General Comments
of the Committee on the Rights of the Child

A Compendium for child rights advocates, scholars and policy makers

unite for children

unicef

General Comments of the Committee on the Rights of the Child

A Compendium for child rights advocates, scholars and policy makers

January 2014

Compiled by André Viviers, Senior Social Policy Specialist, UNICEF South Africa

For more information:

André Viviers, Senior Social Policy Specialist
UNICEF South Africa, PO Box 4884, Pretoria, 0001, Republic of South Africa
Tel: +27123548201 Fax: +27123548293 Email: aviviers@unicef.org or Pretoria@unicef.org
Visit our webpage at www.unicef.org/southafrica or http://www.unicef.org/
Support us at www.unicef.org.za
Follow us on Facebook http://www.facebook.com/unicef or Twitter http://twitter.com/

Introductory Note

This booklet is a compilation of the Committee on the Rights of Child's seventeen (17) General Comments as published on the Committee's website. The aim is to create a single document where practitioners can find the General Comments and to search for key provisions across general comments.

The General Comments are the UN Committee on the Rights of the Child interpretation of the provisions and principles of the *Convention on the Rights of the Child* (CRC). The General Comments provide valuable insights into the practical implementation and application of certain provisions in the CRC, and also highlight specific State obligations in respect of specific rights of the children. Thus, these 17 General Comments contained in the compilation provides an authoritative reference for:

- Scholars in human rights, specifically child rights
- Members of Parliament and Provincial Legislatures
- Members of the Executive
- Government officials
- Practitioners working with children
- Civil society
- Parents and children
- Any other person interested in the rights of children.

Note on content: The text of each General Comment in this compilation is the same as the original text as published on the Committee's website (31 December 2013) and is published in this booklet with only format editing to ensure consistency in layout.

Note on citation: Scholars and authors who wish to cite a General Comment, should cite the original General Comment and not this compilation.

Original text is available at:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

This document is only available electronically.

Table of Content

		Page
1	General comment No.1: The Aims of Education	7
2	General comment No.2: The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child	13
3	General comment No.3 (2003): HIV/AIDS and the rights of the children	19
4	General comment No.4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child	27
5	General Comment No.5 (2003): General Measures of Implementation of the Convention on the Rights of the Child	35
6	General Comment No.6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin	47
7	General comment No.7 (2005): Implementing child rights in early childhood	61
8	General Comment No.8 (2006):The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)	73
9	General Comment No.9 (2006): The rights of children with disabilities	81
10	General Comment No.10 (2007): Children's rights in juvenile justice	95
11	General Comments No.11 (2009): Indigenous children and their rights under the Convention	109
12	General Comments No.12 (2009): The right of the child to be heard	119
13	General comment No.13 (2011): The right of the child to freedom from all forms of violence	135
14	General comment No.14 (2013): The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)	153
15	General comment No.15 (2013): The right of the child to the enjoyment of the highest attainable standard of health (art. 24)	165
16	General comment No.16 (2013): State obligations regarding the impact of the business sector on children's rights	179
17	General comment No.17 (2013): The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)	193
	Annex A; Convention on the Rights of the Child and Optional Protocols	205

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr.GENERAL

CRC/GC/2001/1

17 April 2001

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

GENERAL COMMENT NO. 1 (2001)
ARTICLE 29 (1): THE AIMS OF EDUCATION

Article 29 (1), Convention on the Rights of the Child

"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."

THE SIGNIFICANCE OF ARTICLE 29 (1)

1. Article 29, paragraph 1, of the Convention on the Rights of the Child is of far-reaching importance. The aims of education that it sets out, which have been agreed to by all States parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five subparagraphs of article 29 (1) are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).

2. Article 29 (1) not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.[1] The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or

[1] In this regard, the Committee takes note of General Comment No. 13 (1999) of the Committee on Economic, Social and Cultural Rights on the right to education, which deals, inter alia, with the aims of education under article 13 (1) of the International Covenant on Economic, Social and Cultural Rights. The Committee also draws attention to the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention, (CRC/C/58), paras. 112-116.

her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

3. The child's right to education is not only a matter of access (art. 28) but also of content. An education with its contents firmly rooted in the values of article 29 (1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between, inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material.[2] And yet, in the national and international programmes and policies on education that really count the elements embodied in article 29 (1) seem all too often to be either largely missing or present only as a cosmetic afterthought.

4. Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

THE FUNCTIONS OF ARTICLE 29 (1)

5. Article 29 (1) is much more than an inventory or listing of different objectives which education should seek to achieve. Within the overall context of the Convention it serves to highlight, inter alia, the following dimensions.

6. First, it emphasizes the indispensable interconnected nature of the Convention's provisions. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. In addition to the general principles of the Convention - non-discrimination (art. 2), the best interest of the child (art. 3), the right to life, survival and development (art. 6), and the right to express views and have them taken into account (art. 12) - many other provisions may be mentioned, such as but not limited to the rights and responsibilities of parents (arts. 5 and 18), freedom of expression (art. 13), freedom of thought (art. 14), the right to information (art. 17), the rights of children with disabilities (art. 23), the right to education for health (art. 24), the right to education (art. 28), and the linguistic and cultural rights of children belonging to minority groups (art. 30).

7. Children's rights are not detached or isolated values devoid of context, but exist within a broader ethical framework which is partly described in article 29 (1) and in the preamble to the Convention. Many of the criticisms that have been made of the Convention are specifically answered by this provision. Thus, for example, this article underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children's rights, far from being externally imposed, are embedded within the values of local communities.

8. Second, the article attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

9. Third, while article 28 focuses upon the obligations of State parties in relation to the establishment of educational systems and in ensuring access thereto, article 29 (1) underlines the individual and subjective right to a specific quality of education. Consistent with the Convention's emphasis on the importance of acting in the best interests of the child, this article emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in

[2] United Nations Educational, Scientific and Cultural Organization, *Learning: The Treasure Within,* Report of the International Commission on Education for the 21st Century, 1996, pp. 16-18.

recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs.[3] Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.

10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.[4] Children with HIV/AIDS are also heavily discriminated against in both settings.[5] All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

11. The Committee also wishes to highlight the links between article 29 (1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically, and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by "others". It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.

12. Fourth, article 29 (1) insists upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society. It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents. Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.

13. Fifth, it emphasizes the need for education to be designed and provided in such a way that it promotes and reinforces the range of specific ethical values enshrined in the Convention, including education for peace, tolerance, and respect for the natural environment, in an integrated and holistic manner. This may require a multidisciplinary approach. The promotion and reinforcement of the values of article 29 (1) are not only necessary because of problems elsewhere, but must also focus on problems within the child's own community. Education in this regard should take place within the family, but schools and communities must also play an important role. For example, for the development of respect for the natural environment, education must link issues of environment and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.

14. Sixth, it reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article.

HUMAN RIGHTS EDUCATION

15. Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights, held in Vienna in 1993, and promoted by international agencies. Nevertheless, the rights of the child

[3] United Nations Educational, Scientific and Cultural Organization, *The Salamanca Statement and Framework for Action on Special Needs Education,* 1994, p. viii.
[4] See General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.
[5] See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, para. 1536).

have not always been given the prominence they require in the context of such activities. Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values in the daily life and experiences of children.[6]

16. The values embodied in article 29 (1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.[7] Education about international humanitarian law also constitutes an important, but all too often neglected, dimension of efforts to give effect to article 29 (1).

IMPLEMENTATION, MONITORING AND REVIEW

17. The aims and values reflected in this article are stated in quite general terms and their implications are potentially very wide ranging. This seems to have led many States parties to assume that it is unnecessary, or even inappropriate, to ensure that the relevant principles are reflected in legislation or in administrative directives. This assumption is unwarranted. In the absence of any specific formal endorsement in national law or policy, it seems unlikely that the relevant principles are or will be used to genuinely inform educational policies. The Committee therefore calls upon all States parties to take the necessary steps to formally incorporate these principles into their education policies and legislation at all levels.

18. The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1).

19. In addition, the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1). The term “human rights education” is too often used in a way which greatly oversimplifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.

20. In general terms, the various initiatives that States parties are required to take pursuant to their Convention obligations will be insufficiently grounded in the absence of widespread dissemination of the text of the Convention itself, in accordance with the provisions of article 42. This will also facilitate the role of children as promoters and defenders of children’s rights in their daily lives. In order to facilitate broader dissemination, States parties should report on the measures they have taken to achieve this objective and the Office of the High Commissioner for Human Rights should develop a comprehensive database of the language versions of the Convention that have been produced.

21. The media, broadly defined, also have a central role to play, both in promoting the values and aims reflected in article 29 (1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17 (a), to take all appropriate steps to “encourage the mass media to disseminate information and material of social and cultural benefit to the child”.[8]

22. The Committee calls upon States parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time in relation to article 29 (1). Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs. The Committee notes the importance of surveys that may provide an opportunity to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.

23. The Committee calls upon States parties to develop a comprehensive national plan of action to promote and monitor realization of the objectives listed in article 29 (1). If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29 (1) and does so from a child-rights perspective. The Committee urges that the United Nations and

[6] See General Assembly resolution 49/184 of 23 December 1994 proclaiming the United Nations Decade for Human Rights Education.
[7] Education for All: Meeting our Collective Commitments, adopted at the World Education Forum, Dakar, 26-28 April 2000.
[8] The Committee recalls the recommendations in this respect which emerged from its day of general discussion in 1996 on the child and the media (see A/53/41 para. 1396).

other international bodies concerned with educational policy and human rights education seek better coordination so as to enhance the effectiveness of the implementation of article 29 (1).

24. The design and implementation of programmes to promote the values reflected in this article should become part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred. Thus, for example, where major incidents of racism, racial discrimination, xenophobia and related intolerance occur which involve those under 18, it can reasonably be presumed that the Government has not done all that it should to promote the values reflected in the Convention generally, and in article 29 (1) in particular. Appropriate additional measures under article 29 (1) should therefore be adopted which include research on and adoption of whatever educational techniques might have a positive impact in achieving the rights recognized in the Convention.

25. States parties should also consider establishing a review procedure which responds to complaints that existing policies or practices are not consistent with article 29 (1). Such review procedures need not necessarily entail the creation of new legal, administrative, or educational bodies. They might also be entrusted to national human rights institutions or to existing administrative bodies. The Committee requests each State party when reporting on this article to identify the genuine possibilities that exist at the national or local level to obtain a review of existing approaches which are claimed to be incompatible with the Convention. Information should be provided as to how such reviews can be initiated and how many such review procedures have been undertaken within the reporting period.

26. In order to better focus the process of examining States parties' reports dealing with article 29 (1), and in accordance with the requirement in article 44 that reports shall indicate factors and difficulties, the Committee requests each State party to provide a detailed indication in its periodic reports of what it considers to be the most important priorities within its jurisdiction which call for a more concerted effort to promote the values reflected in this provision and to outline the programme of activities which it proposes to take over the succeeding five years in order to address the problems identified.

27. The Committee calls upon United Nations bodies and agencies and other competent bodies whose role is underscored in article 45 of the Convention to contribute more actively and systematically to the Committee's work in relation to article 29 (1).

28. Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will require human and financial resources which should be available to the maximum extent possible, in accordance with article 4. Therefore, the Committee considers that resource constraints cannot provide a justification for a State party's failure to take any, or enough, of the measures that are required. In this context, and in light of the obligations upon States parties to promote and encourage international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1).

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr.GENERAL

CRC/GC/2002/2

15 November 2002

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-second session
13-31 January 2003

GENERAL COMMENT NO. 2 (2002)
THE ROLE OF INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD

1. Article 4 of the Convention on the Rights of the Child obliges States parties to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention". Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights. In this regard, the Committee has welcomed the establishment of NHRIs and children's ombudspersons/children's commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.

2. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them. Where such institutions have already been established, the Committee calls upon States to review their status and effectiveness for promoting and protecting children's rights, as enshrined in the Convention on the Rights of the Child and other relevant international instruments.

3. The World Conference on Human Rights, held in 1993, in the Vienna Declaration and Programme of Action reaffirmed "… the important and constructive role played by national institutions for the promotion and protection of human rights", and encouraged "… the establishment and strengthening of national institutions". The General Assembly and the Commission on Human Rights have repeatedly called for the establishment of national human rights institutions, underlining the important role NHRIs play in promoting and protecting human rights and enhancing public awareness of those rights. In its general guidelines for periodic reports, the Committee requires that States parties furnish information on "any independent body established to promote and protect the rights of the child …",[9] hence, it consistently addresses this issue during its dialogue with States parties.

4. NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The "Paris Principles") adopted by the General Assembly in 1993[10] transmitted by the Commission on Human Rights in 1992.[11] These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.

5 While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children's human rights are given special attention. These include the facts that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organizations that may protect their rights is generally limited.

[9] General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention (CRC/C/58), para. 18.
[10] Principles relating to the status of national institutions for the promotion and protection of human rights (The "Paris Principles"), General Assembly resolution 48/134 of 20 December 1993, annex.
[11] Commission on Human Rights resolution 1992/54 of 3 March 1992, annex.

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

7. It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is "mainstreamed" and that all human rights institutions existing in a country work closely together to this end.

MANDATE AND POWERS

8. NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols. If the NHRI was established before the existence of the Convention, or without expressly incorporating it, necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution's mandate with the principles and provisions of the Convention.

9. NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.

ESTABLISHMENT PROCESS

10. The NHRI establishment process should be consultative, inclusive and transparent, initiated and supported at the highest levels of Government and inclusive of all relevant elements of the State, the legislature and civil society. In order to ensure their independence and effective functioning, NHRIs must have adequate infrastructure, funding (including specifically for children's rights, within broad-based institutions), staff, premises, and freedom from forms of financial control that might affect their independence.

RESOURCES

11. While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.

PLURALISTIC REPRESENTATION

12. NHRIs should ensure that their composition includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights. They should seek to involve, among others, the following: human rights, anti-discrimination and children's rights non-governmental organizations (NGOs), including child- and youth-led organizations; trade unions; social and professional organizations (of doctors, lawyers, journalists, scientists, etc.); universities and experts, including children's rights experts. Government departments should be involved in an advisory capacity only. NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process.

PROVIDING REMEDIES FOR BREACHES OF CHILDREN'S RIGHTS

13. NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.

14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.

ACCESSIBILITY AND PARTICIPATION

15. NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.

16. NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.

17. NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established.

18. NHRIs must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention.

RECOMMENDED ACTIVITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORTING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD AND COOPERATION BETWEEN NHRIs AND UNITED NATIONS AGENCIES AND HUMAN RIGHTS MECHANISMS

20. NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies.

21. The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee.

22. NHRIs should also cooperate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict.

23. The United Nations has a long-standing programme of assistance for the establishment and strengthening of national human rights institutions. This programme, which is based in the Office of the High Commissioner for Human Rights (OHCHR), provides technical assistance and facilitates regional and global cooperation and exchanges among national human rights institutions. States parties should avail themselves of this assistance where necessary. The United Nations Children's Fund (UNICEF) also offers expertise and technical cooperation in this area.

24. As articulated in article 45 of the Convention, the Committee may also transmit, as it considers appropriate, to any specialized United Nations agency, OHCHR and any other competent body any reports from States parties that contain a request or indicate a need for technical advice or assistance in the establishment of NHRIs.

NHRIs AND STATES PARTIES

25. The State ratifies the Convention on the Rights of the Child and takes on obligations to implement it fully. The role of NHRIs is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities.

NHRIs AND NGOS

26. Non-governmental organizations play a vital role in promoting human rights and children's rights. The role of NHRIs, with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.

REGIONAL AND INTERNATIONAL COOPERATION

27. Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries.

28. In this respect, NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions on children's rights issues.

29. Children's human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues (including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc.). International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr.GENERAL

CRC/GC/2003/3

17 March 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-second session
13-31 January 2003

GENERAL COMMENT NO. 3 (2003)
HIV/AIDS AND THE RIGHTS OF THE CHILD

I. INTRODUCTION[12]

1. 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. The epidemic impacts on the daily life of younger children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances. HIV/AIDS is not a problem of some countries but of the entire world. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.

2. Initially children were considered to be only marginally affected by the epidemic. However, the international community has discovered that, unfortunately, children are at the heart of the problem. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the most recent trends are alarming: in most parts of the world the majority of new infections are among young people between the ages of 15 and 24, sometimes younger. Women, including young girls, are also increasingly becoming infected. In most regions of the world, the vast majority of infected women do not know that they are infected and may unknowingly infect their children. Consequently, many States have recently registered an increase in their infant and child mortality rates. Adolescents are also vulnerable to HIV/AIDS because their first sexual experience may take place in an environment in which they have no access to proper information and guidance. Children who use drugs are at high risk.

3. Yet, all children can be rendered vulnerable by the particular circumstances of their lives, especially (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained by its consequences; and (c) children who are most prone to be infected or affected.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. The objectives of the present General Comment are:

(a) To identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS;

(b) To promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the Convention on the Rights of the Child (hereafter "the Convention");

[12] At its seventeenth session (1998), the Committee on the Rights of the Child held a day of general discussion on the theme of HIV/AIDS and children's rights, in which it recommended that a number of actions be taken, including facilitating the engagement of States parties on HIV/AIDS issues in relation to the rights of the child. Human rights in relation to HIV/AIDS has also been discussed at the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies in 1997 and has been taken up by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Similarly, HIV/AIDS has been discussed annually by the Commission on Human Rights for over a decade. UNAIDS and the United Nations Children's Fund (UNICEF) have emphasized the rights of the child in relation to HIV/AIDS in all aspects of their work, and the World AIDS Campaign for 1997 focused on "Children Living in a World with AIDS" and for 1998 on "Force for Change: World AIDS Campaign with Young People". UNAIDS and the Office of the United Nations High Commissioner for Human Rights have also produced *The International Guidelines on HIV/AIDS and Human Rights* (1998) and its *Revised Guideline 6* (2002) to promote and protect human rights in the context of HIV/AIDS. At the international political level, HIV/AIDS-related rights have been recognized in the *Declaration of Commitment on HIV/AIDS*, adopted at the United Nations General Assembly special session, *A World Fit for Children*, adopted at the United Nations General Assembly special session on children, and in other international and regional documents.

(c) To identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic;

(d) To contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, polices and programmes to combat the spread and mitigate the impact of HIV/AIDS at the national and international levels.

III. THE CONVENTION'S PERSPECTIVES ON HIV/AIDS: THE HOLISTIC CHILD RIGHTS-BASED APPROACH

5. The issue of children and HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. In this regard, the right to health (article 24 of the Convention) is, however, central. But HIV/AIDS impacts so heavily on the lives of all children that it affects all their rights - civil, political, economic, social and cultural. The rights embodied in the general principles of the Convention - the right to non-discrimination (art. 2), the right of the child to have his/her interest as a primary consideration (art. 3), the right to life, survival and development (art. 6) and the right to have his/her views respected (art. 12) - should therefore be the guiding themes in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

6. Adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The most relevant rights in this regard, in addition to those enumerated in paragraph 5 above, are the following: the right to access information and material aimed at the promotion of their social, spiritual and moral well-being and physical and mental health (art. 17); the right to preventive health care, sex education and family planning education and services (art. 24 (f)); the right to an appropriate standard of living (art. 27); the right to privacy (art. 16); the right not to be separated from parents (art. 9); the right to be protected from violence (art. 19); the right to special protection and assistance by the State (art. 20); the rights of children with disabilities (art. 23); the right to health (art. 24); the right to social security, including social insurance (art. 26); the right to education and leisure (arts. 28 and 31); the right to be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs (arts. 32, 33, 34 and 36); the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment (arts. 35 and 37); and the right to physical and psychological recovery and social reintegration (art. 39). Children are confronted with serious challenges to the above-mentioned rights as a result of the epidemic. The Convention, and in particular the four general principles with their comprehensive approach, provide a powerful framework for efforts to reduce the negative impact of the pandemic on the lives of children. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

A. THE RIGHT TO NON-DISCRIMINATION (ART. 2)

7. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination, children are denied access to information, education (see the Committee's General Comment No. 1 on the aims of education), health or social care services or community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized.

8. Of particular concern is gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.

9. All the above-mentioned discriminatory practices are violations of children's rights under the Convention. Article 2 of the Convention obliges States parties to ensure all the rights set forth in the Convention without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The Committee interprets "other status" under article 2 of the Convention to include HIV/AIDS status of the child or his/her parent(s). Laws, policies, strategies and practices should address all forms of discrimination that contribute to increasing the impact of the epidemic. Strategies should also promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS.

B. BEST INTERESTS OF THE CHILD (ART. 3)

10. Policies and programmes for the prevention, care and treatment of HIV/AIDS have generally been designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration. Article 3, paragraph 1, of the Convention states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The obligations attached to this right are fundamental to guiding the action of States in relation to HIV/AIDS. The child should be placed at the centre of the response to the pandemic, and strategies should be adapted to children's rights and needs.

C. THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (ART. 6)

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

D. THE RIGHT TO EXPRESS VIEWS AND HAVE THEM TAKEN INTO ACCOUNT (ART. 12)

12. Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives and in the development of HIV/AIDS policies and programmes. Interventions have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out rather than being seen as objects for whom decisions are made. In this regard, the participation of children as peer educators, both within and outside schools, should be actively promoted. States, international agencies and non-governmental organizations must provide children with a supportive and enabling environment to carry out their own initiatives, and to fully participate at both community and national levels in HIV policy and programme conceptualization, design, implementation, coordination, monitoring and review. A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard, and given due weight in accordance with their age and maturity (art. 12, para. 1). Where appropriate, the involvement of children living with HIV/AIDS in raising awareness, by sharing their experiences with their peers and others, is critical both to effective prevention and to reducing stigmatization and discrimination. States parties must ensure that children who participate in these awareness-raising efforts do so voluntarily, after being counselled, and that they receive both the social support and legal protection to allow them to lead normal lives during and after their involvement.

E. OBSTACLES

13. Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial. 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.

14. With regard to financial, technical and human resources, the Committee is aware that such resources may not be immediately available. However, concerning this obstacle, the Committee wishes to remind States parties of their obligations under article 4. It further notes that resource constraints should not be used by States parties to justify their failure to take any or enough of the technical or financial measures required. Finally, the Committee wishes to emphasize in this regard the essential role of international cooperation.

IV. PREVENTION, CARE, TREATMENT AND SUPPORT

15. The Committee wishes to stress that prevention, care, treatment and support are mutually reinforcing elements and provide a continuum within an effective response to HIV/AIDS.

A. INFORMATION ON HIV PREVENTION AND AWARENESS-RAISING

16. Consistent with the obligations of States parties in relation to the rights to health and information (arts. 24, 13 and 17), 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.

17. Dialogue with community, family and peer counsellors, and the provision of “life skills” education within schools, including skills in communicating on sexuality and healthy living, have been found to be useful approaches to delivering HIV prevention messages to both girls and boys, but different approaches may be necessary to reach different groups of children. States parties must make efforts to address gender differences as they may impact on the access children have to prevention messages, and ensure that children are reached with appropriate prevention messages even if they face constraints due to language, religion, disability or other factors of discrimination. Particular attention must be paid to raising awareness among hard-to-reach populations. In this respect, the role of the mass media and/or oral tradition in ensuring that children have access to information and material, as recognized in article 17 of the

Convention, is crucial both to providing appropriate information and to reducing stigmatization and discrimination. States parties should support the regular monitoring and evaluation of HIV/AIDS awareness campaigns to ascertain their effectiveness in providing information, reducing ignorance, stigmatization and discrimination, as well as addressing fear and misperceptions concerning HIV and its transmission among children, including adolescents.

B. THE ROLE OF EDUCATION

18. Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS (see also the Committee's General Comment No. 1 on the aims of education). Furthermore, education can and should empower children to protect themselves from the risk of HIV infection. In this regard, 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.

19. States parties must make every effort to ensure that schools are safe places for children, which offer them security and do not contribute to their vulnerability to HIV infection. In accordance with article 34 of the Convention, States parties are under obligation to take all appropriate measures to prevent, inter alia, the inducement or coercion of a child to engage in any unlawful sexual activity.

C. CHILD AND ADOLESCENT SENSITIVE HEALTH SERVICES

20. The Committee is concerned that health services are generally still insufficiently responsive to the needs of children under 18 years of age, in particular adolescents. As the Committee has noted on numerous occasions, children are more likely to use services that are friendly and supportive, provide a wide range of services and information, are geared to their needs, give them the opportunity to participate in decisions affecting their health, are accessible, affordable, confidential and non-judgemental, do not require parental consent and are not discriminatory. In the context of HIV/AIDS and taking into account the evolving capacities of the child, States parties are encouraged to ensure that health services employ trained personnel who fully respect the rights of children to privacy (art. 16) and non-discrimination in offering them access to HIV-related information, voluntary counselling and testing, knowledge of their HIV status, confidential sexual and reproductive health services, and free or low-cost contraceptive, methods and services, as well as HIV-related care and treatment if and when needed, including for the prevention and treatment of health problems related to HIV/AIDS, e.g. tuberculosis and opportunistic infections.

21. In some countries, even when child- and adolescent-friendly HIV-related services are available, they are not sufficiently accessible to children with disabilities, indigenous children, children belonging to minorities, children living in rural areas, children living in extreme poverty or children who are otherwise marginalized within the society. In others, where the health system's overall capacity is already strained, children with HIV have been routinely denied access to basic health care. States parties must ensure that services are provided to the maximum extent possible to all children living within their borders, without discrimination, and that they sufficiently take into account differences in gender, age and the social, economic, cultural and political context in which children live.

D. HIV COUNSELLING AND TESTING

22. The accessibility of voluntary, confidential HIV counselling and testing services, with due attention to the evolving capacities of the child, is fundamental to the rights and health of children. Such services are critical to children's ability to reduce the risk of contracting or transmitting HIV, to access HIV-specific care, treatment and support, and to better plan for their futures. Consistent with their obligation under article 24 of the Convention to ensure that no child is deprived of his or her right of access to necessary health services, States parties should ensure access to voluntary, confidential HIV counselling and testing for all children.

23. The Committee wishes to stress that, as the duty of States parties is first and foremost to ensure that the rights of the child are protected, States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, consistent with the child's right to receive information under articles 13 and 17 of the Convention, States parties must ensure that, prior to any HIV testing, whether by health-care providers in relation to children who are accessing health services for another medical condition or otherwise, the risks and benefits of such testing are sufficiently conveyed so that an informed decision can be made.

24. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

E. MOTHER-TO-CHILD TRANSMISSION

25. Mother-to-child transmission (MTCT) is responsible for the majority of HIV infections in infants and young children. Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States parties are

requested 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.

26. To prevent MTCT of HIV, States parties must take steps, including the provision of essential drugs, e.g. anti-retroviral drugs, appropriate antenatal, delivery and post-partum care, and making HIV voluntary counselling and testing services available to pregnant women and their partners. The Committee recognizes that anti-retroviral drugs administered to a woman during pregnancy and/or labour and, in some regimens, to her infant, have been shown to significantly reduce the risk of transmission from mother to child. However, in addition, States parties should provide support for mothers and children, including counselling on infant feeding options. States parties are reminded that counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options, and guidance on selecting the option most likely to be suitable for their situation. Follow-up support is also required in order for women to be able to implement their selected option as safely as possible.

27. 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 10-20 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.

F. TREATMENT AND CARE

28. The obligations of States parties under the Convention extend to ensuring that children have sustained and equal access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services on a basis of non-discrimination. It is now widely recognized that comprehensive treatment and care includes anti-retroviral and other drugs, diagnostics and related technologies for the care of HIV/AIDS, related opportunistic infections and other conditions, good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. In this regard, States parties should negotiate with the pharmaceutical industry in order to make the necessary medicines locally available at the lowest costs possible. Furthermore, States parties are requested to affirm, support and facilitate the involvement of communities in the provision of comprehensive HIV/AIDS treatment, care and support, while at the same time complying with their own obligations under the Convention. States parties are called upon to pay special attention to addressing those factors within their societies that hinder equal access to treatment, care and support for all children.

G. INVOLVEMENT OF CHILDREN IN RESEARCH

29. Consistent with article 24 of the Convention, States parties must ensure that HIV/AIDS research programmes include specific studies that contribute to effective prevention, care, treatment and impact reduction for children. States parties must, nonetheless, ensure that children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/ADS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child's evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child. States parties are further reminded to ensure that the privacy rights of children, in line with their obligations under article 16 of the Convention, are not inadvertently violated through the research process and that personal information about children, which is accessed through research, is, under no circumstances, used for purposes other than that for which consent was given. States parties must make every effort to ensure that children and, according to their evolving capacities, their parents and/or their guardians participate in decisions on research priorities and that a supportive environment is created for children who participate in such research.

V. VULNERABILITY AND CHILDREN NEEDING SPECIAL PROTECTION

30. The vulnerability of children to HIV/AIDS resulting from political, economic, social, cultural and other factors determines the likelihood of their being left with insufficient support to cope with the impact of HIV/AIDS on their families and communities, exposed to the risk of infection, subjected to inappropriate research, or deprived of access to treatment, care and support if and when HIV infection sets in. Vulnerability to HIV/AIDS is most acute for children living in refugee and internally displaced persons camps, children in detention, children living in institutions, as well as children living in extreme poverty, children living in situations of armed conflict, child soldiers, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. However, all children can be rendered vulnerable by the particular circumstances of their lives. Even in times of severe resource constraints, the Committee wishes to note that the rights of vulnerable members of society must be protected and that many measures can be pursued with minimum resource implications. Reducing vulnerability to HIV/AIDS requires first and foremost that children, their families and communities be empowered to make informed choices about decisions, practices or policies affecting them in relation to HIV/AIDS.

A. CHILDREN AFFECTED AND ORPHANED BY HIV/AIDS

31. Special attention must be given to children orphaned by AIDS and to children from affected families, including child-headed households, as these impact on vulnerability to HIV infection. For children from families affected by HIV/AIDS, the stigmatization and social isolation they experience may be accentuated by the neglect or violation of their rights, in particular discrimination resulting in a decrease or loss of access to education, health and social services. The Committee wishes to underline the necessity of providing legal, economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well as to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate. In this respect, States parties are reminded that these measures are critical to the realization of the rights of children and to giving them the skills and support necessary to reduce their vulnerability and risk of becoming infected.

32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.

33. The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatization and discrimination. In this respect, States parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. Consistent with their obligations under article 27 of the Convention, States parties must also support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.

34. Orphans are best protected and cared for when efforts are 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 the best way to care for orphans when there are no other feasible alternatives. Assistance must be provided so that, to the maximum extent possible, children can remain within existing family structures. This option may not be available due to the impact HIV/AIDS has on the extended family. In that case, States parties should provide, as far as possible, for family-type alternative care (e.g. foster care). States parties are encouraged to provide support, financial and otherwise, when necessary, to child-headed households. States parties must ensure that their strategies recognize that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to assist communities in determining how best to provide support to the orphans living there.

35. Although institutionalized care may have detrimental effects on child development, States parties may, nonetheless, determine that it has an interim role to play in caring for children orphaned by HIV/AIDS when family-based care within their own communities is not a possibility. It is the opinion of the Committee that any form of institutionalized care for children should only serve as a measure of last resort, and that measures must be fully in place to protect the rights of the child and guard against all forms of abuse and exploitation. In keeping with the right of children to special protection and assistance when within these environments, and consistent with articles 3, 20 and 25 of the Convention, 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.

B. VICTIMS OF SEXUAL AND ECONOMIC EXPLOITATION

36. Girls and boys who are deprived of the means of survival and development, particularly children orphaned by AIDS, may be subjected to sexual and economic exploitation in a variety of ways, including the exchange of sexual services or hazardous work for money to survive, support their sick or dying parents and younger siblings, or to pay for school fees. Children who are infected or directly affected by HIV/AIDS may find themselves at a double disadvantage - experiencing discrimination on the basis of both their social and economic marginalization and their, or their parents', HIV status. Consistent with the right of children under articles 32, 34, 35 and 36 of the Convention, and in order to reduce children's vulnerability to HIV/AIDS, States parties are under obligation to protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to prostitution networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development. States parties must take bold action to protect children from sexual and economic exploitation, trafficking and sale and, consistent with the rights under article 39, create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non-governmental entities engaged in these issues.

C. VICTIMS OF VIOLENCE AND ABUSE

37. 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. In keeping with the rights of the child set forth in article 19 of the Convention, States parties have the obligation to protect children from all forms of violence and abuse, whether at home, in school or other institutions, or in the community.

38. 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. In keeping with States parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.

Substance abuse

39. The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.

VI. RECOMMENDATIONS

40. The Committee hereby reaffirms the recommendations, which emerged at the day of general discussion on children living in a world with HIV/AIDS (CRC/C/80), and calls upon States parties:

(a) To adopt and implement national and local HIV/AIDS-related policies, including effective plans of action, strategies, and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention, including by taking into account the recommendations made in the previous paragraphs of the present General Comment and those adopted at the United Nations General Assembly special session on children (2002);

(b) To allocate financial, technical and human resources, to the maximum extent possible, to supporting national and community-based action (art. 4), and, where appropriate, within the context of international cooperation (see paragraph 41 below).

(c) To review existing laws or enact new legislation with a view to implementing fully article 2 of the Convention, and in particular to expressly prohibiting discrimination based on real or perceived HIV/AIDS status so as to guarantee equal access for of all children to all relevant services, with particular attention to the child's right to privacy and confidentiality and to other recommendations made by the Committee in the previous paragraphs relevant to legislation;

(d) To include HIV/AIDS plans of action, strategies, policies and programmes 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 of neglect or violation of the rights of the child in relation to HIV/AIDS, whether this entails the creation of a new legislative or administrative body or is entrusted to an existing national institution;

(e) To reassess their HIV-related data collection and evaluation to ensure that they adequately cover children as defined under the Convention, are disaggregated by age and gender ideally in five-year age groups, and include, as far as possible, children belonging to vulnerable groups and those in need of special protection;

(f) To include, in their reporting process under article 44 of the Convention, information on national HIV/AIDS policies and programmes and, to the extent possible, budgeting and resource allocations at the national, regional and local levels, as well as within these breakdowns the proportions allocated to prevention, care, research and impact reduction. Specific attention must be given to the extent to which these programmes and policies explicitly recognize children (in the light of their evolving capacities) and their rights, and the extent to which HIV-related rights of children are dealt with in laws, policies and practices, with specific attention to discrimination against children on the basis of their HIV status, as well as because they are orphans or the children of parents living with HIV/AIDS. The Committee requests States parties to provide a detailed indication in their reports of what they consider to be the most important priorities within their jurisdiction in relation to children and HIV/AIDS, and to outline the programme of activities they intend to pursue over the coming five years in order to address the problems identified. This would allow activities to be progressively assessed over time.

41. In order to promote international cooperation, the Committee calls upon UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and other relevant international bodies, organizations and agencies to contribute systematically, at the

national level, to efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to work with the Committee to improve the rights of the child in the context of HIV/AIDS. Further, the Committee urges States providing development cooperation to ensure that HIV/AIDS strategies are so designed as to take fully into account the rights of the child.

42. Non-governmental organizations, as well as community-based groups and other civil society actors, such as youth groups, faith-based organizations, women's organizations and traditional leaders, including religious and cultural leaders, all have a vital role to play in the response to the HIV/AIDS pandemic. States parties are called upon to ensure an enabling environment for participation by civil society groups, which includes facilitating collaboration and coordination among the various players, and that these groups are given the support needed to enable them to operate effectively without impediment (in this regard, States parties are specifically encouraged to support the full involvement of people living with HIV/AIDS, with particular attention to the inclusion of children, in the provision of HIV/AIDS prevention, care, treatment and support services).

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr.GENERAL

CRC/GC/2003/4

1 July 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-third session
19 May-6 June 2003

GENERAL COMMENT NO. 4 (2003)
ADOLESCENT HEALTH AND DEVELOPMENT IN THE CONTEXT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

INTRODUCTION

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

2. Adolescence is a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills. While adolescents are in general a healthy population group, adolescence also poses new challenges to health and development owing to their relative vulnerability and pressure from society, including peers, to adopt risky health behaviour. These challenges include developing an individual identity and dealing with one's sexuality. The dynamic transition period to adulthood is also generally a period of positive changes, prompted by the significant capacity of adolescents to learn rapidly, to experience new and diverse situations, to develop and use critical thinking, to familiarize themselves with freedom, to be creative and to socialize.

3. The Committee on the Rights of the Child notes with concern that in implementing their obligations under the Convention, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. This has motivated the Committee to adopt the present general comment in order to raise awareness and provide States parties with guidance and support in their efforts to guarantee the respect for, protection and fulfilment of the rights of adolescents, including through the formulation of specific strategies and policies.

4. The Committee understands the concepts of "health and development" more broadly than being strictly limited to the provisions defined in articles 6 (right to life, survival and development) and 24 (right to health) of the Convention. One of the aims of this general comment is precisely to identify the main human rights that need to be promoted and protected in order to ensure that adolescents do enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large. This general comment should be read in conjunction with the Convention and its two Optional Protocols on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, as well as other relevant international human rights norms and standards.[13]

I. FUNDAMENTAL PRINCIPLES AND OTHER OBLIGATIONS OF STATES PARTIES

5. As recognized by the World Conference on Human Rights (1993) and repeatedly stated by the Committee, children's rights too are indivisible and interrelated. In addition to articles 6 and 24, other provisions and principles of the Convention are crucial in guaranteeing that adolescents fully enjoy their right to health and development.

[13] These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Discrimination Against Women.

The right to non-discrimination

6. States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". These grounds also cover adolescents' sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.

Appropriate guidance in the exercise of rights

7. The Convention acknowledges the responsibilities, rights and duties of parents (or other persons legally responsible for the child) "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention" (art. 5). The Committee believes that parents or other persons legally responsible for the child need to fulfil with care their right and responsibility to provide direction and guidance to their adolescent children in the exercise by the latter of their rights. They have an obligation to take into account the adolescents' views, in accordance with their age and maturity, and to provide a safe and supportive environment in which the adolescent can develop. Adolescents need to be recognized by the members of their family environment as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction.

Respect for the views of the child

8. The right to express views freely and have them duly taken into account (art. 12) is also fundamental in realizing adolescents' right to health and development. States parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults 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.

Legal and judicial measures and processes

9. Under article 4 of the Convention, "States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized" therein. In the context of the rights of adolescents to health and development, States parties need to ensure that specific legal provisions are guaranteed under domestic law, including with regard to setting a minimum age for sexual consent, marriage and the possibility of medical treatment without parental consent. These minimum ages should be the same for boys and girls (article 2 of the Convention) and closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity (arts. 5 and 12 to 17). Further, adolescents need to have easy access to individual complaint systems as well as judicial and appropriate non-judicial redress mechanisms that guarantee fair and due process, with special attention to the right to privacy (art. 16).

Civil rights and freedoms

10. The Convention defines the civil rights and freedoms of children and adolescents in its articles 13 to 17. These are fundamental in guaranteeing the right to health and development of adolescents. Article 17 states that the child has the right to "access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health". The right of adolescents to access appropriate information is crucial if States parties are to promote cost-effective measures, including through laws, policies and programmes, with regard to numerous health-related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from harmful traditional practices, including early marriages and female genital mutilation, and the abuse of alcohol, tobacco and other harmful substances.

11. In order to promote the health and development of adolescents, States parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters (art. 16). Health-care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult's confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment.

Protection from all forms of abuse, neglect, violence and exploitation[14]

12. States parties must take effective measures to ensure that adolescents are protected from all forms of violence, abuse, neglect and exploitation (arts. 19, 32-36 and 38), paying increased attention to the specific forms of abuse, neglect, violence and exploitation that affects this 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 to abuse and neglect. States parties should also ensure that adolescents affected by poverty who are socially marginalized are not criminalized. In this regard, financial and human resources need to be allocated to promote research that would inform the adoption of effective local and national laws, policies and programmes. Policies and strategies should be reviewed regularly and revised accordingly. 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.

Data collection

13. Systematic data collection is necessary for States parties to be able to monitor the health and development of adolescents. States parties should adopt data-collection mechanisms that allow desegregation by sex, age, origin and socio-economic status so that the situation of different groups can be followed. Data should also be collected to study the situation of specific groups such as ethnic and/or indigenous minorities, migrant or refugee adolescents, adolescents with disabilities, working adolescents, etc. Where appropriate, adolescents should participate in the analysis to ensure that the information is understood and utilized in an adolescent-sensitive way.

II. CREATING A SAFE AND SUPPORTIVE ENVIRONMENT

14. The health and development of adolescents are strongly determined by the environments in which they live. Creating a safe and supportive environment entails addressing attitudes and actions of both the immediate environment of the adolescent - family, peers, schools and services - as well as the wider environment created by, inter alia, community and religious leaders, the media, national and local policies and legislation. The promotion and enforcement of the provisions and principles of the Convention, especially articles 2-6, 12-17, 24, 28, 29 and 31, are key to guaranteeing adolescents' right to health and development. States parties should take measures to raise awareness and stimulate and/or regulate action through the formulation of policy or the adoption of legislation and the implementation of programmes specifically for adolescents.

15. The Committee stresses the importance of the family environment, including the members of the extended family and community or other persons legally responsible for the child or adolescent (arts. 5 and 18). While most adolescents grow up in well-functioning family environments, for some the family does not constitute a safe and supportive milieu.

16. 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 (art. 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 (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.

17. The school plays an important role in the life of many adolescents, as the venue for learning, development and socialization. Article 29 (1) states that education must be directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential". In addition, general comment No. 1 on the aims of education states that "Education must also be aimed at ensuring that … no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include … the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle [and] good social relationships …". Considering the importance of appropriate education for the current and future health and development of adolescents, as well as for their children, the Committee urges States parties, in line with articles 28 and 29 of the Convention to (a) ensure that quality primary education is compulsory and available, accessible and free to all and that secondary and higher education are available and accessible to all adolescents; (b) provide well-functioning school and recreational facilities which do not pose health risks to students, including water and sanitation and safe journeys to school; (c) take the necessary actions to prevent and prohibit all forms of violence and abuse, including sexual abuse, corporal punishment and other inhuman, degrading or humiliating treatment or punishment in school, by school personnel as well as among students; (d) initiate and support measures, attitudes and activities that promote healthy behaviour by including relevant topics in school curricula.

[14] See also the reports of the Committee's days of general discussion on "Violence against children" held in 2000 and 2001 and the Recommendations adopted in this regard (see CRC/C/100, chap. V and CRC/C/111, chap. V).

18. 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.

19. The Committee also stresses that in accordance with article 23 (3) of the Convention, 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.

20. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).

21. In most countries accidental injuries or injuries due to violence are a leading cause of death or permanent disability among adolescents. In that respect, the Committee is concerned about the injuries and death resulting from road traffic accidents, which affect adolescents disproportionately. States parties should adopt and enforce legislation and programmes to improve road safety, including driving education for and examination of adolescents and the adoption or strengthening of legislation known to be highly effective such as the obligations to have a valid driver's licence, wear seat belts and crash helmets, and the designation of pedestrian areas.

22. The Committee is also very concerned about the high rate of suicide among this age group. Mental disorders and psychosocial illness are relatively common among adolescents. In many countries symptoms such as depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide, are increasing. They may be related to, inter alia, violence, ill-treatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school. States parties should provide these adolescents with all the necessary services.

23. 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[15] 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.

24. In light of articles 3, 6, 12, 19 and 24 (3) of the Convention, States parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. Further, States parties should facilitate the establishment of multidisciplinary information and advice centres regarding the harmful aspects of some traditional practices, including early marriage and female genital mutilation.

25. The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents[16].

[15] Ibid.
[16] As proposed in the Framework Convention on Tobacco Control (2003) of the World Health Organization.

III. INFORMATION, SKILLS DEVELOPMENT, COUNSELLING, AND HEALTH SERVICES

26. Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.

27. 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.

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

29. Under article 24 of the Convention, States parties are urged to provide adequate treatment and rehabilitation for adolescents with mental disorders, to make the community aware of the early signs and symptoms and the seriousness of these conditions, and to protect adolescents from undue pressures, including psychosocial stress. States parties are also urged to combat discrimination and stigma surrounding mental disorders, in line with their obligations under article 2. Every adolescent with a mental disorder has the right to be treated and cared for, as far as possible, in the community in which he or she lives. Where hospitalization or placement in a psychiatric institution is necessary, this decision should be made in accordance with the principle of the best interests of the child. In the event of hospitalization or institutionalization, the patient should be given the maximum possible opportunity to enjoy all his or her rights as recognized under the Convention, including the rights to education and to have access to recreational activities.[17] Where appropriate, adolescents should be separated from adults. States parties must ensure that adolescents have access to a personal representative other than a family member to represent their interests, when necessary and appropriate.[18] In accordance with article 25 of the Convention, States parties should undertake periodic review of the placement of adolescents in hospitals or psychiatric institutions.

30. Adolescents, both girls and boys, are at risk of being infected with and affected by STDs, including HIV/AIDS[19]. States should ensure that appropriate goods, services and information for the prevention and treatment of STDs, including HIV/AIDS, are available and accessible. To this end, States parties are urged (a) to develop effective prevention programmes, including measures aimed at changing cultural views about adolescents' need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality; (b) to adopt legislation to combat practices that either increase adolescents' risk of infection or contribute to the marginalization of adolescents who are already infected with STDs, including HIV; (c) to take measures to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms, and care.

31. Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling; (b) to foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers; and (c) to develop policies that will allow adolescent mothers to continue their education.

32. Before parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the "best interest of the child" (art. 3).

---

[17] For further guidance on this subject, refer to the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, (General Assembly resolution 46/119 of 17 December 1991, annex).
[18] Ibid., in particular principles 2, 3 and 7.
[19] For further guidance on this issue, see general comment No. 3 (2003) on HIV/AIDS and the rights of children.

33. With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment.

IV. VULNERABILITY AND RISK

34. In ensuring respect for the right of adolescents to health and development, both individual behaviours and environmental factors which increase their vulnerability and risk should be taken into consideration. Environmental factors, such as armed conflict or social exclusion, increase the vulnerability of adolescents to abuse, other forms of violence and exploitation, thereby severely limiting adolescents' abilities to make individual, healthy behaviour choices. For example, the decision to engage in unsafe sex increases adolescents' risk of ill-health.

35. 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.[20] 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.

36. States parties have to provide special protection to homeless adolescents, including those working in the informal sector. 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.

37. Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity (art. 39). It is the obligation of States parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders.

38. Additionally, adolescents experiencing poverty, armed conflicts, all forms of injustice, family breakdown, political, social and economic instability and all types of migration may be particularly vulnerable. These situations might seriously hamper their health and development. By investing heavily in preventive policies and measures States parties can drastically reduce levels of vulnerability and risk factors; they will also provide cost-effective ways for society to help adolescents develop harmoniously in a free society.

V. NATURE OF STATES' OBLIGATIONS

39. In exercising their obligations in relation to the health and development of adolescents, States parties shall always take fully into account the four general principles of the Convention. It is the view of the Committee that States parties must take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention. To this end, States parties must notably fulfil 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 facilities, goods and 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;

[20] United Nations Standard Rules on Equal Opportunities for Persons with Disabilities.

(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 in the fulfilment of all aforementioned obligations;

(i) To implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

40. The Committee draws the attention of States parties to the general comment No. 14 on the right to the highest attainable standard of health of the Committee on Economic, Social and Cultural Rights which states that, "States parties should provide a safe and supportive environment for adolescents that ensures the opportunity to participate in decisions affecting their health, to build life skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services."

41. In accordance with articles 24, 39 and other related provisions of the Convention, States parties should provide health services that are sensitive to the particular needs and human rights of all adolescents, paying attention to the following characteristics:

(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.

42. States parties should, where feasible, adopt a multisectoral approach to the promotion and protection of adolescent health and development by facilitating effective and sustainable linkages and partnerships among all relevant actors. At the national level, such an approach calls for close and systematic collaboration and coordination within Government, so as to ensure the necessary involvement of all relevant government entities. Public health and other services utilized by adolescents should also be encouraged and assisted in seeking collaboration with, inter alia, private and/or traditional practitioners, professional associations, pharmacies and organizations that provide services to vulnerable groups of adolescents.

43. A multisectoral approach to the promotion and protection of adolescent health and development will not be effective without international cooperation. Therefore, States parties should, when appropriate, seek such cooperation with United Nations specialized agencies, programmes and bodies, international NGOs and bilateral aid agencies, international professional associations and other non-State actors.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/GC/2003/5

27 November 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-fourth session
19 September-3 October 2003

GENERAL COMMENT NO. 5 (2003)
GENERAL MEASURES OF IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (ARTS. 4, 42 AND 44, PARA. 6)

FOREWORD

The Committee on the Rights of the Child has drafted this general comment to outline States parties' obligations to develop what it has termed "general measures of implementation". The various elements of the concept are complex and the Committee emphasizes that it is likely to issue more detailed general comments on individual elements in due course, to expand on this outline. Its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child" has already expanded on this concept.

