Education For All (EFA) initiative, ILO’s Decent Work Agenda and – specific to Africa – the New Partnership for Africa’s Development (NEPAD).” ILO perceives mainstreaming child labour concerns in these frameworks as the key strategy to raise the profile of the issue and ensure greater impact.

The Report analyses the links between the Millennium Development Goals and child labour (which is not mentioned explicitly in the goals): “... they tend to run both ways – between poverty reduction (MDG 1) and child labour on the one hand, and education for all (MDG 2) and child labour on the other. But child labour also has a gender equality dimension (MDG 3) in view of the discriminatory practices that deprive many girls of appropriate education and add to their burdens through excessive household chores. Combating HIV/AIDS (MDG 6) also bears on child labour, since children orphaned by AIDS are among the children most at risk, as does the development of a global partnership for development (MDG 8), including the promotion of decent work for youth... The incorporation of child labour into the MDG framework as a target or an indicator for several MDG targets should be an objective



Combating child labour

A World Fit for Children, outcome document of the United Nations General Assembly's special session on children, 2002: extract

In the Plan of Action, States committed themselves to:

“Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Provide for the rehabilitation and social integration of children removed from the worst forms of child labour through *inter alia* ensuring access to free basic education and, whenever possible and appropriate, vocational training.

Take appropriate steps to assist one another in the elimination of the worst forms of child labour through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Elaborate and implement strategies to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In this context, protect children from all forms of economic exploitation by mobilizing national partnerships and international cooperation, and improve the conditions of children through, *inter alia*, providing working children with free basic education and with vocational training and their integration into the education system in every way possible and encourage support for social and economic policies aimed at poverty eradication and at providing families, particularly women, with employment and income-generating opportunities.

Promote international cooperation to assist developing countries upon request in addressing child labour and its root causes, *inter alia*, through social and economic policies aimed at poverty eradication, while stressing that labour standards should not be used for protectionist trade purposes.

Strengthen the collection and analysis of data on child labour.

Mainstream action relating to child labour into national poverty eradication and development efforts, especially in policies and programmes in the areas of health, education, employment and social protection.”

(“A World Fit for Children”, Report of the Ad Hoc Committee of the Whole of the twenty-seventh special session of the General Assembly, 2002, A/S-27/19/Rev.1, para. 44 (33 to 39))



for the worldwide movement, and in particular for the ILO in its drive to promote decent work as a global goal...” (*The end of child labour: Within reach*, Part III, paras. 231, 245 and 246)

The Global Compact

At the World Economic Forum in 1999, the United Nations Secretary-General challenged world business leaders to “embrace and enact” the Global Compact. Among its nine principles are the elimination of all forms of forced or compulsory labour and the effective abolition of child labour (see www.unglobalcompact.org).

Girls and economic exploitation

The Platform for Action of the Fourth World Conference on Women (Beijing, 1995) highlights the particular discriminatory forms of child labour affecting girls. It cites child labour as one of the reasons why, of the 130 million children

who in 1990 had no access to primary education, 81 million were girls. Its strategic objective L.6 – “Eliminate the economic exploitation of child labour and protect young girls at work” – promotes the standards in the Convention on the Rights of the Child and ILO Conventions (Report of the Fourth World Conference on Women, September 1995, A/CONF.177/20, Platform for Action, paras. 263 and 282).

The report of the United Nations General Assembly's special session in 2000, following up on the Fourth World Conference on Women, refers to child labour and the heavy burden of domestic responsibilities on girls which has contributed to a lack of opportunities and possibilities for girls to become confident and self-reliant, and independent adults (A/RES/S-23/3, para. 33).



The Committee on the Rights of the Child often takes up the vulnerability of girls to forms of economic exploitation in its examination of States' reports, in particular "worst forms of labour" (see also page 496 below). For example:

"The Committee notes the measures taken by the State Party to prevent girls from being used as domestic servants (petites bonnes) and subjected to economic exploitation and sexual abuse. However, the Committee is concerned by the growing extent of this reality which threatens the health, physical integrity and education of the girl child.