ARTICLE 4

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

I. INTRODUCTION

1. When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.[21] Article 4 requires States parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality of the human rights of children - needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.[22]

2. In its periodic examination of States parties' reports under the Convention, the Committee pays particular attention to what it has termed "general measures of implementation". In its concluding observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State party to describe action taken in response to these recommendations in its subsequent periodic report. The Committee's reporting guidelines arrange the Convention's articles in clusters,[23] the first being on "general measures of implementation" and groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see, paragraph 66 below) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see paragraph 71 below).

[21] The Committee reminds States parties that, for the purposes of the Convention, a child is defined as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier" (art. 1).
[22] In 1999, the Committee on the Rights of the Child held a two-day workshop to commemorate the tenth anniversary of adoption of the Convention on the Rights of the Child by the United Nations General Assembly. The workshop focused on general measures of implementation following which the Committee adopted detailed conclusions and recommendations (see CRC/C/90, para. 291).
[23] General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a) of the Convention, CRC/C/5, 15 October 1991; General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996.

3. In addition to these provisions, other general implementation obligations are set out in article 2: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind …".

4. Also under article 3, paragraph 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."

5. In international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the present general comment and which are referred to below.[24]

6. Article 4, while reflecting States parties' overall implementation obligation, suggests a distinction between civil and political rights and economic, social and cultural rights in its second sentence: "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." There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee's reporting guidelines group articles 7, 8, 13-17 and 37 (a) under the heading "Civil rights and freedoms", but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted in paragraph 25 below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.

7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of "progressive realization" of such rights: States need to be able to demonstrate that they have implemented "to the maximum extent of their available resources" and, where necessary, have sought international cooperation . When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).

8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that "even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances …".[25] Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

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

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

11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.

12. The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

[24] Human Rights Committee, general comment No. 3 (thirteenth session, 1981), *Article 2: Implementation at the national level*; Committee on Economic, Social and Cultural Rights, general comment No. 3 (fifth session, 1990), *The nature of States parties' obligations (article 2, paragraph 1, of the Covenant*); also general comment No. 9 (nineteenth session, 1998), *The domestic application of the Covenant*, elaborating further on certain elements in general comment No. 3. A compendium of the treaty bodies' general comments and recommendations is published regularly by the Office of the High Commissioner for Human Rights (HRI/GEN/1/Rev.6).

[25] General comment No. 3, HRI/GEN/1/Rev.6, para. 11, p. 16.

Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.[26]

Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children. The article refers to actions undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.

Article 6: the child's inherent right to life and States parties' obligation to ensure to the maximum extent possible the survival and development of the child. The Committee expects States to interpret "development" in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.

Article 12: the child's right to express his or her views freely in "all matters affecting the child", those views being given due weight. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.

Opening government decision-making processes to children is a positive challenge which the Committee finds States are increasingly responding to. Given that few States as yet have reduced the voting age below 18, there is all the more reason to ensure respect for the views of unenfranchised children in Government and parliament. If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.

One-off or regular events like Children's Parliaments can be stimulating and raise general awareness. But article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views. The emphasis on "matters that affect them" in article 12 (1) implies the ascertainment of the views of particular groups of children on particular issues - for example children who have experience of the juvenile justice system on proposals for law reform in that area, or adopted children and children in adoptive families on adoption law and policy. It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions. In the early years of the Convention, NGOs had played a notable role in pioneering participatory approaches with children, but it is in the interests of both Governments and children to have appropriate direct contact.

II. REVIEW OF RESERVATIONS

13. In its reporting guidelines on general measures of implementation, the Committee starts by inviting the State party to indicate whether it considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.[27] States parties to the Convention are entitled to make reservations at the time of their ratification of or accession to it (art. 51). The Committee's aim of ensuring full and unqualified respect for the human rights of children can be achieved only if States withdraw their reservations. It consistently recommends during its examination of reports that reservations be reviewed and withdrawn. Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next periodic report. The Committee draws the attention of States parties to the encouragement given by the World Conference on Human Rights to the review and withdrawal of reservations.[28]

14. Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State". The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is "incompatible with the object and purpose of the treaty" (art. 19).

15. Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted". The Committee is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State's

[26] Human Rights Committee, general comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 et seq.
[27] General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 11.
[28] World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.

existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

16. The Committee notes that, in some cases, States parties have lodged formal objections to such wide-ranging reservations made by other States parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States parties.

III. RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

17. As part of its consideration of general measures of implementation, and in the light of the principles of indivisibility and interdependence of human rights, the Committee consistently urges States parties, if they have not already done so, to ratify the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) and the six other major international human rights instruments. During its dialogue with States parties the Committee often encourages them to consider ratifying other relevant international instruments. A non-exhaustive list of these instruments is annexed to the present general comment, which the Committee will update from time to time.

IV. LEGISLATIVE MEASURES

18. The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others.

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

20. The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation (see also paragraphs 40 et seq. below).

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

22. The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children's rights statutes, which can highlight and emphasize the Convention's principles. But the Committee emphasizes that it is crucial in addition that all relevant "sectoral" laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.

23. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41. The Committee emphasizes that the other international human rights instruments apply to all persons below the age of 18 years.

V. JUSTICIABILITY OF RIGHTS

24. For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to

ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.

25. As noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective.

VI. ADMINISTRATIVE AND OTHER MEASURES

26. The Committee cannot prescribe in detail the measures which each or every State party will find appropriate to ensure effective implementation of the Convention. But from its first decade's experience of examining States parties' reports and from its ongoing dialogue with Governments and with the United Nations and United Nations-related agencies, NGOs and other competent bodies, it has distilled here some key advice for States.

27. The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children's lives and children's enjoyment of their rights. Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.

A. DEVELOPING A COMPREHENSIVE NATIONAL STRATEGY ROOTED IN THE CONVENTION

28. If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.

29. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (para. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.

30. Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. As noted above (para. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination.

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

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

33. Developing a national strategy is not a one-off task. Once drafted the strategy will need to be widely disseminated throughout Government and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public.

34. The "national plans of action" which States were encouraged to develop following the first World Summit for Children, held in 1990, were related to the particular commitments set by nations attending the Summit.[29] In 1993, the Vienna Declaration and Programme of

[29] World Summit for Children, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001, United Nations, New York, 30 September 1990.

Action, adopted by the World Conference on Human Rights, called on States to integrate the Convention on the Rights of the Child into their national human rights action plans.[30]

35. The outcome document of the United Nations General Assembly special session on children, in 2002, also commits States "to develop or strengthen as a matter of urgency if possible by the end of 2003 national and, where appropriate, regional action plans with a set of specific time-bound and measurable goals and targets based on this plan of action …".[31] The Committee welcomes the commitments made by States to achieve the goals and targets set at the special session on children and identified in the outcome document, *A World Fit for Children*. But the Committee emphasizes that making particular commitments at global meetings does not in any way reduce States parties' legal obligations under the Convention. Similarly, preparing specific plans of action in response to the special session does not reduce the need for a comprehensive implementation strategy for the Convention. States should integrate their response to the 2002 special session and to other relevant global conferences into their overall implementation strategy for the Convention as a whole.

36. The outcome document also encourages States parties to "consider including in their reports to the Committee on the Rights of the Child information on measures taken and results achieved in the implementation of the present Plan of Action".[32] The Committee endorses this proposal; it is committed to monitoring progress towards meeting the commitments made at the special session and will provide further guidance in its revised guidelines for periodic reporting under the Convention.

B. COORDINATION OF IMPLEMENTATION OF CHILDREN'S RIGHTS

37. In examining States parties' reports the Committee has almost invariably found it necessary to encourage further coordination of government to ensure effective implementation: coordination among central government departments, among different provinces and regions, between central and other levels of government and between Government and civil society. The purpose of coordination is to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children - education, health or welfare and so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

38. The Committee believes that, as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties. There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention and in particular of the four articles identified as providing general principles (see paragraph 12 above).

39. Many States parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children - can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention.

C. DECENTRALIZATION, FEDERALIZATION AND DELEGATION

40. The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.

41. The Committee reiterates that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.

D. PRIVATIZATION

42. The process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 day of general discussion to the theme "The private sector as service provider and its role in implementing

[30] World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.
[31] *A World Fit for Children*, outcome document of the United Nations General Assembly special session on children, 2002, para. 59.
[32] Ibid., para. 61 (a).

child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit. Following that day of general discussion, the Committee adopted detailed recommendations to which it draws the attention of States parties.[33]

43. The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.

44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

E. MONITORING IMPLEMENTATION - THE NEED FOR CHILD IMPACT ASSESSMENT AND EVALUATION

45. Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.

46. Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see paragraph 65 below).

47. The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.

F. DATA COLLECTION AND ANALYSIS AND DEVELOPMENT OF INDICATORS

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

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

50. The Committee emphasizes that, in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on.

G. MAKING CHILDREN VISIBLE IN BUDGETS

51. In its reporting guidelines and in the consideration of States parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets.[34] No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of … available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish

[33] Committee on the Rights of the Child, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights", paras. 630-653.
[34] General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 20.

annual "children's budgets". The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

52. Emphasizing that economic policies are never neutral in their effect on children's rights, the Committee has been deeply concerned by the often negative effects on children of structural adjustment programmes and transition to a market economy. The implementation duties of article 4 and other provisions of the Convention demand rigorous monitoring of the effects of such changes and adjustment of policies to protect children's economic, social and cultural rights.

H. TRAINING AND CAPACITY-BUILDING

53. The Committee emphasizes States' obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children. These include, for example, community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others. Training needs to be systematic and ongoing - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must, of course, be promoted among children themselves, through the school curriculum and in other ways (see also paragraph 69 below and the Committee's General Comment No. 1 (2001) on the aims of education).

54. The Committee's guidelines for periodic reports mention many aspects of training, including specialist training, which are essential if all children are to enjoy their rights. The Convention highlights the importance of the family in its preamble and in many articles. It is particularly important that the promotion of children's rights should be integrated into preparation for parenthood and parenting education.

55. There should be periodic evaluation of the effectiveness of training, reviewing not only knowledge of the Convention and its provisions but also the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights.

I. COOPERATION WITH CIVIL SOCIETY

56. Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations. The Committee concurs, for example, with general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: "While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities."

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

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

59. The Committee welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children's human rights and urges Governments to give them non-directive support and to develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention, coming within the definition of "competent bodies" under article 45 (a), has in many cases given a real impetus to the process of implementation as well as reporting. The NGO Group for the Convention on the Rights of the Child has a very welcome, strong and supportive impact on the reporting process and other aspects of the Committee's work. The Committee underlines in its reporting guidelines that the process of preparing a report "should encourage and facilitate popular participation and public scrutiny of government policies".[35] The media can be valuable partners in the process of implementation (see also paragraph 70).

[35] Ibid., para. 3.

J. INTERNATIONAL COOPERATION

60. Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation.[36] The Charter of the United Nations (Arts. 55 and 56) identifies the overall purposes of international economic and social cooperation, and members pledge themselves under the Charter "to take joint and separate action in cooperation with the Organization" to achieve these purposes. In the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty.

61. The Committee advises States parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product. This goal was reiterated along with other targets in the Monterrey Consensus, arising from the 2002 International Conference on Financing for Development.[37] The Committee encourages States parties that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee expects States parties to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children's rights.

62. The Committee endorses the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee notes that international meetings held to review progress have concluded that many States are going to have difficulty meeting fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased. The Committee takes note of and encourages efforts being made to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP). As the central, country-led strategy for achieving the millennium development goals, PRSPs must include a strong focus on children's rights. The Committee urges Governments, donors and civil society to ensure that children are a prominent priority in the development of PRSPs and sectorwide approaches to development (SWAps). Both PRSPs and SWAps should reflect children's rights principles, with a holistic, child-centred approach recognizing children as holders of rights and the incorporation of development goals and objectives which are relevant to children.

63. The Committee encourages States to provide and to use, as appropriate, technical assistance in the process of implementing the Convention. The United Nations Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and other United Nations and United Nations-related agencies can provide technical assistance with many aspects of implementation. States parties are encouraged to identify their interest in technical assistance in their reports under the Convention.

64. In their promotion of international cooperation and technical assistance, all United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children's rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.

K. INDEPENDENT HUMAN RIGHTS INSTITUTIONS

65. In its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child", the Committee notes that it "considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights". Independent human rights institutions are complementary to effective government structures for children; the essential element is independence: "The role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities."[38] General comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children.

ARTICLE 42: MAKING THE CONVENTION KNOWN TO ADULTS AND CHILDREN

"States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

66. Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.

---

[36] The following articles of the Convention relate to international cooperation explicitly: articles 7 (2); 11 (2); 17 (b); 21 (e); 22 (2); 23 (4); 24 (4); 27 (4); 28 (3); 34 and 35.
[37] Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/Conf.198/11).
[38] HRI/GEN/1/Rev. 6, para. 25, p. 295.

67. The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies - governmental and independent - involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee commends the collection of official and unofficial translations of the Convention made by OHCHR. There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages - a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.

68. Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee's general comment No. 1 (2001) entitled "The aims of education" (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to "… the development of respect for human rights and fundamental freedoms … ". The general comment underlines: "Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children."[39]

69. Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children (see paragraph 53 above). The Committee reminds States parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention, in which it recalled that "dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities".[40]

"*The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect*."[41]

70. The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.[42]

ARTICLE 44 (6): MAKING REPORTS UNDER THE CONVENTION WIDELY AVAILABLE

"… States Parties shall make their reports widely available to the public in their own countries."

71. If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.

72. The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.

73. The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's concluding observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The summary records of the examination of government representatives by the Committee aid understanding of the process and of the Committee's requirements and should also be made available and discussed.

[39] Ibid., para. 15, p. 286.
[40] See CRC/C/90, para. 291 (k).
[41] Ibid., para. 291 (l).
[42] The Committee held a day of general discussion on the theme "The child and the media" in 1996, adopting detailed recommendations (see CRC/C/57, paras. 242 et seq.).

ANNEX I

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

As noted in paragraph 17 of the present general comment, the Committee on the Rights of the Child, as part of its consideration of general measures of implementation, and in the light of the principles of indivisibility and interdependence of human rights, consistently urges States parties, if they have not already done so, to ratify the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography) and the six other major international human rights instruments. During its dialogue with States parties the Committee often encourages them to consider ratifying other relevant international instruments. A non-exhaustive list of these instruments is annexed here. The Committee will update this from time to time.

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

UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr. GENERAL

CRC/GC/2005/6

1 September 2005

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-ninth session
17 May-3 June 2005

GENERAL COMMENT NO. 6 (2005)
TREATMENT OF UNACCOMPANIED AND SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN

I. OBJECTIVES OF THE GENERAL COMMENT

1. The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (the "Convention"), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.

2. The issuing of this general comment is motivated by the Committee's observation of an increasing number of children in such situations. There are varied and numerous reasons for a child being unaccompanied or separated, including: persecution of the child or the parents; international conflict and civil war; trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities.

3. The issuing of the general comment is further motivated by the Committee's identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of, inter alia, sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender-based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.

4. Concerns such as these have led the Committee to frequently raise issues related to unaccompanied and separated children in its concluding observations. This general comment will compile and consolidate standards developed, inter alia, through the Committee's monitoring efforts and shall thereby provide clear guidance to States on the obligations deriving from the Convention with regard to this particular vulnerable group of children. In applying these standards, States parties must be cognizant of their evolutionary character and therefore recognize that their obligations may develop beyond the standards articulated herein. These standards shall in no way impair further-reaching rights and benefits offered to unaccompanied and separated children under regional human rights instruments or national systems, international and regional refugee law or international humanitarian law.

II. STRUCTURE AND SCOPE OF THE GENERAL COMMENT

5. This general comment applies to unaccompanied and separated children who find themselves outside their country of nationality (consistent with article 7) or, if stateless, outside their country of habitual residence. The general comment applies to all such children irrespective of their residence status and reasons for being abroad, and whether they are unaccompanied or separated. However, it does not apply to children who have not crossed an international border, even though the Committee acknowledges the many similar challenges related to internally displaced unaccompanied and separated children, recognizes that much of the guidance offered below

is also valuable in relation to such children, and strongly encourages States to adopt relevant aspects of this general comment in relation to the protection, care and treatment of unaccompanied and separated children who are displaced within their own country.

6. While the mandate of the Committee is confined to its supervisory function in relation to the Convention, its interpretation efforts must be conducted in the context of the entirety of applicable international human rights norms and, therefore, the general comment adopts a holistic approach to the question of the proper treatment of unaccompanied and separated children. This acknowledges that all human rights, including those contained in the Convention, are indivisible and interdependent. The importance of other international human rights instruments to the protection of the child is also recognized in the preamble to the Convention.

III. DEFINITIONS

7. "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

8. "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

9. A "child as defined in article 1 of the Convention", means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". This means that any instruments governing children in the territory of the State cannot define a child in any way that deviates from the norms determining the age of majority in that State.

10. If not otherwise specified, the guidelines below apply equally to both unaccompanied and separated children.

11. "Country of origin" is the country of nationality or, in the case of a stateless child, the country of habitual residence.

IV. APPLICABLE PRINCIPLES

(a) Legal obligations of States parties for all unaccompanied or separated children in their territory and measures for their implementation

12. State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

13. Obligations deriving from the Convention vis-à-vis unaccompanied and separated children apply to all branches of government (executive, legislative and judicial). They include the obligation to establish national legislation; administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support such measures. Such legal obligations are both negative and positive in nature, requiring States not only to refrain from measures infringing on such children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. Such responsibilities are not only limited to the provision of protection and assistance to children who are already unaccompanied or separated, but include measures to prevent separation (including the implementation of safeguards in case of evacuation). The positive aspect of these protection obligations also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and if in the child's best interest, to reunify separated and unaccompanied children with their families as soon as possible.

14. As reaffirmed in its general comment No. 5 (2003) (paras. 18-23), States parties to the Convention have to ensure that the provisions and principles of the treaty are fully reflected and given legal effect in relevant domestic legislation. In case of any conflict in legislation, predominance should always be given to the Convention, in light of article 27 of the Vienna Convention on the Law of Treaties.

15. In order to ensure a conducive legal environment and in light of article 41 (b) of the Convention, States parties are also encouraged 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 "CAT"), 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 Inter-Country Adoption, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the four Geneva Conventions of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the

Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1997. The Committee also encourages States parties to the Convention and others concerned to take into account the Office of the United Nations High Commissioner for Refugees (UNHCR)'s Guidelines on Protection and Care (1994) and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children.[43]

16. In view of the absolute nature of obligations deriving from the Convention and their *lex specialis* character, article 2, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights would not apply with regard to unaccompanied and separated children. In application of article 4 of the Convention, the particular vulnerability of unaccompanied and separated children, explicitly recognized in article 20 of the Convention, must be taken into account and will result in making the assignment of available resources to such children a priority. States are expected to accept and facilitate assistance offered within their respective mandates by the United Nations Children's Fund (UNICEF), UNHCR and other agencies (article 22 (2) of the Convention) in order to meet the needs of unaccompanied and separated children.

17. The Committee believes that reservations made by States parties to the Convention should not in any way limit the rights of unaccompanied and separated children. As is systematically done with States parties during the reporting process, the Committee recommends that, in the light of the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights in Vienna,[44] reservations limiting the rights of unaccompanied and separated children be reviewed with the objective of withdrawal.

(b) Non-discrimination (art. 2)

18. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

(c) Best interests of the child as a primary consideration in the search for short and long-term solutions (art.3)

19. Article 3 (1) states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

21. Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

22. Respect for best interests also requires that, where competent authorities have placed an unaccompanied or separated child "for the purposes of care, protection or treatment of his or her physical or mental health", the State recognizes the right of that child to a "periodic review" of their treatment and "all other circumstances relevant to his or her placement" (article 25 of the Convention).

(d) The right to life, survival and development (art. 6)

23. The obligation of the State party under article 6 includes protection from violence and exploitation, to the maximum extent possible, which would jeopardize a child's right to life, survival and development. Separated and unaccompanied children are vulnerable to various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Accordingly, article 6

[43] These Guiding Principles are jointly endorsed by the International Committee of the Red Cross, the International Rescue Committee, Save the Children/UK, UNICEF, UNHCR, and World Vision International. They are intended to guide the work of all members of the Inter-Agency Standing Committee with respect to unaccompanied and separated children.

[44] Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, held in Vienna, 14-25 June 1993.

necessitates vigilance by States parties in this regard, particularly when organized crime may be involved. While the issue of trafficking of children is beyond the scope of this general comment, the Committee notes that there is often a link between trafficking and the situation of separated and unaccompanied children.

24. The Committee is of the view that practical measures should be taken at all levels to protect children from the risks mentioned above. Such measures could include: priority procedures for child victims of trafficking, the prompt appointment of guardians, the provision of information to children about the risks they may encounter, and establishment of measures to provide follow-up to children particularly at risk. These measures should be regularly evaluated to ensure their effectiveness.

(e) Right of the child to express his or her views freely (art. 12)

25. Pursuant to article 12 of the Convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child's views and wishes should be elicited and taken into account (art. 12 (1)). To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22 (2)). In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.

(f) Respect for the principle of non-refoulement

26. In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of CAT.

27. 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.

28. As underage recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.

(g) Confidentiality

29. States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (art. 16). This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.

30. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the "best interests" of the child.

V. RESPONSE TO GENERAL AND SPECIFIC PROTECTION NEEDS

(a) Initial assessment and measures

31. The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process, in particular, entails the following:

i. Prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities (art. 8). Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any

risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such;

ii. Prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner, in a language the child understands, by professionally qualified persons to collect biodata and social history to ascertain the identity of the child, including, wherever possible, identity of both parents, other siblings, as well as the citizenship of the child, the siblings and the parents;

iii. In continuation of the registration process, the recording of further information in order to meet the specific needs of the child. This information should include:
   - Reasons for being separated or unaccompanied;
   - Assessment of particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma;
   - All available information to determine the potential existence of international protection needs, including those: due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" in the child's country of origin (article 1 A (2), 1951 Refugee Convention); deriving from external aggression, occupation, foreign domination or events seriously disturbing public order (article 1 (2), Convention Governing the Specific Aspects of Refugee Problems in Africa); or relating to the indiscriminate effects of generalized violence;

iv. Unaccompanied and separated children should be provided with their own personal identity documentation as soon as possible;

v. Tracing of family members to be commenced as early as possible (arts. 22 (2), 9 (3) and 10 (2)).

32. Any further actions relating to the residence and other status of the child in the territory of the State should be based on the findings of an initial protection assessment carried out in accordance with the above procedures. States should refrain from referring unaccompanied and separated children into asylum procedures if their presence in the territory does not raise the question of international refugee protection needs. This is without prejudice to the obligation of States to refer unaccompanied or separated children to relevant procedures serving child protection, such as those foreseen under child welfare legislation.

(b) Appointment of a guardian or adviser and legal representative (arts. 18 (2) and 20 (1))

33. States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role.

34. In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely. If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured.

35. Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse.

36. In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.

37. At all times children should be informed of arrangements with respect to guardianship and legal representation and their opinions should be taken into consideration.

38. In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children.

(c) Care and accommodation arrangements (arts. 20 and 22)

39. Unaccompanied or separated children are children temporarily or permanently deprived of their family environment and, as such, are beneficiaries of States' obligations under article 20 of the Convention and shall be entitled to special protection and assistance provided by the relevant State.

40. Mechanisms established under national law in order to ensure alternative care for such children in accordance with article 22 of the Convention, shall also cover unaccompanied or separated children outside their country of origin. A wide range of options for care and accommodation arrangements exist and are explicitly acknowledged in article 20 (3) as follows: "… inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children". When selecting from these options, the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account. In particular, due regard ought to be taken of the desirability of continuity in a child's upbringing and to the ethnic, religious, cultural and linguistic background as assessed in the identification, registration and documentation process. Such care and accommodation arrangements should comply with the following parameters:

- 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.

(d) Full access to education (arts. 28, 29 (1) (c), 30 and 32)

41. 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 in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. 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.

42. 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.

43. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to meet the educational needs of unaccompanied and separated children.

(e) Right to an adequate standard of living (art. 27)

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27 (2) of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

45. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to secure an adequate standard of living for unaccompanied and separated children.

(f) Right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (arts. 23, 24 and 39)

46. When implementing the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health under article 24 of the Convention, States are obligated to ensure that unaccompanied and separated children have the same access to health care as children who are ... nationals ... .

47. In ensuring their access, States must assess and address the particular plight and vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. Moreover, girls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.

48. The obligation under article 39 of the Convention sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. In order to facilitate such recovery and reintegration, culturally appropriate and gender-sensitive mental health care should be developed and qualified psychosocial counselling provided.
49. States shall, in particular where government capacity is limited, accept and facilitate assistance offered by UNICEF, the World Health Organization (WHO), United Nations Joint Programme on HIV/AIDS (UNAIDS), UNHCR and other agencies (art. 22 (2)) within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations in order to meet the health and health-care needs of unaccompanied and separated children.

(g) Prevention of trafficking and of sexual and other forms of exploitation, abuse and violence (arts. 34, 35 and 36)

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

51. Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence.

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

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

(h) Prevention of military recruitment and protection against effects of war (arts. 38 and 39)

Prevention of recruitment
54. State obligations deriving from article 38 of the Convention and from articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also apply to unaccompanied and separated children. A State must take all necessary measures to prevent recruitment or use of such children by any party to a conflict. This also applies to former child soldiers who have defected from their units and who require protection against re-recruitment.

Care arrangements
55. Care arrangements for unaccompanied and separated children shall be made in a manner which prevents their recruitment, re-recruitment or use by any party to a conflict. Guardianships should not be given to individuals or organizations who are directly or indirectly involved in a conflict.

Former child soldiers
56. Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized

on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

57. If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

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

Child-specific forms and manifestations of persecution[45]
59. Reminding States of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that under-age recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on "reasons of race, religion, nationality, membership of a particular social group or political opinion" (article 1A (2), 1951 Refugee Convention).

Rehabilitation and recovery
60. States shall develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age-appropriate and gender-sensitive system of psychological support and assistance for unaccompanied and separated children affected by armed conflict.

(i) Prevention of deprivation of liberty and treatment in cases thereof

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

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

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

[45] On child-specific forms and manifestations of persecution more generally, see section VI (d) below "Child sensitive assessment of protection needs, taking into account persecution of a child-specific nature".

VI. ACCESS TO THE ASYLUM PROCEDURE, LEGAL SAFEGUARDS AND RIGHTS IN ASYLUM

(a) General

64. The obligation stemming from article 22 of the Convention to take "appropriate measures" to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status receives appropriate protection entails, inter alia, the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the Convention and in other international human rights, refugee protection or humanitarian instruments to which the State is a party. States facing resource constraints in staging such capacity-building efforts are strongly encouraged to seek international assistance, including that provided by UNHCR.

65. Taking into account the complementary nature of the obligations under article 22 and those deriving from international refugee law, as well as the desirability of consolidated standards, States should apply international standards relating to refugees as they progressively evolve when implementing article 22 of the Convention.

(b) Access to asylum procedures, regardless of age

66. Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age. In the case that facts become known during the identification and registration process which indicate that the child may have a well-founded fear or, even if unable to explicitly articulate a concrete fear, the child may objectively be at risk of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or otherwise be in need of international protection, such a child should be referred to the asylum procedure and/or, where relevant, to mechanisms providing complementary protection under international and domestic law.

67. Unaccompanied or separated children for whom there is no indication of being in need of international protection should not automatically, or otherwise, be referred to asylum procedures, but shall be protected pursuant to other relevant child protection mechanisms such as those provided under youth welfare legislation.

(c) Procedural safeguards and support measures (art. 3 (3))

68. Appropriate measures required under article 22 (1) of the Convention must take into account the particular vulnerabilities of unaccompanied and separated children and the national legal framework and conditions. Such measures should be guided by the considerations set out below.

69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests (see section V (b), "Appointment of a guardian or adviser or legal representative"). The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.

70. Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.

71. Minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. Where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made. Wherever the child is unable to communicate directly with the qualified official in a common language, the assistance of a qualified interpreter should be sought. Moreover, the child should be given the "benefit of the doubt", should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision.

72. The interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the history, culture and background of the child. The assessment process should comprise a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. The guardian and the legal representative should be present during all interviews.

73. 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.

(d) Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature

74. When assessing refugee claims of unaccompanied or separated children, States shall take into account the development of, and formative relationship between, international human rights and refugee law, including positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention. 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.

75. Staff involved in status-determination procedures of children, in particular those who are unaccompanied or separated, should receive training on adopting an application of international and national refugee law that is child, cultural, and gender-sensitive. To properly assess asylum claims of children, information on the situation of children, including those belonging to minorities or marginalized groups, should be included in government efforts to collect country-of-origin information.

(e) Full enjoyment of all international refugee and human rights by children granted refugee status (art. 22)

76. Unaccompanied or separated children recognized as refugees and granted asylum do not only enjoy rights under the 1951 Refugee Convention, but are also entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

(f) Children to benefit from complementary forms of protection

77. In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs. The application of such complementary forms of protection does not obviate States' obligations to address the particular protection needs of the unaccompanied and separated child. Therefore, children granted complementary forms of protection are entitled, to the fullest extent, to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

78. In line with the generally applicable principles and, in particular, those relating to the responsibilities of States with regard to unaccompanied or separated children finding themselves in their territory, children who are neither granted refugee status nor benefiting from complementary forms of protection, will still enjoy protection under all norms of the Convention as long as they remain de facto within the States' territories and/or subject to its jurisdiction.

VII. FAMILY REUNIFICATION, RETURN AND OTHER FORMS OF DURABLE SOLUTIONS

(a) General

79. The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification.

80. Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought.

(b) Family reunification

81. In order to pay full respect to the obligation of States under article 9 of the Convention to ensure that a child shall not be separated from his or her parents against their will, 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 full account of the right of the child to express his or her views (art. 12) (see also section IV (e), "Right of the child to express his or her views freely"). While the considerations explicitly listed in article 9, paragraph 1, sentence 2, namely, cases involving abuse or neglect of the child by the parents, may prohibit reunification at any location, other best-interests considerations can provide an obstacle to reunification at specific locations only.

82. Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations (including those deriving from article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and articles 6 and 7 of the International Covenant on Civil and Political Rights). Accordingly, the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based

considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

83. Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best-interests-based balancing test has decided against return, the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. In this context, States parties are particularly reminded that "applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10 (1)). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10 (2)).

(c) Return to the country of origin

84. Return to the country of origin is not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall, inter alia, take into account:

- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return, including through home study, where appropriate, conducted by social network organizations;
- The availability of care arrangements for that particular child;
- The views of the child expressed in exercise of his or her right to do so under article 12 and those of the caretakers;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right "to preserve his or her identity, including nationality, name and family relations" (art. 8);
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (art. 20).

85. In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.

86. Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights-based arguments such as those relating to general migration control, cannot override best interests considerations.

87. In all cases return measures must be conducted in a safe, child-appropriate and gender-sensitive manner.
88. Countries of origin are also reminded in this context of their obligations pursuant to article 10 of the Convention and, in particular, to respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country".

(d) Local integration

89. Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the Convention rights that are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or whether the best-interests-based balancing test has decided against return.

90. Once it has been determined that a separated or unaccompanied child will remain in the community, the relevant authorities should conduct an assessment of the child's situation and then, in consultation with the child and his or her guardian, determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate such integration. The long-term placement should be decided in the best interests of the child and, at this stage, institutional care should, wherever possible, serve only as a last resort. The separated or unaccompanied child should have the same access to rights (including to education, training, employment and health care) as enjoyed by national children. In ensuring that these rights are fully enjoyed by the unaccompanied or separated child, the host country may need to pay special attention to the extra measures required to address the child's vulnerable status, including, for example, through extra language training.

(e) Intercountry adoption (art. 21)

91. States must have full respect for the preconditions provided under article 21 of the Convention as well as other relevant international instruments, including in particular the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and its 1994 Recommendation Concerning the Application to Refugee and other Internationally Displaced Children when considering the adoption of unaccompanied and separated children. States should, in particular, observe 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 has 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.

(f) Resettlement in a third country

92. Resettlement to a third country may offer a durable solution for an accompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly called for if such is the only means to effectively and sustainably protect a child against refoulement or against persecution or other serious human rights violations in the country of stay. Resettlement is also in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.

93. The best-interests assessment determination, prior to a decision to resettle, needs also to take into account other factors such as: the envisaged duration of legal or other obstacles to a child's return to his or her home country; the child's right to preserve his or her identity, including nationality and name (art. 8); the child's age, sex, emotional state, educational and family background; continuity/discontinuity of care in the host country; the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20); the right of the child to preserve his or her family relations (art. 8) and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country. Unaccompanied or separated children should never be resettled to a third country if this would undermine or seriously hamper future reunion with their family.

94. States are encouraged to provide resettlement opportunities in order to meet all the resettlement needs related to unaccompanied and separated children.

VIII. TRAINING, DATA AND STATISTICS

(a) Training of personnel dealing with unaccompanied and separated children

95. Particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.

96. Such training should be specifically tailored to the needs and rights of the groups concerned. Nevertheless, certain key elements should be included in all training programmes, including:
- Principles and provisions of the Convention;
- Knowledge of the country of origin of separated and unaccompanied children;
- Appropriate interview techniques;
- Child development and psychology;
- Cultural sensitivity and intercultural communication.

97. Initial training programmes should also be followed up regularly, including through on-the-job learning and professional networks.

(b) Data and statistics on separated and unaccompanied children

98. It is the experience of the Committee that data and statistics collected with regard to unaccompanied and separated children tends to be limited to the number of arrivals and/or number of requests for asylum. This data is insufficient for a detailed analysis of the implementation of the rights of such children. Furthermore, data and statistics are often collected by a variety of different ministries or agencies, which can impede further analysis and presents potential concerns with regard to confidentiality and a child's right to privacy.

99. Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.

100. Data collected within such a system should ideally include but not be limited to: basic biographical data on each child (including age, sex, country of origin and nationality, ethnic group); total number of unaccompanied and separated children attempting to enter the country and the number that have been refused entry; number of requests for asylum; number of legal representatives and guardians assigned to such children; legal and immigration status (i.e. asylum-seeker, refugee, temporary resident permit); living arrangements (i.e. in institutions, with families or living independently); enrolment in school or vocational training; family reunifications; and, numbers returned to their country of origin. In addition, States parties should consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as for instance, disappearances of unaccompanied and separated children and the impact of trafficking.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/7/Rev.1

20 September 2006

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Fortieth Session
Geneva, 12-30 September 2005

GENERAL COMMENT NO. 7 (2005)
IMPLEMENTING CHILD RIGHTS IN EARLY CHILDHOOD

I. INTRODUCTION

1. This general comment arises out of the Committee's experiences of reviewing States parties' reports. In many cases, very little information has been offered about early childhood, with comments limited mainly to child mortality, birth registration and health care. The Committee felt the need for a discussion on the broader implications of the Convention on the Rights of the Child for young children. Accordingly, in 2004, the Committee devoted its day of general discussion to the theme "Implementing child rights in early childhood". This resulted in a set of recommendations (see CRC/C/143, sect. VII) as well as the decision to prepare a general comment on this important topic. Through this general comment, the Committee wishes to encourage recognition that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for the realization of these rights. The Committee's working definition of "early childhood" is all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school (see paragraph 4 below).

II. OBJECTIVES OF THE GENERAL COMMENT

2. The objectives of the general comment are:

(a) To strengthen understanding of the human rights of all young children and to draw States parties' attention to their obligations towards young children;

(b) To comment on the specific features of early childhood that impact on the realization of rights;

(c) To encourage recognition of young children as social actors from the beginning of life, with particular interests, capacities and vulnerabilities, and of requirements for protection, guidance and support in the exercise of their rights;

(d) To draw attention to diversities within early childhood that need to be taken into account when implementing the Convention, including diversities in young children's circumstances, in the quality of their experiences and in the influences shaping their development;

(e) To point to variations in cultural expectations and treatment of children, including local customs and practices that should be respected, except where they contravene the rights of the child;

(f) To emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being;

(g) To contribute to the realization of rights for all young children through formulation and promotion of comprehensive policies, laws, programmes, practices, professional training and research specifically focused on rights in early childhood.

III. HUMAN RIGHTS AND YOUNG CHILDREN

3. **Young children are rights holders.** The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (art. 1). Consequently, young children

are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights.

4. **Definition of early childhood.** Definitions of early childhood vary in different countries and regions, according to local traditions and the organization of primary school systems. In some countries, the transition from preschool to school occurs soon after 4 years old. In other countries, this transition takes place at around 7 years old. In its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school. Accordingly, the Committee proposes as an appropriate working definition of early childhood the period below the age of 8 years; States parties should review their obligations towards young children in the context of this definition.

5. **A positive agenda for early childhood.** The Committee encourages States parties to construct a positive agenda for rights in early childhood. A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. 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. These requirements can best be planned for within a framework of laws, policies and programmes for early childhood, including a plan for implementation and independent monitoring, for example through the appointment of a children's rights commissioner, and through assessments of the impact of laws and policies on children (see general comment No. 2 (2002) on the role of independent human rights institutions, para. 19).

6. **Features of early childhood.** Early childhood is a critical period for realizing children's rights. During this period:

(a) Young children experience the most rapid period of growth and change during the human lifespan, in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities, and rapid shifts in their interests and abilities;

(b) Young children form strong emotional attachments to their parents or other caregivers, from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing capacities;

(c) Young children establish their own important relationships with children of the same age, as well as with younger and older children. Through these relationships they learn to negotiate and coordinate shared activities, resolve conflicts, keep agreements and accept responsibility for others;

(d) Young children actively make sense of the physical, social and cultural dimensions of the world they inhabit, learning progressively from their activities and their interactions with others, children as well as adults;

(e) Young children's earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity, and developing competencies;

(f) Young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems;

(g) Young children's experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community.

7. Respecting the distinctive interests, experiences and challenges facing every young child is the starting point for realizing their rights during this crucial phase of their lives.

8. **Research into early childhood.** The Committee notes the growing body of theory and research which confirms that young children are best understood as social actors whose survival, well-being and development are dependent on and built around close relationships. These relationships are normally with a small number of key people, most often parents, members of the extended family and peers, as well as caregivers and other early childhood professionals. At the same time, research into the social and cultural dimensions of early childhood draws attention to the diverse ways in which early development is understood and enacted, including varying expectations of the young child and arrangements for his or her care and education. A feature of modern societies is that increasing numbers of young children are growing up in multicultural communities and in contexts marked by rapid social change, where beliefs and expectations about young children are also changing, including through greater recognition of their rights. States parties are encouraged to draw on beliefs and knowledge about early childhood in ways that are appropriate to local circumstances and changing practices, and respect traditional values, provided these are not discriminatory, (article 2 of the Convention) nor prejudicial to children's health and well-being (art. 24.3), nor against their best interests (art. 3). Finally, research has highlighted the particular risks to young children from malnutrition, disease, poverty, neglect, social exclusion and a range of other adversities. It shows that proper prevention and intervention strategies during early childhood have the potential to impact positively on young children's current

well-being and future prospects. Implementing child rights in early childhood is thus an effective way to help prevent personal, social and educational difficulties during middle childhood and adolescence (see general comment No. 4 (2003) on adolescent health and development).

III. GENERAL PRINCIPLES AND RIGHTS IN EARLY CHILDHOOD

9. The Committee has identified articles 2, 3, 6 and 12 of the Convention as general principles (see general comment No. 5 (2003) on the general measures of implementation of the Convention). Each principle has implications for rights in early childhood.

10. **Right to life, survival and development.** Article 6 refers to the child's inherent right to life and States parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. States parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. Malnutrition and preventable diseases continue to be major obstacles to realizing rights in early childhood. Ensuring survival and physical health are priorities, but States parties are reminded that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention (see section VI below). The Committee reminds States parties (and others concerned) that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18). From an early age, children should themselves be included in activities promoting good nutrition and a healthy and disease-preventing lifestyle.

11. **Right to non-discrimination.** Article 2 ensures rights to every child, without discrimination of any kind. The Committee urges States parties to identify the implications of this principle for realizing rights in early childhood:

(a) Article 2 means that young children in general must not be discriminated against on any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. Young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights;

(b) Article 2 also means that particular groups of young children must not be discriminated against. Discrimination may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive. For example:

(i) Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of selective abortion, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy. They may be expected to undertake excessive family responsibilities and deprived of opportunities to participate in early childhood and primary education;

(ii) Discrimination against children with disabilities reduces survival prospects and quality of life. These children are entitled to the care, nutrition, nurturance and encouragement offered other children. They may also require additional, special assistance in order to ensure their integration and the realization of their rights;

(iii) Discrimination against children infected with or affected by HIV/AIDS deprives them of the help and support they most require. Discrimination may be found within public policies, in the provision of and access to services, as well as in everyday practices that violate these children's rights (see also paragraph 27);

(iv) Discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society. It affects parents' capacities to fulfil their responsibilities towards their children. It affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults;

(v) Young children who suffer multiple discrimination (e.g. related to ethnic origin, social and cultural status, gender and/or disabilities) are especially at risk.

12. Young children may also suffer the consequences of discrimination against their parents, for example if children have been born out of wedlock or in other circumstances that deviate from traditional values, or if their parents are refugees or asylum-seekers. States parties have a responsibility to monitor and combat discrimination in whatever forms it takes and wherever it occurs - within families, communities, schools or other institutions. Potential discrimination in access to quality services for young children is a particular concern, especially where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations. As a first step, the Committee encourages States parties to monitor the availability of and access to quality services that contribute to young children's survival and development, including through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances. As a second step, actions may be required that guarantee that all children have an equal opportunity to benefit from available services. More generally, States parties should raise awareness about discrimination against young children in general, and against vulnerable groups in particular.

13. **Best interests of the child.** Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and

represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:

(a) *Best interests of individual children*. All decision-making concerning a child's care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences;

(b) *Best interests of young children as a group or constituency*. All law and policy development, administrative and judicial decision-making and service provision that affect children must take account of the best interests principle. This includes actions directly affecting children (e.g. related to health services, care systems, or schools), as well as actions that indirectly impact on young children (e.g. related to the environment, housing or transport).

14. **Respect for the views and feelings of the young child.** Article 12 states that the child has a right to express his or her views freely in all matters affecting the child, and to have them taken into account. This right reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12.1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language. In this regard:

(a) The Committee encourages States parties to take all appropriate measures to ensure that the concept of the child as rights holder with freedom to express views and the right to be consulted in matters that affect him or her is implemented from the earliest stage in ways appropriate to the child's capacities, best interests, and rights to protection from harmful experiences;

(b) The right to express views and feelings should be anchored in the child's daily life at home (including, when applicable, the extended family) and in his or her community; within the full range of early childhood health, care and education facilities, as well as in legal proceedings; and in the development of policies and services, including through research and consultations;

(c) States parties should take all appropriate measures to promote the active involvement of parents, professionals and responsible authorities in the creation of opportunities for young children to progressively exercise their rights within their everyday activities in all relevant settings, including by providing training in the necessary skills. To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child's interests, levels of understanding and preferred ways of communicating.

IV. PARENTAL RESPONSIBILITIES AND ASSISTANCE FROM STATES PARTIES

15. **A crucial role for parents and other primary caregivers.** Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on States parties to provide assistance, including quality childcare services (especially article 18). The preamble to the Convention refers to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.

16. **Parents/primary caregivers and children's best interests.** The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in "the exercise by the child of the rights in the … Convention". This applies equally to younger as to older children. Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights.

17. **Evolving capacities as an enabling principle.** Article 5 draws on the concept of "evolving capacities" to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children's evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer "direction and guidance" in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).[46]

18. **Respecting parental roles.** Article 18 of the Convention reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern (arts. 18.1 and 27.2). States parties should respect the primacy of parents, mothers and fathers. This includes the obligation not to separate children from their parents, unless it is in the child's best interests (art. 9). Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers. They are also less able to comprehend the circumstances of any separation. 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), or where they are provided with low-quality institutional care. The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where young children's well-being may be at risk. States parties' overall goals should include reducing the number of young children abandoned or orphaned, as well as minimizing the numbers requiring institutional or other forms of long-term care, except where this is judged to be in a young child's best interests (see also section VI below).

19. **Social trends and the role of the family.** The Convention emphasizes that "both parents have common responsibilities for the upbringing and development of the child", with fathers and mothers recognized as equal caregivers (art. 18.1). The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children. These trends are especially significant for young children, whose physical, personal and psychological development is best provided for within a small number of consistent, caring relationships. Typically, these relationships are with some combination of mother, father, siblings, grandparents and other members of the extended family, along with professional caregivers specialized in childcare and education. The Committee acknowledges that each of these relationships can make a distinctive contribution to the fulfilment of children's rights under the Convention and that a range of family patterns may be consistent with promoting children's well-being. In some countries and regions, shifting social attitudes towards family, marriage and parenting are impacting on young children's experiences of early childhood, for example following family separations and reformations. Economic pressures also impact on young children, for example, where parents are forced to work far away from their families and their communities. In other countries and regions, the illness and death of one or both parents or other kin due to HIV/AIDS is now a common feature of early childhood. These and many other factors impact on parents' capacities to fulfil their responsibilities towards children. More generally, during periods of rapid social change, traditional practices may no longer be viable or relevant to present parental circumstances and lifestyles, but without sufficient time having elapsed for new practices to be assimilated and new parental competencies understood and valued.

20. **Assistance to parents.** States parties are required to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities (arts. 18.2 and 18.3), including assisting parents in providing living conditions necessary for the child's development (art. 27.2) and ensuring that children receive necessary protection and care (art. 3.2). 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. Recognizing these interdependencies is a sound starting point for planning assistance and services to parents, legal guardians and other caregivers. For example:

(a) An integrated approach would include interventions that impact indirectly on parents' ability to promote the best interests of children (e.g. taxation and benefits, adequate housing, working hours) as well as those that have more immediate consequences (e.g. perinatal health services for mother and baby, parent education, home visitors);

[46] See G. Lansdown, *The Evolving Capacities of the Child* (Florence: UNICEF Innocenti Research Centre, 2005).

(b) Providing adequate assistance should take account of the new roles and skills required of parents, as well as the ways that demands and pressures shift during early childhood - for example, as children become more mobile, more verbally communicative, more socially competent, and as they begin to participate in programmes of care and education;

(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.

21. Appropriate assistance to parents can best be achieved as part of comprehensive policies for early childhood (see section V below), including provision for health, care and education during the early years. States parties should ensure that parents are given appropriate support to enable them to involve young children fully in such programmes, especially the most disadvantaged and vulnerable groups. In particular, article 18.3 acknowledges that many parents are economically active, often in poorly paid occupations which they combine with their parental responsibilities. Article 18.3 requires States parties to take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services, maternity protection and facilities for which they are eligible. In this regard, the Committee recommends that States parties ratify the Maternity Protection Convention, 2000 (No. 183) of the International Labour Organization.

V. COMPREHENSIVE POLICIES AND PROGRAMMES FOR EARLY CHILDHOOD, ESPECIALLY FOR VULNERABLE CHILDREN

22. **Rights-based, multisectoral strategies.** In many countries and regions, early childhood has received low priority in the development of quality services. These services have often been fragmented. They have frequently been the responsibility of several government departments at central and local levels, and their planning has often been piecemeal and uncoordinated. In some cases, they have also been largely provided by the private and voluntary sector, without adequate resources, regulation or quality assurance. States parties are urged to develop rights-based, coordinated, multisectoral strategies in order to ensure that children's best interests are always the starting point for service planning and provision. These should be based around a systematic and integrated approach to law and policy development in relation to all children up to 8 years old. A comprehensive framework for early childhood services, provisions and facilities is required, backed up by information and monitoring systems. Comprehensive services will be coordinated with the assistance provided to parents and will fully respect their responsibilities, as well as their circumstances and requirements (as in articles 5 and 18 of the Convention; see section IV above). Parents should also be consulted and involved in the planning of comprehensive services.

23. **Programme standards and professional training appropriate to the age range.** The Committee emphasizes that a comprehensive strategy for early childhood must also take account of individual children's maturity and individuality, in particular recognizing the changing developmental priorities for specific age groups (for example, babies, toddlers, preschool and early primary school groups), and the implications for programme standards and quality criteria. States parties must ensure that the institutions, services and facilities responsible for early childhood conform to quality standards, particularly in the areas of health and safety, and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained. Provision of services appropriate to the circumstances, age and individuality of young children requires that all staff be trained to work with this age group. Work with young children should be socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women. It is essential that they have sound, up-to-date theoretical and practical understanding about children's rights and development (see also paragraph 41); that they adopt appropriate child-centred care practices, curricula and pedagogies; and that they have access to specialist professional resources and support, including a supervisory and monitoring system for public and private programmes, institutions and services.

24. **Access to services, especially for the most vulnerable.** The Committee calls on States parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents (see also section VI).

25. **Birth registration.** Comprehensive services for early childhood begin at birth. The Committee notes that provision for registration of all children at birth is still a major challenge for many countries and regions. This can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare. As a first step in ensuring the rights to survival, development and access to quality services for all children (art. 6), the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate. The Committee notes that children who are sick or disabled are less likely to be registered in some regions and emphasizes that all children should be registered at birth, without discrimination of any kind (art. 2). The Committee also reminds States parties of the importance of facilitating late registration of

birth, and ensuring that children who have not been registered have equal access to health care, protection, education and other social services.

26. **Standard of living and social security.** Young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development (art. 27). 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 (art. 26).

27. **Health-care provision.** 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.[47] Priority should also be given to the provision of appropriate prenatal 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;

(c) The Committee wishes to draw States parties' attention to the particular challenges of HIV/AIDS for early childhood. All necessary steps should be taken to: (i) prevent infection of parents and young children, especially by intervening in chains of transmission, especially between father and mother and from mother to baby; (ii) provide accurate diagnoses, effective treatment and other forms of support for both parents and young children who are infected by the virus (including antiretroviral therapies); and (iii) ensure adequate alternative care for children who have lost parents or other primary caregivers due to HIV/AIDS, including healthy and infected orphans. (See also general comment No. 3 (2003) on HIV/AIDS and the rights of the child.)

28. **Early childhood education.** The Convention recognizes the right of the child to education, and primary education should be made compulsory and available free to all (art. 28). The Committee recognizes with appreciation that some States parties are planning to make one year of preschool 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: (a) 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).

29. **Parental and public responsibilities for early childhood education.** The principle that parents (and other primary caregivers) are children's first educators is well established and endorsed within the Convention's emphasis on respect for the responsibilities of parents (sect. IV above). 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,

[47] See Global Strategy for Infant and Young Child Feeding, World Health Organization, 2003.

professionals and others in developing "the child's personality, talents and mental and physical abilities to their fullest potential" (art. 29.1 (a)).

30. The Committee calls on States parties to ensure that all young children receive education in the broadest sense (as outlined in paragraph 28 above), 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.

31. **Community-based programmes.** The Committee recommends that States parties support early childhood development programmes, including home- and community-based preschool 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. The Committee also recommends that States parties pay greater attention to, and actively support, a rights-based approach to early childhood programmes, including initiatives surrounding transition to primary school that ensure continuity and progression, in order to build children's confidence, communication skills and enthusiasm for learning through their active involvement in, among others, planning activities.

32. **The private sector as service provider.** With reference to its recommendations adopted during its 2002 day of general discussion on "The private sector as service provider and its role in implementing child rights" (see CRC/C/121, paras. 630-653), the Committee recommends that States parties support the activities of the non-governmental sector as a channel for programme implementation. It further calls on all non-State service providers ("for profit" as well as "non-profit" providers) to respect the principles and provisions of the Convention and, in this regard, reminds States parties of their primary obligation to ensure its implementation. Early childhood professionals - in both the State and non-State sectors - should be provided with thorough preparation, ongoing training and adequate remuneration. In this context, States parties are responsible for service provision for early childhood development. The role of civil society should be complementary to - not a substitute for - the role of the State. Where non-State services play a major role, the Committee reminds States parties that they have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served.

33. **Human rights education in early childhood.** In light of article 29 and the Committee's general comment No. 1 (2001), the Committee also recommends that States parties include human rights education within early childhood education. Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare centres, in early education programmes and other community settings with which young children can identify.

34. **Right to rest, leisure and play.** The Committee notes that insufficient attention has been given by States parties and others to the implementation of the provisions of article 31 of the Convention, which guarantees "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". 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.

35. **Modern communications technologies and early childhood.** Article 17 recognizes the potential for both traditional print-based media and modern information technology-based mass media to contribute positively to the realization of children's rights. Early childhood is a specialist market for publishers and media producers, who should be encouraged to disseminate material that is appropriate to the capacities and interests of young children, socially and educationally beneficial to their well-being, and which reflects the national and regional diversities of children's circumstances, culture and language. Particular attention should be given to the need of minority groups for access to media that promote their recognition and social inclusion. Article 17 (e) also refers to the role of States parties in ensuring that children are protected from inappropriate and potentially harmful material. Rapid increases in the variety and accessibility of modern technologies, including Internet-based media, are a particular cause for concern. Young children are especially

at risk if they are exposed to inappropriate or offensive material. States parties are urged to regulate media production and delivery in ways that protect young children, as well as support parents/caregivers to fulfil their child-rearing responsibilities in this regard (art. 18).

VI. YOUNG CHILDREN IN NEED OF SPECIAL PROTECTION

36. **Young children's vulnerability to risks.** Throughout this general comment the Committee notes that large numbers of young children grow up in difficult circumstances that are frequently in violation of their rights. Young children are especially vulnerable to the harm caused by unreliable, inconsistent relationships with parents and caregivers, or growing up in extreme poverty and deprivation, or being surrounded by conflict and violence or displaced from their homes as refugees, or any number of other adversities prejudicial to their well-being. Young children are less able to comprehend these adversities or resist harmful effects on their health, or physical, mental, spiritual, moral or social development. They are especially at risk where parents or other caregivers are unable to offer adequate protection, whether due to illness, or death, or due to disruption to families or communities. Whatever the difficult circumstances, young children require particular consideration because of the rapid developmental changes they are experiencing; they are more vulnerable to disease, trauma, and distorted or disturbed development, and they are relatively powerless to avoid or resist difficulties and are dependent on others to offer protection and promote their best interests. In the following paragraphs, the Committee draws States parties' attention to major difficult circumstances referred to in the Convention that have clear implications for rights in early childhood. This list is not exhaustive, and children may in any case be subject to multiple risks. In general, the goal of States parties should be to ensure that every child, in every circumstance, receives adequate protection in fulfilment of their rights:

(a) *Abuse and neglect* (*art. 19*). 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;

(b) *Children without families (art. 20 and 21)*. Children's rights to development are at serious risk when they are orphaned, abandoned or deprived of family care or when they suffer long-term disruptions to relationships or separations (e.g. due to natural disasters or other emergencies, epidemics such as HIV/AIDS, parental imprisonment, armed conflicts, wars and forced migration). These adversities will impact on children differently depending on their personal resilience, their age and their circumstances, as well as the availability of wider sources of support and alternative care. 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. Where adoption is envisaged "the best interests of the child shall be the paramount consideration" (art. 21), not just "a primary consideration" (art. 3), systematically bearing in mind and respecting all relevant rights of the child and obligations of States parties set out elsewhere in the Convention and recalled in the present general comment;

(c) *Refugees (art. 22)*. Young children who are refugees are most likely to be disoriented, having lost much that is familiar in their everyday surroundings and relationships. They and their parents are entitled to equal access to health care, education and other services. Children who are unaccompanied or separated from their families are especially at risk. The Committee offers detailed guidance on the care and protection of these children in general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;

(d) *Children with disabilities (art. 23)*. Early childhood 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. (See also the recommendations from the Committee's 1997 day of general discussion on "The rights of children with disabilities" contained in document CRC/C/66.);

(e) *Harmful work (art. 32)*. 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;

(f) *Substance abuse (art. 33)*. While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of care, as well as being at risk of early initiation into substance abuse;

(g) *Sexual abuse and exploitation (art. 34)*. Young children, especially girls, are vulnerable to early sexual abuse and exploitation within and outside families. Young children in difficult circumstances are at particular risk, for example girl children employed as domestic workers. Young children may also be victims of producers of pornography; this is covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2002;

(h) *Sale, trafficking and abduction of children (art. 35)*. The Committee has frequently expressed concern about evidence of the sale and trafficking of abandoned and separated children for various purposes. As far as the youngest age groups are concerned, these purposes can include adoption, particularly (though not solely) by foreigners. In addition to the Optional Protocol on the sale of children, child prostitution and child pornography, the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption provides a framework and mechanism for preventing abuses in this sphere, and the Committee has therefore always consistently and strongly urged all States parties that recognize and/or permit adoption to ratify or accede to this treaty. Universal birth registration, in addition to international cooperation, can help to combat this violation of rights;

(i) *Deviant behaviour and lawbreaking (art. 40)*. Under no circumstances should young children (defined as under 8 years old; see paragraph 4) be included in legal definitions of minimum age of criminal responsibility. Young children who misbehave or violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution. States parties should ensure that parents/caregivers are provided adequate support and training to fulfil their responsibilities (art. 18) and that young children have access to quality early childhood education and care, and (where appropriate) specialist guidance/therapies.

37. In each of these circumstances, and in the case of all other forms of exploitation (art. 36), the Committee urges States parties to incorporate the particular situation of young children into all legislation, policies and interventions to promote physical and psychological recovery and social reintegration within an environment that promotes dignity and self-respect (art. 39).

VII. CAPACITY-BUILDING FOR EARLY CHILDHOOD

38. **Resource allocation for early childhood.** In order to ensure that young children's rights are fully realized during this crucial phase of their lives (and bearing in mind the impact of early childhood experiences on their long-term prospects), States parties are urged to adopt comprehensive, strategic and time-bound plans for early childhood within a rights-based framework. This requires an increase in human and financial resource allocations for early childhood services and programmes (art. 4). The Committee acknowledges that States parties implementing child rights in early childhood do so from very different starting points, in terms of existing infrastructures for early childhood policies, services and professional training, as well as levels of resources potentially available to allocate to early childhood. The Committee also acknowledges that States parties may be faced with competing priorities to implement rights throughout childhood, for example where universal health services and primary education have still not been achieved. It is nonetheless important that there be sufficient public investment in services, infrastructure and overall resources specifically allocated to early childhood, for the many reasons set out in this general comment. In this connection, States parties are encouraged to develop strong and equitable partnerships between the Government, public services, non-governmental organizations, the private sector and families to finance comprehensive services in support of young children's rights. Finally, the Committee emphasizes that where services are decentralized, this should not be to the disadvantage of young children.

39. **Data collection and management.** The Committee reiterates the importance of comprehensive and up-to-date quantitative and qualitative data on all aspects of early childhood for the formulation, monitoring and evaluation of progress achieved, and for assessment of the impact of policies. The Committee is aware that many States parties lack adequate national data collection systems on early childhood for many areas covered by the Convention, and in particular that specific and disaggregated information on children in the early years is not readily available. The Committee urges all States parties to develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, family structure, urban and rural residence, and other relevant categories. This system should cover all children up to the age of 18 years, with specific emphasis on early childhood, particularly children belonging to vulnerable groups.

40. **Capacity-building for research in early childhood.** The Committee noted earlier in this general comment that extensive research has been carried out on aspects of children's health, growth, and cognitive, social and cultural development, on the influence of both positive and negative factors on their well-being, and on the potential impact of early childhood care and education programmes. Increasingly, research is also being carried out on early childhood from a human rights perspective, notably on ways that children's participatory rights can be respected, including through their participation in the research process. Theory and evidence from early childhood research has a great deal to offer in the development of policies and practices, as well as in the monitoring and evaluation of initiatives and the education and training of all responsible for the well-being of young children. But the Committee also draws attention to the limitations of current research, through its focus mainly on early childhood in a limited range of contexts and regions of the world. As part of planning for early childhood, the Committee encourages States parties to develop national and local capacities for early childhood research, especially from a rights-based perspective.

41. **Training for rights in early childhood.** Knowledge and expertise about early childhood are not static but change over time. This is due variously to social trends impacting on the lives of young children, their parents and other caregivers, changing policies and priorities for their care and education, innovations in childcare, curricula and pedagogy, as well as the emergence of new research. Implementing child rights in early childhood sets challenges for all those responsible for children, as well as for children themselves as they gain an understanding of their role in their families, schools and communities. States parties are encouraged to undertake systematic child rights training for children and their parents, as well as for all professionals working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law enforcement officials, civil servants, personnel in institutions and places of detention for children, teachers, health personnel, social workers and local leaders. Furthermore, the Committee urges States parties to conduct awareness-raising campaigns for the public at large.

42. **International assistance.** Acknowledging the resource constraints affecting many States parties seeking to implement the comprehensive provisions outlined in this general comment, the Committee recommends that donor institutions, including the World Bank, other United Nations bodies and bilateral donors support early childhood development programmes financially and technically, and that it be one of their main targets in assisting sustainable development in countries receiving international assistance. Effective international cooperation can also strengthen capacity-building for early childhood, in terms of policy development, programme development, research and professional training.

43. **Looking forward.** The Committee urges all States parties, inter-governmental organizations, non-governmental organizations, academics, professional groups and grass-roots communities to continue advocating for the establishment of independent institutions on children's rights and foster continuous, high-level policy dialogues and research on the crucial importance of quality in early childhood, including dialogues at international, national, regional and local levels.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/8[48]

2 March 2007

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Forty-second session
Geneva, 15 May-2 June 2006

GENERAL COMMENT NO. 8 (2006)
THE RIGHT OF THE CHILD TO PROTECTION FROM CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT (ARTS. 19; 28, PARA. 2; AND 37, INTER ALIA)

I. OBJECTIVES

1. Following its two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child resolved to issue a series of general comments concerning eliminating violence against children, of which this is the first. 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.

2. 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.

3. 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.

II. BACKGROUND

4. The Committee has, from its earliest sessions, paid special attention to asserting children's right to protection from all forms of violence. In its examination of States parties' reports, and most recently in the context of the United Nations Secretary-General's study on violence against children, it has noted with great concern the widespread legality and persisting social approval of corporal punishment and other cruel or degrading punishment of children.[49] Already in 1993, the Committee noted in the report of its fourth session that it "recognized the importance of the question of corporal punishment in improving the system of promotion and protection of the rights of the child and decided to continue to devote attention to it in the process of examining States parties' reports".[50]

5. 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.[51] 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.[52]

[48] Re-issued for technical reasons
[49] United Nations Secretary-General's Study on Violence against Children, due to report to United Nations General Assembly, autumn 2006. For details see http://www.violencestudy.org.
[50] Committee on the Rights of the Child, Report on the fourth session, 25 October 1993, CRC/C/20, para. 176.
[51] All the Committee's concluding observations can be viewed at www.ohchr.org.
[52] The Global Initiative to End All Corporal Punishment of Children provides reports on the legal status of corporal punishment at www.endcorporalpunishment.org.

6. In September 2000, the Committee held the first of two days of general discussion on violence against children. It focused on "State violence against children" and afterwards adopted detailed recommendations, including for the prohibition of all corporal punishment and 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".[53]

7. In April 2001, the Committee adopted its first general comment on "The aims of education" and reiterated that corporal punishment is incompatible with the Convention: "… Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12, paragraph 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, paragraph 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 …".[54]

8. In recommendations adopted following the second day of general discussion, on "Violence against children within the family and in schools", held in September 2001, the Committee called upon States to "enact or repeal, as a matter of urgency, 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 ...".[55]

9. Another outcome of the Committee's 2000 and 2001 days of general discussion was a recommendation that the United Nations Secretary-General should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The United Nations General Assembly took this forward in 2001.[56] Within the context of the United Nations study, carried out between 2003 and 2006, the need to prohibit all currently legalized violence against children has been highlighted, as has children's own deep concern at the almost universal high prevalence of corporal punishment in the family and also its persisting legality in many States in schools and other institutions, and in penal systems for children in conflict with the law.

III. DEFINITIONS

10. "Child" is defined as in the Convention as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".[57]

11. 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 - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, 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 that 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.

12. 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.

13. In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society.

14. The Committee recognizes that parenting and caring for children, especially babies and young children, demand frequent physical actions and interventions to protect them. This is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation. As adults, we know for ourselves the difference between a protective physical action and a punitive assault; it is no more difficult to make a distinction in relation to actions involving children. The law in all States, explicitly or implicitly, allows for the use of non-punitive and necessary force to protect people.

15. The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must

[53] Committee on the Rights of the Child, day of general discussion on State violence against children, Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 666-688.
[54] Committee on the Rights of the Child, general comment No. 1, The aims of education, 17 April 2001, CRC/GC/2001/1, para. 8.
[55] Committee on the Rights of the Child, day of general discussion on violence against children within the family and in schools, Report on the twenty-eighth session, September/October 2001, CRC/C/111, paras. 701-745.
[56] General Assembly resolution 56/138.
[57] Article 1.

always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.

IV. HUMAN RIGHTS STANDARDS AND CORPORAL PUNISHMENT OF CHILDREN

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

17. The preamble to the Convention on the Rights of the Child affirms, in accordance with the principles in the Charter of the United Nations, repeated in the preamble to the Universal Declaration, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The preamble to the Convention also recalls that, in the Universal Declaration, the United Nations "has proclaimed that childhood is entitled to special care and assistance".

18. Article 37 of the Convention requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by article 19, which requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". There is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.

19. In addition, article 28, paragraph 2, of the Convention refers to school discipline and requires States parties to "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".

20. Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The *travaux préparatoires* for the Convention do not record any discussion of corporal punishment during the drafting sessions. But 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).

21. 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.

22. 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. It notes that other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture have reflected the same view in their concluding observations on States parties' reports under the relevant instruments, recommending prohibition and other measures against corporal punishment in schools, penal systems and, in some cases, the family. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 13 (1999) on "The right to education" stated: "In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with school discipline, including public humiliation."[58]

23. Corporal punishment has also been condemned by regional human rights mechanisms. The European Court of Human Rights, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home.[59] The European Committee of Social Rights, monitoring compliance of member States of the Council of Europe with the European Social Charter and Revised Social Charter, has found that compliance with the Charters requires prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere.[60]

---

[58] Committee on Economic, Social and Cultural Rights, general comment No. 13, The right to education (art. 13), 1999, para. 41.

[59] Corporal punishment was condemned in a series of decisions of the European Commission on Human Rights and judgements of the European Court of Human Rights; see in particular *Tyrer v. UK*, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998. European Court judgements are available at http://www.echr.coe.int/echr.

[60] European Committee of Social Rights, general observations regarding article 7, paragraph 10, and article 17. *Conclusions XV-2*, Vol. 1, General Introduction, p. 26, 2001; the Committee has since issued conclusions, finding a number of Member States not in compliance because of their failure to prohibit all corporal punishment in the family and in other settings. In 2005 it issued decisions on collective complaints made under the charters, finding three States not in compliance because of their failure to prohibit.

24. An Advisory Opinion of the Inter-American Court of Human Rights, on the *Legal Status and Human Rights of the Child* (2002) holds that the States parties to the American Convention on Human Rights "are under the obligation … to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities". The Court quotes provisions of the Convention on the Rights of the Child, conclusions of the Committee on the Rights of the Child and also judgements of the European Court of Human Rights relating to States' obligations to protect children from violence, including within the family. The Court concludes that "the State has the duty to adopt positive measures to fully ensure effective exercise of the rights of the child".[61]

25. The African Commission on Human and Peoples' Rights monitors implementation of the African Charter on Human and Peoples' Rights. In a 2003 decision on an individual communication concerning a sentence of "lashes" imposed on students, the Commission found that the punishment violated article 5 of the African Charter, which prohibits cruel, inhuman or degrading punishment. It requested the relevant Government to amend the law, abolishing the penalty of lashes, and to take appropriate measures to ensure compensation of the victims. In its decision, the Commission states: "There is no right for individuals, and particularly the Government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State-sponsored torture under the Charter and contrary to the very nature of this human rights treaty."[62] The Committee on the Rights of the Child is pleased to note that constitutional and other high-level courts in many countries have issued decisions condemning corporal punishment of children in some or all settings, and in most cases quoting the Convention on the Rights of the Child.[63]

26. When the Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of "reasonable" or "moderate" corporal punishment can be justified as in the "best interests" of the child. The Committee has identified, as an important general principle, the Convention's requirement that the best interests of the child should be a primary consideration in all actions concerning children (art. 3, para. 1). The Convention also asserts, in article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.

27. The preamble to the Convention upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Convention requires States to respect and support families. There is no conflict whatsoever with States' obligation to ensure that the human dignity and physical integrity of children within the family receive full protection alongside other family members.

28. Article 5 requires States to respect the responsibilities, rights and duties of parents "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention". Here again, interpretation of "appropriate" direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or degrading forms of discipline.

29. 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.

For details, see http://www.coe.int/T/E/
Human_Rights/Esc/; also *Eliminating corporal punishment: a human rights imperative for Europe's children*, Council of Europe Publishing, 2005.

[61] Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras. 87 and 91.

[62] African Commission on Human and Peoples' Rights, *Curtis Francis Doebbler v. Sudan*, Comm. No. 236/2000 (2003); see para. 42.

[63] For example, in 2002 the Fiji Court of Appeal declared corporal punishment in schools and the penal system unconstitutional. The judgement declared: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students" (Fiji Court of Appeal, *Naushad Ali v. State*, 2002). In 1996, Italy's highest Court, the Supreme Court of Cassation in Rome, issued a decision that effectively prohibited all parental use of corporal punishment. The judgement states: "… The use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance which the [Italian] legal system attributes to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals" (Cambria, Cass, sez. VI, 18 Marzo 1996 [Supreme Court of Cassation, 6th Penal Section, 18 March 1996], Foro It II 1996, 407 (Italy)). Also see South African Constitutional Court (2000) *Christian Education South Africa v. Minister of Education*, CCT4/00; 2000 (4) SA757 (CC); 2000 (10) BCLR 1051 (CC), 18 August 2000.

V. MEASURES AND MECHANISMS REQUIRED TO ELIMINATE CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT

1. LEGISLATIVE MEASURES

30. The wording of article 19 of the Convention builds upon article 4 and makes clear that legislative as well as other measures are required to fulfil States' obligations to protect children from all forms of violence. The Committee has welcomed the fact that, in many States, the Convention or its principles have been incorporated into domestic law. All States have criminal laws to protect citizens from assault. Many have constitutions and/or legislation reflecting international human rights standards and article 37 of the Convention on the Rights of the Child, which uphold "everyone's" right to protection from torture and cruel, inhuman or degrading treatment or punishment. Many also have specific child protection laws that make "ill-treatment" or "abuse" or "cruelty" an offence. But the Committee has learned from its examination of States' reports that such legislative provisions do not generally guarantee the child protection from all corporal punishment and other cruel or degrading forms of punishment, in the family and in other settings.

31. In its examination of reports, the Committee has noted that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in "disciplining" children. For example, the defence of "lawful", "reasonable" or "moderate" chastisement or correction has formed part of English common law for centuries, as has a "right of correction" in French law. At one time in many States the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting.

32. In some States, corporal punishment is specifically authorized in schools and other institutions, with regulations setting out how it is to be administered and by whom. And in a minority of States, corporal punishment using canes or whips is still authorized as a sentence of the courts for child offenders. As frequently reiterated by the Committee, the Convention requires the repeal of all such provisions.

33. In some States, the Committee has observed that while there is no explicit defence or justification of corporal punishment in the legislation, nevertheless traditional attitudes to children imply that corporal punishment is permitted. Sometimes these attitudes are reflected in court decisions (in which parents or teachers or other carers have been acquitted of assault or ill-treatment on the grounds that they were exercising a right or freedom to use moderate "correction").

34. In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or "smack" or "spank" a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed "discipline" or "reasonable correction".

35. Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. 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.

36. The Committee is also concerned at reports that corporal punishment and other cruel or degrading punishments are used in situations of child labour, including in the domestic context. The Committee reiterates that the Convention and other applicable human rights instruments protect the child from economic exploitation and from any work that is likely to be hazardous, interferes with the child's education, or is harmful to the child's development, and that they require certain safeguards to ensure the effective enforcement of this protection. 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.

37. Article 39 of the Convention requires States to 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". Corporal punishment and other degrading forms of punishment may inflict serious damage to the physical, psychological and social development of children, requiring appropriate health and other care and treatment. This must take place in an environment that fosters the integral health, self-respect and dignity of the child, and be extended as appropriate to the child's family group. There should be an interdisciplinary approach to planning and providing care and treatment, with specialized training of the professionals involved. The child's views should be given due weight concerning all aspects of their treatment and in reviewing it.

2. IMPLEMENTATION OF PROHIBITION OF CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT

38. The Committee believes that implementation of the prohibition of all corporal punishment requires awareness-raising, guidance and training (see paragraph 45 et seq. below) for all those involved. This must ensure that the law operates in the best interests of the affected children - in particular when parents or other close family members are the perpetrators. The first purpose of law reform to prohibit corporal punishment of children within the family is prevention: to prevent violence against children by changing attitudes and practice, underlining children's right to equal protection and providing an unambiguous foundation for child protection and for the promotion of positive, non-violent and participatory forms of child-rearing.

39. Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defence that it is their right ("reasonably" or "moderately") to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.

40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.

41. Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child's views should be given due weight, according to his or her age and maturity.

42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on.

43. Where, despite prohibition and positive education and training programmes, cases of corporal punishment come to light outside the family home - in schools, other institutions and forms of alternative care, for example - prosecution may be a reasonable response. The threat to the perpetrator of other disciplinary action or dismissal should also act as a clear deterrent. It is essential that the prohibition of all corporal punishment and other cruel or degrading punishment, and the sanctions that may be imposed if it is inflicted, should be well disseminated to children and to all those working with or for children in all settings. Monitoring disciplinary systems and the treatment of children must be part of the sustained supervision of all institutions and placements which is required by the Convention. Children and their representatives in all such placements must have immediate and confidential access to child-sensitive advice, advocacy and complaints procedures and ultimately to the courts, with necessary legal and other assistance. In institutions, there should be a requirement to report and to review any violent incidents.

3. EDUCATIONAL AND OTHER MEASURES

44. Article 12 of the Convention underlines the importance of giving due consideration to children's views on the development and implementation of educational and other measures to eradicate corporal punishment and other cruel or degrading forms of punishment.

45. Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes and practice. 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.

46. In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be

respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.

47. The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable, members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that "the best interests of the child will be their basic concern". Under article 12, States are required to assure children the right to express their views freely "in all matters affecting the child", with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children's participation rights. In its general comment No. 1 on "The aims of education", the Committee has emphasized the importance of developing education that is "child-centred, child-friendly and empowering".[64]

48. 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.[65] 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.

49. The Committee proposes that States may wish to seek technical assistance from, among others, UNICEF and UNESCO concerning awareness-raising, public education and training to promote non-violent approaches.

4. MONITORING AND EVALUATION

50. The Committee, in its general comment No. 5 on "General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) ", emphasizes the need for systematic monitoring by States parties of the realization of children's rights, through the development of appropriate indicators and the collection of sufficient and reliable data.[66]

51. Therefore States parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment and thus realizing children's right to protection. Research using interviews with children, their parents and other carers, in conditions of confidentiality and with appropriate ethical safeguards, is essential in order to accurately assess the prevalence of these forms of violence within the family and attitudes to them. The Committee encourages every State to carry out/commission such research, as far as possible with groups representative of the whole population, to provide baseline information and then at regular intervals to measure progress. The results of this research can also provide valuable guidance for the development of universal and targeted awareness-raising campaigns and training for professionals working with or for children.

52. The Committee also underlines in general comment No. 5 the importance of independent monitoring of implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see also the Committee's general comment No. 2 on "The role of independent national human rights institutions in the protection and promotion of the rights of the child").[67] These could all play an important role in monitoring the realization of children's right to protection from all corporal punishment and other cruel or degrading forms of punishment.

VI. REPORTING REQUIREMENTS UNDER THE CONVENTION

53. The Committee expects States to include in their periodic reports under the Convention information on the measures taken to prohibit and prevent all corporal punishment and other cruel or degrading forms of punishment in the family and all other settings, including on related awareness-raising activities and promotion of positive, non-violent relationships and on the State's evaluation of progress towards achieving full respect for children's rights to protection from all forms of violence. The Committee also encourages United Nations agencies, national human rights institutions, NGOs and other competent bodies to provide it with relevant information on the legal status and prevalence of corporal punishment and progress towards its elimination.

[64] See note 11.
[65] The Committee commends, as one example, UNESCO's handbook, *Eliminating corporal punishment: the way forward to constructive child discipline*, UNESCO Publishing, Paris, 2005. This provides a set of principles for constructive discipline, rooted in the Convention. It also includes Internet references to materials and programmes available worldwide.
[66] Committee on the Rights of the Child, general comment No. 5 (2003), "General measures of implementation for the Convention on the Rights of the Child", para. 2.
[67] Committee on the Rights of the Child, general comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", 2002.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/9

27 February 2007

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Forty-third session
Geneva, 11 – 29 September 2006

GENERAL COMMENT NO. 9 (2006)
THE RIGHTS OF CHILDREN WITH DISABILITIES

I. INTRODUCTION

A. Why a General Comment on children with disabilities?

1. It is estimated that there are 500-650 million persons with disabilities in the world, approximately 10 % of the world population, 150 million of whom are children. More than 80 % live in developing countries with little or no access to services. The majority of children with disabilities in developing countries remain out of school and are completely illiterate. It is recognized that most of the causes of disabilities, such as war, illness and poverty, are preventable which also prevent and/or reduce the secondary impacts of disabilities, often caused by the lack of early/timely intervention. Therefore, more should be done to create the necessary political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities with the participation of all levels of society.

2. The past few decades have witnessed positive focus on persons with disabilities in general and children in particular. The reason for this new focus is explained partly by the fact that the voice of persons with disabilities and of their advocates from national and international non governmental organizations (NGO) is being increasingly heard and partly by the growing attention paid to persons with disabilities within the framework of the human rights treaties and the United Nations human rights treaty bodies. These treaty bodies have considerable potential in advancing the rights of persons with disabilities but they have generally been underused. When adopted in November 1989 the Convention on the Rights of the Child (hereafter "the Convention") was the first human rights treaty that contained a specific reference to disability (article 2 on non-discrimination) and a separate article 23 exclusively dedicated to the rights and needs of children with disabilities. Since the Convention has entered into force (2 September 1990), the Committee on the Rights of the Child (thereafter "the Committee") has paid sustained and particular attention to disability-based discrimination[68] while other human rights treaty bodies have paid attention to disability-based discrimination under "other status" in the context of articles on non-discrimination of their relevant Convention. In 1994 the Committee on Economic, Social and Cultural Rights issued its general comment No. 5 on persons with disabilities and stated in paragraph 15 that "The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services." The Special Rapporteur on disability of the United Nations Commission for Social Development was first appointed in 1994 and mandated to monitor of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly at its forty-eighth session in 1993 (A/RES/48/96, Annex), and to advance the status of persons with disabilities throughout the world. On 6 October 1997 the Committee devoted its day of general discussion to children with disabilities and adopted a set of recommendations (CRC/C/66, paragraphs 310-339), in which it considered the possibility of drafting a general comment on children with disabilities. The Committee notes with appreciation the work of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, and that it adopted at its eighth session, held in New York on 25 August 2006, a draft convention on the rights of persons with disabilities to be submitted to the General Assembly at its sixty-first session (A/AC.265/2006/4, Annex II).

3. The Committee, in reviewing State party reports, has accumulated a wealth of information on the status of children with disabilities worldwide and found that in the overwhelming majority of countries some recommendations had to be made specifically to address the situation of children with disabilities. The problems identified and addressed have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities. Poverty being both a cause and a consequence of disability, the Committee has repeatedly stressed that children with disabilities and their families have the right to an adequate standard

[68] See Wouter Vandenhole, Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies, p.170-172, Antwerpen/Oxford, Intersentia 2005.

of living, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The question of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring that children with disabilities have access to social protection and poverty reduction programmes.

4. The Committee has noted that no reservations or declarations have been entered specifically to article 23 of the Convention by any State party.

5. The Committee also notes that children with disabilities are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention. The Committee emphasizes that the barrier is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers. Acknowledging the importance of articles 2 and 23 of the Convention, the Committee states from the outset that the implementation of the Convention with regards to children with disabilities should not be limited to these articles.

6. The present general comment is meant to provide guidance and assistance to States parties in their efforts to implement the rights of children with disabilities, in a comprehensive manner which covers all the provisions of the Convention. Thus, the Committee will first make some observations related directly to articles 2 and 23, then it will elaborate on the necessity of paying particular attention to and including explicitly children with disabilities within the framework of general measures for the implementation of the Convention. Those observations will be followed by comments on the meaning and the implementation of the various articles of the Convention (clustered in accordance with the Committee's practice) for children with disabilities.

B. Definition

7. According to article 1, paragraph 2, of the draft 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." (A/AC.265/2006/4, Annex II)

II. THE KEY PROVISIONS FOR CHILDREN WITH DISABILITIES (ARTS. 2 AND 23)

A. Article 2

8. Article 2 requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States parties to take appropriate measures to prevent all forms of discrimination, including on the ground of disability. This explicit mention of disability as a prohibited ground for discrimination in article 2 is unique and can be explained by the fact that children with disabilities belong to one of the most vulnerable groups of children. In many cases forms of multiple discrimination - based on a combination of factors, i.e. indigenous girls with disabilities, children with disabilities living in rural areas and so on - increase the vulnerability of certain groups. It has been therefore felt necessary to mention disability explicitly in the non-discrimination article. Discrimination takes place – often de facto – in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities. The Committee shall elaborate on these aspects in the paragraphs below.

9. In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures:

(a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions on non-discrimination and/or include specific prohibition of discrimination on the ground of disability in specific anti-discrimination laws or legal provisions.

(b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child.

(c) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating de facto discrimination against children with disabilities.

10. Girls with disabilities are often even more vulnerable to discrimination 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.

B. Article 23

11. Paragraph 1 of article 23 should be considered as the leading principle for the implementation of the Convention with respect to 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 contained 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.

12. According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child's condition and the circumstances of the parents or others caring for the child. Paragraph 3 of article 23 gives further rules regarding the costs of specific measures and precisions as to what the assistance should try to achieve.

13. In order to meet the requirements of article 23 it is necessary that States parties develop and effectively implement a comprehensive policy by means of a plan of action which not only aims at the full enjoyment of the rights enshrined in the Convention without discrimination but which also ensures that a child with disability and her or his parents and/or others caring for the child do receive the special care and assistance they are entitled to under the Convention.

14. Regarding the specifics of paragraphs 2 and 3 of article 23, the Committee makes the following observations:

(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make 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 discrimination against children with disabilities and towards their maximum inclusion in society.

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.

15. With reference to article 23, paragraph 4, the Committee 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.

16. 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, within the framework of bilateral or multilateral development assistance, particular attention be 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 such international cooperation.

III. GENERAL MEASURES OF IMPLEMENTATION (ARTS. 4, 42 AND 44 (6))[69]

A. Legislation

17. In addition to the legislative measures recommended with regard to non-discrimination (see paragraph 9 above), the Committee recommends that States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate. National laws and regulations should contain clear and explicit provisions for the protection and exercise of the specific rights of children with disabilities, in particular those enshrined in article 23 of the Convention.

B. National plans of action and policies

18. The need for a national plan of action that integrates all the provisions of the Convention is a well-recognized fact and has often been a recommendation made by the Committee to States parties. Plans of action must be comprehensive, including plans and strategies for children with disabilities, and should have measurable outcomes. The draft convention on the rights of persons with disabilities, in its article 4, paragraph 1 *c*, emphasizes the importance of inclusion of this aspect stating that States parties undertake "to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes" (A/AC.265/2006/4, annex II). It is also essential that all programmes be adequately supplied with financial and human resources and equipped with built-in monitoring mechanisms, for example, indicators allowing accurate outcome measurements. Another factor that

[69] In the present general comment the Committee focuses on the need to pay special attention to children with disabilities in the context of the general measures. For a more elaborated explanation of the content and importance of these measures, see the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

should not be overlooked is the importance of including all children with disabilities in policies and programmes. Some States parties have initiated excellent programmes, but failed to include all children with disabilities.

C. Data and statistics

19. In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes. 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. Extra efforts are often needed to collect data on children with disabilities because they are often hidden by their parents or others caring for the child.

D. Budget

20. Allocation of budget: in the light of article 4 "…States parties shall undertake such measures to the maximum extent of their available resources…". Although the Convention does not make a specific recommendation regarding the most appropriate percentage of the State budget that should be dedicated to services and programmes for children, it does insist that children should be a priority. The implementation of this right has been a concern to the Committee since many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years. This trend has many serious implications especially for children with disabilities who often rank quite low, or even not at all, on priority lists. For example, if a State party is failing to allocate sufficient funds to ensure compulsory and free quality education for all children, it will be unlikely to allocate funds to train teachers for children with disabilities or to provide for the necessary teaching aids and transportation for children with disabilities. Decentralization and privatization of services are now means of economic reform. However, it should not be forgotten that it is the State Party's ultimate responsibility to oversee that adequate funds are allocated to children with disabilities along with strict guidelines for service delivery. Resources allocated to children with disabilities should be sufficient --and earmarked so that they are not used for other purposes-- to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services. Furthermore, funding must also be ensured for other programmes aimed at including children with disabilities into mainstream education, inter alia by renovating schools to render them physically accessible to children with disabilities.

E. Coordination body: "Focal point for disabilities"

21. Services for children with disabilities are often delivered by various governmental and non-governmental institutions, and more often than not, these services are fragmented and not coordinated which result in overlapping of functions and gaps in provisions. Therefore, the setting up of an appropriate coordinating mechanism becomes essential. This body should be multisectoral, including all organizations public or private. It must be empowered and supported from the highest possible levels of Government to allow it to function at its full potential. A coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or a national coordination system for persons with disabilities, would have the advantage of working within an already established system, provided this system is functioning adequately and capable of devoting the adequate financial and human resources necessary. On the other hand, a separate coordination system may help to focus attention on children with disabilities.

F. International cooperation and technical assistance

22. In order to make information among States parties freely accessible and to cultivate an atmosphere of knowledge-sharing concerning, inter alia, the management and rehabilitation of children with disabilities, States parties should recognize the importance of international cooperation and technical assistance. Particular attention should be paid to developing countries that need assistance in setting up and/or funding programmes that protect and promote the rights of children with disabilities. These countries are experiencing increasing difficulties in mobilizing the adequate resources to meet the pressing needs of persons with disabilities and would urgently need assistance in the prevention of disability, the provision of services and rehabilitation, and in the equalization of opportunities. However, in order to respond to these growing needs, the international community should explore new ways and means of raising funds, including substantial increase of resources, and take the necessary follow-up measures for mobilizing resources. Therefore, voluntary contributions from Governments, increased regional and bilateral assistance as well as contributions from private sources should also be encouraged. UNICEF and the World Health Organization (WHO) have been instrumental in helping developing countries set up and implement specific programmes for children with disabilities. The process of knowledge exchange is also valuable in sharing updated medical knowledge and good practices, such as early identification and community-based approaches to early intervention and support to families, and addressing common challenges.

23. Countries that have endured, or continue to endure, internal or foreign conflict, during which land mines were laid, face a particular challenge. States parties are often not privy to plans of the sites where the land mines and unexploded ordnance were planted and the cost of mine clearance is very high. The Committee emphasizes the importance of international cooperation in accordance with the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in order to prevent injuries and deaths caused by landmines and unexploded ordnance that remain in place. In this regard the

Committee recommends that States parties closely cooperate with a view to completely removing all landmines and unexploded ordnance in areas of armed conflict and/or previous armed conflict.

G. Independent monitoring

24. Both the Convention and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities recognize the importance of the establishment of an appropriate monitoring system[70]. The Committee has very often referred to "the Paris Principles" (A/RES/48/134) as the guidelines which national human rights institutions should follow (see the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child). National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific. Whatever mechanism is chosen, it must be:

(a) Independent and provided with adequate human and financial resources;

(b) Well known to children with disabilities and their caregivers;

(c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially; and

(d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities.

H. Civil society

25. Although caring for children with disabilities is an obligation of the State, NGOs often carry out these responsibilities without the appropriate support, funding or recognition from Governments. States parties are therefore encouraged to support and cooperate with NGOs enabling them to participate in the provision of services for children with disabilities and to ensure that they operate in full compliance with the provisions and principles of the Convention. In this regard the Committee draws the attention of States parties to the recommendations adopted on its day of general discussion on the private sector as a service provider, held on 20 September 2002 (CRC/C/121, paras. 630-653).

I. Dissemination of knowledge and training of professionals

26. Knowledge of the Convention and its specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of these rights. States parties are encouraged to disseminate knowledge by, inter alia, conducting systematic awareness-raising campaigns, producing appropriate material, such as a child friendly version of the Convention in print and Braille, and using the mass media to foster positive attitudes towards children with disabilities.
27. As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

IV. GENERAL PRINCIPLES

Article 2 - Non-discrimination

28. See paragraphs 8-10 above.

Article 3 - Best interests of the child

29. "In all actions concerning children…the best interests of the child shall be a primary consideration". The broad nature of this article aims at covering all aspects of care and protection for children in all settings. It addresses legislators who are entrusted with setting the legal framework for protecting the rights of children with disabilities as well as the decisions-making processes concerning children with disabilities. Article 3 should be the basis on which programmes and policies are set and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

30. The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets.

[70] See also the general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights regarding persons with disabilities.

Article 6 - Right to life, survival and development

31. The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right. In addition to being more vulnerable to infanticide, some cultures view a child with any form of disability as a bad omen that may "tarnish the family pedigree" and, accordingly, a certain designated individual from the community systematically kills children with disabilities. These crimes often go unpunished or perpetrators receive reduced sentences. States parties are urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment to all those who directly or indirectly violate the right to life, survival and development of children with disabilities.

Article 12 - Respect for the views of the child

32. 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 be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. In order for this principle to be respected, children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically. Engaging children in such a process not only ensures that the policies are targeted to their needs and desires, but also functions as a valuable tool for inclusion since it ensures that the decision-making process is a participatory one. Children should be provided with whatever mode of communication they need to facilitate expressing their views. Furthermore, States parties should support the 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.

33. Children with disabilities often require special services in health and education to allow them to achieve their fullest potential and these are further discussed in the relevant paragraphs below. However it should be noted that spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities catering to these essential aspects of any child's life is either totally lacking or minimal. Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.

V. CIVIL RIGHTS AND FREEDOMS (ARTS. 7, 8, 13-17, AND 37 *A*)

34. The right to name and nationality, preservation of identity, freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, the right to privacy and the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment and not to be unlawfully deprived of liberty are all universal civil rights and freedoms which must be respected, protected and promoted for all, including children with disabilities. Particular attention should be paid here on areas where the rights of children with disabilities are more likely to be violated or where special programmes are needed for their protection.

A. Birth registration

35. Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and to education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.

36. In the light of article 7 of the Convention, the Committee recommends that States parties adopt all appropriate measures to ensure the registration of children with disabilities at birth. Such measures should include developing and implementing an effective system of birth registration, waiving registration fees, introducing mobile registration offices and, for children who are not yet registered, providing registration units in schools. In this context, States parties should ensure that the provisions of article 7 are fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interests of the child (art. 3).

B. Access to appropriate information and mass media

37. Access to information and means of communication, including information and communication technologies and systems, enables children with disabilities to live independently and participate fully in all aspects of life. Children with disabilities and their caregivers should have access to information concerning their disabilities so that they can be adequately educated on the disability, including its causes, management and prognosis. This knowledge is extremely valuable as it does not only enable them to adjust and live better with their disabilities, but also allows them to be more involved in and to make informed decisions about their own care. Children with disabilities should also be provided with the appropriate technology and other services and/or languages, e.g. Braille and sign language, which would enable them to have access to all forms of media, including television, radio and printed material as well as new information and communication technologies and systems, such as the Internet.

38. On the other hand, States parties are required to protect all children, including children with disabilities from harmful information, especially pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices.

C. Accessibility to public transportation and facilities

39. The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. Although this provision may be mostly realized in developed countries, it remains largely un-addressed in the developing world. All States parties are urged to set out appropriate policies and procedures to make public transportation safe, easily accessible to children with disabilities, and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child.

40. All new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, governmental buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTS. 5, 18 (1-2), 9-11, 19-21, 25, 27 (4), AND 39)

A. Family support and parental responsibilities

41. Children with disabilities are best cared for and nurtured within their own family environment provided that the family is adequately provided for in all aspects. Such support to families includes education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family's common language, for example sign language, so that parents and siblings can communicate with family members with disabilities; material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture and mobility devices that is deemed necessary for the child with a disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community. In this context, support should also be extended to children who are affected by the disabilities of their caregivers. For example, a child living with a parent or other caregiver with disabilities should receive the support that would protect fully his or her rights and allow him or her to continue to live with this parent whenever it is in his or her best interests. Support services should also include different forms of respite care, such as care assistance in the home and day-care facilities directly accessible at community level. Such services enable parents to work, as well as relieve stress and maintain healthy family environments.

B. Violence, abuse and neglect

42. 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, inter alia 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, and they are also 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 and monitoring mechanism 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. Their particular vulnerability may be explained inter alia by the following main reasons:

(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, they can be targets of abusive people, particularly those who base abuse on sexuality.

43. 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 caring for the child to understand the risks and detect the 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) Ensure that schools 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 (see paragraph 24 above);

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

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

44. In this context the Committee would also like to draw States parties' attention to the report of the independent expert for the United Nations study on violence against children (A/61/299) which refers to children with disabilities as a group of children especially vulnerable to violence. The Committee encourages States parties to take all appropriate measures to implement the overarching recommendations and setting-specific recommendations contained in this report.

C. Family-type alternative care

45. The role of the extended family, which is still a main pillar of childcare in many communities and is considered one of the best alternatives for childcare, should be strengthened and empowered to support the child and his or her parents or others taking care of the child.

46. Recognizing that the foster family is an accepted and practiced form of alternative care in many States parties, it is nevertheless a fact that many foster families are reluctant to take on the care of a child with disability as children with disabilities often pose a challenge in the extra care they may need and the special requirements in their physical, psychological and mental upbringing. Organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with disability.

D. Institutions

47. 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 lack of identified standards 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 (see paragraphs 42-44 above). The Committee therefore urges States parties to use the placement in institution 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.

48. The Committee is concerned at the fact that children with disabilities are not often heard in separation and placement processes. 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. In this context, the Committee draws the attention of the States parties to the Committee's recommendations adopted on its day of general discussion on children without parental care, held on 16 September 2005 (CRC/C/153, paragraphs 636-689).

49. 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.

E. Periodic review of placement

50. Whatever form of placement chosen for children with disabilities by the competent authorities, it is essential that a periodic review of the treatment provided to the child, and all other circumstances relevant to his or her placement, is carried out to monitor his or her well being.

VII. BASIC HEALTH AND WELFARE (ARTS. 6, 18 (3), 23, 24, 26, AND 27 (1-3))

A. Right to health

51. Attainment of the highest possible standard of health as well as access and affordability of quality healthcare is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to 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 of children with disabilities. Health policies should be comprehensive and address early detection of disabilities, early intervention, including psychological and physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids and visual aids.

52. It is important to emphasize 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 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 possible standard and practice based on 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.

B. Prevention

53. Causes of disabilities are multiple and, therefore, the quality and level of prevention vary. 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 given during the delivery. It also recommends that States parties provide adequate post-natal health-care services and develop campaigns to inform parents and others caring for the child about basic child healthcare 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.

54. Domestic and road traffic accidents are a major cause of disability in some countries and policies of prevention 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 such causes 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.

55. Armed conflicts and their aftermath, including availability and accessibility of 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 mine clearance activities and, when appropriate, seek the necessary technical and financial support within a framework of international cooperation, including from United Nations agencies. (See also paragraph 23 above on landmines and unexploded ordnance and paragraph 78 below on armed conflicts under special protection measures).

C. Early identification

56. Very often, disabilities are detected quite late in the child's life, which deprives him or her of effective treatment and rehabilitation. Early identification requires high awareness among health professionals, parents, teachers as well as other professionals working with children. They should be able to identify the earliest signs of disability and make the appropriate referrals for diagnosis and management. Therefore, the Committee recommends that States parties establish systems of early identification and early intervention

as part of their health services, together with birth registration and procedures for following the progress of children identified with disabilities at an early age. Services should be both community- and home-based, and easy to access. Furthermore, links should be established between early intervention services, pre-schools and schools to facilitate the smooth transition of the child.

57. Following identification, the systems in place must be capable of early intervention including treatment and rehabilitation providing all necessary devices that enable children with disabilities to achieve their full functional capacity in terms of mobility, hearing aids, visual aids, and prosthetics among others. It should also be emphasized that these provisions should be offered free of cost, whenever possible, and the process of acquiring such services should be efficient and simple avoiding long waits and bureaucracies.

D. Multidisciplinary care

58. Children with disabilities very often have multiple health issues that need to be addressed in a team approach. Very often, many professionals are involved in the care of the child, such as neurologists, psychologists, psychiatrists, orthopaedic surgeons and physiotherapists among others. Ideally these professionals should collectively identify a plan of management for the child with disability that would ensure the most efficient healthcare is provided.