"The Committee recommends that the State Party:

(a) Take all necessary measures to raise awareness on the threats a girl child is facing by being used as a domestic servant;

(b) Enact laws to protect girls from economic exploitation;

(c) Strengthen its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education;

(d) Take measures to ensure effective implementation of the ILO Conventions No.138 concerning Minimum Age for Admission

to Employment and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which the State Party has ratified; and
(e) Seek technical cooperation from ILO and UNICEF." (Senegal CRC/C/SEN/CO/2, paras. 60 to 63)

Children whose liberty is restricted

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty requires that juveniles under arrest or awaiting trial "should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention" (rule 18(b)). In addition, under rule 44: "All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty." Rules 45 and 46 require that juveniles deprived of their liberty should, whenever possible, be provided with the opportunity to perform remunerated work and have the right to an "equitable remuneration".

Reservations and declarations relating to article 32

Few States Parties have made reservations or declarations in relation to article 32. India made a declaration justifying progressive implementation of the article: "While fully subscribing to the objectives and purposes of the Convention,

realizing that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India – the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party." (CRC/C/2/Rev.8, p. 25) When it examined India's Initial Report, the Committee encouraged the State to withdraw its declaration as unnecessary and it re-emphasized this when it examined the State's Second Report:

"In the light of the State Party's numerous measures to implement progressively article 32 of the Convention, the Committee has serious doubts as to the need for this declaration.

"In line with its previous recommendations ..., and in the light of the Vienna Declaration and Programme of Action, the Committee urges the State Party to withdraw the declaration made to article 32 of the Convention." (India CRC/C/15/Add.228, paras. 7 and 8. See below, page 493.)

New Zealand noted that it considered the rights of the child, provided for in article 32(1), "are adequately protected by its existing law. It therefore reserves the right not to legislate further or to take additional measures as may be envisaged in article 32(2)" (CRC/C/2/Rev.8, p. 34). When it examined New Zealand's Initial Report, the Committee expressed concern at

"... the broad nature of the reservations made by the State Party". (New Zealand CRC/C/15/Add.71, para. 8)

It was "very concerned" that the reservation had not been withdrawn when it examined the Second Report and urged New Zealand to:

"Expedite the changes in legislation and administrative procedures necessary for the withdrawal of its general reservation and the reservations to articles 32, paragraph 2 and 37(c)..." (New Zealand CRC/C/15/Add.216, paras. 6 and 7)

The right of the child to protection from economic exploitation

The first paragraph of article 32 requires States to recognize the right of the child to be protected from economic exploitation and from performing any work which is likely to be hazardous, interfere with the child's education, or be harmful to health or physical, mental, spiritual, moral or social development.

The Committee has not as yet developed a General Comment on article 32, but it has addressed State's obligations in its General Comments No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child" and No. 7 on "Implementing child rights in early childhood" and as follows:

"During adolescence, an increasing number of young people are leaving school to start working to help support their families or for wages in the formal or informal sector. Participation in work activities in accordance with international standards, as long as it does not jeopardize the enjoyment of any of the other rights of adolescents, including health and education, may be beneficial for the development of the adolescent. The Committee urges States Parties to take all necessary measures to abolish all forms of child labour, starting with the worst forms, to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Conventions Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms..."

"To this end, States Parties must notably fulfil the following obligations: ...

(e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards..." (Committee on the Rights of the Child, General Comment No. 4, 2003, CRC/GC/2003/4, paras. 18 and 39(e))

"In some countries and regions, children are socialized to work from an early age, including in activities that are potentially hazardous, exploitative and damaging to their health, education and long-term prospects. For example, young children may be initiated into domestic work or agricultural labour, or assist parents or siblings engaged in hazardous activities. Even very young babies

may be vulnerable to economic exploitation, as when they are used or hired out for begging. Exploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern. States Parties have particular responsibilities in relation to extreme forms of hazardous child labour identified in the Worst Forms of Child Labour Convention, 1999 (No.182) of the ILO..." (Committee on the Rights of the Child, General Comment No. 7, 2006, CRC/C/GC/7/Rev.1, para. 36(e))

In its General Comment No. 9 on "The rights of children with disabilities", the Committee emphasizes that children with disabilities are particularly vulnerable to different forms of economic exploitation, including the "worst forms of child labour", as well as drug trafficking and begging. It recommends ratification of ILO Conventions (No.138) and (No.182) and urges States in the implementation of these Conventions to pay special attention to the vulnerability and needs of children with disabilities (CRC/C/GC/9, para. 75).

Day of General Discussion on "Economic exploitation of the child"

The Committee held a Day of General Discussion on the "Economic exploitation of the child" in October 1993. At the conclusion of the General Discussion, the Committee made a public statement and, subsequently, through a working group of its members, framed a set of recommendations (see below). The statement invited financial institutions, including the World Bank and the International Monetary Fund, to a discussion about the need to protect the rights of the child in economic reform programmes and recommended that UNESCO take the lead in an international effort to make school education

"... a real and effective alternative to exploitative child labour, including child prostitution".

The Committee also recommended that all governments

"... ratify promptly the International Labour Organization standards on minimum age and on conditions of employment. These international norms should also be incorporated into national legislation – and be enforced.

"The laws in many countries do not give protection against economic exploitation of children. In other cases, the legislation is consistent with international standards but is not enforced. A system for inspection of work places is needed in each country. Also, the informal sector of the economy should be systematically controlled.





“The cynicism which has made large-scale exploitation of children possible must now be effectively countered. Violations of the rights of working children should be penalized. Child prostitution must be severely criminalized; intermediaries, accomplices and ‘clients’ should be penalized. Child pornography should be banned.” (Committee on the Rights of the Child, Report on the fourth session, September/October 1993, CRC/C/20, Annex VI, pp. 57 and 58)

The Committee adopted “Recommendations concerning economic exploitation of children” at its fifth session in January 1994. These emphasized that the holistic approach to the human rights of children, stressed in the Convention on the Rights of the Child and in particular in the general principles of the Convention (articles 2, 3, 6 and 12), should be used as a general framework in which to consider situations of economic exploitation of children. It called for “an adequate legal framework and necessary mechanisms of implementation”, as well as periodic assessment and evaluation of progress. The Committee recommended the establishment of a national mechanism for coordinating policies and monitoring the implementation of the Convention, having specific competence in the area of protection from economic exploitation.

Specifically in the area of the protection of the child from economic exploitation, the Committee

“... considers the child as a person who should be given the benefit of respect and solidarity within the family and society;

“(i) In the case of sexual exploitation or exploitation through work, the Committee considers the child as a victim who should be given the benefit of special protection in terms of health, education and development.

“(ii) In any event, the following must be strictly forbidden:

- *Activities jeopardizing the development of the child or contrary to human values and dignity;*
- *Activities involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude;*
- *Activities that are dangerous or harmful to the child’s harmonious physical, mental and spiritual development or are liable to jeopardize the future education and training of the child;*
- *Activities involving discrimination, particularly with regard to vulnerable and marginalized social groups;*
- *All activities under the minimum ages referred to in article 32, paragraph 2, of the Convention on the Rights of the Child and in particular those recommended by ILO;*
- *All activities using the child for legally punishable criminal acts, such as trafficking in drugs or prohibited goods.*

“(iii) In accordance with article 32 of the Convention on the Rights of the Child, every child has the right to be protected from economic exploitation. Taking into consideration the best interests of the child, States Parties must formulate standards or revise legislation in force with a view to ensuring the legal protection of the child from any form of exploitation. States Parties are invited to take all legislative, administrative and other measures aimed at ensuring the protection of the child, taking account of all forms of employment, including employment within the family and in the agricultural sector and informal employment.

“(iv) States Parties must also take measures to ensure the rehabilitation of children who, as a result of economic exploitation, are exposed to serious physical and moral danger. It is essential to provide these children with the necessary social and medical assistance and to envisage social reintegration programmes for them in the light of article 39 of the Convention on the Rights of the Child.”

(Committee on the Rights of the Child, Report on the fifth session, January 1994, CRC/C/24, pp. 38 to 43)

The Committee’s examination of States’ reports

The Committee has reflected these general recommendations in its Concluding Observations on States Parties’ reports. In cases where there are allegations of forced labour, the Committee has the most serious concern.

(See also comments on sexual exploitation, another form of forced labour: article 34, page 513.)

In many cases, the Committee has expressed more general concern and made a variety of recommendations, referring to ILO Conventions (No.138) and (No.182), and to the possibility of States Parties seeking technical assistance from ILO. For example, in a particularly detailed observation on India’s Initial Report:

“The Committee notes that India was the first country to sign a Memorandum of Understanding with the ILO in 1992 to implement the ILO-IPEC programme. The Committee further notes the amendments to schedules A and B of the 1986 Child Labour (Prohibition and Regulation) Act. Nevertheless, the Committee remains concerned at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions. The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are

not imposed to ensure that employers comply with the law.

“The Committee encourages the State Party to withdraw its declaration with respect to article 32 of the Convention, as it is unnecessary in the light of the efforts the State Party is making to address child labour. The Committee recommends that the State Party ensure the full implementation of the 1986 Child Labour (Prohibition and Regulation) Act, the 1976 Bonded Labour (System Abolition) Act and the 1993 Employment of Manual Scavengers Act.