E. Adolescent health and development

59. The Committee notes that children with disabilities are, particularly during their adolescence, facing multiple challenges and risks in the area of establishing relationships with peers and reproductive health. Therefore, the Committee recommends that States parties provide adolescents with disabilities with adequate, and where appropriate, disability specific information, guidance and counselling and fully take into account the Committee's general comments No. 3 (2003) on HIV/AIDS and the rights of the child and No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

60. The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.

F. Research

61. Causes, prevention and management of disabilities do not receive the 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.

VIII. EDUCATION AND LEISURE (ARTS. 28, 29 AND 31)

A. Quality education

62. Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention[71]. For this purpose, effective access of children with disabilities to education has to be ensured to promote "the development of the child's personality, talents and mental and physical abilities to their fullest potential (see articles 28 and 29 of the Convention and the Committee's general comment No. 1 (2001) on the aims of education). The Convention recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

63. As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Everybody, who furthers the child's skills, abilities and self-development, has to precisely observe the child's progress and carefully listen to the child's verbal and emotional communication in order to support education and development in a well-targeted and most appropriate manner.

B. Self-esteem and self-reliance

64. It is crucial that the education of a child with disability includes the strengthening of positive self-awareness, making sure that the child feels he or she is respected by others as a human being without any limitation of dignity. The child must be able to observe that others respect him or her and recognize his or her human rights and freedoms. Inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has recognized identity and belongs to the community of learners, peers, and citizens. Peer support enhancing self-esteem of children with disabilities should be more widely recognized and promoted.

[71] In this context the Committee would like to make a reference to the United Nations Millennium Declaration (A/RES/55/2) and in particular to the Millennium Development Goal No. 2 relating to universal primary education according to which Governments are committed to "ensure that, by 2015, 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". The Committee would also like to refer to other international commitments which endorse the idea of inclusive education, inter alia, the Salamanca Statement and Framework for Action on Special Needs Education adopted by the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994 (UNESCO and Ministry of Education and Science of Spain) and the Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000.

Education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child.

C. Education in the school system

65. Early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions. Early intervention is of utmost importance to help children to develop their full potential. If a child is identified as having a disability or developmental delay at an early stage, the child has much better opportunities to benefit from early childhood education which should be designed to respond to her or his individual needs. Early childhood education provided by the State, the community or civil society institutions can provide important assistance to the well-being and development of all children with disabilities (see the Committee's general comment No. 7 (2005) on implementing child rights in early childhood). Primary education, including primary school and, in many States parties, also secondary school, has to be provided for children with disabilities free of costs. All schools should be without communicational barriers as well as physical barriers impeding the access of children with reduced mobility. Also higher education, accessible on the basis of capacities, has to be accessible for qualified adolescents with disabilities. In order to fully exercise their right to education, many children need personal assistance, in particular, teachers trained in methodology and techniques, including appropriate languages, and other forms of communication, for teaching children with a diverse range of abilities capable of using child-centred and individualised teaching strategies, and appropriate and accessible teaching materials, equipment and assistive devices, which States parties should provide to the maximum extent of available resources.

D. Inclusive education

66. Inclusive education[72] should be the goal of educating children with disabilities. The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system. The Committee notes the explicit commitment towards the goal of inclusive education contained in the draft convention on the rights of persons with disabilities and the obligation for States to ensure that persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal. However, the Committee underlines that the extent of inclusion within the general education system may vary. A continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future.

67. The movement towards inclusive education has received much support in recent years. However, the term inclusive may have different meanings. 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 class room 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.

E. Career education and vocational training

68. Education for career development and transition is for all persons with disabilities regardless of their age. It is imperative to begin preparation at an early age because career development is seen as a process that begins early and continues throughout life. Developing career awareness and vocational skills as early as possible, beginning in the elementary school, enables children to make better choices later in life in terms of employment. Career education in the elementary school does not mean using young children to perform labour that ultimately opens the door for economic exploitation. It begins with students choosing goals according to their evolving capacities in the early years. It should then be followed by a functional secondary school curriculum that offers adequate skills and access to work experience, under systematic coordination and monitoring between the school and the work place.

69. Career development and vocational skills should be included in the school curriculum. Career awareness and vocational skills should be incorporated into the years of compulsory education. In countries where compulsory education does not go beyond the elementary school years, vocational training beyond elementary school should be mandatory for children with disabilities. Governments must establish policies and allocate sufficient funds for vocational training.

F. Recreation and cultural activities

[72] UNESCO's Guidelines for Inclusion: Ensuring Access to Education for All (UNESCO 2005) provides the following definition "Inclusion is seen as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children…Inclusion is concerned with the identification and removal of barriers…" (p. 13 and 15)

70. The Convention stipulates in article 31 the right of the child to recreation and cultural activities appropriate to the age of the child. This article should be interpreted to include mental, psychological as well as the physical ages and capabilities of the child. 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.

71. 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.

G. Sports

72. Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive manner, 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.

IX. SPECIAL PROTECTION MEASURES (ARTS. 22, 38, 39, 40, 37 *B-D*, AND 32-36)

A. Juvenile justice system

73. In the light of article 2 States parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected not only by the provisions of the Convention which specifically relate to juvenile justice (arts. 40, 37 and 39) but by all other relevant provisions and guarantees contained in the Convention, for example in the area of health care and education. In addition, States parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

74. With reference to the rights enshrined in article 23 and given the high level of vulnerability of children with disabilities, the Committee recommends – in addition to the general recommendation made in paragraph 73 above – that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account:

(a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;

(b) Governments should develop and implement alternative measures with a variety and a flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;

(c) Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.

B. Economic exploitation

75. 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. In this context, the Committee recommends that States parties which have not yet done so ratify the Convention No. 138 of the International Labour Organization (ILO) concerning the minimum age for admission to employment and ILO Convention No. 182 concerning the prohibition of and immediate action for the elimination of the worst forms of child labour. In the implementation of these conventions States parties should pay special attention to the vulnerability and needs of children with disabilities.

C. Street children

76. Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States

parties are required to take all necessary actions to prevent this form of exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.

D. Sexual exploitation

77. The Committee has often expressed grave concern at the growing number of child victims of child prostitution and child pornography. Children with disabilities are more likely than others to become victims of these serious crimes. Governments are urged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) and, in fulfilling their obligations to the Optional Protocol, States parties should pay particular attention to the protection of children with disabilities recognizing their particular vulnerability.

E. Children in armed conflict

78. As previously noted above, armed conflicts are a major cause of disabilities whether children are actually involved in the conflict or are victims of combat. In this context, Governments are urged to ratify and implement the Optional Protocol on the involvement of children in armed conflict (OPAC). Special attention should be paid to the recovery and social re-integration of children who suffer disabilities as a result of armed conflicts. Furthermore, the Committee recommends that States parties explicitly exclude children with disabilities from recruitment in armed forces and take the necessary legislative and other measures to fully implement that prohibition.

F. Refugee and internally displaced children, children belonging to minorities and indigenous children

79. Certain disabilities result directly from the conditions that have led some individuals to become refugees or internally displaced persons, such as human-caused or natural disasters. For example, landmines and unexploded ordnance kill and injure refugee, internally displaced and resident children long after armed conflicts have ceased. Refugee and internally displaced children with disabilities are vulnerable to multiple forms of discrimination, particularly refugee and internally displaced girls with disabilities, who are more often than boys subject to abuse, including sexual abuse, neglect and exploitation. The Committee strongly emphasizes that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration. The Office of the United Nations High Commissioner for Refugees (UNHCR) has made children a policy priority and adopted several documents to guide its work in that area, including the Guidelines on Refugee Children in 1988, which are incorporated into UNHCR Policy on Refugee Children. The Committee also recommends that States parties take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside of their country of origin.

80. All appropriate and necessary measures undertaken to protect and promote the rights of children with disabilities must include and pay special attention to the particular vulnerability and needs of children belonging to minorities and indigenous children who are more likely to be already marginalized within their communities. Programmes and policies must always be culturally and ethnically sensitive.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/10

25 April 2007

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Forty-fourth session
Geneva, 15 January-2 February 2007

GENERAL COMMENT N. 10 (2007)
CHILDREN'S RIGHTS IN JUVENILE JUSTICE

I. INTRODUCTION

1. In the reports they submit to the Committee on the Rights of the Child (hereafter: the Committee), States parties often pay quite detailed attention to the rights of children alleged as, accused of, or recognized as having infringed the penal law, also referred to as "children in conflict with the law". In line with the Committee's guidelines for periodic reporting, the implementation of articles 37 and 40 of the Convention on the Rights of the Child (hereafter: CRC) is the main focus of the information provided by the States parties. The Committee notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with CRC. However, it is also clear that many States parties still have a long way to go in achieving full compliance with CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort.

2. The Committee is equally concerned about the lack of information on the measures that States parties have taken to prevent children from coming into conflict with the law. This may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many States parties are providing only very limited statistical data on the treatment of children in conflict with the law.

3. The experience in reviewing the States parties' performance in the field of juvenile justice is the reason for the present general comment, by which the Committee wants to provide the States parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with CRC. This juvenile justice, which should promote, inter alia, the use of alternative measures such as diversion and restorative justice, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. At the outset, the Committee wishes to underscore that CRC requires States parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 4 and 39. Therefore, the objectives of this general comment are:

- To encourage States parties to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with CRC, and to seek in this regard advice and support from the Interagency Panel on Juvenile Justice, with representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC) and non-governmental organizations (NGO's), established by ECOSOC resolution 1997/30;
- To provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in articles 37 and 40 of CRC;
- To promote the integration, in a national and comprehensive juvenile justice policy, of other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines").

III. JUVENILE JUSTICE: THE LEADING PRINCIPLES OF A COMPREHENSIVE POLICY

5. Before elaborating on the requirements of CRC in more detail, the Committee will first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40.

Non-discrimination (art. 2)

6. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

7. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).

8. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: “In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.”

9. In addition, behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

Best interests of the child (art. 3)

10. In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

The right to life, survival and development (art. 6)

11. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a very negative impact on the child’s development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child’s development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of CRC (see paragraphs 75-77 below). The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child’s right to development is fully respected and ensured (see paragraphs 78-88 below).[73]

The right to be heard (art. 12)

12. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice (see paragraphs 43-45 below). The Committee notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

[73] Note that the rights of a child deprived of his/her liberty, as recognized in CRC, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

Dignity (art. 40 (1))

13. CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

- *Treatment that is consistent with the child's sense of dignity and worth*. This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;
- *Treatment that reinforces the child's respect for the human rights and freedoms of others*. This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (art. 29 (1) (b) of CRC and general comment No. 1 on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40 (2) (see paragraphs 40-67 below). If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;
- *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society*. This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;
- *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented*. Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).

14. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in CRC.

IV. JUVENILE JUSTICE: THE CORE ELEMENTS OF A COMPREHENSIVE POLICY

15. A comprehensive policy for juvenile justice must deal with the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pretrial detention and post-trial incarceration.

A. Prevention of juvenile delinquency

16. One of the most important goals of the implementation of CRC is to promote the full and harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). The child should be prepared to live an individual and responsible life in a free society (preamble, and article 29), in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (arts. 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. In the light of these and other provisions of CRC, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

17. As stated above, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990.

18. The Committee fully supports the Riyadh Guidelines and agrees that emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not

complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families.

19. Articles 18 and 27 of CRC confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time CRC requires States parties to provide the necessary assistance to parents (or other caretakers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but also and even more on the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can start at a very young age of the child. In addition, early childhood education has shown to be correlated with a lower rate of future violence and crime. At the community level, positive results have been achieved with programmes such as Communities that Care (CTC), a risk-focused prevention strategy.

20. States parties should fully promote and support the involvement of children, in accordance with article 12 of CRC, and of parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers), in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

21. The Committee recommends that States parties seek support and advice from the Interagency Panel on Juvenile Justice in their efforts to develop effective prevention programmes.

B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by the State authorities for dealing with children alleged as, accused of, or recognized as having infringed the penal law: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. The Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40 (1) of CRC). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40 (4)).

Interventions without resorting to judicial proceedings

24. According to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases.

25. In the opinion of the Committee, the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is certainly not limited to children who commit minor offences, such as shoplifting or other property offences with limited damage, and first-time child offenders. Statistics in many States parties indicate that a large part, and often the majority, of offences committed by children fall into these categories. It is in line with the principles set out in article 40 (1) of CRC to deal with all such cases without resorting to criminal law procedures in court. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.

26. States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40 (3) (b)).

27. It is left to the discretion of States parties to decide on the exact nature and content of the measures for dealing with children in conflict with the law without resorting to judicial proceedings, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims. Other States parties should benefit from these experiences. As far as full respect for human rights and legal safeguards is concerned, the Committee refers to the relevant parts of article 40 of CRC and emphasizes the following:

- Diversion (i.e. measures for dealing with children, alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings) should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;

- The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring the consent of parents, in particular when the child is below the age of 16 years;
- The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;
- The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;
- The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

Interventions in the context of judicial proceedings

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor's office), the principles of a fair and just trial must be applied (see section D below). At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

29. The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.

C. Age and children in conflict with the law

The minimum age of criminal responsibility

30. The reports submitted by States parties show the existence of a wide range of minimum ages of criminal responsibility. They range from a very low level of age 7 or 8 to the commendable high level of age 14 or 16. Quite a few States parties use two minimum ages of criminal responsibility. Children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is left to the court/judge, often without the requirement of involving a psychological expert, and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices. In the light of this wide range of minimum ages for criminal responsibility the Committee feels that there is a need to provide the States parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

31. Article 40 (3) of CRC requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The committee understands this provision as an obligation for States parties to set a minimum age of criminal responsibility (MACR). This minimum age means the following:

- Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests;
- Children at or above the MACR at the time of the commission of an offence (or: infringement of the penal law) but younger than 18 years (see also paragraphs 35-38 below) can be formally charged and subject to penal law procedures. But these procedures, including the final outcome, must be in full compliance with the principles and provisions of CRC as elaborated in the present general comment.

32. Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

33. At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States parties should inform the Committee in their reports in specific detail how children below the MACR set

in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above MACR.

34. The Committee wishes to express its concern about the practice of allowing exceptions to a MACR which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a MACR that does not allow, by way of exception, the use of a lower age.

35. If there is no proof of age and it cannot be established that the child is at or above the MACR, the child shall not be held criminally responsible (see also paragraph 39 below).

The upper age-limit for juvenile justice
36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.

37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.

38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception.

39. Finally, the Committee wishes to emphasize the fact that it is crucial for the full implementation of article 7 of CRC requiring, inter alia, that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. Every child must be provided with a birth certificate free of charge whenever he/she needs it to prove his/her age. If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt.

D. The guarantees for a fair trial

40. Article 40 (2) of CRC contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6-9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child's dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which promotes the child's reintegration and his/her assuming a constructive role in society (art. 40 (1)). All the guarantees recognized in article 40 (2), which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process.

No retroactive juvenile justice (art. 40 (2) (a))
41. Article 40 (2) (a) of CRC affirms that the rule that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed is also applicable to children (see also article 15 of ICCPR). It means that no child can be charged with or sentenced under the penal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. The Committee also wishes to remind States parties that the rule that no heavier penalty shall be imposed than the one that

was applicable at the time when the criminal offence was committed, as expressed in article 15 of ICCPR, is in the light of article 41 of CRC, applicable to children in the States parties to ICCPR. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

The presumption of innocence (art. 40 (2) (b) (i))

42. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

The right to be heard (art. 12)

43. Article 12 (2) of CRC requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

44. It is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the right to be heard is fundamental for a fair trial. It is equally obvious that the child has the right to be heard directly and not only through a representative or an appropriate body if it is in her/his best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12 (1)), throughout the juvenile justice process. This means that the child, in order to effectively participate in the proceedings, must be informed not only of the charges (see paragraphs 47-48 below), but also of the juvenile justice process as such and of the possible measures.

45. The child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour. This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

The right to effective participation in the proceedings (art 40 (2) (b) (iv))

46. A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))

47. Every child alleged as or accused of having infringed the penal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the prosecutor or the judge initially takes procedural steps against the child. But also when the authorities decide to deal with the case without resorting to judicial proceedings, the child must be informed of the charge(s) that may justify this approach. This is part of the requirement of article 40 (3) (b) of CRC that legal safeguards should be fully respected. The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a "translation" of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand.

48. Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child's legal or other assistance. It is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her. The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Legal or other appropriate assistance (art. 40 (2) (b) (ii))

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The

Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn.

Decisions without delay and with involvement of parents (art. 40 (2) (b) (iii))

51. Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. In this regard, the Committee also refers to article 37 (d) of CRC, where the child deprived of liberty has the right to a prompt decision on his/her action to challenge the legality of the deprivation of his/her liberty. The term “prompt” is even stronger - and justifiably so given the seriousness of deprivation of liberty - than the term “without delay” (art. 40 (2) (b) (iii) of CRC), which is stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR.

52. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults. But at the same time, decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police.

53. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.

54. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child’s infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.

55. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children. Civil liability for the damage caused by the child’s act can, in some limited cases, be appropriate, in particular for the younger children (e.g. below 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iii))

56. In line with article 14 (3) (g) of ICCPR, CRC requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

57. There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: “You can go home as soon as you have given us the true story”, or lighter sanctions or release are promised.

58. The child being questioned must have access to a legal or other appropriate representative, and must be able to request the presence of his/her parent(s) during questioning. There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

Presence and examination of witnesses (art. 40 (2) (b) (iv))
59. The guarantee in article 40 (2) (b) (iv) of CRC underscores that the principle of equality of arms (i.e. under conditions of equality or parity between defence and prosecution) should be observed in the administration of juvenile justice. The term "to examine or to have examined" refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard, views which should be given due weight in accordance with the age and maturity of the child (art. 12).

The right to appeal (art. 40 (2) (b) (v))
60. The child has the right to appeal against the decision by which he is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body, in other words, a body that meets the same standards and requirements as the one that dealt with the case in the first instance. This guarantee is similar to the one expressed in article 14 (5) of ICCPR. This right of appeal is not limited to the most serious offences.

61. This seems to be the reason why quite a few States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. The Committee reminds States parties to the ICCPR that a similar provision is made in article 14 (5) of the Covenant. In the light of article 41 of CRC, it means that this article should provide every adjudicated child with the right to appeal. The Committee recommends that the States parties withdraw their reservations to the provision in article 40 (2) (b) (v).

Free assistance of an interpreter (art. 40 (2) (vi))
62. If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter. This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation. The condition starting with "if", "if the child cannot understand or speak the language used", means that a child of a foreign or ethnic origin for example, who - besides his/her mother tongue - understands and speaks the official language, does not have to be provided with the free assistance of an interpreter.

63. The Committee also wishes to draw the attention of States parties to children with speech impairment or other disabilities. In line with the spirit of article 40 (2) (vi), and in accordance with the special protection measures provided to children with disabilities in article 23, the Committee recommends that States parties ensure that children with speech impairment or other disabilities are provided with adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process (see also in this regard general comment No. 9 (The rights of children with disabilities) of the Committee on the Rights of the Child.

Full respect of privacy (arts. 16 and 40 (2) (b) (vii))
64. The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in article 16 of CRC. "All stages of the proceedings" includes from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. In this particular context, it is meant to avoid harm caused by undue publicity or by the process of labelling. No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via these press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

65. In order to protect the privacy of the child, most States parties have as a rule - sometimes with the possibility of exceptions - that the court or other hearings of a child accused of an infringement of the penal law should take place behind closed doors. This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a decision should be open for appeal by the child.

66. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed. The right to privacy (art. 16) requires all professionals involved in the implementation of the measures taken by the court or another competent authority to keep all information that may result in the identification of the child confidential in all their external contacts. Furthermore, the right to privacy also means that the records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or

prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.

67. The Committee also recommends that the States parties introduce rules which would allow for an automatic removal from the criminal records of the name of the child who committed an offence upon reaching the age of 18, or for certain limited, serious offences where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).

E. Measures (see also chapter IV, section B, above)

Pretrial alternatives

68. The decision to initiate a formal criminal law procedure does not necessarily mean that this procedure must be completed with a formal court sentence for a child. In line with the observations made above in section B, the Committee wishes to emphasize that the competent authorities - in most States the office of the public prosecutor - should continuously explore the possibilities of alternatives to a court conviction. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should continue. The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner.

69. In this process of offering alternatives to a court conviction at the level of the prosecutor, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph 27 above, which equally apply here.

Dispositions by the juvenile court/judge

70. After a fair and just trial in full compliance with article 40 of CRC (see chapter IV, section D, above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40 (4) of CRC, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b) of CRC).

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs 5-14 above). The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) (The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment)). In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.

72. The Committee notes that if a penal disposition is linked to the age of a child, and there is conflicting, inconclusive or uncertain evidence of the child's age, he/she shall have the right to the rule of the benefit of the doubt (see also paragraphs 35 and 39 above).

73. As far as alternatives to deprivation of liberty/institutional care are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement these alternatives by adjusting them to their own culture and tradition. It goes without saying that measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.

74. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of CRC, and to deprivation of liberty.

Prohibition of the death penalty

75. Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. Although the text is clear, there are States parties that assume that the rule only prohibits the execution of persons below the age of 18 years. However, under this rule the explicit and decisive criteria is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

76. The Committee recommends the few States parties that have not done so yet to abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons till the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with CRC.

No life imprisonment without parole
77. No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. In this regard, the Committee refers to article 25 of CRC providing the right to periodic review for all children placed for the purpose of care, protection or treatment. The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means inter alia that the child sentenced to this imprisonment should receive education, treatment, and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

Basic principles
79. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

Procedural rights (art. 37 (d))
82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

Treatment and conditions (art. 37 (c))
85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, "unless it is considered in the child's best interests not to do so", should be

interpreted narrowly; the child's best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;
- Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
- Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;
- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;
- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;
- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

V. THE ORGANIZATION OF JUVENILE JUSTICE

90. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system. As stated in article 40 (3) of CRC, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.

91. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on juvenile justice.

92. A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

93. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

94. In addition, specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of child offenders. In this juvenile justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner.

95. It is clear from many States parties' reports that non-governmental organizations can and do play an important role not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive juvenile justice policy and provide them with the necessary resources for this involvement.

VI. AWARENESS-RAISING AND TRAINING

96. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of child offenders is often based on misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law. It is crucial for children, in particular those who have experience with the juvenile justice system, to be involved in these awareness-raising efforts.

97. It is essential for the quality of the administration of juvenile justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of juvenile delinquency, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter IV, section B, above).

VII. DATA COLLECTION, EVALUATION AND RESEARCH

98. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.

99. The Committee recommends that States parties conduct regular evaluations of their practice of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. It is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the juvenile justice system. The privacy of these children and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/11

12 February 2009

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Fiftieth session
Geneva, 12-30 January 2009

GENERAL COMMENT NO. 11 (2009)
INDIGENOUS CHILDREN AND THEIR RIGHTS UNDER THE CONVENTION

INTRODUCTION

1. In the preamble of the Convention on the Rights of the Child, States parties take "*due account of the importance and cultural values of each people for the protection and harmonious development of the child*". While all the rights contained in the Convention apply to all children, whether indigenous or not, the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.

2. Article 30 of the Convention states that "*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.*"

3. Furthermore, article 29 of the Convention provides that "*education of the child shall be directed to 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*".

4. Article 17 of the Convention also makes specific mention as States parties shall "*encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous*".

5. The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights. The Committee on the Rights of the Child has consistently taken into account the situation of indigenous children in its reviews of periodic reports of States parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment.

6. In addition to the Convention on the Rights of the Child, various human rights treaties, have played an important role in addressing the situation of indigenous children and their right not to be discriminated, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Cultural Rights, 1966.

7. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989 contains provisions which advance the rights of indigenous peoples and specifically highlights the rights of indigenous children in the area of education.

8. In 2001, the United Nations Commission on Human Rights appointed a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, subsequently confirmed by the Human Rights Council in 2007. The Council has requested the Special Rapporteur to pay particular attention to the situation of indigenous children and several recommendations included in his annual and mission reports have focused on their specific situation.

9. In 2003, the United Nations Permanent Forum on Indigenous Issues held its second session on the theme indigenous children and youth and the same year the Committee on the Rights of the Child held its annual Day of General Discussion on the rights of indigenous children and adopted specific recommendations aimed primarily at States parties but also United Nations entities, human rights mechanisms, civil society, donors, the World Bank and regional development banks.

10. In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples which provides important guidance on the rights of indigenous peoples, including specific reference to the rights of indigenous children in a number of areas.

OBJECTIVES AND STRUCTURE

11. This general comment on the rights of indigenous children as provided for by the Convention on the Rights of the Child draws on the legal developments and initiatives outlined above.

12. The primary objective of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children. The Committee bases this general comment on its experience in interpreting the provisions of the Convention in relation to indigenous children. Furthermore, the general comment is based upon the recommendations adopted following the Day of General Discussion on indigenous children in 2003 and reflects a consultative process with relevant stakeholders, including indigenous children themselves.

13. The general comment aims to explore the specific challenges which impede indigenous children from being able to fully enjoy their rights and highlight special measures required to be undertaken by States in order to guarantee the effective exercise of indigenous children's rights. Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of rights for indigenous children.

14. Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard.

15. The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups.

ARTICLE 30 AND GENERAL OBLIGATIONS OF STATES

16. The Committee recalls the close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for 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. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.[74]

17. Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a "right" and requires that it "shall not be denied". Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.[75]

18. In this context, the Committee also supports the Committee on the Elimination of Racial Discrimination in its call upon States parties *to recognize and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation*.[76]

19. The presence of indigenous peoples is established by self-identification as the fundamental criterion for determining their existence.[77] There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.

20. Based on its reviews of States parties reports, the Committee on the Rights of the Child has observed that in implementing their obligations under the Convention many States parties give insufficient attention to the rights of indigenous children and to promotion of their development. The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned[78] and with the participation of children in the consultation process, as provided for by article 12 of the Convention. The Committee considers that consultations should be actively carried out by

[74] Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, paras. 3.2, 7. Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 4.
[75] Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, para. 6.1.
[76] Committee on the Elimination of Racial Discrimination, general recommendation No. 23 on Indigenous Peoples, 1997, contained in A/52/18, Annex V.
[77] ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, article 1 (2).
[78] ILO Convention No. 169, articles 2, 6, 27.

authorities or other entities of States parties in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue.

21. The Committee urges States parties to ensure that adequate attention is given to article 30 in the implementation of the Convention. States parties should provide detailed information in their periodic reports under the Convention on the special measures undertaken in order to guarantee that indigenous children can enjoy the rights provided in article 30.

22. The Committee underlines that cultural practices provided by article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health and development.[79] Should harmful practices be present, inter alia early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing attitudes and address gender roles and stereotypes that contribute to harmful practices.[80]

GENERAL PRINCIPLES (ARTS. 2, 3, 6 AND 12 OF THE CONVENTION)

Non-discrimination

23. Article 2 sets out the obligation of States parties to ensure the rights of each child within its jurisdiction without discrimination of any kind. Non-discrimination has been identified by the Committee as a general principle of fundamental importance for the implementation of all the rights enshrined in the Convention. Indigenous children have the inalienable right to be free from discrimination. In order to effectively protect children from discrimination, it is a State party obligation to ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible. The Committee highlights that the obligations of the State party extend not only to the public but also to the private sector.

24. As previously stated in the Committee's general comment No. 5 on general measures of implementation, the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.[81]

25. The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.[82]

26. Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.[83]

27. States parties should ensure that public information and educational measures are taken to address the discrimination of indigenous children. The obligation under article 2 in conjunction with articles 17, 29.1 (d) and 30 of the Convention requires States to develop public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Furthermore, States parties should provide meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions, and languages.

28. In their periodic reports to the Committee, States parties should identify measures and programmes undertaken to address discrimination of indigenous children in relation to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Discrimination, Xenophobia and Related Intolerance. [84]

29. In the design of special measures, States parties should consider the needs of indigenous children who may face multiple facets of discrimination and also take into account the different situation of indigenous children in rural and urban situations. Particular attention should be given to girls in order to ensure that they enjoy their rights on an equal basis as boys. States parties should furthermore ensure that special measures address the rights of indigenous children with disabilities.[85]

---

[79] UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 7.
[80] CRC, general comment No. 4 on Adolescent Health, 2003, para. 24.
[81] CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.
[82] Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 9.
[83] Ibid., para. 6.
[84] Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 12.
[85] Convention on the Rights of Persons with Disabilities, preamble. United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 21, 22.

Best interests of the child

30. The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation).[86] In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.

31. When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

32. The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests.

33. The principle of the best interests of the child requires States to undertake active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests.[87] In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child.

The right to life, survival and development

34. The Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact on their survival and development. The Committee is furthermore concerned over the high infant and child mortality rates as well as malnutrition and diseases among indigenous children. Article 4 obliges States parties to address economic, social and cultural rights to the maximum extent of their available resources and where needed with international cooperation. Articles 6 and 27 provide the right of children to survival and development as well as an adequate standard of living. States should assist parents and others responsible for the indigenous child to implement this right by providing culturally appropriate material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The Committee stresses the need for States parties to take special measures to ensure that indigenous children enjoy the right to an adequate standard of living and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children.

35. The Committee reiterates its understanding of development of the child as set out in its general comment No. 5, as a "holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development".[88] The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture.[89] States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible.

36. The Committee reaffirms the importance of the Millennium Development Goals (MDGs) and calls on States to engage with indigenous peoples, including children, to ensure the full realization of the MDGs with respect to indigenous children.

Respect for the views of the child

37. The Committee considers that, in relation to article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the right to be heard collectively, which allows children as a group to be involved in consultations on matters involving them.

38. With regard to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.

---

[86] UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 1.
[87] CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.
[88] Ibid.
[89] UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 8.

39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they are consulted on all matters affecting them. The State party should design special strategies to guarantee that their participation is effective. The State party should ensure that this right is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programmes, policies and strategies for implementation of the Convention.

CIVIL RIGHTS AND FREEDOMS (ARTS. 7, 8, 13-17 AND 37 (A) OF THE CONVENTION)

Access to information

40. The Committee underlines the importance that the media have particular regard for the linguistic needs of indigenous children, in accordance with articles 17 (d) and 30 of the Convention. The Committee encourages States parties to support indigenous children to have access to media in their own languages. The Committee underlines the right of indigenous children to access information, including in their own languages, in order for them to effectively exercise their right to be heard.

Birth registration, nationality and identity

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.

42. Therefore, States parties should take special measures in order to ensure that indigenous children, including those living in remote areas, are duly registered. Such special measures, to be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.

43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.[90]

44. Furthermore, taking into account articles 8 and 30 of the Convention, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides indigenous parents with the possibility of selecting the name of their preference for their children.

45. The Committee draws the attention of States to article 8 (2) of the Convention which affirms that a child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity. The Committee encourages States parties to bear in mind article 8 of the United Nations Declaration on the Rights of Indigenous Peoples which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTS. 5, 18 (PARAS. 1-2), 9-11, 19-21, 25, 27 (PARA. 4) AND 39 OF THE CONVENTION)

46. Article 5 of the Convention requires States parties to respect the rights, responsibilities and duties of parents or where applicable, the members of the extended family or community to provide, in a manner consistent with the evolving capacities of all children, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention.[91]

47. States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children.[92]

48. Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and in accordance with article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties

[90] UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 9.
[91] Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 17.
[92] Ibid.

where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity.

BASIC HEALTH AND WELFARE (ARTS. 6, 18 (PARA. 3), 23, 24, 26, 27 (PARAS. 1-3) OF THE CONVENTION)

49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties' reports, that this applies both to developing and developed countries.

50. The Committee urges States parties to take special measures to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children and notes that States parties have a positive duty to ensure that indigenous children have equal access to health services and to combat malnutrition as well as infant, child and maternal mortality.

51. States parties should take the necessary steps to ensure ease of access to health-care services for indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned.[93] Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in indigenous languages. Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.[94]

52. Health-care workers and medical staff from indigenous communities play an important role by serving as a bridge between traditional medicine and conventional medical services and preference should be given to employment of local indigenous community workers.[95] States parties should encourage the role of these workers by providing them with the necessary means and training in order to enable that conventional medicine be used by indigenous communities in a way that is mindful of their culture and traditions. In this context, the Committee recalls article 25 (2) of the ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.[96]

53. States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and postnatal care, child and adolescent health, vaccinations, communicable diseases (in particular HIV/AIDS and tuberculosis), hygiene, environmental sanitation and the dangers of pesticides and herbicides.

54. Regarding adolescent health, States parties should consider specific strategies in order to provide indigenous adolescents with access to sexual and reproductive information and services, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted infections (STIs). The Committee recommends States parties to take into account its general comments No. 3 on HIV/AIDS and the rights of the child (2003) and No. 4 on adolescent health (2003) for this purpose.[97]

55. In certain States parties suicide rates for indigenous children are significantly higher than for non-indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, following consultation with the affected community. In order to analyse and combat the root causes, the State party should establish and maintain a dialogue with the indigenous community.

EDUCATION (ARTS. 28, 29 AND 31 OF THE CONVENTION)

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives include 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. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies. States are encouraged to refer to the Committee's general comment No. 1 on the aims of education for further guidance.[98]

---

[93] ILO Convention No. 169, article 25 (1, 2).
[94] CRC, general comment No. 9 on The Rights of Children with Disabilities, 2006.
[95] ILO Convention No. 169, article 25 (3).
[96] United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 24, 31.
[97] CRC, general comment No. 3 on HIV/AIDS and the Rights of the Child, 2003 and general comment No. 4 on Adolescent Health, 2003.
[98] CRC, general comment No. 1 on the Aims of Education, 2001.

57. The education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society. Quality education enables indigenous children to exercise and enjoy economic, social and cultural rights for their personal benefit as well as for the benefit of their community. Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples.

58. In order to ensure that the aims of education are in line with the Convention, States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism. This duty is particularly pertinent in relation to indigenous children. In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples.[99] Discriminatory practices, such as restrictions on the use of cultural and traditional dress, should be avoided in the school setting.

59. Article 28 of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child. However, in practice, indigenous children are less likely to be enrolled in school and continue to have higher drop out and illiteracy rates than non-indigenous children. Most indigenous children have reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with article 30. Furthermore, indigenous children are frequently confronted with discrimination and racism in the school setting.

60. In order for indigenous children to enjoy their right to education on equal footing with non-indigenous children, States parties should ensure a range of special measures to this effect. States parties should allocate targeted financial, material and human resources in order to implement policies and programmes which specifically seek to improve the access to education for indigenous children. As established by article 27 of the ILO Convention No. 169, education programmes and services should be developed and implemented in cooperation with the peoples concerned to address their specific needs. Furthermore, governments should recognize the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples.[100] States should undertake all reasonable efforts to ensure that indigenous communities are aware of the value and importance of education and of the significance of community support for school enrolment.

61. States parties should ensure that school facilities are easily accessible where indigenous children live. If required, States parties should support the use of media, such as radio broadcasts and long distance education programmes (internet-based) for educational purposes and establish mobile schools for indigenous peoples who practice nomadic traditions. The school cycle should take into account and seek to adjust to cultural practices as well as agricultural seasons and ceremonial periods. States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.

62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Article 28 of ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.[101] Bilingual and intercultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.

63. With reference to article 31 of the Convention, the Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights.

SPECIAL PROTECTION MEASURES (ARTS. 22, 30, 38, 39, 40, 37 (B)-(D), 32-36 OF THE CONVENTION)

Children in armed conflict and refugee children

64. Through its periodic reviews of States parties' reports, the Committee has concluded that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest. Indigenous communities often reside in areas which are coveted for their natural resources or that, because of remoteness, serve as a base for non-State armed groups. In other situations, indigenous communities reside in the vicinity of borders or frontiers which are disputed by States.[102]

65. Indigenous children in such circumstances have been, and continue to face risks of being, victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community. Targeting of schools by armed forces and groups has denied indigenous children access to

[99] ILO Convention No. 169, article 31, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 15.
[100] ILO Convention No. 169, article 27.
[101] ILO Convention No. 169, article 28.
[102] UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 13.

education. Furthermore, indigenous children have been recruited by armed forces and groups and forced to commit atrocities, sometimes even against their own communities.

66. Article 38 of the Convention obliges States parties to ensure respect for the rules of humanitarian law, to protect the civilian population and to take care of children who are affected by armed conflict. States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned. Military activities on indigenous territories should be avoided to the extent possible, the Committee recalls article 30 of the United Nations Declaration on the Rights of Indigenous Peoples in this regard.[103] States parties should not require military conscription of indigenous children under the age of 18 years. States parties are encouraged to ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict.

67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities. Consistent with article 39 of the Convention, States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. In the case of indigenous children, this should be done giving due consideration to the child's cultural and linguistic background.

68. Indigenous children who have been displaced or become refugees should be given special attention and humanitarian assistance in a culturally sensitive manner. Safe return and restitution of collective and individual property should be promoted.

Economic exploitation

69. Article 32 of the Convention provides that all children should 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. In addition, ILO Convention No. 138 (Minimum Age Convention) and Convention No. 182 (Worst Forms of Child Labour Convention) set parameters for distinguishing child labour that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture, on the other. Child labour is work that deprives children of their childhood, their potential and dignity and that is harmful to their physical and mental development.[104]

70. Provisions in the Convention on the Rights of the Child refer to the use of children in illicit production and trafficking of drugs (art. 33), sexual exploitation (art. 34), trafficking in children (art. 35), children in armed conflicts (art. 38). These provisions are closely related to the definition of the worst forms of child labour under ILO Convention No. 182. The Committee notes with grave concern that indigenous children are disproportionately affected by poverty and at particular risk of being used in child labour, especially its worst forms, such as slavery, bonded labour, child trafficking, including for domestic work, use in armed conflict, prostitution and hazardous work.

71. The prevention of exploitative child labour among indigenous children (as in the case of all other children) requires a rights-based approach to child labour and is closely linked to the promotion of education. For the effective elimination of exploitative child labour among indigenous communities, States parties must identify the existing barriers to education and the specific rights and needs of indigenous children with respect to school education and vocational training. This requires that special efforts be taken to maintain a dialogue with indigenous communities and parents regarding the importance and benefits of education. Measures to combat exploitative child labour furthermore require analysis of the structural root causes of child exploitation, data collection and the design and implementation of prevention programmes, with adequate allocation of financial and human resources by the State party, to be carried out in consultation with indigenous communities and children.

Sexual exploitation and trafficking

72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

73. States should, in consultation with indigenous communities, including children, design preventive measures and allocate targeted financial and human resources for their implementation. States should base preventive measures on studies which include documentation of the patterns of violations and analysis of root causes.

Juvenile justice

74. Articles 37 and 40 of the Convention ensure the rights of children within, and in interaction with, State judicial systems. The Committee notes with concern that incarceration of indigenous children is often disproportionately high and in some instances may be

[103] United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 30.
[104] ILO, Handbook on Combating Child Labour among Indigenous and Tribal Peoples, 2006, p. 9.

attributed to systemic discrimination from within the justice system and/or society.[105] To address these high rates of incarceration, the Committee draws the attention of States parties to article 40 (3) of the Convention requiring States to undertake measures to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate. The Committee, in its general comment No. 10 on children's rights in juvenile justice (2007) and in its concluding observations, has consistently affirmed that the arrest, detention or imprisonment of a child may be used only as a measure of last resort.[106]

75. States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.[107] The Committee draws the attention of States parties to the United Nations Guidelines for the Prevention of Juvenile Delinquency, which encourage the development of community programmes for the prevention of juvenile delinquency.[108] States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.

76. States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.

77. Professionals involved in law enforcement and the judiciary should receive appropriate training on the content and meaning of the provisions of the Convention and its Optional Protocols, including the need to adopt special protection measures for indigenous children and other specific groups.[109]

STATES PARTIES' OBLIGATIONS AND MONITORING OF THE IMPLEMENTATION OF THE CONVENTION

78. The Committee reminds States parties that ratification of the Convention on the Rights of the Child obliges States parties to take action to ensure the realization of all rights in the Convention for all children within their jurisdiction. The duty to respect and protect requires each State party to ensure that the exercise of the rights of indigenous children is fully protected against any acts of the State party by its legislative, judicial or administrative authorities or by any other entity or person within the State party.

79. Article 3 of the Convention requires States parties to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 4 of the Convention requires States parties to undertake measures to implement the Convention to the maximum extent of their available resources. Article 42 sets out that States parties are further required to ensure that children and adults are provided information on the principles and provisions of the Convention.

80. In order to effectively implement the rights of the Convention for indigenous children, States parties need to adopt appropriate legislation in accordance with the Convention. Adequate resources should be allocated and special measures adopted in a range of areas in order to effectively ensure that indigenous children enjoy their rights on an equal level with non-indigenous children. Further efforts should be taken to collect and disaggregate data and develop indicators to evaluate the degree of implementation of the rights of indigenous children. In order to develop policy and programming efforts in a culturally sensitive manner, States parties should consult with indigenous communities and directly with indigenous children. Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights.

81. The Committee calls for States parties to, when applicable, better integrate information in their periodic reports to the Committee on the implementation of indigenous children's rights and on the adoption of special measures in this regard. Furthermore, the Committee requests States parties to strengthen efforts to translate and disseminate information about the Convention and its Optional Protocols and the reporting process among indigenous communities and children, in order for them to actively participate in the monitoring process. Furthermore, indigenous communities are encouraged to utilize the Convention as an opportunity to assess the implementation of the rights of their children.

82. Finally, the Committee urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. In order to guarantee effective monitoring of the implementation of the rights of indigenous children, States parties are urged to strengthen direct cooperation with indigenous communities and, if required, seek technical cooperation from international agencies, including United Nations entities. Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations.

[105] CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 6.
[106] Ibid. para. 23.
[107] Recommendations of Day of General Discussion on the Rights of Indigenous Children, 2003, para. 13.
[108] United Nations Guidelines for the Prevention of Juvenile Delinquency, "the Riyadh Guidelines", 1990.
[109] CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 97.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/12

20 July 2009

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Fifty-first session
Geneva, 25 May-12 June 2009

GENERAL COMMENT No. 12 (2009)
The right of the child to be heard

The right of the child to be heard
Article 12 of the Convention on the Rights of the Child provides:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

I. INTRODUCTION

1. Article 12 of the Convention on the Rights of the Child (the Convention) is a unique provision in a human rights treaty; it addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights. Paragraph 1 assures, to every child capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity. Paragraph 2 states, in particular, that the child shall be afforded the right to be heard in any judicial or administrative proceedings affecting him or her.

2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

3. Since the adoption of the Convention in 1989, considerable progress has been achieved at the local, national, regional and global levels in the development of legislation, policies and methodologies to promote the implementation of article 12. A widespread practice has emerged in recent years, which has been broadly conceptualized as "participation", although this term itself does not appear in the text of article 12. This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.

4. States parties reaffirmed their commitment to the realization of article 12 at the twenty-seventh special session of the General Assembly on children in 2002.[110] However, the Committee notes that, in most societies around the world, implementation of the child's right to express her or his view on the wide range of issues that affect her or him, and to have those views duly taken into account, continues to be impeded by many long-standing practices and attitudes, as well as political and economic barriers. While difficulties are experienced by many children, the Committee particularly recognizes that certain groups of children, including younger boys and girls, as well as children belonging to marginalized and disadvantaged groups, face particular barriers in the realization of this right. The Committee also remains concerned about the quality of many of the practices that do exist. There is a need for a better understanding of what article 12 entails and how to fully implement it for every child.

[110] Resolution S-27/2 "A world fit for children", adopted by the General Assembly in 2002.

5. In 2006, the Committee held a day of general discussion on the right of the child to be heard in order to explore the meaning and significance of article 12, its linkages to other articles, and the gaps, good practices and priority issues that need to be addressed in order to further the enjoyment of this right.[111] The present general comment arises from the exchange of information which took place on that day, including with children, the accumulated experience of the Committee in reviewing States parties' reports, and the very significant expertise and experience of translating the right embodied in article 12 into practice by governments, non-governmental organizations (NGOs), community organizations, development agencies, and children themselves.

6. The present general comment will first present a legal analysis of the two paragraphs of article 12 and will then explain the requirements to fully realize this right, including in judicial and administrative proceedings in particular (sect. A). In section B, the connection of article 12 with the three other general principles of the Convention, as well as its relation to other articles, will be discussed. The requirements and the impact of the child's right to be heard in different situations and settings are outlined in section C. Section D sets out the basic requirements for the implementation of this right, and the conclusions are presented in section E.

7. The Committee recommends that States parties widely disseminate the present general comment within government and administrative structures as well as to children and civil society. This will necessitate translating it into the relevant languages, making child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all professionals working for and with children.

II. OBJECTIVES

8. The overall objective of the general comment is to support States parties in the effective implementation of article 12. In so doing it seeks to:

- Strengthen understanding of the meaning of article 12 and its implications for governments, stakeholders, NGOs and society at large
- Elaborate the scope of legislation, policy and practice necessary to achieve full implementation of article 12
- Highlight the positive approaches in implementing article 12, benefitting from the monitoring experience of the Committee
- Propose basic requirements for appropriate ways to give due weight to children's views in all matters that affect them

III. THE RIGHT TO BE HEARD: A RIGHT OF THE INDIVIDUAL CHILD AND A RIGHT OF GROUPS OF CHILDREN

9. The general comment is structured according to the distinction made by the Committee between the right to be heard of an individual child and the right to be heard as applied to a group of children (e.g. a class of schoolchildren, the children in a neighbourhood, the children of a country, children with disabilities, or girls). This is a relevant distinction because the Convention stipulates that States parties must assure the right of the child to be heard according to the age and maturity of the child (see the following legal analysis of paragraphs 1 and 2 of article 12).

10. The conditions of age and maturity can be assessed when an individual child is heard and also when a group of children chooses to express its views. The task of assessing a child's age and maturity is facilitated when the group in question is a component of an enduring structure, such as a family, a class of schoolchildren or the residents of a particular neighbourhood, but is made more difficult when children express themselves collectively. Even when confronting difficulties in assessing age and maturity, States parties should consider children as a group to be heard, and the Committee strongly recommends that States parties exert all efforts to listen to or seek the views of those children speaking collectively.

11. States parties should encourage the child to form a free view and should provide an environment that enables the child to exercise her or his right to be heard.

12. The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.

13. These processes are usually called participation. The exercise of the child's or children's right to be heard is a crucial element of such processes. The concept of participation emphasizes that including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives.

14. In section A (Legal analysis) of the general comment, the Committee deals with the right to be heard of the individual child. In section C (The implementation of the right to be heard in different settings and situations), the Committee considers the right to be heard of both the individual child and children as a group.

A. Legal analysis

15. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. This right imposes a clear

[111] See the recommendations of the day of general discussion in 2006 on the right of the child to be heard, available at: http://www2.ohchr.org/english/bodies/crc/docs/discussion/ Final_Recommendations_after_DGD.doc.

legal obligation on States parties to recognize this right and ensure its implementation by listening to the views of the child and according them due weight. This obligation requires that States parties, with respect to their particular judicial system, either directly guarantee this right, or adopt or revise laws so that this right can be fully enjoyed by the child.

16. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.

17. Article 12 as a general principle provides that States parties should strive to ensure that the interpretation and implementation of all other rights incorporated in the Convention are guided by it.[112]

18. Article 12 manifests that the child holds rights which have an influence on her or his life, and not only rights derived from her or his vulnerability (protection) or dependency on adults (provision).[113] The Convention recognizes the child as a subject of rights, and the nearly universal ratification of this international instrument by States parties emphasizes this status of the child, which is clearly expressed in article 12.

1. Literal analysis of article 12

(a) Paragraph 1 of article 12

(i) "Shall assure"

19. Article 12, paragraph 1, provides that States parties "shall assure" the right of the child to freely express her or his views. "Shall assure" is a legal term of special strength, which leaves no leeway for State parties' discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

(ii) "Capable of forming his or her own views"

20. States parties shall assure the right to be heard to every child "capable of forming his or her own views". This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him. In this respect, the Committee underlines the following:

- First, in its recommendations following the day of general discussion on implementing child rights in early childhood in 2004, the Committee underlined that the concept of the child as rights holder is "... anchored in the child's daily life from the earliest stage".[114] Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally.[115] Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences.
- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter.
- Third, States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views. Efforts must also be made to recognize the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language.
- Lastly, States parties must be aware of the potential negative consequences of an inconsiderate practice of this right, particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.

(iii) "The right to express those views freely"

22. The child has the right "to express those views freely". "Freely" means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard. "Freely" also means that the child must not be manipulated or subjected to undue influence or pressure. "Freely" is further intrinsically related to the child's "own" perspective: the child has the right to express her or his own views and not the views of others.

---

[112] See the Committee's general comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child (CRC/GC/2003/5).
[113] The Convention is commonly referred to by the three "ps": provision, protection and participation.
[114] CRC/C/GC/7/Rev.1, para. 14.
[115] Cf. Lansdown G., "The evolving capacities of the child", Innocenti Research Centre, UNICEF/Save the Children, Florence (2005).

23. States parties must ensure conditions for expressing views that account for the child's individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.

24. The Committee emphasizes that a child should not be interviewed more often than necessary, in particular when harmful events are explored. The "hearing" of a child is a difficult process that can have a traumatic impact on the child.

25. The realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child's clarified decisions.

(iv) "In all matters affecting the child"

26. States parties must assure that the child is able to express her or his views "in all matters affecting" her or him. This represents a second qualification of this right: the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.

27. The Open-ended Working Group established by the Commission on Human Rights, which drafted the text of the Convention, rejected a proposal to define these matters by a list limiting the consideration of a child's or children's views. Instead, it was decided that the right of the child to be heard should refer to "all matters affecting the child". The Committee is concerned that children are often denied the right to be heard, even though it is obvious that the matter under consideration is affecting them and they are capable of expressing their own views with regard to this matter. While the Committee supports a broad definition of "matters", which also covers issues not explicitly mentioned in the Convention, it recognizes the clause "affecting the child", which was added in order to clarify that no general political mandate was intended. The practice, however, including the World Summit for Children, demonstrates that a wide interpretation of matters affecting the child and children helps to include children in the social processes of their community and society. Thus, States parties should carefully listen to children's views wherever their perspective can enhance the quality of solutions.

(v) "Being given due weight in accordance with the age and maturity of the child"

28. The views of the child must be "given due weight in accordance with the age and maturity of the child". This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.

29. By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child's views. Children's levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination.

30. Maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant the appropriate assessment of the maturity of that child.

31. Consideration needs to be given to the notion of the evolving capacities of the child, and direction and guidance from parents (see para. 84 and sect. C below).

(b) Paragraph 2 of article 12

(i) The right "to be heard in any judicial and administrative proceedings affecting the child"

32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular "in any judicial and administrative proceedings affecting the child". The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

33. The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption. States parties are encouraged to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.

34. A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.

(ii) "Either directly, or through a representative or an appropriate body"

35. After the child has decided to be heard, he or she will have to decide how to be heard: "either directly, or through a representative or appropriate body". The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

36. The representative can be the parent(s), a lawyer, or another person (inter alia, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

37. The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child's views.

(iii) "In a manner consistent with the procedural rules of national law"

38. The opportunity for representation must be "in a manner consistent with the procedural rules of national law". This clause should not be interpreted as permitting the use of procedural legislation which restricts or prevents enjoyment of this fundamental right. On the contrary, States parties are encouraged to comply with the basic rules of fair proceedings, such as the right to a defence and the right to access one's own files.

39. When rules of procedure are not adhered to, the decision of the court or the administrative authority can be challenged and may be overturned, substituted, or referred back for further juridical consideration.

2. Steps for the implementation of the child's right to be heard

40. Implementation of the two paragraphs of article 12 requires five steps to be taken in order to effectively realize the right of the child to be heard whenever a matter affects a child or when the child is invited to give her or his views in a formal proceeding as well as in other settings. These requirements have to be applied in a way which is appropriate for the given context.

(a) Preparation

41. Those responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child and, in particular, in any judicial and administrative decision-making processes, and about the impact that his or her expressed views will have on the outcome. The child must, furthermore, receive information about the option of either communicating directly or through a representative. She or he must be aware of the possible consequences of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard.

(b) The hearing

42. The context in which a child exercises her or his right to be heard has to be enabling and encouraging, so that the child can be sure that the adult who is responsible for the hearing is willing to listen and seriously consider what the child has decided to communicate. The person who will hear the views of the child can be an adult involved in the matters affecting the child (e.g. a teacher, social worker or caregiver), a decision maker in an institution (e.g. a director, administrator or judge), or a specialist (e.g. a psychologist or physician).

43. Experience indicates that the situation should have the format of a talk rather than a one-sided examination. Preferably, a child should not be heard in open court, but under conditions of confidentiality.

(c) Assessment of the capacity of the child

44. The child's views must be given due weight, when a case-by-case analysis indicates that the child is capable of forming her or his own views. If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue. Good practice for assessing the capacity of the child has to be developed.

(d) Information about the weight given to the views of the child (feedback)

45. Since the child enjoys the right that her or his views are given due weight, the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously. The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint.

(e) Complaints, remedies and redress

46. Legislation is needed to provide children with complaint procedures and remedies when their right to be heard and for their views to be given due weight is disregarded and violated.[116] Children should have the possibility of addressing an ombudsman or a person of a comparable role in all children's institutions, inter alia, in schools and day-care centres, in order to voice their complaints. Children should know who these persons are and how to access them. In the case of family conflicts about consideration of children's views, a child should be able to turn to a person in the youth services of the community.

47. If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment.

3. Obligations of States parties

(a) Core obligations of States parties

48. The child's right to be heard imposes the obligation on States parties to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.

49. In order to fulfil these obligations, States parties should adopt the following strategies:

- Review and withdraw restrictive declarations and reservations to article 12
- Establish independent human rights institutions, such as children's ombudsmen or commissioners with a broad children's rights mandate[117]
- Provide training on article 12, and its application in practice, for all professionals working with, and for, children, including lawyers, judges, police, social workers, community workers, psychologists, caregivers, residential and prison officers, teachers at all levels of the educational system, medical doctors, nurses and other health professionals, civil servants and public officials, asylum officers and traditional leaders
- Ensure appropriate conditions for supporting and encouraging children to express their views, and make sure that these views are given due weight, by regulations and arrangements which are firmly anchored in laws and institutional codes and are regularly evaluated with regard to their effectiveness
- Combat negative attitudes, which impede the full realization of the child's right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child

(b) Specific obligations with regard to judicial and administrative proceedings

(i) The child's right to be heard in civil judicial proceedings

50. The main issues which require that the child be heard are detailed below:

Divorce and separation
51. In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the "best interests of the child".

52. For this reason, all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child.

Separation from parents and alternative care
53. Whenever a decision is made to remove a child from her or his family because the child is a victim of abuse or neglect within his or her home, the view of the child must be taken into account in order to determine the best interests of the child. The intervention may be initiated by a complaint from a child, another family member or a member of the community alleging abuse or neglect in the family.

[116] See the Committee's general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 24.
[117] See the Committee's general comment No. 2 (2002) on the role of independent human rights institutions.

54. The Committee's experience is that the child's right to be heard is not always taken into account by States parties. The Committee recommends that States parties ensure, through legislation, regulation and policy directives, that the child's views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.

Adoption and kafalah of Islamic law
55. When a child is to be placed for adoption or *kafalah* of Islamic law and finally will be adopted or placed in *kafalah*, it is vitally important that the child is heard. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.

56. Article 21 of the Convention states that the best interests of the child shall be the paramount consideration. In decisions on adoption, *kafalah* or other placement, the "best interests" of the child cannot be defined without consideration of the child's views. The Committee urges all States parties to inform the child, if possible, about the effects of adoption, *kafalah* or other placement, and to ensure by legislation that the views of the child are heard.

(ii) The child's right to be heard in penal judicial proceedings

57. In penal proceedings, the right of child to express her or his views freely in all matters affecting the child has to be fully respected and implemented throughout every stage of the process of juvenile justice.[118]

The child offender
58. Article 12, paragraph 2, of the Convention requires that a child alleged to have, accused of, or recognized as having, infringed the penal law, has the right to be heard. This right has to be fully observed during all stages of the judicial process, from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures.

59. In case of diversion, including mediation, a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance in determining the appropriateness and desirability of the diversion proposed.

60. In order to effectively participate in the proceedings, every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely.

61. The court and other hearings of a child in conflict with the law should be conducted behind closed doors. Exceptions to this rule should be very limited, clearly outlined in national legislation and guided by the best interests of the child.

The child victim and child witness
62. The child victim and child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime".[119]

63. In particular, this means that every effort has to be made to ensure that a child victim or/and witness is consulted on the relevant matters with regard to involvement in the case under scrutiny, and enabled to express freely, and in her or his own manner, views and concerns regarding her or his involvement in the judicial process.

64. The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which "questioning" is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.

(iii) The child's right to be heard in administrative proceedings

65. All States parties should develop administrative procedures in legislation which reflect the requirements of article 12 and ensure the child's right to be heard along with other procedural rights, including the rights to disclosure of pertinent records, notice of hearing, and representation by parents or others.

66. Children are more likely to be involved with administrative proceedings than court proceedings, because administrative proceedings are less formal, more flexible and relatively easy to establish through law and regulation. The proceedings have to be child-friendly and accessible.

67. Specific examples of administrative proceedings relevant for children include mechanisms to address discipline issues in schools (e.g. suspensions and expulsions), refusals to grant school certificates and performance-related issues, disciplinary measures and

[118] See the Committee's general comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10).
[119] United Nations Economic and Social Council resolution 2005/20, in particular arts. 8, 19 and 20. Available at: www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf.

refusals to grant privileges in juvenile detention centres, asylum requests from unaccompanied children, and applications for driver's licences. In these matters a child should have the right to be heard and enjoy the other rights "consistent with the procedural rules of national law".

B. The right to be heard and the links with other provisions of the Convention

68. Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

69. The connection of article 12 to article 5 (evolving capacities of the child and appropriate direction and guidance from parents, see para. 84 of the present general comment) is of special relevance, since it is crucial that the guidance given by parents takes account of the evolving capacities of the child.

1. Articles 12 and 3

70. The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.

71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

72. Article 3 is devoted to individual cases, but, explicitly, also requires that the best interests of children as a group are considered in all actions concerning children. States parties are consequently under an obligation to consider not only the individual situation of each child when identifying their best interests, but also the interests of children as a group. Moreover, States parties must examine the actions of private and public institutions, authorities, as well as legislative bodies. The extension of the obligation to "legislative bodies" clearly indicates that every law, regulation or rule that affects children must be guided by the "best interests" criterion.

73. There is no doubt that the best interests of children as a defined group have to be established in the same way as when weighing individual interests. If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should also provide opportunities to hear the concerned children from such undefined groups and to give their views due weight when they plan actions, including legislative decisions, which directly or indirectly affect children.

74. There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.

2. Articles 12, 2 and 6

75. The right to non-discrimination is an inherent right guaranteed by all human rights instruments including the Convention on the Rights of the Child. According to article 2 of the Convention, every child has the right not to be discriminated against in the exercise of his or her rights including those provided under article 12. The Committee stresses that States parties shall take adequate measures to assure to every child the right to freely express his or her views and to have those views duly taken into account without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States parties shall address discrimination, including against vulnerable or marginalized groups of children, to ensure that children are assured their right to be heard and are enabled to participate in all matters affecting them on an equal basis with all other children.

76. In particular, the Committee notes with concern that, in some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right. States parties shall take adequate measures to raise awareness and educate the society about the negative impact of such attitudes and practices and to encourage attitudinal changes in order to achieve full implementation of the rights of every child under the Convention.

77. The Committee urges States parties to pay special attention to the right of the girl child to be heard, to receive support, if needed, to voice her view and her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girls in the enjoyment of the right set forth in article 12.

78. The Committee welcomes the obligation of States parties in article 7 of the Convention on the Rights of Persons with Disabilities to ensure that children with disabilities are provided with the necessary assistance and equipment to enable them to freely express their views and for those views to be given due weight.

79. Article 6 of the Convention on the Rights of the Child acknowledges that every child has an inherent right to life and that States parties shall ensure, to the maximum extent possible, the survival and development of the child. The Committee notes the importance of promoting opportunities for the child's right to be heard, as child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child consistent with article 6 and with the aims of education embodied in article 29.

3. Articles 12, 13 and 17

80. Article 13, on the right to freedom of expression, and article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard. These articles establish that children are subjects of rights and, together with article 12, they assert that the child is entitled to exercise those rights on his or her own behalf, in accordance with her or his evolving capacities.

81. The right to freedom of expression embodied in article 13 is often confused with article 12. However, while both articles are strongly linked, they do elaborate different rights. Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. It asserts the right of the child not to be restricted by the State party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue. Article 12, however, relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions that impact on her or his life. Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate active involvement of the child in all actions affecting the child and in decision-making, and to fulfil the obligation to give due weight to those views once expressed. Freedom of expression in article 13 requires no such engagement or response from States parties. However, creating an environment of respect for children to express their views, consistent with article 12, also contributes towards building children's capacities to exercise their right to freedom of expression.

82. Fulfilment of the child's right to information, consistent with article 17 is, to a large degree, a prerequisite for the effective realization of the right to express views. Children need access to information in formats appropriate to their age and capacities on all issues of concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures. Consistent with articles 17 and 42, States parties should include children's rights in the school curricula.

83. The Committee also reminds States parties that the media are an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for the public expression of such views. It urges various forms of the media to dedicate further resources to the inclusion of children in the development of programmes and the creation of opportunities for children to develop and lead media initiatives on their rights.[120]

4. Articles 12 and 5

84. Article 5 of the Convention states that States parties shall respect the responsibilities, rights and duties of parents, legal guardians, or members of the extended family or community as provided for by local custom, to give direction and guidance to the child in her or his exercise of the rights recognized in the Convention. Consequently, the child has a right to direction and guidance, which have to compensate for the lack of knowledge, experience and understanding of the child and are restricted by his or her evolving capacities, as stated in this article. The more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child's development, but will steadily increase as the child is encouraged to contribute her or his views.

85. This requirement is stimulated by article 12 of the Convention, which stipulates that the child's views must be given due weight, whenever the child is capable of forming her or his own views. In other words, as children acquire capacities, so they are entitled to an increasing level of responsibility for the regulation of matters affecting them.[121]

5. Article 12 and the implementation of child rights in general

86. In addition to the articles discussed in the preceding paragraphs, most other articles of the Convention require and promote children's involvement in matters affecting them. For these manifold involvements, the concept of participation is ubiquitously used. Unquestionably, the lynchpin of these involvements is article 12, but the requirement of planning, working and developing in consultation with children is present throughout the Convention.

87. The practice of implementation deals with a broad range problems, such as health, the economy, education or the environment, which are of interest not only to the child as an individual, but to groups of children and children in general. Consequently, the

[120] Day of general discussion on the child and the media (1996): www.unhchr.ch/html/menu2/6/crc/doc/days/media.pdf.
[121] General comment No. 5 (2003) on general measures of implementation for the Convention on the Rights of the Child.

Committee has always interpreted participation broadly in order to establish procedures not only for individual children and clearly defined groups of children, but also for groups of children, such as indigenous children, children with disabilities, or children in general, who are affected directly or indirectly by social, economic or cultural conditions of living in their society.

88. This broad understanding of children's participation is reflected in the outcome document adopted by the twenty-seventh special session of the General Assembly entitled "A world fit for children". States parties have promised "to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels" (para. 32, subpara. 1). The Committee has stated in its general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child: "It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organizations (NGOs) or human rights institutions."[122]

C. The implementation of the right to be heard in different settings and situations

89. The right of the child to be heard has to be implemented in the diverse settings and situations in which children grow up, develop and learn. In these settings and situations, different concepts of the child and her or his role exist, which may invite or restrict children's involvement in everyday matters and crucial decisions. Various ways of influencing the implementation of the child's right to be heard are available, which States parties may use to foster children's participation.

1. In the family

90. A family where children can freely express views and be taken seriously from the earliest ages provides an important model, and is a preparation for the child to exercise the right to be heard in the wider society.[14] Such an approach to parenting serves to promote individual development, enhance family relations and support children's socialization and plays a preventive role against all forms of violence in the home and family.

91. The Convention recognizes the rights and responsibilities of parents, or other legal guardians, to provide appropriate direction and guidance to their children (see para. 84 above), but underlines that this is to enable the child to exercise his or her rights and requires that direction and guidance are undertaken in a manner consistent with the evolving capacities of the child.
92. States parties should encourage, through legislation and policy, parents, guardians and childminders to listen to children and give due weight to their views in matters that concern them. Parents should also be advised to support children in realizing the right to express their views freely and to have children's views duly taken into account at all levels of society.

93. In order to support the development of parenting styles respecting the child's right to be heard, the Committee recommends that States parties promote parent education programmes, which build on existing positive behaviours and attitudes and disseminate information on the rights of children and parents enshrined in the Convention.

94. Such programmes need to address:
- The relationship of mutual respect between parents and children
- The involvement of children in decision-making
- The implication of giving due weight to the views of every family member
- The understanding, promotion and respect for children's evolving capacities
- Ways of dealing with conflicting views within the family

95. These programmes have to reinforce the principle that girls and boys have equal rights to express their views.

96. The media should play a strong role in communicating to parents that their children's participation is of high value for the children themselves, their families and society.

2. In alternative care

97. Mechanisms must be introduced to ensure that children in all forms of alternative care, including in institutions, are able to express their views and that those views be given due weight in matters of their placement, the regulations of care in foster families or homes and their daily lives. These should include:
- Legislation providing the child with the right to information about any placement, care and/or treatment plan and meaningful opportunities to express her or his views and for those views to be given due weight throughout the decision-making process.
- Legislation ensuring the right of the child to be heard, and that her or his views be given due weight in the development and establishment of child-friendly care services.
- Establishment of a competent monitoring institution, such as a children's ombudsperson, commissioner or inspectorate, to monitor compliance with the rules and regulations governing the provision of care, protection or treatment of children in accordance with the obligations under article 3. The monitoring body should be mandated to have unimpeded access to residential facilities (including those for children in conflict with the law), to hear the views and concerns of the child directly, and to monitor the extent to which his or her views are listened to and given due weight by the institution itself.

[122] Ibid., para. 12.

- Establishment of effective mechanisms, for example, a representative council of the children, both girls and boys, in the residential care facility, with the mandate to participate in the development and implementation of the policy and any rules of the institution.

3. In health care

98. The realization of the provisions of the Convention requires respect for the child's right to express his or her views and to participate in promoting the healthy development and well-being of children. This applies to individual health-care decisions, as well as to children's involvement in the development of health policy and services.

99. The Committee identifies several distinct but linked issues that need consideration in respect of the child's involvement in practices and decisions relating to her or his own health care.

100. Children, including young children, should be included in decision-making processes, in a manner consistent with their evolving capacities. They should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities.

101. States parties need to introduce legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent, irrespective of the child's age, where this is needed for the child's safety or well-being. Children may need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit.

102. The Committee welcomes the introduction in some countries of a fixed age at which the right to consent transfers to the child, and encourages States parties to give consideration to the introduction of such legislation. Thus, children above that age have an entitlement to give consent without the requirement for any individual professional assessment of capacity after consultation with an independent and competent expert. However, the Committee strongly recommends that States parties ensure that, where a younger child can demonstrate capacity to express an informed view on her or his treatment, this view is given due weight.

103. Physicians and health-care facilities should provide clear and accessible information to children on their rights concerning their participation in paediatric research and clinical trials. They have to be informed about the research, so that their informed consent can be obtained in addition to other procedural safeguards.

104. States parties should also introduce measures enabling children to contribute their views and experiences to the planning and programming of services for their health and development. Their views should be sought on all aspects of health provision, including what services are needed, how and where they are best provided, discriminatory barriers to accessing services, quality and attitudes of health professionals, and how to promote children's capacities to take increasing levels of responsibility for their own health and development. This information can be obtained through, inter alia, feedback systems for children using services or involved in research and consultative processes, and can be transmitted to local or national children's councils or parliaments to develop standards and indicators of health services that respect the rights of the child.[123]

4. In education and school

105. Respect for right of the child to be heard within education is fundamental to the realization of the right to education. The Committee notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children's views and the due weight to be given these views.

106. The Committee recommends that States parties take action to build opportunities for children to express their views and for those views to be given due weight with regard to the following issues.
107. In all educational environments, including educational programmes in the early years, the active role of children in a participatory learning environment should be promoted.[124] Teaching and learning must take into account life conditions and prospects of the children. For this reason, education authorities have to include children's and their parents' views in the planning of curricula and school programmes.

108. Human rights education can shape the motivations and behaviours of children only when human rights are practised in the institutions in which the child learns, plays and lives together with other children and adults.[125] In particular, the child's right to be heard is under critical scrutiny by children in these institutions, where children can observe, whether in fact due weight is given to their views as declared in the Convention.

109. Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child-centred interactive learning. Giving children's views weight is particularly important in the elimination of

[123] The Committee also draws attention to its general comment No. 3 (2003) on HIV/Aids and the rights of the child, paras. 11 and 12, and its general comment No. 4 (2003) on adolescent health, para. 6.
[124] "A human rights-based approach to Education for All: A framework for the realization of children's right to education and rights within education", UNICEF/UNESCO (2007).
[125] Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education (art. 29, para. 1 of the Convention), (CRC/GC/2001/1).

discrimination, prevention of bullying and disciplinary measures. The Committee welcomes the expansion of peer education and peer counselling.

110. Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them.

111. Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a "second chance", school curricula, teaching methods, school structures, standards, budgeting and child-protection systems.

112. The Committee encourages States parties to support the development of independent student organizations, which can assist children in competently performing their participatory roles in the education system.

113. In decisions about the transition to the next level of schools or choice of tracks or streams, the right of the child to be heard has to be assured as these decisions deeply affect the child's best interests. Such decisions must be subject to administrative or judicial review. Additionally, in disciplinary matters, the right of the child to be heard has to be fully respected.[126] In particular, in the case of exclusion of a child from instruction or school, this decision must be subject to judicial review as it contradicts the child's right to education.

114. The Committee welcomes the introduction of child-friendly school programmes in many countries, which seek to provide interactive, caring, protective and participatory environments that prepare children and adolescents for active roles in society and responsible citizenship within their communities.

5. In play, recreation, sports and cultural activities

115. Children require play, recreation, physical and cultural activities for their development and socialization. These should be designed taking into account children's preferences and capacities. Children who are able to express their views should be consulted regarding the accessibility and appropriateness of play and recreation facilities. Very young children and some children with disabilities, who are unable to participate in formal consultative processes, should be provided with particular opportunities to express their wishes.

6. In the workplace

116. Children working at younger ages than permitted by laws and International Labour Organization Conventions Nos. 138 (1973) and 182 (1999) have to be heard in child-sensitive settings in order to understand their views of the situation and their best interests. They should be included in the search for a solution, which respects the economic and socio-structural constraints as well as the cultural context under which these children work. Children should also be heard when policies are developed to eliminate the root causes of child labour, in particular regarding education.

117. Working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated.

7. In situations of violence

118. The Convention establishes the right of the child to be protected from all forms of violence and the responsibility of States parties to ensure this right for every child without any discrimination. The Committee encourages States parties to consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalized and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes.

119. In this regard, the Committee welcomes the findings of the Secretary-General's Study on Violence against Children, and urges States Parties to implement fully its recommendations, including the recommendation to provide the space for children to freely express their views and give these views due weight in all aspects of prevention, reporting and monitoring violence against them.[127]

120. Much of the violence perpetrated against children goes unchallenged both because certain forms of abusive behaviour are understood by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights.

[126] States parties should refer to the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, which explains participatory strategies to eliminate corporal punishment (CRC/C/GC/8).
[127] Report of the independent expert for the United Nations Study on Violence against Children (A/61/299).

Thus, effective inclusion of children in protective measures requires that children be informed about their right to be heard and to grow up free from all forms of physical and psychological violence. States parties should oblige all children's institutions to establish easy access to individuals or organizations to which they can report in confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children.

121. The Committee also draws the attention of States parties to the recommendation in the Secretary-General's Study on Violence against Children to support and encourage children's organizations and child-led initiatives to address violence and to include these organizations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.

8. In the development of prevention strategies

122. The Committee notes that the voices of children have increasingly become a powerful force in the prevention of child rights violations. Good practice examples are available, inter alia, in the fields of violence prevention in schools, combating child exploitation through hazardous and extensive labour, providing health services and education to street children, and in the juvenile justice system. Children should be consulted in the formulation of legislation and policy related to these and other problem areas and involved in the drafting, development and implementation of related plans and programmes.

9. In immigration and asylum proceedings

123. Children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation. For this reason it is urgent to fully implement their right to express their views on all aspects of the immigration and asylum proceedings. In the case of migration, the child has to be heard on his or her educational expectations and health conditions in order to integrate him or her into school and health services. In the case of an asylum claim, the child must additionally have the opportunity to present her or his reasons leading to the asylum claim.

124. The Committee emphasizes that these children have to be provided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings. A guardian or adviser should be appointed, free of charge. Asylum-seeking children may also need effective family tracing and relevant information about the situation in their country of origin to determine their best interests. Particular assistance may be needed for children formerly involved in armed conflict to allow them to pronounce their needs. Furthermore, attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside.[128]

10. In emergency situations

125. The Committee underlines that the right embodied in article 12 does not cease in situations of crisis or in their aftermath. There is a growing body of evidence of the significant contribution that children are able to make in conflict situations, post-conflict resolution and reconstruction processes following emergencies.[129] Thus, the Committee emphasized in its recommendation after the day of general discussion in 2008 that children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organizational skills and strengthens a sense of identity. However, care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful.

126. Accordingly, the Committee encourages States parties to support mechanisms which enable children, in particular adolescents, to play an active role in both post-emergency reconstruction and post-conflict resolution processes. Their views should be elicited in the assessment, design, implementation, monitoring and evaluation of programmes. For example, children in refugee camps can be encouraged to contribute to their own safety and well-being through the establishment of children's forums. Support needs to be given to enable children to establish such forums, while ensuring that their operation is consistent with children's best interests and their right to protection from harmful experiences.

11. In national and international settings

127. Much of the opportunity for children's participation takes place at the community level. The Committee welcomes the growing number of local youth parliaments, municipal children's councils and ad hoc consultations where children can voice their views in decision-making processes. However, these structures for formal representative participation in local government should be just one of many approaches to the implementation of article 12 at the local level, as they only allow for a relatively small number of children to engage in their local communities. Consulting hours of politicians and officials, open house and visits in schools and kindergartens create additional opportunities for communication.

128. Children should be supported and encouraged to form their own child-led organizations and initiatives, which will create space for meaningful participation and representation. In addition, children can contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure

[128] Cf. the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6).
[129] "The participation of children and young people in emergencies: a guide for relief agencies", UNICEF, Bangkok (2007).

more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included.

129. Such participation opportunities are, meanwhile, established in many countries also on the district, regional, federal state and national levels, where youth parliaments, councils and conferences provide forums for children to present their views and make them known to relevant audiences. NGOs and civil society organizations have developed practices to support children, which safeguard the transparency of representation and counter the risks of manipulation or tokenism.

130. The Committee welcomes the significant contributions by UNICEF and NGOs in promoting awareness-raising on children's right to be heard and their participation in all domains of their lives, and encourages them to further promote child participation in all matters affecting them, including at the grass-roots, community, and national or international levels, and to facilitate exchanges of best practices. Networking among child-led organizations should be actively encouraged to increase opportunities for shared learning and platforms for collective advocacy.

131. At the international level, children's participation at the World Summits for Children convened by the General Assembly in 1990 and 2002, and the involvement of children in the reporting process to the Committee on the Rights of the Child have particular relevance. The Committee welcomes written reports and additional oral information submitted by child organizations and children's representatives in the monitoring process of child rights implementation by States parties, and encourages States parties and NGOs to support children to present their views to the Committee.

D. Basic requirements for the implementation of the right of the child to be heard

132. The Committee urges States parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It emphasizes that adult manipulation of children, placing children in situations where they are told what they can say, or exposing children to risk of harm through participation are not ethical practices and cannot be understood as implementing article 12.

133. If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-off event. Experience since the Convention on the Rights of the Child was adopted in 1989 has led to a broad consensus on the basic requirements which have to be reached for effective, ethical and meaningful implementation of article 12. The Committee recommends that States parties integrate these requirements into all legislative and other measures for the implementation of article 12.

134. All processes in which a child or children are heard and participate must be:

(a) Transparent and informative - children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact;

(b) Voluntary - children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage;

(c) Respectful - children's views have to be treated with respect and they should be provided with opportunities to initiate ideas and activities. Adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment. They also need an understanding of the socio-economic, environmental and cultural context of children's lives. Persons and organizations working for and with children should also respect children's views with regard to participation in public events;

(d) Relevant - the issues on which children have the right to express their views must be of real relevance to their lives and enable them to draw on their knowledge, skills and abilities. In addition, space needs to be created to enable children to highlight and address the issues they themselves identify as relevant and important;

(e) Child-friendly - environments and working methods should be adapted to children's capacities. Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities;

(f) Inclusive - participation must be inclusive, avoid existing patterns of discrimination, and encourage opportunities for marginalized children, including both girls and boys, to be involved (see also para. 88 above). Children are not a homogenous group and participation needs to provide for equality of opportunity for all, without discrimination on any grounds. Programmes also need to ensure that they are culturally sensitive to children from all communities;

(g) Supported by training - adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities. Children themselves can be involved as trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy;

(h) Safe and sensitive to risk - in certain situations, expression of views may involve risks. Adults have a responsibility towards the children with whom they work and must take every precaution to minimize the risk to children of violence, exploitation or any other negative consequence of their participation. Action necessary to provide appropriate protection will include the development of a clear child-protection strategy which recognizes the particular risks faced by some groups of children, and the extra barriers they face in obtaining help. Children must be aware of their right to be protected from harm and know where to go for help if needed. Investment in working with families and communities is important in order to build understanding of the value and implications of participation, and to minimize the risks to which children may otherwise be exposed;

(i) Accountable - a commitment to follow-up and evaluation is essential. For example, in any research or consultative process, children must be informed as to how their views have been interpreted and used and, where necessary, provided with the opportunity to challenge and influence the analysis of the findings. Children are also entitled to be provided with clear feedback on how their participation has influenced any outcomes. Wherever appropriate, children should be given the opportunity to participate in follow-up processes or activities. Monitoring and evaluation of children's participation needs to be undertaken, where possible, with children themselves.

E. Conclusions

135. Investment in the realization of the child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration, is a clear and immediate legal obligation of States parties under the Convention. It is the right of every child without any discrimination. Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.

134. Fulfilling these obligations will present a challenge for States parties. But it is an attainable goal if the strategies outlined in this general comment are systematically implemented and a culture of respect for children and their views is built.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr.GENERAL

CRC/C/GC/13

18 April 2011

Original: ENGLISH

Committee on the Rights of the Child

GENERAL COMMENT NO. 13 (2011)
THE RIGHT OF THE CHILD TO FREEDOM FROM ALL FORMS OF VIOLENCE

I. INTRODUCTION

1. **Article 19 states the following**:

"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."

2. **Rationale for the present general comment**. The Committee on the Rights of the Child (hereinafter: the Committee) issues the present general comment on article 19 of the Convention on the Rights of the Child (hereinafter: the Convention), since the extent and intensity of violence exerted on children is alarming. Measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children's development and societies' potential non-violent solutions for conflict resolution.

3. **Overview.** The general comment is based on the following fundamental assumptions and observations:

(a) "No violence against children is justifiable; all violence against children is preventable";[130]

(b) A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as "victims";

(c) The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy;

(d) The principle of the rule of law should apply fully to children as it does to adults;

(e) Children's rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes;

(f) The right of children to have their best interests be a primary consideration in all matters involving or affecting them must be respected, especially when they are victims of violence, as well as in all measures of prevention;

(g) Primary prevention, through public health, education, social services and other approaches, of all forms of violence is of paramount importance;

(h) The Committee recognizes the primary position of families, including extended families, in child caregiving and protection and in the prevention of violence. Nevertheless, the Committee also recognizes that the majority of violence takes place in the context of

[130] Report of the independent expert for the United Nations study on violence against children (A/61/299), para. 1.

families and that intervention and support are therefore required when children become the victims of hardship and distress imposed on, or generated in, families;

(i) The Committee is also aware of widespread and intense violence applied against children in State institutions and by State actors including in schools, care centres, residential homes, police custody and justice institutions which may amount to torture and killing of children, as well as violence against children frequently used by armed groups and State military forces.

4. **Definition of violence.** For the purposes of the present general comment, "violence" is understood to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1, of the Convention. The term violence has been chosen here to represent all forms of harm to children as listed in article 19, paragraph 1, in conformity with the terminology used in the 2006 United Nations study on violence against children, although the other terms used to describe types of harm (injury, abuse, neglect or negligent treatment, maltreatment and exploitation) carry equal weight.[131] In common parlance the term violence is often understood to mean only physical harm and/or intentional harm. However, the Committee emphasizes most strongly that the choice of the term violence in the present general comment must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment).

5. **States' obligations and the responsibilities of family and other actors.** References to "States parties" relate to the obligations of States parties to assume their responsibilities towards children not only at the national level, but also at the provincial and municipal levels. These special obligations are due diligence and the obligation to prevent violence or violations of human rights, the obligation to protect child victims and witnesses from human rights violations, the obligation to investigate and to punish those responsible, and the obligation to provide access to redress human rights violations. Regardless of whether violence takes place, States parties have a positive and active obligation to support and assist parents and other caregivers to secure, within their abilities and financial capacities and with respect for the evolving capacities of the child, the living conditions necessary for the child's optimal development (arts. 18 and 27). States parties, furthermore, shall ensure that all persons who, within the context of their work, are responsible for the prevention of, protection from, and reaction to violence and in the justice systems are addressing the needs and respecting the rights of children.

6. **Evolution of general comment No. 13.** The present general comment builds on the existing guidance provided by the Committee in its review of States parties' reports and the respective concluding observations, the recommendations of two days of general discussion on violence against children, held in 2000 and 2001, general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, and references in other general comments to the topic of violence. The present general comment draws attention to the recommendations of the 2006 report of the independent expert for the United Nations study on violence against children (A/61/299) and calls on States parties to implement those recommendations without delay. It calls attention to the detailed guidance available in the Guidelines for the Alternative Care of Children.[132] It also draws on the expertise and experience of United Nations agencies, Governments, non-governmental organizations (NGOs), community organizations, development agencies, and children themselves in seeking to implement article 19 in practice.[133]

7. **Article 19 in context.** The Committee recognizes that:

(a) Article 19 is one of many provisions in the Convention directly relating to violence. The Committee also recognizes the direct relevance to article 19 of the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict. However, the Committee holds that article 19 forms the core provision for discussions and strategies to address and eliminate all forms of violence in the context of the Convention more broadly;

(b) Article 19 is strongly linked to a broad range of provisions in the Convention beyond those relating directly to violence. In addition to the articles containing the rights identified as principles of the Convention (see section V of the present general comment), implementation of article 19 must be situated in the context of articles 5, 9, 18 and 27;

(c) Children's rights to respect for their human dignity, physical and psychological integrity and to equal protection under the law are also recognized in other international and regional human rights instruments;

(d) Implementation of article 19 requires cooperation within and between national, regional and international human rights bodies, mechanisms and United Nations agencies;

(e) Cooperation is needed in particular with the Special Representative of the Secretary-General on Violence against Children, who has the mandate to promote the implementation of the recommendations of the United Nations study on violence against children in close collaboration with Member States and a wide range of partners, including United Nations agencies and organizations, civil society organizations and children, in order to safeguard the child's right to freedom from all forms of violence.

8. **Dissemination.** The Committee recommends that States parties widely disseminate the present general comment within government and administrative structures, to parents, other caregivers, children, professional organizations, communities and civil society at large. All channels of dissemination, including print media, the Internet and children's own communication means, should be

[131] Translations of the Convention into other languages do not necessarily include exact equivalents of the English term "violence".
[132] General Assembly resolution 64/142, annex.
[133] See the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

used. This will necessitate translating it into relevant languages, including sign languages, Braille and easy-to-read formats for children with disabilities. It also requires making culturally appropriate and child-friendly versions available, holding workshops and seminars, implementing age- and disability-specific support to discuss its implications and how best to implement it, and incorporating it into the training of all professionals working for and with children.

9. **Reporting requirements under the Convention.** The Committee refers States parties to the reporting requirements outlined in the treaty-specific reporting guidelines (CRC/C/58/Rev.2 and Corr.1), in general comment No. 8 (para. 53), and in the concluding observations of the Committee adopted following the dialogues with representatives of States parties. The current general comment consolidates and specifies the measures on which States parties are expected to give information in the reports to be submitted under article 44 of the Convention. The Committee also recommends that States parties include information on progress made towards implementing the recommendations of the United Nations study on violence against children (A/61/299, para. 116). Reporting should comprise laws and other regulations taken to prohibit violence and to intervene appropriately when violence occurs and also measures for the prevention of violence, awareness-raising activities and the promotion of positive, non-violent relationships. In the reports it should be furthermore specified who has responsibility for the child and family at each stage of intervention (including prevention), what those responsibilities are, at what stage and under what circumstances professionals can intervene, and how different sectors work together.

10. **Additional sources of information.** The Committee also encourages United Nations agencies, national human rights institutions, NGOs and other competent bodies to provide it with relevant information on the legal status and prevalence of all forms of violence and progress towards their elimination.

II. OBJECTIVES

11. The present general comment seeks:

(a) To guide States parties in understanding their obligations under article 19 of the Convention to prohibit, prevent and respond to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation of children, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child, including State actors;

(b) To outline the legislative, judicial, administrative, social and educational measures that States parties must take;

(c) To overcome isolated, fragmented and reactive initiatives to address child caregiving and protection which have had limited impact on the prevention and elimination of all forms of violence;

(d) To promote a holistic approach to implementing article 19 based on the Convention's overall perspective on securing children's rights to survival, dignity, well-being, health, development, participation and non-discrimination – the fulfilment of which are threatened by violence;

(e) To provide States parties and other stakeholders with a basis on which to develop a coordinating framework for eliminating violence through comprehensive child rights-based caregiving and protection measures;

(f) To highlight the need for all States parties to move quickly to fulfil their obligations under article 19.

III. VIOLENCE IN CHILDREN'S LIVES

12. **Challenges.** The Committee acknowledges and welcomes the numerous initiatives developed by Governments and others to prevent and respond to violence against children. In spite of these efforts, existing initiatives are in general insufficient. Legal frameworks in a majority of States still fail to prohibit all forms of violence against children, and where laws are in place, their enforcement is often inadequate. Widespread social and cultural attitudes and practices condone violence. The impact of measures taken is limited by lack of knowledge, data and understanding of violence against children and its root causes, by reactive efforts focusing on symptoms and consequences rather than causes, and by strategies which are fragmented rather than integrated. Resources allocated to address the problem are inadequate.

13. **The human rights imperative.** Addressing and eliminating the widespread prevalence and incidence of violence against children is an obligation of States parties under the Convention. Securing and promoting children's fundamental rights to respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence, is essential for promoting the full set of child rights in the Convention. All other arguments presented here reinforce but do not replace this human rights imperative. Strategies and systems to prevent and respond to violence must therefore adopt a child rights rather than a welfare approach. (See para. 0 for more details).

14. **Societal development and children's contribution.** A respectful, supportive child-rearing environment free from violence supports the realization of children's individual personalities and fosters the development of social, responsible and actively contributing citizens in the local community and larger society. Research shows that children who have not experienced violence and who develop in a healthy manner are less likely to act violently, both in childhood and when they become adults. Preventing violence in one generation reduces its likelihood in the next. Implementation of article 19 is therefore a key strategy for reducing and preventing all

forms of violence in societies and for promoting "social progress and better standards of life" and "freedom, justice and peace in the world" for the "human family" in which children have a place and a value equal to that of adults (Convention preamble).

15. **Survival and development – the devastating impact of violence against children.** Children's survival and their "physical, mental, spiritual, moral and social development" (art. 27, para. 1) are severely negatively impacted by violence, as described below:

(a) The short- and long-term health consequences of violence against children and child maltreatment are widely recognized. They include: fatal injury; non-fatal injury (possibly leading to disability); physical health problems (including failure to thrive, later lung, heart and liver disease and sexually transmitted infections); cognitive impairment (including impaired school and work performance); psychological and emotional consequences (such as feelings of rejection and abandonment, impaired attachment, trauma, fear, anxiety, insecurity and shattered self-esteem); mental health problems (such as anxiety and depressive disorders, hallucinations, memory disturbances and suicide attempts); and health-risk behaviours (such as substance abuse and early initiation of sexual behaviour);

(b) Developmental and behavioural consequences (such as school non-attendance and aggressive, antisocial, self-destructive and interpersonal destructive behaviours) can lead, inter alia, to deterioration of relationships, exclusion from school and coming into conflict with the law). There is evidence that exposure to violence increases a child's risk of further victimization and an accumulation of violent experiences, including later intimate partner violence.[134]

(c) The impact on children, in particular adolescents, of high-handed or "zero tolerance" State policies in response to child violence is highly destructive as it is a punitive approach victimizing children by reacting to violence with more violence. Such policies are often shaped by public concerns over citizens' security and by the high profile given to these issues by mass media. State policies on public security must carefully consider the root causes of children's offences in order to provide a way out of a vicious circle of retaliating violence with violence.

16. **The cost of violence against children.** The human, social and economic costs of denying children's rights to protection are enormous and unacceptable. Direct costs may include medical care, legal and social welfare services and alternative care. Indirect costs may include possible lasting injury or disability, psychological costs or other impacts on a victim's quality of life, disruption or discontinuation of education, and productivity losses in the future life of the child. They also include costs associated with the criminal justice system as a result of crimes committed by children who have experienced violence. The social costs arising from a demographic imbalance due to the discriminatory elimination of girls before birth are high and have potential implications for increased violence against girls including abduction, early and forced marriage, trafficking for sexual purposes and sexual violence.

IV. LEGAL ANALYSIS OF ARTICLE 19

A. Article 19, paragraph 1

1. "… all forms of ..."

17. **No exceptions.** The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. "All forms of physical or mental violence" does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

18. **The need for child rights-based definitions.** States parties need to establish national standards for child well-being, health and development as securing these conditions is the ultimate goal of child caregiving and protection. Clear operational legal definitions are required of the different forms of violence outlined in article 19 in order to ban all forms of violence in all settings. These definitions must take into account the guidance provided in the present general comment, must be sufficiently clear to be usable and should be applicable in different societies and cultures. Efforts to standardize definitions internationally (in order to facilitate data collection and cross-country exchange of experiences) should be encouraged.

19. **Forms of violence – overview.** The following non-exhaustive lists outlining forms of violence apply to all children in all settings and in transit between settings. Children can experience violence at the hands of adults, and violence may also occur among children. Furthermore, some children harm themselves. The Committee recognizes that forms of violence often co-occur and that they can span the categories used here for convenience. Both girls and boys are at risk of all forms of violence, but violence often has a gender component. For example, girls may experience more sexual violence at home than boys whereas boys may be more likely to encounter – and experience violence within – the criminal justice system. (See also para. 0 (b) on the gender dimensions of violence).

20. **Neglect or negligent treatment.** Neglect means the failure to meet children's physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children's care have the means, knowledge and access to services to do so. It includes:

[134] See Paulo Sérgio Pinheiro, independent expert for the United Nations Secretary-General's study on violence against children, *World Report on Violence against Children* (Geneva, 2006), pp. 63-66.

(a) Physical neglect: failure to protect a child from harm,[135] including through lack of supervision, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care;

(b) Psychological or emotional neglect: including lack of any emotional support and love, chronic inattention to the child, caregivers being "psychologically unavailable" by overlooking young children's cues and signals, and exposure to intimate partner violence, drug or alcohol abuse;

(c) Neglect of children's physical or mental health: withholding essential medical care;

(d) Educational neglect: failure to comply with laws requiring caregivers to secure their children's education through attendance at school or otherwise; and

(e) Abandonment: a practice which is of great concern and which can disproportionately affect, inter alia, children out of wedlock and children with disabilities in some societies.[136]

21. **Mental violence.** "Mental violence", as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include:

(a) All forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another's needs;

(b) Scaring, terrorizing and threatening; exploiting and corrupting; spurning and rejecting; isolating, ignoring and favouritism;

(c) Denying emotional responsiveness; neglecting mental health, medical and educational needs;

(d) Insults, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings;

(e) Exposure to domestic violence;

(f) Placement in solitary confinement, isolation or humiliating or degrading conditions of detention; and

(g) Psychological bullying and hazing[137] by adults or other children, including via information and communication technologies (ICTs) such as mobile phones and the Internet (known as "cyberbullying").

22. **Physical violence.** This includes fatal and non-fatal physical violence. The Committee is of the opinion that physical violence includes:

(a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment; and

(b) Physical bullying and hazing by adults and by other children.

23. Children with disabilities may be subject to particular forms of physical violence such as:

(a) Forced sterilization, particularly girls;

(b) Violence in the guise of treatment (for example electroconvulsive treatment (ECT) and electric shocks used as "aversion treatment" to control children's behaviour); and

(c) Deliberate infliction of disabilities on children for the purpose of exploiting them for begging in the streets or elsewhere.

23. **Corporal punishment.** In general comment No. 8 (para. 11), the Committee defined "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 - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion. In the view of the Committee, corporal punishment is invariably degrading. Other specific forms of corporal punishment are listed in the report of the independent expert for the United Nations study on violence against children (A/61/299, paras. 56, 60 and 62).

24. **Sexual abuse and exploitation.** Sexual abuse and exploitation includes:

[135] States parties are also obliged to support caregivers to prevent accidents (art. 19 and art. 24, para. 2 (e)).
[136] In many countries children are abandoned because parents and caregivers living in poverty do not have the means to support them. According to the definition, neglect is a failure of care when parents have the means to meet their children's needs. The Committee has often urged States parties to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" (art. 18, para. 2 of the Convention).
[137] "Hazing" refers to rituals and other activities involving harassment, violence or humiliation which are used as a way of initiating a person into a group.

(a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;[138]

(b) The use of children in commercial sexual exploitation; and

(c) The use of children in audio or visual images of child sexual abuse;

(d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.

25. **Torture and inhuman or degrading treatment or punishment.** This includes violence in all its forms against children in order to extract a confession, to extrajudicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors. Victims are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests. This includes children in conflict with the law, children in street situations, minorities and indigenous children, and unaccompanied children. The brutality of such acts often results in life-long physical and psychological harm and social stress.

26. **Violence among children**. This includes physical, psychological and sexual violence, often by bullying, exerted by children against other children, frequently by groups of children, which not only harms a child's physical and psychological integrity and well-being in the immediate term, but often has severe impact on his or her development, education and social integration in the medium and long term. Also, violence by youth gangs takes a severe toll on children, whether as victims or as participants. Although children are the actors, the role of adults responsible for these children is crucial in all attempts to appropriately react and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence.

27. **Self-harm.** This includes eating disorders, substance use and abuse, self-inflicted injuries, suicidal thoughts, suicide attempts and actual suicide. Suicide among adolescents is of particular concern to the Committee.

28. **Harmful practices.** These include, but are not limited to:

(a) Corporal punishment and other cruel or degrading forms of punishment;

(b) Female genital mutilation;

(c) Amputations, binding, scarring, burning and branding;

(d) Violent and degrading initiation rites; force-feeding of girls; fattening; virginity testing (inspecting girls' genitalia);

(e) Forced marriage and early marriage;

(f) "Honour" crimes; "retribution" acts of violence (where disputes between different groups are taken out on children of the parties involved); dowry-related death and violence;

(g) Accusations of "witchcraft" and related harmful practices such as "exorcism";

(h) Uvulectomy and teeth extraction.

29. **Violence in the mass media**. Mass media, especially tabloids and the yellow press, tend to highlight shocking occurrences and as a result create a biased and stereotyped image of children, in particular of disadvantaged children or adolescents, who are often portrayed as violent or delinquent just because they may behave or dress in a different way. Such stirred-up stereotypes pave the way for State policies based on a punitive approach, which may include violence as a reaction to assumed or factual misdemeanours of children and young persons.

30. **Violence through information and communications technologies.**[139] Child protection risks in relation to ICT comprise the following overlapping areas:

(a) Sexual abuse of children to produce both visual and audio child abuse images facilitated by the Internet and other ICT;

[138] Sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities.

[139] Information technologies such as the Internet and mobile phones have great potential as positive tools to help keep children safe and as a way to report suspected or actual violence or maltreatment. A protective environment needs to be created through regulation and monitoring of information technologies including empowering children to safely use these technologies.

(b) The process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs or pseudophotographs ("morphing") and videos of children and those making a mockery of an individual child or categories of children;

(c) Children as users of ICT:

(i) As recipients of information, children may be exposed to actually or potentially harmful advertisements, spam, sponsorship, personal information and content which is aggressive, violent, hateful, biased, racist, pornographic[140], unwelcome and/or misleading;

(ii) As children in contact with others through ICT, children may be bullied, harassed or stalked (child "luring") and/or coerced, tricked or persuaded into meeting strangers off-line, being "groomed" for involvement in sexual activities and/or providing personal information;

(iii) As actors, children may become involved in bullying or harassing others, playing games that negatively influence their psychological development, creating and uploading inappropriate sexual material, providing misleading information or advice, and/or illegal downloading, hacking, gambling, financial scams and/or terrorism.[141]

32. **Institutional and system violations of child rights.** Authorities at all levels of the State responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children. It is also an omission when measures and programmes are not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children. Also, in the commission of certain acts, professionals may abuse children's right to freedom from violence, for example, when they execute their responsibilities in a way that disregards the best interests, the views and the developmental objectives of the child.