“The Committee recommends that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; and coverage is expanded to include agriculture and other informal sectors. The Factories Act should be amended to cover all factories or workshops employing child labour. The Beedi Act should be amended so that exemptions for household-based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.

“The Committee recommends that the State Party ensure that laws provide criminal and civil remedies, especially in the light of decisions of the Supreme Court in relation to compensation funds for child labourers (M.C. Mehta vs. The state of Tamil Nadu and M.C. Mehta vs. Union of India). The Committee recommends that court procedures be simplified, so that responses are appropriate, timely and child-friendly; and to vigorously pursue enforcement of minimum-age standards.

“The Committee recommends that the State Party encourage states and districts to establish and oversee child labour vigilance committees, and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations, and to file First Information Reports.

“The Committee recommends that the State Party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends that the State Party continue its efforts to carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers’, workers’ and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals.

“The Committee calls upon the State Party to ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes; and that present cooperation between the State Party and relevant United Nations agencies, such as ILO and UNICEF, and NGOs be expanded. The Committee recommends that the State Party ratify ILO Convention No.138 concerning the Minimum Age for Admission to Employment, and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.” (India CRC/C/15/Add.115, paras. 65 to 71)

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

“The Committee notes the tenth Plan for the National Child Labour Project but is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture. The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.

“The Committee recommends that the State Party:

- (a) Ensure the full implementation of the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour (System Abolition) Act, 1976 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;*
- (b) Amend the Child Labour Act, 1986 so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children;*
- (c) Promote community-based programmes for the prevention of child labour;*
- (d) Ratify ILO Conventions No.138 concerning the Minimum Age for Admission to Employment, and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;*
- (e) Strengthen its efforts to raise awareness of the public at large, especially parents and children, of work hazards and to involve and train employers, workers and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals; and*
- (f) Continue its collaboration with the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO/IPEC).” (India CRC/C/15/Add.228, paras. 72 and 73)*





The Committee told Benin:

"The Committee is deeply concerned at the prevalence of child labour among young children under the age of 14, at the traditional practice of domestic servants or vidomégons, and at the increased number of children working in the informal sector.

"The Committee urges the State Party to:

(a) Undertake surveys throughout the territory with a view to establishing, inter alia, the number of working children, their age, occupations, the number of working hours and the remuneration received;

(b) Strictly enforce provisions of the Labour Code pertaining to children, combined with information on legislation regarding child labour and the creation of appropriate educational opportunities for children;

(c) Strengthen community-based mechanisms to prevent and monitor internal child trafficking and economic exploitation, in particular in the informal sector, and, at the same time, undertake preventive actions to improve living conditions and economic opportunities for families, in the rural areas as well as high-risk zones paying particular attention to less privileged families; and

(d) Continue to cooperate with the International Programme on the Elimination of Child Labour of the International Labour Organization (ILO/IPEC)." (Benin CRC/C/BEN/CO/2, paras. 67 and 68)

The Committee's recommendations cover the need for detailed studies and monitoring, legislative reform, information campaigns, complaints procedures, enforcement, and rehabilitation of child workers. It has often highlighted particular sectors or types of employment. For example:

"The Committee... further suggests that the authorities adopt explicit legislation and measures to protect children from exploitation through child labour in the informal sector." (Ghana CRC/C/15/Add.73, para. 45)

It followed this up more broadly when it examined Ghana's Second Report:

"The Committee is deeply concerned about the high number of children engaged in economic activities and that a high percentage of this group are involved in work that is hazardous, dangerous and jeopardizes their health, education and development.

"The Committee urges the State Party to strengthen the capacity of the institutions responsible for the control and protection of the rights of working children, including the Child Labour Unit and the Inspectorate Division Unit. It further recommends that the State Party, with the support of the International Labour Organization (ILO), UNICEF, and national and international

NGOs, develop a comprehensive programme to prevent and combat child labour, in full compliance with ILO Convention No.182 which the State Party has ratified. The Committee also encourages the State Party to ratify ILO Convention No.138 concerning the Minimum Age for Admission to Employment." (Ghana CRC/C/GHA/CO/2, paras. 65 and 66)

The Committee challenged exploitation of children as jockeys in Mongolia:

"... the Committee is concerned at the hazardous situation of children increasingly involved and exploited in traditional horse racing, which has undergone considerable changes from traditional sports to profitable businesses with child-abusive and exploitative features. In particular, it is concerned that children, sometimes as young as eight years old, are involved and that such involvement can generate serious injuries, even fatalities."

It urged Mongolia:

"... To address the issue of child jockeys in traditional horse racing by undertaking a comprehensive study to assess the nature and extent of exploitation of children in the horse-racing business and by explicitly prohibiting the employment of children under the age of 16 as jockeys in these races in line with the minimum age for work set in the labour law;..." (Mongolia CRC/C/15/Add.264, paras. 60 and 61)

The Committee raised involvement of children in cotton harvesting in Uzbekistan:

"... the Committee is deeply concerned at the information about the involvement of the very many school-aged children in the harvesting of cotton, which results in serious health problems such as intestinal and respiratory infections, meningitis and hepatitis.

"The Committee urges the State Party:

(a) To take all necessary measures to ensure that the involvement of school-aged children in the cotton harvesting is in full compliance with the international child labour standards, inter alia in terms of their age, their working hours, their working conditions, their education and their health;

(b) To ensure regular inspection of the harvesting practice to monitor and guarantee full compliance with international child labour standards;

(c) To establish control mechanisms to monitor the extent of all other forms of child labour, including unregulated work; address its causes with a view to enhancing prevention; and, where children are legally employed, ensure that their work is not exploitative and is in accordance with international standards;..." (Uzbekistan CRC/C/UZB/CO/2, paras. 64 and 65)

Providing “a minimum age or minimum ages for admission to employment”

Article 32(2)(a) of the Convention requires that a minimum age, or minimum ages, for employment must be set; it does not prescribe any particular ages. But the Committee has indicated that such ages should be established in the light of other international instruments, and in particular ILO Convention (No.138) (see full text in Appendix 4, page 729).

Basically, the ILO Convention requires:

- a commitment “to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons” (article 1);
- a minimum age for any employment not less than the age of completion of compulsory schooling and in any event not less than 15 (article 2); and
- a minimum age of 18 “for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons” (article 3).

But in relation to these minimum ages, the Convention allows certain limited exceptions and flexibilities. In relation to the minimum age for any employment or work:

- where the economy and educational facilities are insufficiently developed, a Member State may, provided it has consulted with organizations of workers and employers concerned, initially specify a minimum age of 14 years (article 2);
- members that ratify may also list, after consultation, limited categories of work or employment – as long as not hazardous – “in respect of which special and substantial problems of application arise”, which are excluded from application of the Convention (article 4);
- members may initially limit the overall application of the Convention to selected branches of economic activity or types of undertakings to which it will be applied, by specifying these in a declaration when ratifying the Convention. The Convention, however, must be applied as a minimum to: “mining and quarrying, manufacturing; construction; electricity, gas and water; sanitary services; transport, storage

and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers” (article 5);

- excluded from the Convention is work done in schools or other training institutions for general, vocational or technical education, or by persons at least 14 years of age in undertakings (i.e., apprenticeship with the minimum age of 14 years) under specified conditions (article 6);
- national laws or regulations may permit light work by 13- to 15-year-olds (or 12 to 14 initially), which is not likely to be harmful to their health or development, and does not prejudice their attendance at school or in vocational or training programmes, “or their capacity to benefit from the instruction received” (article 7);
- national laws or regulations may permit employment or work by young people who are at least 15 (or 14 initially) but have not completed their compulsory schooling, provided they meet the above conditions, and the hours and conditions of employment or work are specified (article 7);
- also, after consultation, the competent authority may, by permits granted in individual cases, allow exceptions “for such purposes as participation in artistic performances”; the permits must limit hours and prescribe conditions (article 8).

In relation to hazardous work, members may, after consultation, authorize an exceptional engagement in hazardous work as from the age of 16 “on condition that the health and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity” (article 3).