2. "while in the care of…"

33. **Definition of "caregivers".** The Committee considers that, while respecting the evolving capacities and progressive autonomy of the child, all human beings below the age of 18 years are nonetheless "in the care of" someone, or should be. There are only three conditions for children: emancipated[142], in the care of primary or proxy caregivers, or in the de facto care of the State. The definition of "caregivers", referred to in article 19, paragraph 1, as "parent(s), legal guardian(s) or any other person who has the care of the child", covers those with clear, recognized legal, professional-ethical and/or cultural responsibility for the safety, health, development and well-being of the child, primarily: parents, foster parents, adoptive parents, caregivers in *kafalah* of Islamic law, guardians, extended family and community members; education, school and early childhood personnel; child caregivers employed by parents; recreational and sports coaches – including youth group supervisors; workplace employers or supervisors; and institutional personnel (governmental or non-governmental) in the position of caregivers - for example responsible adults in health-care, juvenile-justice and drop-in and residential-care settings. In the case of unaccompanied children, the State is the de facto caregiver.

34. **Definition of care settings.** Care settings are places where children spend time under the supervision of their "permanent" primary caregiver (such as a parent or guardian) or a proxy or "temporary" caregiver (such as a teacher or youth group leader) for periods of time which are short-term, long-term, repeated or once only. Children will often pass between caregiving settings with great frequency and flexibility but their safety in transit between these settings is still the responsibility of the primary caregiver – either directly, or via coordination and cooperation with a proxy caregiver (for example to and from school or when fetching water, fuel, food or fodder for animals). Children are also considered to be "in the care of" a primary or proxy caregiver while they are physically unsupervised within a care setting, for example while playing out of sight or surfing the Internet unsupervised. Usual care settings include family homes, schools and other educational institutions, early childhood care settings, after-school care centres, leisure, sports, cultural and recreational facilities, religious institutions and places of worship. In medical, rehabilitative and care facilities, at the workplace and in justice settings children are in the custody of professionals or State actors, who must observe the best interests of the child and ensure his or her rights to protection, well-being and development. A third type of setting in which children's protection, well-being and development also must be secured, are neighbourhoods, communities and camps or settlements for refugees and people displaced by conflict and/or natural disasters.[143]

35. **Children without obvious primary or proxy caregivers.** Article 19 also applies to children without a primary or proxy caregiver or another person who is entrusted with the protection and well-being of the child such as, for instance, children in child-headed households, children in street situations, children of migrating parents or unaccompanied children outside their country of origin.[144] The State party is obliged to take responsibility as the de facto caregiver or the one "who has the care of the child", even if these children

[140] Exposure to pornography can lead to an increase in child-on-child sexual abuse as children exposed to pornography "try out" what they have seen in practice with younger children or those to whom they have easy access and over whom they have control.

[141] Adapted from a table developed by the EUKids Online project, cited in *AUPs in Context: Establishing Safe and Responsible Online Behaviours* (Becta, 2009), p. 6. See also the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents. Available from http://iiicongressomundial.net/congresso/arquivos/Rio%20Declaration%20and%20Call%20for%20Action%20-%20FINAL%20Version.pdf.

[142] In line with the Committee's previous recommendation to States parties to increase the age for marriage to 18 years for both girls and boys (general comment No. 4 (2003) on adolescent health and development in the context of the Convention of the Rights of the Child, para. 20), and given their specific vulnerability to maltreatment, the Committee considers that article 19 applies also to children under the age of 18 who have attained majority or emancipation through early marriage and/or forced marriage.

[143] The United Nations study on violence against children describes settings in which violence against children occurs; see also the detailed guidance available in the Guidelines for the Alternative Care of Children.

[144] As defined in the Committee's general comment No. 6 (2005), para. 7.

are not within the context of physical care settings such as foster homes, group homes or NGO facilities. The State party is under the obligation "to ensure the child such protection and care as is necessary for his or her well-being" (art. 3, para. 2) and to "ensure alternative care" to "a child temporarily or permanently deprived of his or her family environment" (art. 20). There are different ways to guarantee the rights of these children, preferably in family-like care arrangements, which must be carefully examined with respect to the risk of these children being exposed to violence.

36. **Perpetrators of violence.** Children may be subjected to violence by primary or proxy caregivers and/or by others against whom their caregiver does provide protection (for example neighbours, peers and strangers). Furthermore, children are at risk of being exposed to violence in many settings where professionals and State actors have often misused their power over children, such as schools, residential homes, police stations or justice institutions. All of these conditions fall under the scope of article 19, which is not limited to violence perpetrated solely by caregivers in a personal context.

3. "shall take …"

37. "Shall take" is a term which leaves no leeway for the discretion of States parties. Accordingly, States parties are under strict obligation to undertake "all appropriate measures" to fully implement this right for all children.

4. "all appropriate legislative, administrative, social and educational measures"

38. **General measures of implementation and monitoring.** The Committee draws the attention of States parties to general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.[145] The Committee also refers States parties to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child. These measures of implementation and monitoring are essential to bring article 19 into reality.

40. **"*All appropriate*...measures".** The term "appropriate" refers to the broad range of measures cutting across all sectors of Government, which must be used and be effective in order to prevent and respond to all forms of violence. "Appropriate" cannot be interpreted to mean acceptance of some forms of violence. An integrated, cohesive, interdisciplinary and coordinated system is required, which incorporates the full range of measures identified in article 19, paragraph 1, across the full range of interventions listed in paragraph 2. Isolated programmes and activities which are not integrated into sustainable and coordinated government policy and infrastructures will have limited effects. Child participation is essential in the development, monitoring and evaluation of the measures outlined here.
Legislative measures refer to both legislation, including the budget, and the implementing and enforcing measures. They comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers.

41. State parties that have not yet done so must:

(a) Ratify the two Optional Protocols to the Convention, and other international and regional human rights instruments that provide protection for children, including the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) Review and withdraw declarations and reservations contrary to the object and purpose of the Convention or otherwise contrary to international law;

(c) Strengthen cooperation with treaty bodies and other human rights mechanisms;

(d) Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators;[146]

(e) Provide adequate budget allocations for the implementation of legislation and all other measures adopted to end violence against children;

(f) Ensure the protection of child victims and witnesses and effective access to redress and reparation;

(g) Ensure that relevant legislation provides adequate protection of children in relation to media and ICT;

(h) Establish and implement social programmes to promote optimal positive child-rearing by providing, through integrated services, necessary support for the child and for those who have the care of the child;

(i) Enforce law and judicial procedures in a child-friendly way, including remedies available to children when rights are violated;

[145] See in particular paras. 9 (range of measures required), 13 and 15 (regarding withdrawal and eligibility of reservations), and 66 and 67 (dissemination of the Convention).
[146] In the context of "sanctions", the term "perpetrators" excludes children who harm themselves. The treatment of children who harm other children must be educational and therapeutic.

(j) Establish and support an independent national institution of children's rights.

42. Administrative measures should reflect governmental obligations to establish policies, programmes, monitoring and oversight systems required to protect the child from all forms of violence. These include:

(a) *At the national and sub-national government levels*:

(i) Establishing a government focal point to coordinate child protection strategies and services;

(ii) Defining the roles, responsibilities and relationships between stakeholders on inter-agency steering committees with a view to their effectively managing, monitoring and holding accountable the implementing bodies at national and subnational levels;

(iii) Ensuring that the process of decentralizing services safeguards their quality, accountability and equitable distribution;

(iv) Implementing systematic and transparent budgeting processes in order to make the best use of allocated resources for child protection, including prevention;

(v) Establishing a comprehensive and reliable national data collection system in order to ensure systematic monitoring and evaluation of systems (impact analyses), services, programmes and outcomes based on indicators aligned with universal standards, and adjusted for and guided by locally established goals and objectives;

(vi) Providing independent national human rights institutions with support and promoting the establishment of specific child rights mandates such as child rights ombudsmen where these do not yet exist.[147]

(b) *At the levels of governmental, professional and civil society institutions:*

(i) Developing and implementing (through participatory processes which encourage ownership and sustainability):

a. Intra- and inter-agency child protection policies;

b. Professional ethics codes, protocols, memoranda of understanding and standards of care for all childcare services and settings (including daycare centres, schools, hospitals, sport clubs and residential institutions etc.);

(ii) Involving academic teaching and training institutions with regard to child protection initiatives;

(iii) Promoting good research programmes.

43. Social measures should reflect governmental commitment to fulfilling child protection rights and provide for basic and targeted services. They can be initiated and implemented by both State and civil society actors under the responsibility of the State. Such measures include:

(a) *Social policy measures to reduce risk and prevent violence against children, for example*:

(i) Integration of child caregiving and protection measures into mainstream systems of social policy;

(ii) Identification and prevention of factors and circumstances which hinder vulnerable groups' access to services and full enjoyment of their rights (including indigenous and minority children and children with disabilities, among others);

(iii) Poverty reduction strategies, including financial and social support to families at risk;

(iv) Public health and safety, housing, employment and education policies;

(v) Improved access to health, social welfare and justice services;

(vi) "Child-friendly cities" planning;

(vii) Reduced demand for and access to alcohol, illegal drugs and weapons;

(viii) Collaboration with the mass media and the ICT industry to devise, promote and enforce global standards for child caregiving and protection;

(ix) Development of guidelines for protecting children from information and material produced by mass media disrespecting the human dignity and integrity of the child, abolishing stigmatizing language, refraining from the dissemination of re-victimizing reports on events in family or elsewhere affecting a child and promoting professional methods of investigation based on the use of diverse sources which can be examined by all parties involved;

(x) Opportunities for children to express their view and expectations in the media and be not only engaged in children's programmes, but also involved in the production and transmission of all kinds of information, including as reporters, analysts and commentators in order to support an adequate image of children and childhood in the public.

(b) *Social programmes to support the child individually and to support the child's family and other caregivers to provide optimal positive child-rearing, for example*:

(i) For children: childcare, early child development and after-school care programmes; child and youth groups and clubs; counselling support to children experiencing difficulties (including self-harm); 24-hour toll-free child helplines with trained personnel; foster family services which are subject to periodic review;

(ii) For families and other caregivers: community-based mutual-help groups to address psychosocial and economic challenges (for example parenting and micro-credit groups); welfare programmes to support families' standard of living, including direct allowances to children at a certain age; counselling support to caregivers having difficulties with employment, housing and/or child-rearing; therapeutic programmes (including mutual help groups) to assist caregivers with challenges related to domestic violence, addictions to alcohol or drugs or with other mental health needs.

44. Educational measures should address attitudes, traditions, customs and behavioural practices which condone and promote violence against children. They should encourage open discussion about violence, including the engagement of media and civil society. They should support children's life skills, knowledge and participation and enhance the capacities of caregivers and professionals in

[147] See general comment No. 2, in particular paras. 1, 2, 4 and 19.

contact with children. They can be initiated and implemented by both State and civil society actors under the responsibility of the State. Specific examples include, but are not limited to:

(a) *For all stakeholders*: public information programmes, including awareness campaigns, via opinion leaders and the media, to promote positive child-rearing and to combat negative societal attitudes and practices which condone or encourage violence; dissemination of the Convention, the present general comment and State party reports in child friendly and accessible formats; supporting measures to educate and advise on protection in the context of ICTs;

(b) *For children*: provision of accurate, accessible and age-appropriate information and empowerment on life skills, self-protection and specific risks, including those relating to ICTs and how to develop positive peer relationships and combat bullying; empowerment regarding child rights in general - and in particular on the right to be heard and to have their views taken seriously - through the school curriculum and in other ways;

(c) *For families and communities*: education on positive child-rearing for parents and caregivers; provision of accurate and accessible information on specific risks and how to listen to children and take their views seriously;

(d) *For professionals and institutions (government and civil society)*:
(i) Providing initial and in-service general and role-specific training (including inter-sectoral where necessary) on a child rights approach to article 19 and its application in practice, for all professionals and non-professionals working with, and for, children (including teachers at all levels of the educational system, social workers, medical doctors, nurses and other health professionals, psychologists, lawyers, judges, police, probation and prison officers, journalists, community workers, residential caregivers, civil servants and public officials, asylum officers and traditional and religious leaders);
(ii) Developing officially recognized certification schemes in association with educational and training institutions and professional societies in order to regulate and acknowledge such training;
(iii) Ensuring that the Convention is part of the educational curriculum of all professionals expected to work with and for children;
(iv) Supporting "child-friendly schools" and other initiatives which include, inter alia, respect for children's participation;
(v) Promoting research on child caregiving and protection.

B. Article 19, paragraph 2

"such protective measures should, as appropriate, include…"

45. **Range of interventions.** A holistic child protection system requires the provision of comprehensive and integrated measures across the full range of stages identified in article 19, paragraph 2, taking account of the socio-cultural traditions and legal system of the respective State party.[148]

46. **Prevention.** The Committee emphasizes in the strongest terms that child protection must begin with proactive prevention of all forms of violence as well as explicitly prohibit all forms of violence. States have the obligation to adopt all measures necessary to ensure that adults responsible for the care, guidance and upbringing of children will respect and protect children's rights. Prevention includes public health and other measures to positively promote respectful child-rearing, free from violence, for all children, and to target the root causes of violence at the levels of the child, family, perpetrator, community, institution and society. Emphasis on general (primary) and targeted (secondary) prevention must remain paramount at all times in the development and implementation of child protection systems. Preventive measures offer the greatest return in the long term. However, commitment to prevention does not lessen States' obligations to respond effectively to violence when it occurs.

47. Prevention measures include, but are not limited to:

(a) *For all stakeholders*:
(i) Challenging attitudes which perpetuate the tolerance and condoning of violence in all its forms, including gender, race, colour, religion, ethnic or social origin, disability and other power imbalances;
(ii) Disseminating information regarding the Convention's holistic and positive approach to child protection through creative public campaigns, schools and peer education, family, community and institutional educational initiatives, professionals and professional groups, NGOs and civil society;
(iii) Developing partnerships with all sectors of society, including children themselves, NGOs and the media;

(b) *For children*:
(i) Registering all children to facilitate their access to services and redress procedures;
(ii) Supporting children to protect themselves and their peers through awareness of their rights and development of social skills as well as age-appropriate empowerment strategies;
(iii) Implementing "mentoring" programmes that engage responsible and trusted adults in the lives of children identified as needing extra support beyond that provided by their caregivers;

(c) *For families and communities*:

[148] The detailed guidance available in the Guidelines for the Alternative Care of Children should also be taken into account at each stage.

(i) Supporting parents and caregivers to understand, embrace and implement good child-rearing, based on knowledge of child rights, child development and techniques for positive discipline in order to support families' capacity to provide children with care in a safe environment;
(ii) Providing pre- and post-natal services, home visitation programmes, quality early-childhood development programmes, and income-generation programmes for disadvantaged groups;
(iii) Strengthening the links between mental health services, substance abuse treatment and child protection services;
(iv) Providing respite programmes and family support centres for families facing especially difficult circumstances;
(v) Providing shelters and crisis centres for parents (mostly women) who have experienced violence at home and their children;
(vi) Providing assistance to the family by adopting measures that promote family unity and ensure for children the full exercise and enjoyment of their rights in private settings, abstaining from unduly interfering in children's private and family relations, depending on circumstances.[149]

(d) *For professionals and institutions (Government and civil society)*:
(i) Identifying prevention opportunities and informing policy and practice on the basis of research studies and data collection;
(ii) Implementing, through a participatory process, rights-based child protection policies and procedures and professional ethics codes and standards of care;
(iii) Preventing violence in care and justice settings by, inter alia, developing and implementing community-based services in order to make use of institutionalization and detention only as a last resort and only if in the best interest of the child.

48. **Identification.**[150] This includes identifying risk factors for particular individuals or groups of children and caregivers (in order to trigger targeted prevention initiatives) and identifying signs of actual maltreatment (in order to trigger appropriate intervention as early as possible). This requires that all who come in contact with children are aware of risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action (including the provision of emergency protection). Children must be provided with as many opportunities as possible to signal emerging problems before they reach a state of crisis, and for adults to recognize and act on such problems even if the child does not explicitly ask for help. Particular vigilance is needed when it comes to marginalized groups of children who are rendered particularly vulnerable due to their alternative methods of communicating, their immobility and/or the perceived view that they are incompetent, such as children with disabilities. Reasonable accomodation should be provided to ensure that they are able to communicate and signal problems on an equal basis with others.

49. **Reporting.**[151] The Committee strongly recommends that all States parties develop safe, well-publicized, confidential and accessible support mechanisms for children, their representatives and others to report violence against children, including through the use of 24-hour toll-free hotlines and other ICTs. The establishment of reporting mechanisms includes: (a) providing appropriate information to facilitate the making of complaints; (b) participation in investigations and court proceedings; (c) developing protocols which are appropriate for different circumstances and made widely known to children and the general public; (d) establishing related support services for children and families; and (e) training and providing ongoing support for personnel to receive and advance the information received through reporting systems. Reporting mechanisms must be coupled with, and should present themselves as help-oriented services offering public health and social support, rather than as triggering responses which are primarily punitive. Children's right to be heard and to have their views taken seriously must be respected. In every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.

50. **Referral.** The person receiving the report should have clear guidance and training on when and how to refer the issue to whichever agency is responsible for coordinating the response. Following this, intersectoral referrals may be made by trained professionals and administrators when children are found to be in need of protection (immediate or longer-term) and specialized support services. Professionals working within the child protection system need to be trained in inter-agency cooperation and protocols for collaboration. The process will involve: (a) a participatory, multi-disciplinary assessment of the short- and long-term needs of the child, caregivers and family, which invites and gives due weight to the child's views as well as those of the caregivers and family; (b) sharing of the assessment results with the child, caregivers and family; (c) referral of the child and family to a range of services to meet those needs; and (d) follow-up and evaluation of the adequateness of the intervention.

51. **Investigation.** Investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to the child's views.

[149] Human Rights Committee, general comment No. 17 (1989) on the rights of the child; European Court of Human Rights, *Olsson vs. Sweden* (No. 1), Judgement of 24 March 1988, Series A No. 130, para. 81; Inter-American Court of Human Rights, *Velásquez Rodríguez vs. Honduras*, Judgement on the Merits, 10 January 1989, Series C, No. 3, para. 172.
[150] Paragraphs 48 ff can also be applied to processes in informal and customary systems of justice.
[151] See also the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

52. **Treatment.** "Treatment" is one of the many services needed to "promote physical and psychological recovery and social reintegration" for children who have experienced violence, and must take place "in an environment which fosters the health, self-respect and dignity of the child" (art. 39). In this respect attention must be given to: (a) inviting and giving due weight to the child's views; (b) the safety of the child; (c) the possible need for her or his immediate safe placement; and (d) the predictable influences of potential interventions on the child's long-term well-being, health and development. Medical, mental health, social and legal services and support may be required for children upon identification of abuse, as well as longer-term follow-up services. A full range of services, including family group conferencing and other similar practices, should be made available. Services and treatment for perpetrators of violence, especially child perpetrators, are also needed. Children who are aggressive towards other children have often been deprived of a caring family and community environment. They must be regarded as victims of their child-rearing conditions, which imbue them with frustration, hatred and aggression. Educational measures must have priority and be directed to improve their pro-social attitudes, competencies and behaviours. Simultaneously, the life conditions of these children must be examined in order to promote their care and support and that of other children in the family and neighbourhood. In terms of children who harm themselves, it is recognized that this is a result of severe psychological distress and may be a result of violence by others. Self-harm should not be criminalized. Interventions must be supportive and not in any way punitive.

53. **Follow-up**. The following must always be clear: (a) who has responsibility for the child and family from reporting and referral all the way through to follow-up; (b) the aims of any course of action taken – which must be fully discussed with the child and other relevant stakeholders; (c) the details, deadlines for implementation and proposed duration of any interventions; and (d) mechanisms and dates for the review, monitoring and evaluation of actions. Continuity between stages of intervention is essential and this may best be achieved through a case management process. Effective help requires that actions, once decided through a participatory process, must not be subject to undue delay. The follow-up must be understood in the context of article 39 (recovery and reintegration), article 25 (periodic review of treatment and placements), article 6, paragraph 2 (right to development) and article 29 (aims of education which present intentions and aspirations for development). Contact of the child with both parents should be ensured in accordance with article 9, paragraph 3, unless this is contrary to the best interests of the child.

54. **Judicial involvement.**[152] At all times and in all cases, due process must be respected. In particular, the protection and the further development of the child and his or her best interests (and the best interests of other children where there is a risk of a perpetrator reoffending) must form the primary purpose of decision-making, with regard given to the least intrusive intervention as warranted by the circumstances. Furthermore, the Committee recommends the respect of the following guarantees:

(a) Children and their parents should be promptly and adequately informed by the justice system or other competent authorities (such as the police, immigration, or educational, social or health-care services);

(b) Child victims of violence should be treated in a child-friendly and sensitive manner throughout the justice process, taking into account their personal situation, needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity;

(c) Judicial involvement should be preventive where possible, proactively encouraging positive behaviour as well as prohibiting negative behaviour. Judicial involvement should be an element of a coordinated and integrated approach across sectors, supporting and facilitating other professionals to work with children, caregivers, families and communities, and facilitating access to the full range of child caregiving and protection services available;

(d) In all proceedings involving children victims of violence, the celerity principle must be applied, while respecting the rule of law.

55. Judicial involvement may consist of the following:

(a) Differentiated and mediated responses such as family group conferencing, alternative dispute-resolution mechanisms, restorative justice and kith and kin agreements (where processes are human-rights respecting, accountable and managed by trained facilitators);

(b) Juvenile or family court intervention leading to a specific measure of child protection;

(c) Criminal law procedures, which must be strictly applied in order to abolish the widespread practice of de jure or de facto impunity, in particular of State actors;

(d) Disciplinary or administrative proceedings against professionals for neglectful or inappropriate behaviour in dealing with suspected cases of child maltreatment (either internal proceedings in the context of professional bodies for breaches of codes of ethics or standards of care, or external proceedings);

(e) Judicial orders to ensure compensation and rehabilitation for children who have suffered from violence in its various forms.

56. When appropriate, juvenile or family specialized courts and criminal procedures should be established for child victims of violence. This could include the establishment of specialized units within the police, the judiciary and the prosecutor's office with the possibility of providing accomodations in the judicial process to ensure equal and fair participation of children with disabilities. All professionals

[152] See also: Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted on 17 November 2010; Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; and General Assembly resolution 65/213.

working with and for children and involved in such cases should receive specific interdisciplinary training on the rights and needs of children of different age groups, as well as on proceedings that are adapted to them. While implementing a multidisciplinary approach, professional rules on confidentiality should be respected. The decision to separate a child from his or her parent(s) or family environment must be made only when it is in the child's best interests (art. 9 and art. 20, para. 1). However, in cases of violence where perpetrators are primary caregivers, within the child rights safeguards listed above, and depending on the severity and other factors, intervention measures focusing on social and educational treatment and a restaurative approach are often preferable to a purely punitive judicial involvement. Effective remedies should be available, including compensation to victims and access to redress mechanisms and appeal or independent complaint mechanisms.

57. **Effective procedures.** Such protective measures as mentioned in article 19, paragraphs 1 and 2, and as integrated into a systems-building approach (see para. 0), require "effective procedures" to ensure their enforcement, quality, relevance, accessibility, impact and efficiency. Such procedures should include:

(a) Inter-sectoral coordination, mandated by protocols and memorandums of understanding as necessary;

(b) The development and implementation of systematic and ongoing data collection and analysis;

(c) The development and implementation of a research agenda; and

(d) The development of measurable objectives and indicators in relation to policies, processes and outcomes for children and families.

58. Outcome indicators should focus on the child's positive development and well-being as a rights-bearing person, beyond a purely narrow focus on incidence, prevalence and types or extent of violence. Child death reviews, critical injury reviews, inquests and systemic reviews must also be taken into account when identifying the underlying causes of violence and in recommending corrective courses of actions. Research must build on the existing body of international and national child protection knowledge and benefit from interdisciplinary and international collaboration in order to maximize complementarity. (See also para. 0 (j) on accountability in relation to national coordinating frameworks).

V. INTERPRETATION OF ARTICLE 19 IN THE BROADER CONTEXT OF THE CONVENTION

59. **Definition of a child rights approach.** Respect for the dignity, life, survival, well-being, health, development, participation and non-discrimination of the child as a rights-bearing person should be established and championed as the pre-eminent goal of States parties' policies concerning children. This is best realized by respecting, protecting and fulfilling all of the rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as "objects" in need of assistance rather than as rights holders entitled to non-negotiable rights to protection. A child rights approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children's evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.

60. **Article 2 (non-discrimination).** The Committee stresses that States parties shall take adequate measures to assure to every child the right to protection from all forms of violence "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". This includes discrimination based on prejudices towards commercially sexually exploited children, children in street situations or children in conflict with the law or based on children's clothing and behaviour. States parties must address discrimination against vulnerable or marginalized groups of children, such as outlined in paragraph 0 (g) of the present general comment, and make proactive efforts to ensure that such children are assured their right to protection on an equal basis with all other children.

61. **Article 3 (best interests of the child).** The Committee emphasizes that the 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. 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. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention. In particular, the Committee maintains that the best interests of the child are best served through:

(a) Prevention of all forms of violence and the promotion of positive child-rearing, emphasizing the need for a focus on primary prevention in national coordinating frameworks;

(b) Adequate investment in human, financial and technical resources dedicated to the implementation of a child rights-based and integrated child protection and support system.

62. **Article 6 (life, survival and development).** Protection from all forms of violence must be considered not only in terms of the child's right to "life" and "survival", but also in terms of their right to "development", which must be interpreted in line with the overall goal of

child protection. Thus, the obligation of the State party includes comprehensive protection from violence and exploitation which would jeopardize a child's right to life, survival and development. The Committee expects States to interpret "development" in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. Implementation measures should be aimed at achieving the optimal development for all children.

63. **Article 12 (right to be heard).** The Committee is of the opinion that child participation promotes protection and child protection is key to participation. The child's right to be heard commences already with very young children who are particularly vulnerable to violence. Children's views must be invited and given due weight as a mandatory step at every point in a child protection process. The child's right to be heard has particular relevance in situations of violence (see the Committee's general comment No. 12 (2009), paras. 118 ff). With regard to family and child-rearing, the Committee expressed that this right plays a preventive role against all forms of violence in the home and family. The Committee furthermore underlines the importance of children's participation in the development of prevention strategies in general and in school, in particular in the elimination and prevention of bullying, and other forms of violence in school. Initiatives and programmes that are aimed at strengthening children's own capacities to eliminate violence should be supported. As the experience of violence is inherently disempowering, sensitive measures are needed to ensure that child protection interventions do not further disempower children but rather contribute positively to their recovery and reintegration via carefully facilitated participation. The Committee notes that barriers to participation are faced by particularly marginalized and/or discriminated groups. Addressing these barriers is especially relevant for child protection, as such children are often among those most affected by violence.

64. The following two articles of the Convention also have all-embracing relevance which gives them particular significance for the implementation of article 19.

65. **Article 4 (appropriate measures).** Article 4 obliges States parties to undertake all appropriate measures to implement all the rights in the Convention, including article 19. In applying article 4 of the Convention, it must be noted that the right to protection from all forms of violence outlined in article 19 is a civil right and freedom. Implementation of article 19 is therefore an immediate and unqualified obligation of States parties. In the light of article 4, whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups (see the Committee's general comment No. 5, para. 8). The article stresses that available resources must be utilized to the maximum extent.

66. **Article 5 (direction and guidance consistent with evolving capacities).** Implementation of article 19 requires recognition of, and support for, the primary importance of parents, extended families, legal guardians and community members in the caregiving and protection of children and the prevention of violence. This approach is consistent with article 5, which promotes respect for the responsibilities, rights and duties of caregivers 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 (including in article 19). (See also para. 0 (d) on the primacy of familes in the context of national coordinating frameworks and other articles relevant to families).

67. **Other relevant articles.** The Convention contains numerous articles which relate explicitly or implicitly to violence and child protection. Article 19 should be read in conjunction with these articles. These comprehensive references demonstrate the need to take account of the pervasive threat to the implementation of child rights by violence in all its forms and to ensure the protection of children in all situations of life and development.

VI. NATIONAL COORDINATING FRAMEWORK ON VIOLENCE AGAINST CHILDREN

68. **Beyond national plans of action.** The Committee recognizes that many national plans of action adopted by States parties to implement the rights of the child include measures to prohibit, prevent and eliminate all forms of violence against children. Such plans of action, while contributing to more enjoyment by children of their rights, have nevertheless faced many challenges in their implementation, monitoring, evaluation and follow-up. For example, they have often lacked links with the overall development policy, programmes, budget and coordinating mechanisms. In order to establish a more feasible and flexible instrument, the Committee is proposing a "coordinating framework on violence against children" for all child rights-based measures to protect children from violence in all its forms and to support a protective environment.[153] Such a coordinating framework can be used in place of national plans of action where these do not yet exist or where they are proving unwieldy. Where national plans of action are being effectively implemented already, the coordinating framework can nonetheless complement those efforts, stimulate discussion and generate new ideas and resources to improve their functioning.

69. **National coordinating framework on violence against children.** This coordinating framework can provide a common frame of reference and a mechanism for communication among Government ministries and also for State and civil society actors at all levels with regard to needed measures, across the range of measures and at each stage of intervention identified in article 19. It can promote flexibility and creativity and allow for the development and implementation of initiatives led simultaneously by both Government and community, but which are nonetheless contained within an overall cohesive and coordinated framework. In previous reccommendations and general comments, including its general comment No. 5 on general measures of implementation, the Committee has already urged States parties to develop plans and strategies for specific aspects of the Convention (for example juvenile justice or early childhood). It is in this context that the Committee recommends the development of a national coordinating framework on protection against all forms of violence, including comprehensive prevention measures.

[153] See also the overarching recommendations of the independent expert for the United Nations study on violence against children (A/61/299), para. 96.

70. **Different starting points.** The Committee acknowledges that protecting children from all forms of violence is highly challenging in most countries and that States parties are designing and implementing measures from very different starting points, in terms of existing legal, institutional and service infrastructures, cultural customs and professional competencies, as well as levels of resources.

71. **The process of developing a national coordinating framework.** There is no single model for such coordinating frameworks for freedom from all forms of violence. Some countries have invested in a discrete system of protecting children whereas others prefer to integrate protection issues into mainstream systems of implementing the rights of children. Experience shows that the process of developing a system is essential to its successful implementation. Skilful facilitation is required to ensure the participation of and ownership by senior representatives of all stakeholder groups, possibly through a multidisciplinary working group which has appropriate decision-making power, which meets regularly and which is prepared to be ambitious. A system of prevention and protection against all forms of violence should build on the strengths in existing formal and informal structures, services and organizations. Gaps should be identified and filled, based on the obligations outlined in article 19 and the Convention more broadly, and in other international and regional human rights instruments, and supported by the guidance provided in the United Nations study on violence against children, the present general comment and additional implementation supports. National planning should be a transparent and inclusive process, with full disclosure to the general public and assurance of the involvement of Government, NGOs, research and professional practice experts, parents and children. It should be accessible and understandable to both children and adults. The national coordinating framework should be fully costed and financed, including human and technical resources, and presented, if possible, within the national child budget.

72. **Elements to be mainstreamed into national coordinating frameworks.** The following elements need to be mainstreamed across the measures (legislative, administrative, social and educational) and stages of intervention (from prevention through to recovery and reintegration):

(a) *Child rights approach*. This approach is based on the declaration of the child as a rights holder and not a beneficiary of benevolent activities of adults. It includes respecting and encouraging consultation and cooperation with, and the agency of, children in the design, implementation, monitoring and evaluation of the coordinating framework and specific measures therein, taking account of the age and evolving capacities of the child or children;

(b) *The gender dimensions of violence against children*. States parties should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly. Men and boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations;

(c) *Primary (general) prevention*. See paragraph 0 of the present general comment for details;

(d) *The primary position of families in child caregiving and protection strategies.*[154] Families (including extended families and other forms of family-type care arrangements) have the greatest potential to protect children and to prevent violence. Families can also support and empower children to protect themselves. The need to strengthen family life, support families and work with families with challenges must therefore be a priority child protection activity at every stage of intervention, particularly prevention (through establishing good child caregiving) and in early intervention. However, the Committee also recognizes that much of the violence experienced by children, including sexual abuse, takes place within a family context and stresses the necessity of intervening in families if children are exposed to violence by family members;

(e) *Resilience and protective factors*. It is of critical importance to understand resilience and protective factors, i.e. internal and external strengths and supports which promote personal security and reduce abuse and neglect and their negative impact. Protective factors include stable families; nurturing child-rearing by adults who meet the child's physical and psychosocial needs; positive non-violent discipline; secure attachment of the child to at least one adult; supportive relationships with peers and others (including teachers); a social environment that fosters pro-social, non-violent and non-discriminatory attitudes and behaviours; high levels of community social cohesion; and thriving social networks and neighbourhood connections;

(f) *Risk factors*. Proactive, tailored measures need to be taken to reduce the risk factors to which individual children or groups of children may be exposed in general or in particular contexts. This includes parental risk factors such as substance abuse, mental health problems and social isolation as well as family risk factors such as poverty, unemployment, discrimination and marginalization. At a universal level all children aged 0-18 years are considered vulnerable until the completion of their neural, psychological, social and physical growth and development. Babies and young children are at higher risk due to the immaturity of their developing brain and their complete dependency on adults. Both girls and boys are at risk, but violence often has a gender component;

(g) *Children in potentially vulnerable situations*. Groups of children which are likely to be exposed to violence include, but are not limited to, children: not living with their biological parents, but in various forms of alternative care; not registered at birth; in street situations; in actual or perceived conflict with the law; with physical disabilities, sensory disabilities, learning disabilities, psychosocial

[154] See also the Guidelines for the Alternative Care of Children.

disabilities and congenital, acquired and/or chronic illnesses or serious behavioural problems; who are indigenous[155] and from other ethnic minorities; from minority religious or linguistic groups; who are lesbian, gay, transgender or transsexual; at risk of harmful traditional practices; in early marriage (especially girls, and especially but not exclusively forced marriage); in hazardous child labour, including the worst forms; who are on the move as migrants or refugees, or who are displaced and/or trafficked; who have already experienced violence; who experience and witness violence in the home and in communities; in low socio-economic urban environments, where guns, weapons, drugs and alcohol may be easily available; living in accident- or disaster-prone areas or in toxic environments; affected by HIV/AIDS or who are themselves HIV infected; who are malnourished; looked after by other children; who are themselves carers and heads of households; born to parents who are themselves still under 18; who are unwanted, born prematurely or part of a multiple birth; hospitalized with inadequate supervision or contact with caregivers; or exposed to ICTs without adequate safeguards, supervision or empowerment to protect themselves. Children in emergencies are extremely vulnerable to violence when, as a consequence of social and armed conflicts, natural disasters and other complex and chronic emergencies, social systems collapse, children become separated from their caregivers and caregiving and safe environments are damaged or even destroyed;

(h) *Resource allocation*. Human, financial and technical resources needed across different sectors must be allocated to the maximum extent of available resources. Robust monitoring mechanisms must be developed and implemented to ensure accountability regarding allocation of budgets and their efficient utilization;

(i) *Coordination mechanisms*. Mechanisms must be explicitly outlined to ensure effective coordination at central, regional and local levels, between different sectors and with civil society, including the empirical research community. These mechanisms must be supported by the administrative measures outlined above;

(j) *Accountability*. It must be ensured that States parties, national and local agencies and organizations, and relevant civil society stakeholders proactively and cooperatively establish and apply standards, indicators, tools, and systems of monitoring, measurement and evaluation to fulfil their obligations and commitments to protect children from violence. The Committee has consistently expressed its support for systems of accountability, including in particular through data collection and analysis, indicator construction, monitoring and evaluation as well as support for independent human rights institutions. The Committee recommends that States parties publish an annual report on progress made with regard to the prohibition, prevention and elimination of violence, submit it to parliament for consideration and discussion, and invite all relevant stakeholders to respond to the information contained therein.

VII. RESOURCES FOR IMPLEMENTATION AND THE NEED FOR INTERNATIONAL COOPERATION

73. **States parties' obligations.** In the light of States parties' obligations under articles 4 and 19, inter alia, the Committee considers that resource constraints cannot provide a justification for a State party's failure to take any, or enough, of the measures that are required for child protection. States parties are therefore urged to adopt comprehensive, strategic and time-bound coordinating frameworks for child caregiving and protection. In particular the Committee highlights the necessity to consult with children in the development of these strategies, frameworks and measures.

74. **Sources of support.** Within the context of different starting points highlighted in paragraph 0, and on the understanding that budgets at national and decentralized levels should be the primary source of funds for child caregiving and protection strategies, the Committee draws the attention of States parties to the avenues of international cooperation and assistance outlined in articles 4 and 45 of the Convention. The Committee calls upon the following partners to support, both financially and technically, child protection programmes, including training, which take full account of the requirements stipulated in article 19 and the Convention more broadly:[156] States parties providing development cooperation; donor institutions (including the World Bank, private sources and foundations); United Nations agencies and organizations; and other international and regional bodies and organizations. This financial and technical support should be provided systematically through strong and equitable partnerships, at the national and international levels. Child rights-based protection programmes should be one of the main components in assisting sustainable development in countries receiving international assistance. The Committee also encourages such bodies to continue to work with the Committee, the Special Representative of the Secretary-General on Violence against Children and other international and regional human rights mechanisms to advance this goal.

75. **Resources needed at the international level.** Investment is also needed in the following areas at the international level to assist States parties to fulfil their obligations in relation to article 19:

(a) Human resources: improved communication, cooperation and individual exchange within and between professional associations (for example medical, mental health, social work, legal, education, child maltreatment, academic/research, child rights and training organizations/institutions); improved communication and cooperation within and between civil society groups (for example research

[155] In some societies, in contrast to non-indigenous families, "neglect" as distinct from "abuse" is the primary reason leading to the removal of indigenous children from their families. Non-punitive family support services and interventions directly addressing causes (such as poverty, housing and historical circumstances) are often more appropriate. Specific efforts are required to address discrimination in the provision of services and the range of intervention options available to indigenous and other minority communities.

[156] See general comment No. 5 (paras. 61, 62 and 64) on: the need for the mainstreaming of children's rights into international cooperation and technical assistance; the need for such cooperation and assistance to be guided by, and to fully promote implementation of, the Convention; the allocation of a substantive part of international aid and assistance specifically to children; and the need for Poverty Reduction Strategy Papers and sector-wide approaches to development to include a strong focus on children's rights.

communities, NGOs, child-led organizations, faith-based organizations, organizations of persons with disabilities, community and youth groups, and individual experts involved in the development and exchange of knowledge and practice);

(b) Financial resources: improved coordination, monitoring and evaluation of donor aid; further development of financial and human capital analyses in order for economists, researchers and States parties to fully measure the costs of implementing holistic child protection systems (with an emphasis on primary prevention) versus the costs of managing the direct and indirect (including intergenerational) impact of violence at the individual, community, national and even international levels; and reviews by international financial institutions of "their policies and activities to take account of the impact they may have on children";[157]

(c) Technical resources: evidence-based indicators, systems, models (including model legislation), tools, guidelines, protocols and practice standards for use by communities and professionals, with guidance on their adaptation to different contexts; a platform for systematic sharing and accessing of information (knowledge and practice); universally established clarity and transparency in budgeting for child rights and child protection, as well as in outcome monitoring of child protection during up and down cycles of economies and challenging circumstances (technical assistance should be established over time, through information, models and related training).

76. **Regional and international cross-border cooperation.** In addition to development assistance, cooperation is also needed to address child protection issues which cut across national borders such as: cross-border movement of children – either unaccompanied or with their families – either voluntarily or under duress (for example due to conflict, famine, natural disasters or epidemics) which can put children at risk of harm; cross-border trafficking of children for labour, sexual exploitation, adoption, removal of body parts or other purposes; conflict which cuts across borders and which may compromise a child's safety and access to protection systems, even if the child remains in the country of origin; and disasters that impact several countries simultaneously. Specific legislation, policies, programmes and partnerships may be required to protect children affected by cross-border child protection issues (for example cybercrime and extraterritorial prosecution of those who sexually abuse children through travel and tourism and traffickers of families and children), whether these children are in traditional caregiving situations or where the State is the de facto caregiver, as in the case of unaccompanied children.

[157] A/61/299, para. 117.

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/14

29 May 2013

Original: ENGLISH

Committee on the Rights of the Child
Sixty-second session
14 January – 1 February 2013

GENERAL COMMENT NO. 14 (2013)
THE RIGHT OF THE CHILD TO HAVE HIS OR HER BEST INTERESTS TAKEN AS A PRIMARY CONSIDERATION (ART. 3, PARA. 1)*

"*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"
Convention on the Rights of the Child (art. 3, para. 1)

I. INTRODUCTION

A. The best interests of the child: a right, a principle and a rule of procedure

1. Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child,[158] and applies it is a dynamic concept that requires an assessment appropriate to the specific context.

2. The concept of the "child's best interests" is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (para. 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 5 (b) and 16, para. 1 (d)), as well as in regional instruments and many national and international laws.

3. The Convention also explicitly refers to the child's best interests in other articles: article 9: separation from parents; article 10: family reunification; article 18: parental responsibilities; article 20: deprivation of family environment and alternative care; article 21: adoption; article 37(c): separation from adults in detention; article 40, paragraph 2 (b) (iii): procedural guarantees, including presence of parents at court hearings for penal matters involving children in conflict with the law. Reference is also made to the child's best interests in the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (preamble and art. 8) and in the Optional Protocol to the Convention on a communications procedure (preamble and arts. 2 and 3).

4. The concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.[159] The Committee has already pointed out[160] that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention." It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests.

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).
[158] The Committee's general comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 12; and No. 12 (2009) on the right of the child to be heard, para. 2.
[159] The Committee expects States to interpret development as a "holistic concept, embracing the child´s physical, mental, spiritual, moral, psychological and social development" (general comment No. 5, para. 12).
[160] General comment No. 13 (2011) on the right to protection from all forms of violence, para. 61.

5. The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.

6. The Committee underlines that the child's best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

7. In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above.

B. Structure

8. The scope of the present general comment is limited to article 3, paragraph 1, of the Convention and does not cover article 3, paragraph 2, which pertains to the well-being of the child, nor article 3, paragraph 3, which concerns the obligation of States parties to ensure that institutions, services and facilities for children comply with the established standards, and that mechanisms are in place to ensure that the standards are respected.

9. The Committee states the objectives (chapter II) of the present general comment and presents the nature and scope of the obligation of States parties (chapter III). It also provides a legal analysis of article 3, paragraph 1 (chapter IV), showing the links to other general principles of the Convention. Chapter V is dedicated to the implementation, in practice, of the principle of best interests of the child, while chapter VI provides guidelines on disseminating the general comment.

II. OBJECTIVES

10. The present general comment seeks to ensure the application of and respect for the best interests of the child by the States parties to the Convention. It defines the requirements for due consideration, especially in judicial and administrative decisions as well as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines – that is, all implementation measures – concerning children in general or as a specific group. The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers.

11. The best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving. The present general comment provides a framework for assessing and determining the child's best interests; it does not attempt to prescribe what is best for the child in any given situation at any point in time.

12. The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration (see paragraph 38 below). Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders. More specifically, this has implications for:

(a) The elaboration of all implementation measures taken by governments;

(b) Individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;

(c) Decisions made by civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children;

(d) Guidelines for actions undertaken by persons working with and for children, including parents and caregivers.

III. NATURE AND SCOPE OF THE OBLIGATIONS OF STATES PARTIES

13. Each State party must respect and implement the right of the child to have his or her best interests assessed and taken as a primary consideration, and is under the obligation to take all necessary, deliberate and concrete measures for the full implementation of this right.

14. Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties:

(a) The obligation to ensure that the child's best interests are *appropriately integrated and consistently applied* in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;

(b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.

(c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

15. To ensure compliance, States parties should undertake a number of implementation measures in accordance with articles 4, 42 and 44, paragraph 6, of the Convention, and ensure that the best interests of the child are a primary consideration in all actions, including:

(a) Reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure;

(b) Upholding the child’s best interests in the coordination and implementation of policies at the national, regional and local levels;

(c) Establishing mechanisms and procedures for complaints, remedy or redress in order to fully realize the right of the child to have his or her best interests appropriately integrated and consistently applied in all implementation measures, administrative and judicial proceedings relevant to and with an impact on him or her;

(d) Upholding the child’s best interests in the allocation of national resources for programmes and measures aimed at implementing children’s rights, and in activities receiving international assistance or development aid;

(e) When establishing, monitoring and evaluating data collection, ensure that the child’s best interests are explicitly spelled out and, where required, support research on children’s rights issues;

(f) Providing information and training on article 3, paragraph 1, and its application in practice to all those making decisions that directly or indirectly impact on children, including professionals and other people working for and with children;

(g) Providing appropriate information to children in a language they can understand, and to their families and caregivers, so that they understand the scope of the right protected under article 3, paragraph 1, as well as creating the necessary conditions for children to express their point of view and ensuring that their opinions are given due weight;

(h) Combating all negative attitudes and perceptions which impede the full realization of the right of the child to have his or her best interests assessed and taken as a primary consideration, through communication programmes involving mass media and social networks as well as children, in order to have children recognized as rights holders.

16. In giving full effect to the child’s best interests, the following parameters should be borne in mind:

(a) The universal, indivisible, interdependent and interrelated nature of children’s rights;

(b) Recognition of children as right holders;

(c) The global nature and reach of the Convention;

(d) The obligation of States parties to respect, protect and fulfill all the rights in the Convention;

(e) Short-, medium- and long-term effects of actions related to the development of the child over time.

IV. LEGAL ANALYSIS AND LINKS WITH THE GENERAL PRINCIPLES OF THE CONVENTION

A. Legal analysis of article 3, paragraph 1

1. "In all actions concerning children"

(a)"in all actions"

17. Article 3, paragraph 1 seeks to ensure that the right is guaranteed in all decisions and actions concerning children. This means that every action relating to a child or children has to take into account their best interests as a primary consideration. The word "action" does not only include decisions, but also all acts, conduct, proposals, services, procedures and other measures.

18. Inaction or failure to take action and omissions are also "actions", for example, when social welfare authorities fail to take action to protect children from neglect or abuse.

(b)"concerning"

19. The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term "concerning" refers first of all, to measures and decisions directly concerning a child, children as a group or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated in the Committee's general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). Therefore, "concerning" must be understood in a very broad sense.

20. Indeed, all actions taken by a State affect children in one way or another. This does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests o the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.

Thus, in relation to measures that are not directly aimed at the child or children, the term "concerning" would need to be clarified in the light of the circumstances of each case in order to be able to appreciate the impact of the action on the child or children.

(c)"children"

21. The term "children" refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the Convention.

22. Article 3, paragraph 1, applies to children as individuals and places an obligation on States parties to assess and take the child's best interests as a primary consideration in individual decisions.

23. However, the term "children" implies that the right to have their best interests duly considered applies to children not only as individuals, but also in general or as a group. Accordingly, States have the obligation to assess and take as a primary consideration the best interests of children as a group or in general in all actions concerning them. This is particularly evident for all implementation measures. The Committee[161] underlines that the child's best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.

24. That is not to say that in a decision concerning an individual child, his or her interests must be understood as being the same as those of children in general. Rather, article 3, paragraph 1, implies that the best interests of a child must be assessed individually. Procedures for establishing the best interests of children individually and as a group can be found in chapter V below.

2. "By public or private social welfare institutions, courts of law, administrative authorities or legislative bodies"

25. The obligation of the States to duly consider the child's best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children. Although parents are not explicitly mentioned in article 3, paragraph 1, the best interests of the child "will be their basic concern" (art. 18, para. 1).

(a)"public or private social welfare institutions"

[161] General comment No.11 (2009) on indigenous children and their rights under the Convention, para. 30.

26. These terms should not be narrowly construed or limited to social institutions *stricto sensu*, but should be understood to mean all institutions whose work and decisions impact on children and the realization of their rights. Such institutions include not only those related to economic, social and cultural rights (e.g. care, health, environment, education, business, leisure and play, etc.), but also institutions dealing with civil rights and freedoms (e.g. birth registration, protection against violence in all settings, etc.). Private social welfare institutions include private sector organizations – either for-profit or non-profit – which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside Government services as an alternative.

(b)"courts of law"

27. The Committee underlines that "courts" refer to all judicial proceedings, in all instances – whether staffed by professional judges or lay persons – and all relevant procedures concerning children, without restriction. This includes conciliation, mediation and arbitration processes.

28. In criminal cases, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The Committee[162] underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders.

29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so.

(c)"administrative authorities"

30. The Committee emphasizes that the scope of decisions made by administrative authorities at all levels is very broad, covering decisions concerning education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality, among others. Individual decisions taken by administrative authorities in these areas must be assessed and guided by the best interests of the child, as for all implementation measures.

(d)"legislative bodies"

31. The extension of States parties' obligation to their "legislative bodies" shows clearly that article 3, paragraph 1, relates to children in general, not only to children as individuals. The adoption of any law or regulation as well as collective agreements – such as bilateral or multilateral trade or peace treaties which affect children – should be governed by the best interests of the child. The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children. This obligation extends also to the approval of budgets, the preparation and development of which require the adoption of a best-interests-of-the-child perspective for it to be child-rights sensitive.

3. "The best interests of the child"

32. The concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of article 3, paragraph 1, in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.

33. The child's best interests shall be applied to all matters concerning the child or children, and taken into account to resolve any possible conflicts among the rights enshrined in the Convention or other human rights treaties. Attention must be placed on identifying possible solutions which are in the child's best interests. This implies that States are under the obligation to clarify the best interests of all children, including those in vulnerable situations, when adopting implementation measures.

34. The flexibility of the concept of the child's best interests allows it to be responsive to the situation of individual children and to evolve knowledge about child development. However, it may also leave room for manipulation; the concept of the child's best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child's best interests as irrelevant or unimportant.

[162] General comment No. 10 (2007) on children's rights in juvenile justice, para. 10.

35. With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation. [163]

4. "Shall be a primary consideration"

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words "shall be" place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.

37. The expression "primary consideration" means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.

38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be "**a primary** consideration" but "**the paramount** consideration". Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.

39. However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

40. Viewing the best interests of the child as "primary" requires a consciousness about the place that children's interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.

B. The best interests of the child and links with other general principles of the Convention

1. The child's best interests and the right to non-discrimination (art. 2)

41. The right to non-discrimination is not a passive obligation, prohibiting all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.

2. The child's best interests and the right to life, survival and development (art. 6)

42. States must create an environment that respects human dignity and ensures the holistic development of every child. In the assessment and determination of the child's best interests, the State must ensure full respect for his or her inherent right to life, survival and development.

3. The child's best interests and the right to be heard (art. 12)

43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives[164].

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake. The Committee has already established that the more the child knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for him or her have to transform direction and guidance into reminders and advice, and later to an exchange on an equal footing.[165] Similarly, as the child matures, his or her views shall have increasing weight in

[163] General comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 45.
[164] General comment No. 12, paras. 70-74.
[165] Ibid., para. 84.

the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.

45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her (see further chapter V.B below).

V. IMPLEMENTATION: ASSESSING AND DETERMINING THE CHILD'S BEST INTERESTS

46. As stated earlier, the "best interests of the child" is a right, a principle and a rule of procedure based on an assessment of all elements of a child's or children's interests in a specific situation. When assessing and determining the best interests of the child in order to make a decision on a specific measure, the following steps should be followed:

(a) First, within the specific factual context of the case, find out what are the relevant elements in a best-interests assessment, give them concrete content, and assign a weight to each in relation to one another;

(b) Secondly, to do so, follow a procedure that ensures legal guarantees and proper application of the right.

47. Assessment and determination of the child's best interests are two steps to be followed when required to make a decision. The "best-interests assessment" consists in evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child or group of children. It is carried out by the decision-maker and his or her staff – if possible a multidisciplinary team –, and requires the participation of the child. The "best-interests determination" describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment.

A. Best interests assessment and determination

48. Assessing the child's best interests is a unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability, as well as the social and cultural context in which the child or children find themselves, such as the presence or absence of parents, whether the child lives with them, quality of the relationships between the child and his or her family or caregivers, the environment in relation to safety, the existence of quality alternative means available to the family, extended family or caregivers, etc.

49. Determining what is in the best interests of the child should start with an assessment of the specific circumstances that make the child unique. This implies that some elements will be used and others will not, and also influences how they will be weighted against each other. For children in general, assessing best interests involves the same elements.

50. The Committee considers it useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests. The non-exhaustive nature of the elements in the list implies that it is possible to go beyond those and consider other factors relevant in the specific circumstances of the individual child or group of children. All the elements of the list must be taken into consideration and balanced in light of each situation. The list should provide concrete guidance, yet flexibility.

51. Drawing up such a list of elements would provide guidance for the State or decision-maker in regulating specific areas affecting children, such as family, adoption and juvenile justice laws, and if necessary, other elements deemed appropriate in accordance with its legal tradition may be added. The Committee would like to point out that, when adding elements to the list, the ultimate purpose of the child's best interests should be to ensure the full and effective enjoyment of the rights recognized in the Convention and the holistic development of the child. Consequently, elements that are contrary to the rights enshrined in the Convention or that would have an effect contrary to the rights under the Convention cannot be considered as valid in assessing what is best for a child or children.

1. Elements to be taken into account when assessing the child's best interests

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child's best interests, as relevant to the situation in question, are as follows:

(a) The child's views

53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests.

54. The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be

subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation[166] and support, where necessary, to ensure their full participation in the assessment of their best interests.

(b) The child's identity

55. Children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests.

56. Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).

57. Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention.

(c) Preservation of the family environment and maintaining relations

58. The Committee recalls that it is indispensable to carry out the assessment and determination of the child's best interests in the context of potential separation of a child from his or her parents (arts. 9, 18 and 20). It also underscores that the elements mentioned above are concrete rights and not only elements in the determination of the best interests of the child.

59. The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). The right of the child to family life is protected under the Convention (art. 16). The term "family" must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5).

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when […] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "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" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

62. The Guidelines for the Alternative Care of Children[167] aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family" (para. 15).

63. Likewise, a child may not be separated from his or her parents on the grounds of a disability of either the child or his or her parents.[168] Separation may be considered only in cases where the necessary assistance to the family to preserve the family unit is not effective enough to avoid a risk of neglect or abandonment of the child or a risk to the child's safety.

[166] See Convention on the Rights of Persons with Disabilities, art. 2: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure […] the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.
[167] General Assembly resolution 64/142, annex.
[168] Convention on the Rights of Persons with Disabilities, art. 23, para. 4.

64. In case of separation, the State must guarantee that the situation of the child and his or her family has been assessed, where possible, by a multidisciplinary team of well-trained professionals with appropriate judicial involvement, in conformity with article 9 of the Convention, ensuring that no other option can fulfil the child's best interests.

65. When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests. The quality of the relationships and the need to retain them must be taken into consideration in decisions on the frequency and length of visits and other contact when a child is placed outside the family.

66. When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification.

67. The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.

68. The Committee encourages the ratification and implementation of the conventions of the Hague Conference on Private International Law,[169] which facilitate the application of the child's best interests and provide guarantees for its implementation in the event that the parents live in different countries.

69. In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children.[170]

70. Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.

(d) Care, protection and safety of the child

71. When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms "protection and care" must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as "to protect the child from harm"), but rather in relation to the comprehensive ideal of ensuring the child's "well-being" and development. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.

72. Emotional care is a basic need of children; if parents or other primary caregivers do not fulfil the child's emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.

73. Assessment of the child's best interests must also include consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc.,[171] as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc.(arts. 32-39).

74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child's safety.

(e) Situation of vulnerability

75. An important element to consider is the child's situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.

[169] These include No. 28 on the Civil Aspects of International Child Abduction, 1980; No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993; No. 23 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973; No. 24 on the Law Applicable to Maintenance Obligations, 1973.
[170] See recommendations of the Day of general discussion on children of incarcerated parents (2011).
[171] General comment No. 13 (2011) on the right of the child to freedom from all forms of violence.

76. The best interests of a child in a specific situation of vulnerability will not be the same as those of all the children in the same vulnerable situation. Authorities and decision-makers need to take into account the different kinds and degrees of vulnerability of each child, as each child is unique and each situation must be assessed according to the child's uniqueness. An individualized assessment of each child's history from birth should be carried out, with regular reviews by a multidisciplinary team and recommended reasonable accommodation throughout the child's development process.

(f)The child's right to health

77. The child's right to health (art. 24) and his or her health condition are central in assessing the child's best interest. However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects, and the views of the child must also be given due weight based on his or her age and maturity. In this respect, children should be provided with adequate and appropriate information in order to understand the situation and all the relevant aspects in relation to their interests, and be allowed, when possible, to give their consent in an informed manner.[172]

78. For example, as regards adolescent health, the Committee[173] has stated that States parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make appropriate health behaviour choices. This should include information on use and abuse of tobacco, alcohol and other substances, diet, appropriate sexual and reproductive information, dangers of early pregnancy, prevention of HIV/AIDS and of sexually transmitted diseases. Adolescents with a psycho-social disorder have the right to be treated and cared for in the community in which he or she lives, to the extent possible. Where hospitalization or placement in a residential institution is necessary, the best interests of the child must be assessed prior to taking a decision and with respect for the child's views; the same considerations are valid for younger children. The health of the child and possibilities for treatment may also be part of a best-interests assessment and determination with regard to other types of significant decisions (e.g. granting a residence permit on humanitarian grounds).

(g) The child's right to education

79. It is in the best interests of the child to have access to quality education, including early childhood education, non-formal or informal education and related activities, free of charge. All decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education. In order to promote education, or better quality education, for more children, States parties need to have well-trained teachers and other professionals working in different education-related settings, as well as a child-friendly environment and appropriate teaching and learning methods, taking into consideration that education is not only an investment in the future, but also an opportunity for joyful activities, respect, participation and fulfilment of ambitions. Responding to this requirement and enhancing children's responsibilities to overcome the limitations of their vulnerability of any kind, will be in their best interests.

2. Balancing the elements in the best-interests assessment

80. It should be emphasized that the basic best-interests assessment is a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.

81. The elements in the best-interests assessment may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements will have to be weighted against each other in order to find the solution that is in the best interests of the child or children.

82. In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.

83. There might be situations where "protection" factors affecting a child (e.g. which may imply limitation or restriction of rights) need to be assessed in relation to measures of "empowerment" (which implies full exercise of rights without restriction). In such situations, the age and maturity of the child should guide the balancing of the elements. The physical, emotional, cognitive and social development of the child should be taken into account to assess the level of maturity of the child.

84. In the best-interests assessment, one has to consider that the capacities of the child will evolve. Decision-makers should therefore consider measures that can be revised or adjusted accordingly, instead of making definitive and irreversible decisions. To do this, they should not only assess the physical, emotional, educational and other needs at the specific moment of the decision, but should also consider the possible scenarios of the child's development, and analyse them in the short and long term. In this context, decisions should assess continuity and stability of the child's present and future situation.

[172] General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para. 31.
[173] General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

B. Procedural safeguards to guarantee the implementation of the child's best interests

85. To ensure the correct implementation of the child's right to have his or her best interests taken as a primary consideration, some child-friendly procedural safeguards must be put in place and followed. As such, the concept of the child's best interests is a rule of procedure (see para. 6 (b) above).

86. While public authorities and organizations making decisions that concern children must act in conformity with the obligation to assess and determine the child's best interests, people who make decisions concerning children on a daily basis (e.g. parents, guardians, teachers, etc.) are not expected to follow strictly this two-step procedure, even though decisions made in everyday life must also respect and reflect the child's best interests.

87. States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child's best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children.

88. The Committee invites States and all persons who are in a position to assess and determine the child's best interests to pay special attention to the following safeguards and guarantees:

(a) Right of the child to express his or her own views

89. A vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views.

90. Where the child wishes to express his or her views and where this right is fulfilled through a representative, the latter's obligation is to communicate accurately the views of the child. In situations where the child's views are in conflict with those of his or her representative, a procedure should be established to allow the child to approach an authority to establish a separate representation for the child (e.g. a guardian ad litem), if necessary.

91. The procedure for assessing and determining the best interests of children as a group is, to some extent, different from that regarding an individual child. When the interests of a large number of children are at stake, Government institutions must find ways to hear the views of a representative sample of children and give due consideration to their opinions when planning measures or making legislative decisions which directly or indirectly concern the group, in order to ensure that all categories of children are covered. There are many examples of how to do this, including children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, etc.

(b) Establishment of facts

92. Facts and information relevant to a particular case must be obtained by well-trained professionals in order to draw up all the elements necessary for the best-interests assessment. This could involve interviewing persons close to the child, other people who are in contact with the child on a daily basis, witnesses to certain incidents, among others. Information and data gathered must be verified and analysed prior to being used in the child's or children's best-interests assessment.

(c) Time perception

93. The passing of time is not perceived in the same way by children and adults. Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible. The timing of the decision should, as far as possible, correspond to the child's perception of how it can benefit him or her, and the decisions taken should be reviewed at reasonable intervals as the child develops and his or her capacity to express his or her views evolves. All decisions on care, treatment, placement and other measures concerning the child must be reviewed periodically in terms of his or her perception of time, and his or her evolving capacities and development (art. 25).

(d) Qualified professionals

94. Children are a diverse group, with each having his or her own characteristics and needs that can only be adequately assessed by professionals who have expertise in matters related to child and adolescent development. This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.

95. The assessment of the consequences of alternative solutions must be based on general knowledge (i.e. in the areas of law, sociology, education, social work, psychology, health, etc.) of the likely consequences of each possible solution for the child, given his or her individual characteristics and past experience.

(e) Legal representation

96. The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision.

(f)Legal reasoning

97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to be outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above).

(g) Mechanisms to review or revise decisions

98. States should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child's or children's best interests. There should always be the possibility to request a review or to appeal such a decision at the national level. Mechanisms should be made known to the child and be accessible by him or her directly or by his or her legal representative, if it is considered that the procedural safeguards had not been respected, the facts are wrong, the best-interests assessment had not been adequately carried out or that competing considerations had been given too much weight. The reviewing body must look into all these aspects.

(h) Child-rights impact assessment (CRIA)

99. As mentioned above, the adoption of all measures of implementation should also follow a procedure that ensures that the child's best interests are a primary consideration. The child-rights impact assessment (CRIA) can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights and should complement ongoing monitoring and evaluation of the impact of measures on children's rights.[174] CRIA needs to be built into Government processes at all levels and as early as possible in the development of policy and other general measures in order to ensure good governance for children's rights. Different methodologies and practices may be developed when undertaking CRIA. At a minimum, they must use the Convention and its Optional Protocols as a framework, in particular ensuring that the assessments are underpinned by the general principles and have special regard for the differentiated impact of the measure(s) under consideration on children. The impact assessment itself could be based on input from children, civil society and experts, as well as from relevant Government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be made publicly available.[175]

VI. DISSEMINATION

100.The Committee recommends that States widely disseminate the present general comment to parliaments, governments and the judiciary, nationally and locally. It should also be made known to children – including those in situations of exclusion –, all professionals working for and with children (including judges, lawyers, teachers, guardians, social workers, staff of public or private welfare institutions, health staff, teachers, etc.) and civil society at large. To do this, the general comment should be translated into relevant languages, child-friendly/appropriate versions should be made available, conferences, seminars, workshops and other events should be held to share best practices on how best to implement it. It should also be incorporated into the formal pre- and in-service training of all concerned professionals and technical staff.

101. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to apply and respect the child's best interests in all judicial and administrative decisions and other actions concerning the child as an individual, as well as at all stages of the adoption of implementation measures concerning children in general or as a specific group.

[174] General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, paras. 78-81.
[175] States may draw guidance from the Report of the Special Rapporteur on the right to food on Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5).

UNITED NATIONS

CRC

Convention on the Rights of the Child

Distr. GENERAL

CRC/C/GC/15

17 April 2013

Original: ENGLISH

Committee on the Rights of the Child
Sixty-second session
14 January – 1 February 2013

GENERAL COMMENT NO. 15 (2013)
THE RIGHT OF THE CHILD TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ART. 24)*

I. INTRODUCTION

1. The present general comment is based on the importance of approaching children's health from a child-rights perspective that all children have the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential. Throughout this general comment, "child" refers to an individual below the age of 18 years, in accordance with article 1 of the Convention on the Rights of the Child (hereinafter "the Convention''). Despite the remarkable achievements in fulfilling children's rights to health in recent years since the adoption of the Convention, significant challenges remain. The Committee on the Rights of the Child (hereinafter "the Committee") recognizes that most mortality, morbidity and disabilities among children could be prevented if there were political commitment and sufficient allocation of resources directed towards the application of available knowledge and technologies for prevention, treatment and care. The present general comment was prepared with the aim of providing guidance and support to States parties and other duty bearers to support them in respecting, protecting and fulfilling children's right to the enjoyment of the highest attainable standard of health (hereinafter "children's right to health").

2. The Committee interprets children's right to health as defined in article 24 as an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. A holistic approach to health places the realization of children's right to health within the broader framework of international human rights obligations.

3. The Committee addresses this general comment to a range of stakeholders working in the fields of children's rights and public health, including policymakers, programme implementers and activists, as well as parents and children themselves. It is explicitly generic in order to ensure its relevance to a wide range of children's health problems, health systems and the varied contexts that exist in different countries and regions. It focuses primarily on article 24, paragraphs 1 and 2, and also addresses article 24, paragraph 4.[176] Implementation of article 24 must take into account all human rights principles, especially the guiding principles of the Convention, and must be shaped by evidence-based public health standards and best practices.

4. In the Constitution of the World Health Organization, States have agreed to regard health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.[177] This positive understanding of health provides the public health foundation for the present general comment. Article 24 explicitly mentions primary health care, an approach to which was defined in the Declaration of Alma-Ata[178] and reinforced by the World Health Assembly.[179] This approach emphasizes the need to eliminate exclusion and reduce social disparities in health; organize health services around people's needs and expectations; integrate health into related sectors; pursue collaborative models of policy dialogue; and increase stakeholder participation, including the demand for and appropriate use of services.

---

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

[176] Article 24, paragraph 3, is not covered because a general comment on harmful practices is currently being developed.

[177] Preamble to the Constitution of the World Health Organization (WHO) as adopted by the International Health Conference, New York, 22 July 1946.

[178] Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, 6–12 September 1978.

[179] World Health Assembly, Primary health care including health systems strengthening, document A62/8.

5. Children's health is affected by a variety of factors, many of which have changed during the past 20 years and are likely to continue to evolve in the future. This includes the attention given to new health problems and changing health priorities, such as: HIV/AIDS, pandemic influenza, non-communicable diseases, importance of mental health care, care of the new born, and neonatal and adolescent mortality; increased understanding of the factors that contribute to death, disease and disability in children, including structural determinants, such as the global economic and financial situation, poverty, unemployment, migration and population displacements, war and civil unrest, discrimination and marginalization. There is also a growing understanding of the impact of climate change and rapid urbanization on children's health; the development of new technologies, such as vaccines and pharmaceuticals; a stronger evidence base for effective biomedical, behavioural and structural interventions, as well as some cultural practices that relate to child-rearing and have proved to have a positive impact on children.

6. Advances in information and communication technologies have created new opportunities and challenges to achieve children's right to health. Despite the additional resources and technologies that have now become available to the health sector, many countries still fail to provide universal access to basic children's health promotion, prevention and treatment services. A wide range of different duty bearers need to be involved if children's right to health is to be fully realized and the central role played by parents and other caregivers needs to be better recognized. Relevant stakeholders will need to be engaged, working at national, regional, district and community levels, including governmental and non-governmental partners, private sector and funding organizations. States have an obligation to ensure that all duty bearers have sufficient awareness, knowledge and capacity to fulfil their obligations and responsibilities, and that children's capacity is sufficiently developed to enable them to claim their right to health.

II. PRINCIPLES AND PREMISES FOR REALIZING CHILDREN'S RIGHT TO HEALTH

A.The indivisibility and interdependence of children's rights

7. The Convention recognizes the interdependence and equal importance of all rights (civil, political, economic, social and cultural) that enable all children to develop their mental and physical abilities, personalities and talents to the fullest extent possible. Not only is children's right to health important in and of itself, but also the realization of the right to health is indispensable for the enjoyment of all the other rights in the Convention. Moreover, achieving children's right to health is dependent on the realization of many other rights outlined in the Convention.

B. Right to non-discrimination

8. In order to fully realize the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability. A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including the child's, parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. These also include sexual orientation, gender identity and health status, for example HIV status and mental health.[180] Attention should also be given to any other forms of discrimination that might undermine children's health, and the implications of multiple forms of discrimination should also be addressed.

9. Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes, from female infanticide/foeticide to discriminatory infant and young child feeding practices, gender stereotyping and access to services. Attention should be given to the differing needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls. Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys.

10. All policies and programmes affecting children's health should be grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.

11. Children in disadvantaged situations and under-served areas should be a focus of efforts to fulfil children's right to health. States should identify factors at national and subnational levels that create vulnerabilities for children or that disadvantage certain groups of children. These factors should be addressed when developing laws, regulations, policies, programmes and services for children's health, and work towards ensuring equity.

C. The best interests of the child

12. Article 3, paragraph 1, of the Convention places an obligation on public and private social welfare institutions, courts of law, administrative authorities and legislative bodies to ensure that the best interests of the child are assessed and taken as a primary consideration in all actions affecting children. This principle must be observed in all health-related decisions concerning individual children or children as a group. Individual children's best interests should be based on their physical, emotional, social and educational needs, age, sex, relationship with parents and caregivers, and their family and social background, and after having heard their views according to article 12 of the Convention.

[180] General comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41* (A/59/41), annex X, para. 6.

13. The Committee urges States to place children's best interests at the centre of all decisions affecting their health and development, including the allocation of resources, and the development and implementation of policies and interventions that affect the underlying determinants of their health. For example, the best interests of the child should:
(a) Guide treatment options, superseding economic considerations where feasible;
(b) Aid the resolution of conflict of interest between parents and health workers; and
(c) Influence the development of policies to regulate actions that impede the physical and social environments in which children live, grow and develop.

14. The Committee underscores the importance of the best interests of the child as a basis for all decision-making with regard to providing, withholding or terminating treatment for all children. States should develop procedures and criteria to provide guidance to health workers for assessing the best interests of the child in the area of health, in addition to other formal, binding processes that are in place for determining the child's best interests. The Committee in its general comment No. 3[181] has underlined that adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The child's best interests should therefore guide the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

15. In its general comment No. 4, the Committee underlined the best interests of the child to have access to appropriate information on health issues.[182] Special attention must be given to certain categories of children, including children and adolescents with psychosocial disabilities. Where hospitalization or placement in an institution is being considered, this decision should be made in accordance with the principle of the best interests of the child, with the primary understanding that it is in the best interests of all children with disabilities to be cared for, as far as possible, in the community in a family setting and preferably within their own family with the necessary supports made available to the family and the child.

D. Right to life, survival and development and the determinants of children's health

16. Article 6 highlights the States parties' obligation to ensure the survival, growth and development of the child, including the physical, mental, moral, spiritual and social dimensions of their development. The many risks and protective factors that underlie the life, survival, growth and development of the child need to be systematically identified in order to design and implement evidence-informed interventions that address a wide range of determinants during the life course.

17. The Committee recognizes that a number of determinants need to be considered for the realization of children's right to health, including individual factors such as age, sex, educational attainment, socioeconomic status and domicile; determinants at work in the immediate environment of families, peers, teachers and service providers, notably the violence that threatens the life and survival of children as part of their immediate environment; and structural determinants, including policies, administrative structures and systems, social and cultural values and norms.[183]

18. Among the key determinants of children's health, nutrition and development are the realization of the mother's right to health[184] and the role of parents and other caregivers. A significant number of infant deaths occur during the neonatal period, related to the poor health of the mother prior to, and during, the pregnancy and the immediate post-partum period, and to suboptimal breastfeeding practices. The health and health-related behaviours of parents and other significant adults have a major impact on children's health.

E. Right of the child to be heard

19. Article 12 highlights the importance of children's participation, providing for children to express their views and to have such views seriously taken into account, according to age and maturity.[185] This includes their views on all aspects of health provisions, including, for example, what services are needed, how and where they are best provided, barriers to accessing or using services, the quality of the services and the attitudes of health professionals, how to strengthen children's capacities to take increasing levels of responsibility for their own health and development, and how to involve them more effectively in the provision of services, as peer educators. States are encouraged to conduct regular participatory consultations, which are adapted to the age and maturity of the child, and research with children, and to do this separately with their parents, in order to learn about their health challenges, developmental needs and expectations as a contribution to the design of effective interventions and health programmes.

F. Evolving capacities and the life course of the child

20. Childhood is a period of continuous growth from birth to infancy, through the preschool age to adolescence. Each phase is significant as important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. The stages of the child's development are cumulative and each stage has an impact on subsequent phases,

[181] General comment No. 3 (2003) on HIV/AIDS and the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41* (A/59/41), annex IX.
[182] General comment No. 4 (2003) on adolescent health and development in the context of the Convention, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41* (A/59/41), annex X, para. 10.
[183] See general comment No. 13 (2011) on the right of the child to be free from all forms of violence, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41* (A/67/41), annex V.
[184] See Committee on the Elimination of Discrimination against Women, general recommendation No. 24 (1999) on women and health, *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38* (A/54/38/Rev.1), chap. I, sect. A.
[185] See general comment No. 12 (2009) on the right of the child to be heard, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41* (A/65/41), annex IV.

influencing the children's health, potential, risks and opportunities. Understanding the life course is essential in order to appreciate how health problems in childhood affect public health in general.

21. The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.

22. To respond and understand children's evolving capacities and the different health priorities along the life cycle, data and information that are collected and analysed should be disaggregated by age, sex, disability, socioeconomic status and sociocultural aspects and geographic location, in accordance with international standards. This makes it possible to plan, develop, implement and monitor appropriate policies and interventions that take into consideration the changing capacities and needs of children over time, and that help to provide relevant health services for all children.

III. NORMATIVE CONTENT OF ARTICLE 24

A. Article 24, paragraph 1

"States parties recognize the right of the child to the enjoyment of the highest attainable standard of health"

23. The notion of "the highest attainable standard of health" takes into account both the child's biological, social, cultural and economic preconditions and the State's available resources, supplemented by resources made available by other sources, including non-governmental organizations, the international community and the private sector.

24. Children's right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one's health and body, including sexual and reproductive freedom to make responsible choices. The entitlements include access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health.

"and to facilities for the treatment of illness and rehabilitation of health"

25. Children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. At the primary level, these services must be available in sufficient quantity and quality, functional, within the physical and financial reach of all sections of the child population, and acceptable to all. The health-care system should not only provide health-care support but also report the information to relevant authorities for cases of rights violations and injustice. Secondary and tertiary level care should also be made available, to the extent possible, with functional referral systems linking communities and families at all levels of the health system.

26. Comprehensive primary health-care programmes should be delivered alongside proven community-based efforts, including preventive care, treatment of specific diseases and nutritional interventions. Interventions at the community level should include the provision of information, services and commodities as well as prevention of illness and injury through, e.g., investment in safe public spaces, road safety and education on injury, accident and violence prevention.

27. States should ensure an appropriately trained workforce of sufficient size to support health services for all children. Adequate regulation, supervision, remuneration and conditions of service are also required, including for community health workers. Capacity development activities should ensure that service providers work in a child-sensitive manner and do not deny children any services to which they are entitled by law. Accountability mechanisms should be incorporated to ensure that quality assurance standards are maintained.

"States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services"

28. Article 24, paragraph 1, imposes a strong duty of action by States parties to ensure that health and other relevant services are available and accessible to all children, with special attention to under-served areas and populations. It requires a comprehensive primary health-care system, an adequate legal framework and sustained attention to the underlying determinants of children's health.

29. Barriers to children's access to health services, including financial, institutional and cultural barriers, should be identified and eliminated. Universal free birth registration is a prerequisite and social protection interventions, including social security such as child grants or subsidies, cash transfers and paid parental leave, should be implemented and seen as complementary investments.

30. Health-seeking behaviour is shaped by the environment in which it takes place, including, inter alia, the availability of services, levels of health knowledge, life skills and values. States should seek to ensure an enabling environment to encourage appropriate health-seeking behaviour by parents and children.

31. In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child's best interests. States should clarify the legislative procedures for the designation of appropriate caregivers for children without parents or legal guardians, who

can consent on the child's behalf or assist the child in consenting, depending on the child's age and maturity. States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.

B. Article 24, paragraph 2

32. In accordance with article 24, paragraph 2, States should put in place a process for identifying and addressing other issues relevant to children's right to health. This requires, inter alia, an in-depth analysis of the current situation in terms of priority health problems and responses, and the identification and implementation of evidence-informed interventions and policies that respond to key determinants and health problems, in consultation with children when appropriate.

Article 24, paragraph 2 (a). "To diminish infant and child mortality"

33. States have an obligation to reduce child mortality. The Committee urges particular attention to neonatal mortality, which constitutes an increasing proportion of under-5 mortality. Additionally, States parties should also address adolescent morbidity and mortality, which is generally under-prioritized.

34. Interventions should include attention to still births, pre-term birth complications, birth asphyxia, low birth weight, mother-to-child transmission of HIV and other sexually transmitted infections, neonatal infections, pneumonia, diarrhoea, measles, under- and malnutrition, malaria, accidents, violence, suicide and adolescent maternal morbidity and mortality. Strengthening health systems to provide such interventions to all children in the context of the continuum of care for reproductive, maternal, newborn and children's health, including screening for birth defects, safe delivery services and care for the newborn are recommended. Maternal and perinatal mortality audits should be conducted regularly for the purposes of prevention and accountability.

35. States should put particular emphasis on scaling up simple, safe and inexpensive interventions that have proven to be effective, such as community-based treatments for pneumonia, diarrhoeal disease and malaria, and pay particular attention to ensuring full protection and promotion of breastfeeding practices.

Article 24, paragraph 2 (b). "To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care"

36. States should prioritize universal access for children to primary health-care services provided as close as possible to where children and their families live, particularly in community settings. While the exact configuration and content of services will vary from country to country, in all cases effective health systems will be required, including: a robust financing mechanism; a well-trained and adequately paid workforce; reliable information on which to base decisions and policies; well-maintained facilities and logistics systems to deliver quality medicines and technologies; and strong leadership and governance. Health-service provision within schools provides an important opportunity for health promotion, to screen for illness, and increases the accessibility of health services for in-school children.

37. Recommended packages of services should be used, for example the Essential Interventions, Commodities and Guidelines for Reproductive, Maternal, Newborn and Child Health.[186] States have an obligation to make all essential medicines on the World Health Organization Model Lists of Essential Medicines, including the list for children (in paediatric formulations where possible) available, accessible and affordable.

38. The Committee is concerned by the increase in mental ill-health among adolescents, including developmental and behavioural disorders; depression; eating disorders; anxiety; psychological trauma resulting from abuse, neglect, violence or exploitation; alcohol, tobacco and drug use; obsessive behaviour, such as excessive use of and addiction to the Internet and other technologies; and self-harm and suicide. There is growing recognition of the need for increased attention for behavioural and social issues that undermine children's mental health, psychosocial wellbeing and emotional development. The Committee cautions against over-medicalization and institutionalization, and urges States to undertake an approach based on public health and psychosocial support to address mental ill-health among children and adolescents and to invest in primary care approaches that facilitate the early detection and treatment of children's psychosocial, emotional and mental problems.

39. States have the obligation to provide adequate treatment and rehabilitation for children with mental health and psychosocial disorders while abstaining from unnecessary medication. The 2012 resolution of the World Health Assembly on the global burden of mental health disorders and the need for a comprehensive coordinated response from health and social sectors at the country level[187] notes that there is increasing evidence of the effectiveness and cost-effectiveness of interventions to promote mental health and prevent mental disorders, particularly in children. The Committee strongly encourages States to scale up these interventions by mainstreaming them through a range of sectoral policies and programmes, including health, education and protection (criminal justice), with the involvement of families and communities. Children at risk because of their family and social environments require special attention in order to enhance their coping and life skills and promote protective and supportive environments.

[186] The Partnership for Maternal, Newborn and Child Health, *A Global Review of the Key Interventions Related to Reproductive, Maternal, Newborn and Child Health* (Geneva, 2011).
[187] Resolution WHA65.4, adopted at the Sixty-fifth World Health Assembly on 25 May 2012.

40. There is a need to recognize the particular challenges to children's health for children affected by humanitarian emergencies, including those resulting in large-scale displacements due to natural or man-made disasters. All possible measures should be taken to ensure that children have uninterrupted access to health services, to (re)unite them with their families and to protect them not only with physical support, such as food and clean water, but also to encourage special parental or other psychosocial care to prevent or address fear and traumas.

Article 24, paragraph 2 (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"

(a) The application of readily available technology

41. As new, proven technologies in children's health, including drugs, equipment and interventions, become available, States should introduce them into policies and services. Mobile arrangements and community-based efforts can substantially reduce some risks and should be made universally available and these include: immunization against the common childhood diseases; growth and developmental monitoring, especially in early childhood; vaccination against human papillomavirus for girls; tetanus toxoid injections for pregnant women; access to oral rehydration therapy and zinc supplementation for diarrhoea treatment; essential antibiotics and antiviral drugs; micronutrient supplements, such as vitamins A and D, iodized salt and iron supplements; and condoms. Health workers should advise parents how they can access and administer these simple technologies as required.

42. The private sector, which includes business enterprises and not-for-profit organizations that impact on health, is taking an increasingly important role in the development and refinement of technology, drugs, equipment, interventions and processes that can contribute to significant advances in children's health. States should ensure that benefits reach all children who need them. States can also encourage public-private partnerships and sustainability initiatives that can increase access and affordability of health technology.

(b) The provision of adequate nutritious foods

43. Measures for fulfilling States' obligations to ensure access to nutritionally adequate, culturally appropriate and safe food[188] and to combat malnutrition will need to be adopted according to the specific context. Effective direct nutrition interventions for pregnant women include addressing anaemia and folic acid and iodine deficiency and providing calcium supplementation. Prevention and management of pre-eclampsia and eclampsia, should be ensured for all women of reproductive age to benefit their health and ensure healthy foetal and infant development.

44. Exclusive breastfeeding for infants up to 6 months of age should be protected and promoted and breastfeeding should continue alongside appropriate complementary foods preferably until two years of age, where feasible. States' obligations in this area are defined in the "protect, promote and support" framework, adopted unanimously by the World Health Assembly.[189] States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children's right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework Convention on Tobacco Control. Special measures should be taken to promote community and workplace support for mothers in relation to pregnancy and breastfeeding and feasible and affordable childcare services; and compliance with the International Labour Organization Convention No. 183 (2000) concerning the revision of the Maternity Protection Convention (Revised), 1952.

45. Adequate nutrition and growth monitoring in early childhood are particularly important. Where necessary, integrated management of severe acute malnutrition should be expanded through facility and community-based interventions, as well as treatment of moderate acute malnutrition, including therapeutic feeding interventions.

46. School feeding is desirable to ensure all pupils have access to a full meal every day, which can also enhance children's attention for learning and increase school enrolment. The Committee recommends that this be combined with nutrition and health education, including setting up school gardens and training teachers to improve children's nutrition and healthy eating habits.

47. States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children's exposure to "fast foods" that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.

(c) The provision of clean drinking water

48. Safe and clean drinking water and sanitation are essential for the full enjoyment of life and all other human rights.[190] Government departments and local authorities responsible for water and sanitation should recognize their obligation to help realize children's right to health, and actively consider child indicators on malnutrition, diarrhoea and other water-related diseases and household size when

[188] See International Covenant on Economic, Social and Cultural Rights, art. 11, and Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food, *Official Records of the Economic and Social Council, 2011, Supplement No. 2* (E/2000/22), annex V.
[189] See WHO and United Nations Children's Fund (UNICEF), *Global Strategy for Infant and Young Child Feeding* (Geneva, 2003).
[190] General Assembly resolution 64/292 on the human right to water and sanitation.

planning and carrying out infrastructure expansion and the maintenance of water services, and when making decisions on amounts for free minimum allocation and service disconnections. States are not exempted from their obligations, even when they have privatized water and sanitation.

(d) Environmental pollution

49. States should take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings. Adequate housing that includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene are core requirements to a healthy upbringing and development. States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.

50. The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children's health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies.

Article 24, paragraph 2 (d). "To ensure appropriate pre-natal and post-natal health care for mothers"

51. The Committee notes that preventable maternal mortality and morbidity constitute grave violations of the human rights of women and girls and pose serious threats to their own and their children's right to health. Pregnancy and child birth are natural processes, with known health risks that are susceptible to both prevention and therapeutic responses, if identified early. Risk situations can occur during pregnancy, delivery and the ante- and postnatal periods and have both short- and long-term impact on the health and well-being of both mother and child.

52. The Committee encourages States to adopt child-sensitive health approaches throughout different periods of childhood such as (a) the baby-friendly hospital initiative[191] which protects, promotes and supports rooming-in and breastfeeding; (b) child-friendly health policies focused on training health workers to provide quality services in a way that minimizes the fear, anxiety and suffering of children and their families; and (c) adolescent-friendly health services which require health practitioners and facilities to be welcoming and sensitive to adolescents, to respect confidentiality and to deliver services that are acceptable to adolescents.

53. The care that women receive before, during and after their pregnancy has profound implications for the health and development of their children. Fulfilling the obligation to ensure universal access to a comprehensive package of sexual and reproductive health interventions should be based on the concept of a continuum of care from pre-pregnancy, through pregnancy, childbirth and throughout the post-partum period. Timely and good-quality care throughout these periods provides important opportunities to prevent the intergenerational transmission of ill-health and has a high impact on the health of the child throughout the life course.

54. The interventions that should be made available across this continuum include, but are not limited to: essential health prevention and promotion, and curative care, including the prevention of neonatal tetanus, malaria in pregnancy and congenital syphilis; nutritional care; access to sexual and reproductive health education, information and services; health behaviour education (e.g. relating to smoking and substance use); birth preparedness; early recognition and management of complications; safe abortion services and post-abortion care; essential care at childbirth; and prevention of mother-to-child HIV transmission, and care and treatment of HIV-infected women and infants. Maternal and newborn care following delivery should ensure no unnecessary separation of the mother from her child.

55. The Committee recommends that social protection interventions include ensuring universal coverage or financial access to care, paid parental leave and other social security benefits, and legislation to restrict the inappropriate marketing and promotion of breast-milk substitutes.

56. Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured.

57. Taking into account that boys and men are crucial to planning and ensuring healthy pregnancies and deliveries, States should integrate education, awareness and dialogue opportunities for boys and men into their policies and plans for sexual, reproductive and children's health services.

[191] UNICEF/WHO, Baby-Friendly Hospital Initiative (1991).

Article 24, paragraph 2 (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 children's health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents"

58. The obligations under this provision include providing health-related information and support in the use of this information. Health-related information should be physically accessible, understandable and appropriate to children's age and educational level.

59. Children require information and education on all aspects of health to enable them to make informed choices in relation to their lifestyle and access to health services. Information and life skills education should address a broad range of health issues, including: healthy eating and the promotion of physical activity, sports and recreation; accident and injury prevention; sanitation, hand washing and other personal hygiene practices; and the dangers of alcohol, tobacco and psychoactive substance use. Information and education should encompass appropriate information about children's right to health, the obligations of Governments, and how and where to access health information and services, and should be provided as a core part of the school curriculum, as well as through health services and in other settings for children who are not in school. Materials providing information about health should be designed in collaboration with children and disseminated in a wide range of public settings.

60. Sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys. It should include content related to sexual health and well-being, such as information about body changes and maturation processes, and designed in a manner through which children are able to gain knowledge regarding reproductive health and the prevention of gender-based violence, and adopt responsible sexual behaviour.

61. Information about children's health should be provided to all parents individually or in groups, the extended family and other caregivers through different methods, including health clinics, parenting classes, public information leaflets, professional bodies, community organizations and the media.

Article 24, paragraph 2 (f). "To develop preventive health care, guidance for parents and family planning education and services"

(a) Preventive health care

62. Prevention and health promotion should address the main health challenges facing children within the community and the country as a whole. These challenges include diseases and other health challenges, such as accidents, violence, substance abuse and psychosocial and mental health problems. Preventive health care should address communicable and non-communicable diseases and incorporate a combination of biomedical, behavioural and structural interventions. Preventing non-communicable diseases should start early in life through the promotion and support of healthy and non-violent lifestyles for pregnant women, their spouses/partners and young children.

63. Reducing the burden of child injuries requires strategies and measures to reduce the incidence of drowning, burns and other accidents. Such strategies and measures should include legislation and enforcement; product and environmental modification; supportive home visits and promotion of safety features; education, skills development and behaviour change; community-based projects; and pre-hospital and acute care, as well as rehabilitation. Efforts to reduce road traffic accidents should include legislating for the use of seatbelts and other safety devices, ensuring access to safe transport for children and according them due consideration in road planning and traffic control. The support of the related industry and the media is essential in this respect.

64. Recognizing violence as a significant cause of mortality and morbidity in children, particularly adolescents, the Committee emphasizes the need to create an environment that protects children from violence and encourages their participation in attitudinal and behavioural changes at home, in schools and in public spaces; to support parents and caregivers in healthy child-rearing; and to challenge attitudes which perpetuate the tolerance and condoning of violence in all forms, including by regulating the depiction of violence by mass media.

65. States should protect children from solvents, alcohol, tobacco and illicit substances, increase the collection of relevant evidence and take appropriate measures to reduce the use of such substances among children. Regulation of the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children are recommended.

66. The Committee encourages States parties that have not yet done so to ratify the international drug control conventions[192] and the World Health Organization Framework Convention on Tobacco Control. The Committee underscores the importance of adopting a rights-based approach to substance use and recommends that, where appropriate, harm reduction strategies should be employed to minimize the negative health impacts of substance abuse.

[192] Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

(b) Guidance for parents

67. Parents are the most important source of early diagnosis and primary care for small children, and the most important protective factor against high-risk behaviours in adolescents, such as substance use and unsafe sex. Parents also play a central role in promoting healthy child development, protecting children from harm due to accidents, injuries and violence and mitigating the negative effects of risk behaviours. Children's socialization processes, which are crucial for understanding and adjusting to the world in which they grow up, are strongly influenced by their parents, extended family and other caregivers. States should adopt evidence-based interventions to support good parenting, including parenting skills education, support groups and family counselling, in particular for families experiencing children's health and other social challenges.

68. In the light of the impact of corporal punishment on children's health, including fatal and non-fatal injury and the psychological and emotional consequences, the Committee reminds States of their obligation to take all appropriate legislative, administrative, social and educational measures to eliminate corporal punishment and other cruel or degrading forms of punishment in all settings, including the home.[193]

(c) Family planning

69. Family planning services should be situated within comprehensive sexual and reproductive health services and should encompass sexuality education, including counselling. They can be considered part of the continuum of services described in article 24, paragraph 2 (d), and should be designed to enable all couples and individuals to make sexual and reproductive decisions freely and responsibly, including the number, spacing and timing of their children, and to give them the information and means to do so. Attention should be given to ensuring confidential, universal access to goods and services for both married and unmarried female and male adolescents. States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections.

70. Short-term contraceptive methods such as condoms, hormonal methods and emergency contraception should be made easily and readily available to sexually active adolescents. Long-term and permanent contraceptive methods should also be provided. The Committee recommends that States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal.

IV. OBLIGATIONS AND RESPONSIBILITIES

A. State parties' obligations to respect, protect and fulfil

71. States have three types of obligations relating to human rights, including children's right to health: to respect freedoms and entitlements, to protect both freedoms and entitlements from third parties or from social or environmental threats, and to fulfil the entitlements through facilitation or direct provision. In accordance with article 4 of the Convention, States parties shall fulfil the entitlements contained in children's right to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

72. All States, regardless of their level of development, are required to take immediate action to implement these obligations as a matter of priority and without discrimination of any kind. Where the available resources are demonstrably inadequate, States are still required to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of children's right to health. Irrespective of resources, States have the obligation not to take any retrogressive steps that could hamper the enjoyment of children's right to health.

73. The core obligations, under children's right to health, include:

(a) Reviewing the national and subnational legal and policy environment and, where necessary, amending laws and policies;

(b) Ensuring universal coverage of quality primary health services, including prevention, health promotion, care and treatment services, and essential drugs;

(c) Providing an adequate response to the underlying determinants of children's health; and

(d) Developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitute a human rights-based approach to fulfilling children's right to health.

74. States should demonstrate their commitment to progressive fulfilment of all obligations under article 24, prioritizing this even in the context of political or economic crisis or emergency situations. This requires that children's health and related policies, programmes and services be planned, designed, financed and implemented in a sustainable manner.

[193] General comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41* (A/63/41), annex II.

B. Responsibilities of non-State actors

75. The State is responsible for realizing children's right to health regardless of whether or not it delegates the provision of services to non-State actors. In addition to the State, a wide range of non-State actors who provide information and services related to children's health and its underlying determinants have specific responsibilities and impact in this regard.

76. States' obligations include a duty to promote awareness of non-State actors' responsibilities and to ensure that all non-State actors recognize, respect and fulfil their responsibilities to the child, applying due diligence procedures where necessary.

77. The Committee calls on all non-State actors engaged in health promotion and services, especially the private sector, including the pharmaceutical and health-technology industry as well as the mass media and health service providers, to act in compliance with the provisions of the Convention and to ensure compliance by any partners who deliver services on their behalf. Such partners include international organizations, banks, regional financial institutions, global partnerships, the private sector (private foundations and funds), donors and any other entities providing services or financial support to children's health, particularly in humanitarian emergencies or politically unstable situations.

1. Responsibilities of parents and other caregivers

78. The responsibilities of parents and other caregivers are expressly referred to in several provisions of the Convention. Parents should fulfil their responsibilities while always acting in the best interests of the child, if necessary with the support of the State. Taking the child's evolving capacity into account, parents and caregivers should nurture, protect and support children to grow and develop in a healthy manner. Although not explicit in article 24, paragraph 2 (f), the Committee understands any reference to parents to also include other caregivers.

2. Non-State service providers and other non-State actors

(a) Non-State service providers

79. All health service providers, including non-State actors, must incorporate and apply to the design, implementation and evaluation of their programmes and services all relevant provisions of the Convention, as well as the criteria of availability, accessibility, acceptability and quality, as described in chapter VI, section E, of the present general comment.

(b) Private sector

80. All business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the Convention. States should require businesses to undertake children's rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their negative impact on children's right to health including across their business relationships and within any global operations. Large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address their impact on children's rights.

81. Among other responsibilities and in all contexts, private companies should: refrain from engaging children in hazardous labour while ensuring they comply with the minimum age for child labour; comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions; limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and refrain from the advertisement, marketing and sale to children of tobacco, alcohol and other toxic substances or the use of child images.

82. The Committee acknowledges the profound impact of the pharmaceutical sector on the health of children and calls on pharmaceutical companies to adopt measures towards enhancing access to medicines for children, paying particular attention to the Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines.[194] At the same time, States should ensure that pharmaceutical companies monitor the use, and refrain from promoting excessive prescription and use of, drugs and medicines on children. Intellectual property rights should not be applied in ways that cause necessary medicines or goods to be unaffordable for the poor.

83. Private health insurance companies should ensure that they do not discriminate against pregnant women, children or mothers on any prohibited grounds and that they promote equality through partnerships with State health insurance schemes based on the principle of solidarity and ensuring that inability to pay does not restrict access to services.

(c) Mass and social media

84. Article 17 of the Convention delineates the responsibilities of mass media organizations. In the context of health, these can be further expanded to include promoting health and healthy lifestyles among children; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to child and general health; and not perpetuating health-related stigma.

[194] See also Human Rights Council resolution 15/22 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(d) Researchers

85. The Committee underscores the responsibility of entities, including academics, private companies and others, undertaking research involving children to respect the principles and provisions of the Convention and the International Ethical Guidelines for Biomedical Research Involving Human Subjects.[195] The Committee reminds researchers that the best interests of the child shall always prevail over the interest of general society or scientific advancement.

V. INTERNATIONAL COOPERATION

86. States parties to the Convention have obligations not only to implement children's right to health within their own jurisdiction, but also to contribute to global implementation through international cooperation. Article 24, paragraph 4, requires States and inter-State agencies to pay particular attention to the children's health priorities among the poorest parts of the population and in developing States.

87. The Convention should guide all international activities and programmes of donor and recipient States related directly or indirectly to children's health. It requires partner States to identify the major health problems affecting children, pregnant women and mothers in recipient countries and to address them in accordance with the priorities and principles established by article 24. International cooperation should support State-led health systems and national health plans.

88. States have individual and joint responsibility, including through United Nations mechanisms, to cooperate in providing disaster relief and humanitarian assistance in times of emergency. In these cases, States should consider prioritizing efforts to realize children's right to health, including through appropriate international medical aid; distribution and management of resources, such as safe and potable water, food and medical supplies; and financial aid to the most vulnerable or marginalized children.

89. The Committee reminds States to meet the United Nations target of allocating 0.7 per cent of gross national income to international development assistance, as financial resources have important implications for the realization of children's right to health in resource-limited States. In order to ensure the highest impact, States and inter-State agencies are encouraged to apply the Paris Principles on Aid Effectiveness and the principles of the Accra Agenda for Action.