The Committee on the Rights of the Child has consistently referred to the standards set by ILO Convention (No.138) in relation to minimum ages for employment or work, and also on occasion to the proposals in ILO Recommendation (No.146) (which calls on States to take as their objective the progressive raising to 16 of the minimum age of employment) and to other ILO Conventions. It has congratulated States which have already ratified Convention (No.138) and urged many others to do so. It has emphasized the importance of proof of age being required. For example:

“The Committee recommends that the State Party ensure that the minimum age



for admission to employment is enforced. Employers should be required to have and produce on demand proof of age of all children working on their premises. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations.” (Armenia CRC/C/15/Add.119, para. 51)

It followed this up when it examined Armenia’s Second Report, expressing satisfaction that Armenia intended to ratify ILO Conventions (No.138) and (No.182), following the adoption of a new Labour Code:

“The Committee recommends that the State Party ensure the effective implementation of the minimum age for admission to employment, set at age 16 in the Labour Code, and of other provisions prohibiting heavy and hazardous work for children under 18. Employers should be required to have and produce on demand proof of age of all children working on their premises. A national mechanism to monitor the implementation of standards at state and local levels should be established and empowered to receive and address complaints of violations. The Committee recommends that the State Party undertake a national survey on the nature and extent of child labour. The Committee recommends that the State Party carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers’, workers’ and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals. The State Party should seek cooperation with relevant United Nations agencies, such as ILO and UNICEF, and NGOs in this regard...” (Armenia CRC/C/15/Add.225, para. 61)

Work and education

Paragraph 1 of article 32 requires protection of the child from performing any work that is likely to “interfere with the child’s education”. As indicated above, in its general recommendations on economic exploitation the Committee has highlighted the interconnection between the right to education, guaranteed by article 28 (see page 407), and exploitation in child labour. In addition, article 28 requires States to “Take measures to encourage regular attendance at schools and the reduction of drop-out rates” – for example by introducing more relevant curricula or providing grants to poor families (see article 28, page 426). The Worst Forms of Child Labour Convention, 1999 (No.182) notes the importance of free basic education in its Preamble and requires ratifying States to ensure access to free basic education for

all children removed from the “worst forms of child labour”.

The Committee has indicated that some flexibility is permitted regarding “seasonal” work. During discussions with Egyptian Government representatives, a Committee member said: “It was not an intention of the Convention or the ILO Conventions to prevent children from supporting their families by doing domestic chores or helping with the harvest. But two clear aims were to ensure that all children received at least primary education and were not required to do physically or mentally hazardous work.” (Egypt CRC/C/SR.68, para. 44)

In its examination of States Parties’ reports, the Committee has highlighted any differences between the age for the completion of compulsory schooling and the age for admission to employment, and has proposed that they should be equalized.

Providing “appropriate regulation of the hours and conditions of employment”

Article 32 requires detailed regulation in those instances in which children are permitted to work: above the minimum ages and where the work is not likely to be hazardous, interfere with the child’s education or be harmful to the child’s health or physical, mental, spiritual, moral or social development. ILO Convention (No.138) indicates the exceptions permitted and also requires that hours of work and conditions be prescribed. There are also various ILO Conventions protecting children from working at night (see box, page 482; see also child’s right to rest and leisure, article 31, page 470).

One important issue not dealt with explicitly in the Convention on the Rights of the Child is that of medical examinations for working children. ILO Conventions (No.77), (No.78) and (No.124) provide for a thorough medical examination to determine fitness for employment prior to engagement and also continued medical supervision until the age of 18; such examinations “shall not involve the child or young person, or his parents, in any expense”.

Violence against children in the workplace

The Committee has become increasingly concerned at the extent of violence against children in the workplace (and the “worst forms” of child labour constitute violence in themselves). In General Comment No. 8 on “The right of the child to protection from corporal punishment and



other cruel or degrading forms of punishment”, the Committee notes that these forms of punishment are used in situations of child labour, including in the domestic context:

“The Committee emphasizes that it is essential that the prohibition of corporal punishment and other cruel or degrading forms of punishment must be enforced in any situations in which children are working.”

It proposes that the prohibition of corporal punishment should be explicit in employment law (*General Comment No. 8, 2006, CRC/C/GC/8, paras. 35 and 36*).

The Report of the United Nations Secretary-General’s Study on Violence Against Children, submitted to the General Assembly in 2006, indicates that there is little information on violence against child workers, especially those in the informal sector: “Across all regions, violence – physical, sexual and psychological – affects many millions of children who are working, both legally and illegally. It may be used to coerce children to work, or punish or control them within the workplace. Some categories of illegal work have been identified as the ‘worst forms of child labour’ and therefore constitute violence against children...”

“Information on acts of workplace violence against children suggests that most cases are inflicted by ‘employers’, although perpetrators may also include co-workers, clients, foremen, customers, police, criminal gangs and, in the case of sexual exploitation, pimps.

“The largest employment category for girls under 16 is domestic work which often takes the form of unregulated employment and exploitation, and sometimes servitude or slavery. Several countries have designated it a ‘worst form’ of child labour under ILO Convention No.182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Child workers report maltreatment such as physical punishment, humiliation and sexual harassment, and child domestic workers report being consistently humiliated. Most physical and psychological violence against child domestic workers is perpetrated by women (generally employers), but girls are often subject to sexual violence from male members of the family of their employer.

“The exploitation of children under 18 in prostitution, child pornography and similar activities constitutes violence. It is estimated that 1 million children enter these sectors every year. Many are coerced, kidnapped, sold and deceived into these activities, or are victims of trafficking. In addition to the sexual violence which is intrinsic to

child prostitution, girls and boys in prostitution and related areas frequently suffer physical and psychological violence, as well as neglect. They are often unable to seek help, and when they do so may be treated as criminals, deprived of liberty and provided with limited redress.

“Bonded labour of children is a feature of many parts of the world. Children in forced and bonded labour are rarely able to protect themselves from employers and other workers, and studies and children’s testimonies suggest that all forms of violence are endemic in forced and bonded labour. Violence also affects the tens of thousands of children in traditional forms of slavery, which still exist in some parts of the world.” (Report of the independent expert for the United Nations study on violence against children, General Assembly, sixty-first session, August 2006, A/61/299, paras. 64 to 68)

The Report’s key recommendations in relation to workplace violence urge States to:

- “(a) Implement domestic labour laws, mainstream the elimination of child labour into national development policies and give priority to eliminating the ‘worst forms’ of child labour, which are inherently violent. Particular attention should be paid to economic exploitation of children in the informal sector, for example, agriculture, fishing and domestic service, where the phenomenon is more prevalent. In addition, States should ensure that child workers participate in discussions about the solutions to this problem;
- (b) Where children are working legally (i.e., in conformity with international conventions), create and implement regulatory regimes and inspection processes that explicitly include violence prevention programmes, reporting systems and complaints procedures;
- (c) Where children are working illegally, ensure the availability of recovery and integration programmes that focus on assisting under-age children and those in ‘worst forms’ of labour to leave work, receive education and training, and improve their life chances without further victimization;
- (d) Enlist the support of the private sector, trade unions and civil society to form partnerships that stimulate corporate social responsibility measures, and encourage the private sector, trade unions and civil society to adopt ethical guidelines in support of prevention programming in the workplace.” (A/61/299, para.113; for summary of overarching recommendations of the report, see article 19, page 251.)



Providing “appropriate penalties or other sanctions to ensure the effective enforcement of the present article”

ILO Convention (No.138) requires that “all necessary measures, including the provision of appropriate penalties” must be taken by the competent authority to ensure effective enforcement. National laws or regulations or a competent authority must also define who is responsible for compliance with the Convention, and what registers or other documents must be kept, recording names and dates of birth (“duly certified wherever possible”) of all under-18-year-olds employed or in work (article 9).

The Committee has proposed various components of “effective enforcement” as required by article 32(2)(c), including a labour inspectorate, complaints procedure (see also article 12, page 158), and adequate penalties in cases of non-compliance. These should cover all forms of employment and work, including in the informal sector. For example:

“The Committee recommends that the Labour Law be amended to ensure that children working in family enterprises, agricultural activities and as domestic labour are protected and that inspections extend to these areas. Employers should be required to have, and produce on demand, proof of age of all children working on their premises and the State Party should vigorously pursue enforcement of minimum age standards.”
(Jordan CRC/C/15/Add.125, para. 58)

It pursued this following examination of Jordan’s Third Report:

“In accordance with article 32 of the Convention, the Committee recommends that the State Party:
(a) *Continue to take effective measures to prohibit economic exploitation of children, in particular in the informal sector where the phenomenon is more prevalent, for example, by reviewing and amending the provisions of the Labour Code in order to protect children from economic exploitation through labour in the informal sector, including family enterprises, agricultural activities and domestic labour;*
(b) *Vigorously pursue enforcement of minimum age standards, including requiring employers to have, and to produce on demand, proof of age of all children working on their premises;*
(c) *Provide the labour inspectors with all the necessary support, including child labour expertise, with a view to enabling them to monitor effectively at the state and local level the implementation of labour law standards and to receive and address complaints of violations; and*
(d) *Continue to seek technical assistance from ILO/IPEC.”* (Jordan CRC/C/JOR/CO/3, para. 89)

The Committee is also emphatic that children who do work legally must be appropriately protected, urging the Solomon Islands to
“... Make every effort, including preventive measures, to ensure that those children who do work, in accordance with international standards, do not work under conditions which are harmful to them, that they benefit from appropriate wages and other work-related benefits and that they can continue to have access to formal education;...” (Solomon Islands CRC/C/15/Add.208, para. 53)

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



Implementation Checklist



• General measures of implementation

Have appropriate general measures of implementation been taken in relation to article 32, including:

- identification and coordination of the responsible departments and agencies at all levels of government (article 32 is particularly relevant to **departments of employment, industry, agriculture, social welfare, education**)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?

adoption of a strategy to secure full implementation

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

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

- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of article 32 widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to article 32 likely to include the training of **all those responsible for inspection and enforcing employment legislation, teachers and social workers, and parenting education**)?

• Specific issues in implementing article 32

Has the State launched or promoted information campaigns

- for children themselves on the measures of protection they can benefit from and the risks involved in situations of economic exploitation?
- for the public, including training activities for professional groups working with or for children, to help achieve effective protection of children against economic exploitation?
- for employers and potential employers?

Does legislation, policy and practice in the State protect children from

- economic exploitation?
 - performing any work which
 - is hazardous?
 - interferes with the child's education?
 - is harmful to the child's health or physical, mental, spiritual, moral or social development?

How to use the checklist, see page XIX



- involves cruel, inhuman or degrading treatment, the sale of children or servitude?
- involves activities in which the child is used for legally punishable criminal acts, such as trafficking in drugs or prohibited goods?
- is incompatible with the realization of other rights in the Convention?

Has the State

- ratified the ILO's Worst Forms of Child Labour Convention, 1999 (No.182)?
- ratified the ILO's Minimum Age Convention, 1973 (No.138)?
- ratified the ILO's Forced Labour Convention, 1930 (No.29)?
- considered the implications for law, policy and practice of ILO's Minimum Age Recommendation (No.146) and Worst Forms of Child Labour Recommendation (No. 190)?
- If not, is the State considering these actions?
- Has the State defined in legislation a minimum age for employment that is equal to the age of completion of compulsory education and not less than 15?
- Has the State considered adjusting the periods of compulsory education with any seasonal patterns of work for families?
- Has the State defined in legislation 18 as the minimum age for admission to any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons?
- Has the State defined in legislation or by the decision of a competent authority the types of employment or work to which this minimum age of 18 applies?

Has the State defined in legislation limited exemptions

- prescribing the conditions under which children are allowed to do work in schools or other training institutions for general, vocational or technical education?
- enabling those aged 14 and over to do work as an integral part of a course of education or training (consistent with the conditions set out in article 6 of ILO Convention No.138)?
- defining any forms of "light work" which 13- to 15-year-olds are permitted to perform, which are not likely to be harmful to health or development or prejudice their education?
- defining hours and conditions for employment or work, if permitted, for those who are at least 15 but have not completed compulsory schooling?
- allowing limited employment or work for such purposes as participation in artistic performances, through a system of permits granted in individual cases (as set out in article 8 of ILO Convention No.138)?
- defining hours and conditions for employment of children in all cases in which employment or work is permitted?
- Has the State ensured adequate arrangements for medical examinations in connection with child employment?

How to use the checklist, see page XIX



In relation to effective enforcement of its legislation on child labour, has the State ensured through legislation and otherwise:

- adequate inspection of situations of work or employment?
 - that employers are required to have and produce on demand proof of age of all children under 18 working for them?
 - adequate access for children to effective complaints procedures?
 - appropriate penalties or other sanctions for non-compliance?
 - adequate record-keeping and reporting in relation to any employment of children?
 - the collection of adequate disaggregated data?
 - that the persons responsible for compliance with provisions concerning child labour are defined?
- Are appropriate measures taken to reintegrate and rehabilitate victims of child labour, in particular its worst forms?

Reminder: The Convention is indivisible and its articles interdependent.
Article 32 should not be considered in isolation.

Particular regard should be paid to: The general principles

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

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

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

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

Closely related articles

Articles whose implementation is particularly related to that of article 32 include:

Article 15: freedom of association (trade unions)

Article 27: adequate standard of living

Article 28: right to education

Article 31: right to leisure, play and recreation

Article 33: illicit production and trafficking in drugs

Article 34: sexual exploitation

Article 35: sale, trafficking and abduction

Article 36: other forms of harmful exploitation

Article 39: rehabilitative care for child victims

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

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