VI.FRAMEWORK FOR IMPLEMENTATION AND ACCOUNTABILITY

90. Accountability is at the core of the enjoyment of children's right to health. The Committee reminds the State party of their obligations to ensure that relevant government authorities and service providers are held accountable for maintaining the highest possible standards of children's health and health care until they reach 18 years of age.

91. States should provide an environment that facilitates the discharge of all duty bearers' obligations and responsibilities with respect to children's right to health and a regulatory framework within which all actors should operate and can be monitored, including by mobilizing political and financial support for children's health-related issues and building the capacity of duty bearers to fulfil their obligations and children to claim their right to health.

92. With the active engagement of the Government, parliament, communities, civil society and children, national accountability mechanisms must be effective and transparent and aim to hold all actors responsible for their actions. They should, inter alia, devote attention to the structural factors affecting children's health including laws, policies and budgets. Participatory tracking of financial resources and their impact on children's health is essential for State accountability mechanisms.

A. Promoting knowledge of children's right to health (art. 42)

93. The Committee encourages States to adopt and implement a comprehensive strategy to educate children, their caregivers, policymakers, politicians and professionals working with children about children's right to health, and the contributions they can make to its realization.

B. Legislative measures

94. The Convention requires States parties to adopt all appropriate legislative, administrative and other measures for the implementation of children's right to health without discrimination. National laws should place a statutory obligation on the State to provide the services, programmes, human resources and infrastructure needed to realize children's right to health and provide a statutory entitlement to essential, child sensitive, quality health and related services for pregnant women and children irrespective of their ability to pay. Laws should be reviewed to assess any potential discriminatory effect or impediment to realizing children's right to health and repealed where required. Where necessary, international agencies and donors should provide development aid and technical assistance for such legal reforms.

95. Legislation should fulfil a number of additional functions in the realization of children's right to health by defining the scope of the right and recognizing children as rights-holders; clarifying the roles and responsibilities of all duty bearers; clarifying what services children, pregnant women and mothers are entitled to claim; and regulating services and medications to ensure that they are of good

[195] Council for International Organizations of Medical Sciences/WHO, Geneva, 1993.

quality and cause no harm. States must ensure that adequate legislative and other safeguards exist to protect and promote the work of human rights defenders working on children's right to health.

C. Governance and coordination

96. States are encouraged to ratify and implement international and regional human rights instruments relevant to children's health and to report on all aspects of children's health accordingly.

97. Sustainability in children's health policy and practice requires a long-term national plan that is supported and entrenched as a national priority. The Committee recommends that States establish and make use of a comprehensive and cohesive national coordinating framework on children's health, built upon the principles of the Convention, to facilitate cooperation between government ministries and different levels of government as well as interaction with civil society stakeholders, including children. Given the high number of government agencies, legislative branches and ministries working on children's health-related policies and services at different levels, the Committee recommends that the roles and responsibilities of each be clarified in the legal and regulatory framework.

98. Particular attention must be given to identifying and prioritizing marginalized and disadvantaged groups of children, as well as children who are at risk of any form of violence and discrimination. All activities should be fully costed, financed and made visible within the national budget.

99. A "child health in all policies" strategy should be used, highlighting the links between children's health and its underlying determinants. Every effort should be made to remove bottlenecks that obstruct transparency, coordination, partnership and accountability in the provision of services affecting children's health.

100. While decentralization is required to meet the particular needs of localities and sectors, this does not reduce the direct responsibility of the central or national Government to fulfil its obligations to all children within its jurisdiction. Decisions about allocations to the various levels of services and geographical areas should reflect the core elements of the approach to primary health care.

101. States should engage all sectors of society, including children, in implementation of children's right to health. The Committee recommends that such engagement include: the creation of conditions conducive to the continual growth, development and sustainability of civil society organizations, including grass-roots and community-level groups; active facilitation of their involvement in the development, implementation and evaluation of children's health policy and services; and provision of appropriate financial support or assistance in obtaining financial support.

1. The role of parliaments in national accountability

102. In children's health-related issues, parliaments have the responsibility to legislate, ensuring transparency and inclusiveness, and encourage continued public debate and a culture of accountability. They should create a public platform for reporting and debating performance and promoting public participation in independent review mechanisms. They should also hold the executive accountable for implementing the recommendations emerging from independent reviews and ensure that the results of the reviews inform subsequent national plans, laws, policies, budgets and further accountability measures.

2. The role of national human rights institutions in national accountability

103. National human rights institutions have an important role to play in reviewing and promoting accountability, providing children with relief for violations of their right to health and advocating systemic change for the realization of that right. The Committee recalls its general comment No. 2, and reminds States that the mandate of children's commissioners or children's ombudsmen should include ensuring the right to health, and the mandate holders should be well-resourced and independent from the Government.[196]

D. Investing in children's health

104. In their decisions about budget allocation and spending, States should strive to ensure availability, accessibility, acceptability and quality of essential children's health services for all, without discrimination.

105. States should continually assess the impact of macroeconomic policy decisions on children's right to health, particularly children in vulnerable situations, prevent any decisions that may compromise children's rights, and apply the "best interests" principle when making such decisions. States should also consider obligations under article 24 in all aspects of their negotiations with international financial institutions and other donors, to ensure that children's right to health is given adequate consideration in international cooperation.

106. The Committee recommends that States parties:

(a) Legislate for a specific proportion of public expenditure to be allocated to children's health and create an accompanying mechanism that allows for systematic independent evaluation of this expenditure;

[196] See general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41* (A/59/41), annex VIII.

(b) Meet World Health Organization-recommended minimum health expenditure per capita and prioritize children's health in budgetary allocations;

(c) Make investment in children visible in the State budget through detailed compilation of resources allocated to them and expended; and

(d) Implement rights-based budget monitoring and analysis, as well as child impact assessments on how investments, particularly in the health sector, may serve the best interests of the child.

107. The Committee underlines the importance of assessment tools in the use of resources and recognizes the need to develop measurable indicators to assist States parties in monitoring and evaluating progress in the implementation of children's right to health.

E. The action cycle

108. States parties' fulfilment of their obligations under article 24 requires engagement in a cyclical process of planning, implementation, monitoring and evaluation to then inform further planning, modified implementation and renewed monitoring and evaluation efforts. States should ensure the meaningful participation of children and incorporate feedback mechanisms to facilitate necessary adjustments throughout the cycle.

109. At the heart of the development, implementation and monitoring of policies, programmes and services that aim to realize children's right to health is the availability of relevant and reliable data. This should include: appropriately disaggregated data across the life course of the child, with due attention to vulnerable groups; data on priority health problems, including new and neglected causes of mortality and morbidity; and data on the key determinants of children's health. Strategic information requires data collected through routine health information systems, special surveys and research, and should include both quantitative and qualitative data. These data should be collected, analysed, disseminated and used to inform national and subnational policies and programmes.

1. Planning

110. The Committee notes that, in order to inform the implementation, monitoring and evaluation of activities to fulfil obligations under article 24, States should carry out situation analyses of existing problems, issues and infrastructure for delivery of services. The analysis should assess the institutional capacity and the availability of human, financial, and technical resources. Based on the outcome of the analysis, a strategy should be developed involving all stakeholders, both State and non-State actors and children.

111. The situation analysis will provide a clear idea of national and subnational priorities and strategies for their achievement. Benchmarks and targets, budgeted action plans and operational strategies should be established along with a framework for monitoring and evaluating policies, programmes and services and promoting accountability for children's health. This will highlight how to build and strengthen existing structures and systems to be consonant with the Convention.

2. Criteria for performance and implementation

112. States should ensure that all children's health services and programmes comply with the criteria of availability, accessibility, acceptability and quality.

(a) Availability

113. States should ensure that there are functioning children's health facilities, goods, services and programmes in sufficient quantity. States need to ensure that they have sufficient hospitals, clinics, health practitioners, mobile teams and facilities, community health workers, equipment and essential drugs to provide health care to all children, pregnant women and mothers within the State. Sufficiency should be measured according to need with particular attention given to under-served and hard to reach populations.

(b) Accessibility

114. The element of accessibility has four dimensions:

(a) *Non-discrimination*: Health and related services as well as equipment and supplies must be accessible to all children, pregnant women and mothers, in law and in practice, without discrimination of any kind;

(b) *Physical accessibility*: Health facilities must be within accessible distance for all children, pregnant women and mothers. Physical accessibility may require additional attention to the needs of children and women with disabilities. The Committee encourages States to prioritize the establishment of facilities and services in under-served areas and to invest in mobile outreach approaches, innovative technologies, and well-trained and supported community health workers, as ways of reaching especially vulnerable groups of children;

(c) *Economic accessibility/affordability*: Lack of ability to pay for services, supplies or medicines should not result in the denial of access. The Committee calls on States to abolish user fees and implement health-financing systems that do not discriminate against women and children on the basis of their inability to pay. Risk-pooling mechanisms such as tax and insurance should be implemented on the basis of equitable, means-based contributions;

(d) *Information accessibility*: Information on health promotion, health status and treatment options should be provided to children and their caregivers in a language and format that is accessible and clearly understandable to them.

(c) Acceptability

115. In the context of children's right to health, the Committee defines acceptability as the obligation to design and implement all health-related facilities, goods and services in a way that takes full account of and is respectful of medical ethics as well as children's needs, expectations, cultures, views and languages, paying special attention to certain groups, where necessary.

(d) Quality

116. Health-related facilities, goods and services should be scientifically and medically appropriate and of good quality. Ensuring quality requires, inter alia, that (a) treatments, interventions and medicines are based on the best available evidence; (b) medical personnel are skilled and provided with adequate training on maternal and children's health, and the principles and provisions of the Convention; (c) hospital equipment is scientifically approved and appropriate for children; (d) drugs are scientifically approved, have not expired, are child-specific (when necessary) and are monitored for adverse reactions; and (e) regular quality of care assessments of health institutions are conducted.

3. Monitoring and evaluation

117. A well-structured and appropriately disaggregated set of indicators should be established for monitoring and evaluation to meet the requirements under the performance criteria above. The data should be used to redesign and improve policies, programmes and services in support of fulfilment of children's right to health. Health information systems should ensure that data should be reliable, transparent, and consistent, while protecting the right to privacy for individuals. States should regularly review their health information system, including vital registration and disease surveillance, with a view to its improvement.

118. National accountability mechanisms should monitor, review and act on their findings. Monitoring means providing data on the health status of children, regularly reviewing the quality of children's health services and how much is spent thereon and where, on what and on whom it is spent. This should include both routine monitoring and periodic, in-depth evaluations. Reviewing means analysing the data and consulting children, families, other caregivers and civil society to determine whether children's health has improved and whether Governments and other actors have fulfilled their commitments. Acting means using evidence emerging from these processes to repeat and expand what is working and to remedy and reform what is not.

F. Remedies for violations of the right to health

119. The Committee strongly encourages States to put in place functional and accessible complaints mechanisms for children that are community-based and render it possible for children to seek and obtain reparations when their right to health is violated or at risk. States should also provide for broad rights of legal standing, including class actions.

120. States should ensure and facilitate access to courts for individual children and their caregivers and take steps to remove any barriers to access remedies for violations of children's right to health. National human rights institutions, children's ombudspersons, health-related professional associations and consumers' associations can play an important role in this regard.

VII. DISSEMINATION

121. The Committee recommends that States widely disseminate the present general comment with parliament and across Government, including within ministries, departments and municipal and local-level bodies working on children's health issues.

UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr. GENERAL

CRC/C/GC/16

17 April 2013

Original: ENGLISH

Committee on the Rights of the Child
Sixty-second session
14 January – 1 February 2013

GENERAL COMMENT NO. 16 (2013)
STATE OBLIGATIONS REGARDING THE IMPACT OF THE BUSINESS SECTOR ON CHILDREN'S RIGHTS*

I. INTRODUCTION AND OBJECTIVES

1. The Committee on the Rights of the Child recognizes that the business sector's impact on children's rights has grown in past decades because of factors such as the globalized nature of economies and of business operations and the ongoing trends of decentralization, and outsourcing and privatizing of State functions that affect the enjoyment of human rights. Business can be an essential driver for societies and economies to advance in ways that strengthen the realization of children's rights through, for example, technological advances, investment and the generation of decent work. However, the realization of children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights.

2. States have obligations regarding the impact of business activities and operations on children's rights arising from the Convention on the Rights of the Child, the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict. These obligations cover a variety of issues, reflecting the fact that children are both rights-holders and stakeholders in business as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates. The present general comment aims to clarify these obligations and outline the measures that should be undertaken by States to meet them.

3. For the purposes of the present general comment, the business sector is defined as including all business enterprises, both national and transnational, regardless of size, sector, location, ownership and structure. The general comment also addresses obligations regarding not-for-profit organizations that play a role in the provision of services that are critical to the enjoyment of children's rights.

4. It is necessary for States to have adequate legal and institutional frameworks to respect, protect and fulfil children's rights, and to provide remedies in case of violations in the context of business activities and operations. In this regard, States should take into account that:

(a) Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights, such as exposure to violence, child labour or unsafe products or environmental hazards may have lifelong, irreversible and even transgenerational consequences;

(b) Children are often politically voiceless and lack access to relevant information. They are reliant on governance systems, over which they have little influence, to have their rights realized. This makes it hard for them to have a say in decisions regarding laws and policies that impact their rights. In the process of decision-making, States may not adequately consider the impact on children of business-related laws and policies, while, conversely, the business sector often exerts a powerful influence on decisions without reference to children's rights;

(c) It is generally challenging for children to obtain remedy – whether in the courts or through other mechanisms – when their rights are infringed upon, even more so by business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. Furthermore, there are particular difficulties for children in obtaining remedy for abuses that occur in the context of businesses' global operations.

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

5. Given the broad range of children's rights that can be affected by business activities and operations, the present general comment does not examine every pertinent article of the Convention and its protocols. Instead it seeks to provide States with a framework for implementing the Convention as a whole with regard to the business sector whilst focusing on specific contexts where the impact of business activities on children's rights can be most significant. The present general comment aims to provide States with guidance on how they should:

(a) Ensure that the activities and operations of business enterprises do not adversely impact on children's rights;

(b) Create an enabling and supportive environment for business enterprises to respect children's rights, including across any business relationships linked to their operations, products or services and across their global operations; and

(c)Ensure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.

6. The present general comment draws from the experience of the Committee in reviewing State parties' reports and its day of general discussion on the private sector as service provider in 2002.[197] It is also informed by regional and international consultations with numerous stakeholders, including children, as well as by public consultations that have taken place since 2011.

7. The Committee is mindful of the relevance to the general comment of existing and evolving national and international norms, standards and policy guidance on business and human rights. The general comment is consistent with international conventions, including the International Labour Organization (ILO) Conventions No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and No. 138 (1973) concerning Minimum Age for Admission to Employment. The Committee recognizes the relevance of the United Nations "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights adopted by the Human Rights Council, and of the ILO Tripartite Declaration of Principles concerning Multinationals and Social Policy. Other documents, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the Global Compact, the United Nations Study on Violence against Children and the Children's Rights and Business Principles have been useful references for the Committee.

II. SCOPE AND APPLICATION

8. The present general comment principally addresses States' obligations under the Convention and the Optional Protocols thereto. At this juncture, there is no international legally binding instrument on the business sector's responsibilities vis-à-vis human rights. However, the Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so. In addition, business enterprises should not undermine the States' ability to meet their obligations towards children under the Convention and the Optional Protocols thereto.

9. The Committee acknowledges that voluntary actions of corporate responsibility by business enterprises, such as social investments, advocacy and public policy engagement, voluntary codes of conduct, philanthropy and other collective actions, can advance children's rights. States should encourage such voluntary actions and initiatives as a means to create a business culture which respects and supports children's rights. However, it should be emphasized that such voluntary actions and initiatives are not a substitute for State action and regulation of businesses in line with obligations under the Convention and its protocols or for businesses to comply with their responsibilities to respect children's rights.

10. It is important to recall that the Convention and the Optional Protocols thereto engage the State as a whole, regardless of its internal structures, branches or organization. Furthermore, decentralization of power, through devolution and delegation, does not reduce the direct responsibility of the State to meet its obligations to all children within its jurisdiction.

11. The present general comment first considers the relationship between State obligations regarding business activities and the general principles of the Convention. It then defines the general nature and scope of State obligations with regards to children's rights and the business sector. An examination follows of the scope of obligations in contexts where the impact of business activities and operations on children's rights is most significant, including when business enterprises are service providers, children are affected in the informal economy, States engage with international organizations and businesses operate abroad in areas where there is insufficient State protection for children's rights. The present general comment concludes by outlining a framework for implementation and dissemination.

III. GENERAL PRINCIPLES OF THE CONVENTION AS THEY RELATE TO BUSINESS ACTIVITIES

12. Children's rights are universal, indivisible, interdependent and interrelated. The Committee has established four general principles within the Convention as the basis for all State decisions and actions relating to business activities and operations in conformity with a child rights approach.[198]

[197] Committee on the Rights of the Child, report on its thirty-first session, CRC/C/121, annex II.
[198] See Committee on the Rights of the Child, general comment No. 13 (2011) on the right of the child to be free from all forms of violence, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41* (A/67/41), annex V, para. 59.

A. The right to non-discrimination (art. 2)

13. Article 2 of the Convention calls on States to respect and ensure rights to each child in their jurisdiction "without discrimination of any kind, irrespective of a child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". States must ensure that all legislation, policies and programmes that deal with business issues are not intentionally or unintentionally discriminatory towards children in their content or implementation; for instance, those that address access to employment for parents or caregivers, or access to goods and services for children with disabilities.

14. States are required to prevent discrimination in the private sphere in general and provide remedy if it occurs. States should collect statistical data that is appropriately disaggregated and other information to identify discrimination against children in the context of business activities and operations and mechanisms should be established to monitor and investigate discriminatory practices within the business sector. States should also take steps to create a supportive environment for business to respect the right to protection from discrimination by promoting knowledge and understanding of the right within the business sector, including within the media, marketing and advertising sectors. Awareness-raising and sensitization among business enterprises should be aimed at challenging and eradicating discriminatory attitudes towards all children, especially those in vulnerable situations.

B. The best interests of the child (art. 3, para. 1)

15. Article 3, paragraph 1, of the Convention provides that the best interests of the child shall be a primary consideration for States in all actions concerning children. States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children. For example, States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations, such as those relating to employment, taxation, corruption, privatization, transport and other general economic, trade or financial issues.

16. Article 3, paragraph 1, is also directly applicable to business enterprises that function as private or public social welfare bodies by providing any form of direct services for children, including care, foster care, health, education and the administration of detention facilities.

17. The Convention and the Optional Protocols thereto provide the framework for assessing and determining the best interests of the child. The obligation to make the best interests of the child a primary consideration becomes crucial when States are engaged in weighing competing priorities, such as short-term economic considerations and longer-term development decisions. States should be in a position to explain how the right to have the best interests of the child considered has been respected in decision-making, including how it has been weighed against other considerations.[199]

C. The right to life, survival and development (art. 6)

18. Article 6 of the Convention acknowledges that every child has an inherent right to life and that States shall ensure the survival and development of the child. The Committee states its understanding of development of the child in general comment No. 5 (2003) on general measures of implementation of the Convention, as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development".[200]

19. The activities and operations of business enterprises can impact on the realization of article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context.[201] The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health.[202] When business employment practices require adults to work long hours, older children, particularly girls, may take on their parent's domestic and childcare obligations, which can negatively impact their right to education and to play; additionally, leaving children alone or in the care of older siblings can have implications for the quality of care and the health of younger children.

20. Measures for implementing article 6 with regard to the business sector will need to be adapted according to context and include preventive measures such as effective regulation and monitoring of advertising and marketing industries and the environmental impact of business. In the context of care of children, particularly young children, other measures will be needed for creating an enabling environment for business to respect article 6 through, for example, the introduction of family-friendly workplace policies. Such policies must take account of the impact of working hours of adults on the survival and development of the child at all stages of development and must include adequately remunerated parental leave.[203]

---

[199] See General Comment No. 14 (2013) on the right of the child to have his/her best interests taken as a primary consideration: article 3, paragraph 1, of the Convention on the Rights of the Child, forthcoming, para. 6.
[200] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41* (A/59/41), annex XI, para. 12.
[201] General comment No. 11 (2009) on indigenous children and their rights under the convention, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41* (A/65/41), annex III, para. 35.
[202] See general comment No. 15 (2013) on the right of the child to the highest attainable standard of health, forthcoming, para. 47.
[203] See passim general comment No. 7 (2005) on implementing child rights in early childhood, *Official Records of the General Assembly, Sixty-first Session*,

D. The right of the child to be heard (art. 12)

21. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. States should hear children's views regularly – in line with general comment No. 12[204] – when developing national and local-level business-related laws and policies that may affect them. In particular, States should consult with children who face difficulties in making themselves heard, such as the children of minority and indigenous groups, children with disabilities as stated in articles 4, paragraph 3, and 7 of the Convention on the Rights of Persons with Disabilities,[205] and children in similar situations of vulnerability. Governmental bodies, such as education and labour inspectorates, concerned with regulating and monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children. States should also hear children when child-rights impact assessments of proposed business-related policy, legislation, regulations, budget or other administrative decisions are undertaken.

22. Children have a specific right "to be heard in any judicial and administrative proceedings affecting the child" (art. 12, para. 3, of the Convention). This includes judicial proceedings and mechanisms of conciliation and arbitration that concern abuses of children's rights caused or contributed to by business enterprises. As set out in general comment No. 12, children should be allowed to voluntarily participate in such proceedings and be provided the opportunity to be heard directly or indirectly through the assistance of a representative or appropriate body that has sufficient knowledge and understanding of the various aspects of the decision-making process as well as experience in working with children.

23. There may be instances when business consults communities that may be affected by a potential business project. In such circumstances, it can be critical for business to seek the views of children and consider them in decisions that affect them. States should provide businesses with specific guidance emphasizing that such processes must be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times. Participation should be voluntary and occur in a child-friendly environment that challenges and does not reinforce patterns of discrimination against children. Where possible, civil society organizations that are competent in facilitating child participation should be involved.

IV. NATURE AND SCOPE OF STATE OBLIGATIONS

A. General obligations

24. The Convention provides for a set of rights for children that impose a particular level of obligations on the State in view of the special status of children; there is a particular gravity to violations of children's rights because they often have severe and long-lasting impact on child development. Article 4 sets out the obligation for States to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention and devote the maximum amount of available resources to the realization of economic, social and cultural rights of the child.

25. Under international human rights law there are three types of obligation on States: to respect, to protect and to fulfil human rights.[206] They encompass obligations of result and obligations of conduct. States are not relieved of their obligations under the Convention and the Optional Protocols thereto when their functions are delegated or outsourced to a private business or non-profit organization. A State will thereby be in breach of its obligations under the Convention where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children. The scope of these duties is explored further below, whilst the required framework for implementation is discussed in chapter VI.

B. The obligation to respect, protect and fulfil

1. The obligation to respect

26. The obligation to respect means that States should not directly or indirectly facilitate, aid and abet any infringement of children's rights. Furthermore, States have the obligation to ensure that all actors respect children's rights, including in the context of business activities and operations. To achieve this, all business-related policy, legislation or administrative acts and decision-making should be transparent, informed and include full and continuous consideration of the impact on the rights of the child.

27. The obligation to respect also implies that a State should not engage in, support or condone abuses of children's rights when it has a business role itself or conducts business with private enterprises. For example, States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children's rights. State agencies and institutions,

---

Supplement No. 41 (A/61/41), annex III.

[204] General comment No. 12 (2009) on the right of the child to be heard, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41* (A/65/41), annex IV.

[205] General comment No. 9 (2006) on the rights of children with disabilities, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 41* (A/63/41), annex III, passim.

[206] See Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, *Official Records of the Economic and Social Council*, *2000, Supplement No. 2* (E/2000/22), annex VI, para. 46.

including security forces, should not collaborate with or condone the infringement of the rights of the child by third parties. Furthermore, States should not invest public finances and other resources in business activities that violate children's rights.

2. The obligation to protect

28. States have an obligation to protect against infringements of rights guaranteed under the Convention and the Optional Protocols thereto by third parties. This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise. A State is therefore responsible for infringements of children's rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.

3. The obligation to fulfil

29. The obligation to fulfil requires States to take positive action to facilitate, promote and provide for the enjoyment of children's rights. This means that States must implement legislative, administrative, budgetary, judicial, promotional and other measures in conformity with article 4 relating to business activities that impact on children's rights. Such measures should ensure the best environment for full realization of the Convention and the Optional Protocols thereto. To meet this obligation, States should provide stable and predictable legal and regulatory environments which enable business enterprises to respect children's rights. This includes clear and well-enforced law and standards on labour, employment, health and safety, environment, anti-corruption, land use and taxation that comply with the Convention and the Optional Protocols thereto. It also includes law and policies designed to create equality of opportunity and treatment in employment; measures to promote vocational training and decent work, and to raise living standards; and policies conducive to the promotion of small and medium enterprises. States should put in place measures to promote knowledge and understanding of the Convention and the Optional Protocols thereto within government departments, agencies and other State-based institutions that shape business practices, and foster a culture in business that is respectful of children's rights.

4. Remedies and reparations

30. States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. The Committee states in its general comment No. 5 that for rights to have meaning, effective remedies must be available to redress violations.[207] Several provisions in the Convention call for penalties, compensation, judicial action and measures to promote recovery after harm caused or contributed to by third parties.[208] Meeting this obligation entails having in place child-sensitive mechanisms – criminal, civil or administrative – that are known by children and their representatives, that are prompt, genuinely available and accessible and that provide adequate reparation for harm suffered. Agencies with oversight powers relevant to children's rights, including labour, education and health and safety inspectorates, environmental tribunals, taxation authorities, national human rights institutions and bodies focusing on equality in the business sector can also play a role in the provision of remedies. These agencies can proactively investigate and monitor abuses and may also have regulatory powers allowing them to impose administrative sanctions on businesses which infringe on children's rights. In all cases, children should have recourse to independent and impartial justice, or judicial review of administrative proceedings.

31. When determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children's development and capacities and reparation should be timely to limit ongoing and future damage to the child or children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done. States should provide medical and psychological assistance, legal support and measures of rehabilitation to children who are victims of abuse and violence caused or contributed to by business actors. They should also guarantee non-recurrence of abuse through, for example, reform of relevant law and policy and their application, including prosecution and sanction of the business actors concerned.

V. STATE OBLIGATIONS IN SPECIFIC CONTEXTS

32. Business activities and operations can impact on a broad range of children's rights. However, the Committee has identified the following non-exhaustive, specific contexts where the impact of business enterprises can be significant and where States' legal and institutional frameworks are often insufficient, ineffective or under pressure.

[207] General comment No. 5 (2003), para. 24. States should also take into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 of 2005.

[208] For example, see Convention on the Rights of the Child, arts. 32, para. 2; 19; and 39.

A. Provision of services for the enjoyment of children's rights

33. Business enterprises and non-profit organizations can play a role in the provision and management of services such as clean water, sanitation, education, transport, health, alternative care, energy, security and detention facilities that are critical to the enjoyment of children's rights. The Committee does not prescribe the form of delivery of such services but it is important to emphasize that States are not exempted from their obligations under the Convention when they outsource or privatize services that impact on the fulfilment of children's rights.

34. States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised.[209] They have an obligation to set standards in conformity with the Convention and closely monitor them. Inadequate oversight, inspection and monitoring of these bodies can result in serious violations of children's rights such as violence, exploitation and neglect. They must ensure that such provision does not threaten children's access to services on the basis of discriminatory criteria, especially under the principle of protection from discrimination, and that, for all service sectors, children have access to an independent monitoring body, complaints mechanisms and, where relevant, to judicial recourse that can provide them with effective remedies in case of violations. The Committee recommends that there should be a permanent monitoring mechanism or process aimed at ensuring that all non-State service providers have in place and apply policies, programmes and procedures which are in compliance with the Convention.[210]

B. The informal economy

35. The informal economy engages an important part of the economically active population in many countries and contributes significantly to gross national product. However, children's rights can be particularly at risk from business activities that take place outside of the legal and institutional frameworks that regulate and protect rights. For example, products that are manufactured or handled in this context, such as toys, garments or foodstuffs, can be unhealthy and/or unsafe for children. Also, a concentrated number of children are often found in hidden areas of informal work, such as small family enterprises, agricultural and hospitality sectors. Such work frequently involves precarious employment status, low, irregular or no remuneration, health risks, a lack of social security, limited freedom of association and inadequate protection from discrimination and violence or exploitation. It can prevent children from attending school, doing schoolwork and having adequate rest and play, potentially infringing articles 28, 29 and 31 of the Convention. Moreover, parents or caregivers working in the informal economy often have to work long hours to obtain subsistence-level earnings, thus seriously limiting their opportunities to exercise parental responsibilities or care for children in their charge.

36. States should put in place measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances regardless of size or sector of the economy so that children's rights can be clearly recognized and protected. Such measures can include: awareness-raising, conducting research and gathering data on the impact of the informal economy upon children's rights, supporting the creation of decent jobs that provide adequate pay to working parents or caregivers; implementing clear and predictable land-use laws; improving the provision of social protection to low-income families; and supporting informal sector enterprises by providing skills training, registration facilities, effective and flexible credit and banking services, appropriate tax arrangements and access to markets, inter alia.

37. States must regulate working conditions and ensure safeguards to protect children from economic exploitation and work that is hazardous or interferes with their education or harms their health or physical, mental, spiritual, moral or social development. Such work is often found, albeit not exclusively, within the informal and family economies. Therefore, States are required to design and implement programmes aimed at reaching businesses in these contexts, including by enforcing international standards regarding legal minimum age for work and appropriate conditions of work, investing in education and vocational training and providing support for the satisfactory transition of children to the world of work. States should ensure that social and child protection policies reach all, especially families in the informal economy.

C. Children's rights and global operations of business

38. Business enterprises increasingly operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children's rights, whether positive or negative, is rarely the result of the action or omission of a single business unit, whether it is the parent company, subsidiary, contractor, supplier or others. Instead, it may involve a link or participation between businesses units located in different jurisdictions. For example, suppliers may be involved in the use of child labour, subsidiaries may be engaged in land dispossession and contractors or licensees may be involved in the marketing of goods and services that are harmful to children. There are particular difficulties for States in discharging their obligations to respect, protect and fulfil the rights of the child in this context owing, among other reasons, to the fact that business enterprises are often legally separate entities located in different jurisdictions even when they operate as an economic unit which has its centre of activity, registration and/or domicile in one country (the home State) and is operational in another (the host State).

39. Under the Convention, States have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit a State's jurisdiction to "territory". In accordance with international law, the Committee has previously urged States to

[209] See Committee on the Rights of the Child, report on its thirty-first session, CRC/C/121, annex II.
[210] See general comment No. 5, para. 44.

protect the rights of children who may be beyond their territorial borders. It has also emphasized that State obligations under the Convention and the Optional Protocols thereto apply to each child within a State's territory and to all children subject to a State's jurisdiction.[211]

40. Extraterritorial obligations are also explicitly referred to in the Optional Protocol on the sale of children, child prostitution and child pornography. Article 3, paragraph 1, provides that each State shall ensure that, as a minimum, offences under it are fully covered by its criminal or penal law, whether such offences are committed domestically or transnationally. Under article 3, paragraph 4, of Optional Protocol on the sale of children, child prostitution and child pornography, liability for these offences, whether criminal, civil or administrative, should be established for legal persons, including business enterprises. This approach is consistent with other human rights treaties and instruments that impose obligations on States to establish criminal jurisdiction over nationals in relation to areas such as complicity in torture, enforced disappearance and apartheid, no matter where the abuse and the act constituting complicity is committed.

41. States have obligations to engage in international cooperation for the realization of children's rights beyond their territorial boundaries. The preamble and the provisions of the Convention consistently refer to the "importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries".[212] General comment No. 5 emphasizes that "implementation of the Convention is a cooperative exercise for the States of the world".[213] As such, the full realization of children's rights under the Convention is in part a function of how States interact. Furthermore, the Committee highlights that the Convention has been nearly universally ratified; thus realization of its provisions should be of major and equal concern to both host and home States of business enterprises.

42. Host States have the primary responsibility to respect, protect and fulfil children's rights in their jurisdiction. They must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated within a legal and institutional framework that ensures that they do not adversely impact on the rights of the child and/or aid and abet violations in foreign jurisdictions.

43. Home States also have obligations, arising under the Convention and the Optional Protocols thereto, to respect, protect and fulfil children's rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned.[214] When adopting measures to meet this obligation, States must not violate the Charter of the United Nations and general international law nor diminish the obligations of the host State under the Convention.

44. States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States.

45. Measures to prevent the infringement of children's rights by business enterprises when they are operating abroad include:

(a) Making access to public finance and other forms of public support, such as insurance, conditional on a business carrying out a process to identify, prevent or mitigate any negative impacts on children's rights in their overseas operations;

(b) Taking into account the prior record of business enterprises on children's rights when deciding on the provision of public finance and other forms of official support;

(c) Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children's rights abuses.

46. Both home and host States should establish institutional and legal frameworks that enable businesses to respect children's rights across their global operations. Home States should ensure that there are effective mechanisms in place so that the government agencies and institutions with responsibility for implementation of the Convention and the Optional Protocols thereto coordinate effectively with those responsible for trade and investment abroad. They should also build capacity so that development assistance agencies and overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including children's rights, with foreign Governments. States that adhere to the OECD Guidelines for Multinational Enterprises should support their national contact points in providing mediation and conciliation for matters that arise extraterritorially by ensuring that they are adequately resourced, independent and mandated to work to ensure respect for children's rights in the context of business issues. Recommendations issued by bodies such as the OECD national contact points should be given adequate effect.

---

[211] General comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 41* (A/61/41), annex II, para. 12.
[212] See Convention on the Rights of the Child, arts. 4; 24, para. 4; 28, para. 3; 17 and 22, para. 2; as well as Optional Protocol on the sale of children, child prostitution and child pornography, art. 10, and Optional Protocol on the involvement of children in armed conflict, art. 10.
[213] General comment No. 5, para. 60.
[214] See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, principle 25 (2012).

D. International organizations

47. All States are called upon, under article 4 of the Convention, to cooperate directly in the realization of the rights in the Convention through international cooperation and through their membership in international organizations. In the context of business activities, these international organizations include international development, finance and trade institutions, such as the World Bank Group, the International Monetary Fund and the World Trade Organization, and others of a regional scope, in which States act collectively. States must comply with their obligations under the Convention and the Optional Protocols thereto when acting as members of such organizations and they should not accept loans from international organizations, or agree to conditions set forth by such organizations, if these loans or policies are likely to result in violations of the rights of children. States also retain their obligations in the field of development cooperation and should ensure that cooperation policies and programmes are designed and implemented in compliance with the Convention and the Optional Protocols thereto.

48. A State engaged with international development, finance and trade organizations must take all reasonable actions and measures to ensure that such organizations act in accordance with the Convention and the Optional Protocols thereto in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector. Such actions and measures should go beyond the eradication of child labour and include the full realization of all children's rights. International organizations should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm. These organizations should put in place procedures and mechanisms to identify, address and remedy violations of children's rights in accordance with existing international standards, including when they are committed by or result from activities of businesses linked to or funded by them.

E. Emergencies and conflict situations

49. There are particular challenges for both host and home States in meeting their obligations to respect, protect and fulfil the rights of the child when businesses are operating in situations where protection institutions do not work properly because of conflict, disaster or the breakdown of social or legal order. It is important to emphasize that the Convention and the Optional Protocols thereto apply at all times and that there are no provisions allowing for derogation of their provisions during emergencies.

50. In such contexts, there may be a greater risk of child labour being used by business enterprises (including within supply chains and subsidiaries), of child soldiers being used or of corruption and tax evasion occurring. Given the heightened risks, home States should require business enterprises operating in situations of emergency and conflict to undertake stringent child-rights due diligence tailored to their size and activities. Home States should also develop and implement laws and regulations that address specific foreseeable risks to children's rights from business enterprises that are operating transnationally. This can include a requirement to publish actions taken to ensure that companies' operations do not contribute to serious violations of children's rights, and a prohibition on the sale or transfer of arms and other forms of military assistance when the final destination is a country in which children are known to be, or may potentially be, recruited or used in hostilities.

51. A home State should provide businesses with current, accurate and comprehensive information of the local children's rights context when they are operating or planning to operate in areas affected by conflict or emergency. Such guidance should emphasize that companies have identical responsibilities to respect children's rights in such settings as they do elsewhere. Children can be affected by violence, including sexual abuse or exploitation, child trafficking and gender-based violence in conflict zones and this must be recognized by States when providing guidance to businesses.

52. The obligations of host and home States under the relevant provisions of the Convention should be emphasized when business is operating in areas affected by conflict: Article 38 requires respect for the rules of international humanitarian law, article 39 obliges States to provide appropriate psychological recovery and social reintegration and the Optional Protocol on the involvement of children in armed conflict contains provisions regarding recruitment of children into armed forces under 18 years of age. When operating in areas affected by conflict, business enterprises may employ private security companies and may risk being involved in violations such as exploitation and/or use of violence against children in the course of protecting facilities or other operations. To prevent this, both home and host States should introduce and implement national legislation that includes a specific prohibition on such companies recruiting children or using them in hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

VI. FRAMEWORK FOR IMPLEMENTATION

A. Legislative, regulatory and enforcement measures

1. Legislation and regulation

53. Legislation and regulation are essential instruments for ensuring that the activities and operations of business enterprises do not adversely impact on or violate the rights of the child. States should enact legislation that gives effect to the rights of the child by third parties and provides a clear and predictable legal and regulatory environment which enables business enterprises to respect children's rights. To meet their obligation to adopt appropriate and reasonable legislative and regulatory measures to ensure that business

enterprises do not infringe on children's rights, States will need to gather data, evidence and research for identifying specific business sectors of concern.

54. In conformity with article 18, paragraph 3, of the Convention, States should create employment conditions within business enterprises which assist working parents and caregivers in fulfilling their responsibilities to children in their care such as: the introduction of family-friendly workplace policies, including parental leave; support and facilitate breastfeeding; access to quality childcare services; payment of wages sufficient for an adequate standard of living; protection from discrimination and violence in the workplace; and, security and safety in the workplace.

55. Ineffective taxation systems, corruption and mismanagement of government revenues from, among others, State-owned businesses and corporate taxation, can limit the resources available for the fulfilment of children's rights in accordance with article 4 of the Convention. In addition to any existing obligations under anti-bribery and anti-corruption instruments,[215] States should develop and implement effective laws and regulations to obtain and manage revenue flows from all sources, ensuring transparency, accountability and equity.

56. States should implement article 32 of the Convention to ensure the prohibition of economic exploitation and hazardous work for children. Some children are above the minimum working age, in line with international standards, and therefore can be legitimately working as employees, while still needing to be protected, for instance, from work that is hazardous to their health, safety or moral development and ensuring that their rights to education, development and recreation are promoted and protected.[216] States must set a minimum age for employment; appropriately regulate working hours and conditions; and establish penalties to effectively enforce article 32. They must have functioning labour inspection and enforcement systems and capacities in place. States should also ratify and enact into domestic law both of the fundamental ILO conventions relating to child labour.[217] Under article 39, States must take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child who has experienced any form of violence, neglect, exploitation, or abuse, including economic exploitation.

57. States are also required to implement and enforce internationally agreed standards concerning children's rights, health and business, including the World Health Organization Framework Convention on Tobacco Control, and the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions. The Committee is aware that the activities and operations of the pharmaceutical sector can have a profound impact on the health of children. Pharmaceutical companies should be encouraged to improve the access, availability, acceptability and quality of medicines for children taking into consideration existing guidance.[218] Furthermore, intellectual property rights should be applied in ways that promote the affordability of medicines.[219]

58. The mass media industry, including advertising and marketing industries, can have positive as well as negative impacts on children's rights. Under article 17 of the Convention, States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles. The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children, while recognizing children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage. States should establish copyright exceptions which permit the reproduction of books and other printed publications in formats that are accessible for children with visual or other impairments.

59. Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.

60. Digital media is of particular concern, as many children can be users of the Internet but also become victims of violence such as cyber-bullying, cyber-grooming, trafficking or sexual abuse and exploitation through the Internet. Although companies may not be directly involved in such criminal acts, they can be complicit in these violations through their actions; for example, child sex tourism can be facilitated by travel agencies operating on the Internet, as they enable the exchange of information and the planning of sex tourism activities. Child pornography can be indirectly facilitated by Internet businesses and credit-card providers. As well as meeting their obligations under the Optional Protocol on the sale of children, child prostitution and child pornography, States should provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help. They should coordinate with the information and communication technology industry so that it develops and puts in place adequate measures to protect children from violent and inappropriate material.

[215] Such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and/or the United Nations Convention Against Corruption.
[216] See general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), forthcoming.
[217] ILO Conventions Nos. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and 138 (1973) concerning Minimum Age for Admission to Employment.
[218] Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines; Human Rights Council resolution 15/22.
[219] See general comment No. 15, para. 82; World Trade Organization, Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2.

2. Enforcement measures

61. Generally, it is the lack of implementation or the poor enforcement of laws regulating business that pose the most critical problems for children. There are a number of measures States should employ to ensure effective implementation and enforcement, including:
(a) Strengthening regulatory agencies responsible for the oversight of standards relevant to children's rights such as health and safety, consumer rights, education, environment, labour and advertising and marketing so that they have sufficient powers and resources to monitor and to investigate complaints and to provide and enforce remedies for abuses of children's rights;
(b) Disseminating laws and regulations regarding children's rights and business to stakeholders, including children and business enterprises;
(c) Training judges and other administrative officials as well as lawyers and legal aid providers to ensure the correct application of the Convention and its protocols on business and children's rights, international human rights standards and relevant national legislation and to promote the development of national jurisprudence; and
(d) Providing effective remedy through judicial or non-judicial mechanisms and effective access to justice.

3. Children's rights and due diligence by business enterprises

62. To meet their obligation to adopt measures to ensure that business enterprises respect children's rights, States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations.[220] Where there is a high risk of business enterprises being involved in violations of children's rights because of the nature of their operations or their operating contexts, States should require a stricter process of due diligence and an effective monitoring system.

63. Where child-rights due diligence is subsumed within a more general process of human-rights due diligence, it is imperative that the provisions of the Convention and the Optional Protocols thereto influence decisions. Any plan of action and measures to prevent and/or remedy human rights abuses must have special consideration for the differentiated impact on children.

64. States should lead by example, requiring all State-owned enterprises to undertake child-rights due diligence and to publicly communicate their reports on their impact on children's rights, including regular reporting. States should make public support and services, such as those provided by an export credit agency, development finance and investment insurance conditional on businesses carrying out child-rights due diligence.

65. As part of child-rights due diligence, large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address child-rights impacts. Such communication should be available, efficient and comparable across enterprises and address measures taken by business to mitigate potential and actual adverse impacts for children caused by their activities. Business enterprises should be required to publish the actions taken to ensure that the goods and services they produce or commercialize do not involve serious violations of children's rights, such as slavery or forced labour. Where reporting is mandatory, States should put in place verification and enforcement mechanisms to ensure compliance. States may support reporting by creating instruments to benchmark and recognize good performance with regard to children's rights.

B. Remedial measures

66. Children often find it difficult to access the justice system to seek effective remedies for abuse or violations of their rights when business enterprises are involved. Children may lack legal standing, which prevents them from pursuing a claim; children and their families often lack knowledge about their rights and the mechanisms and procedures available to them to seek redress or may lack confidence in the justice system. States may not always investigate breaches of criminal, civil or administrative laws committed by business enterprises. There are vast power imbalances between children and business and, often, prohibitive costs involved in litigation against companies as well as difficulties in securing legal representation. Cases involving business are frequently settled out of court and in the absence of a body of developed case law; children and their families in jurisdictions where judicial precedent is persuasive may be more likely to abandon undertaking litigation given uncertainty surrounding the outcome.

67. There are particular difficulties in obtaining remedy for abuses that occur in the context of businesses' global operations. Subsidiaries or others may lack insurance or have limited liability; the way in which transnational corporations are structured in separate entities can make identification and attribution of legal responsibility to each unit challenging; access to information and evidence located in different countries can be problematic when building and defending a claim; legal aid may be difficult to obtain in foreign jurisdictions and various legal and procedural hurdles can be used to defeat extraterritorial claims.

68. States should focus their attention on removing social, economic and juridical barriers so that children can in practice have access to effective judicial mechanisms without discrimination of any kind. Children and their representatives should be provided with information about remedies through, for example, the school curriculum, youth centres or community-based programmes. They should be allowed to initiate proceedings in their own right and have access to legal aid and the support of lawyers and legal aid providers in bringing cases against business enterprises to ensure equality of arms. States that do not already have provision for collective complaints, such as class actions and public interest litigation, should introduce these as a means of increasing accessibility to the

[220] See UNICEF, Save the Children and Global Compact, Children's Rights and Business Principles (2011).

courts for large numbers of children similarly affected by business actions. States may have to provide special assistance to children who face obstacles to accessing justice, for example, because of language or disability or because they are very young.

69. Age should not be a barrier to a child's right to participate fully in the justice process. Likewise, special arrangements should be developed for child victims and witnesses in both civil and criminal proceedings, in line with the Committee's general comment No. 12. Furthermore, States should implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.[221] Confidentiality and privacy must be respected and children should be kept informed of progress at all stages of the process, giving due weight to the child's maturity and any speech, language or communication difficulties they might have.

70. The Optional Protocol on the sale of children, child prostitution and child pornography requires that States enact criminal legislation that also applies to legal entities, including business enterprises. States should consider the adoption of criminal legal liability – or another form of legal liability of equal deterrent effect – for legal entities, including business enterprises, in cases concerning serious violations of the rights of the child, such as forced labour. National tribunals should have jurisdiction over these serious violations, in accordance with accepted rules of jurisdiction.

71. Non-judicial mechanisms, such as mediation, conciliation and arbitration, can be useful alternatives for resolving disputes concerning children and enterprises. They must be available without prejudice to the right to judicial remedy. Such mechanisms can play an important role alongside judicial processes, provided they are in conformity with the Convention and the Optional Protocols thereto and with international principles and standards of effectiveness, promptness and due process and fairness. Grievance mechanisms established by business enterprises can provide flexible and timely solutions and at times it may be in a child's best interests for concerns raised about a company's conduct to be resolved through them. These mechanisms should follow criteria that include: accessibility, legitimacy, predictability, equitability, rights compatibility, transparency, continuous learning and dialogue.[222] In all cases, access to courts or judicial review of administrative remedies and other procedures should be available.

72. States should make every effort to facilitate access to international and regional human rights mechanisms, including the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, so that an individual child or a group of children, or others acting on his/her/their behalf, are able to obtain remedy for State failure to adequately respect, protect and fulfil children's rights in relation to business activities and operations.

C. Policy measures

73. States should encourage a business culture that understands and fully respects children's rights. To this end, States should include the issue of children's rights and business in the overall context of the national policy framework for implementation of the Convention. They should develop guidance that explicitly sets out government expectations for business enterprises to respect children's rights in the context of its own business activities, as well as within business relationships linked to operations, products or services and activities abroad when they operate transnationally. This should include the implementation of zero-tolerance policies for violence in all business activities and operations. As required, States should signpost and encourage adherence to relevant corporate responsibility initiatives.

74. In many contexts, small and medium-sized enterprises represent a large part of the economy and it is particularly important that States provide them with readily available tailored guidance and support on how to respect children's rights and comply with national legislation while avoiding unnecessary administrative burdens. States should also encourage larger companies to use their influence over small and medium-sized enterprises to strengthen children's rights throughout their value chains.

D. Coordination and monitoring measures

1. Coordination

75. Full implementation of the Convention and the Optional Protocols thereto requires effective cross-sectoral coordination, among government agencies and departments and across different levels of government, from local to regional and central.[223] Typically, the departments and agencies directly involved with business policies and practices work separately from departments and agencies with direct responsibility for children's rights. States must ensure that governmental bodies, as well as parliamentarians, that shape business law and practices are aware of the State's obligations with regard to children's rights. They may require relevant information, training and support so that they are equipped to ensure full compliance with the Convention when developing law and policy and entering into economic, trade and investment agreements. National human rights institutions can play an important role as catalysts for linking different governmental departments concerned with children's rights and with business.

[221] Adopted by the Economic and Social Council in its resolution 2005/20.
[222] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, guiding principle 31.
[223] General comment No. 5, para. 37.

2. Monitoring

76. States have an obligation to monitor violations of the Convention and the Optional Protocols thereto committed or contributed to by business enterprises, including in their global operations. This can be achieved, for instance, through: gathering data that can be used to identify problems and inform policy; investigating abuses; collaborating with civil society and national human rights institutions; and making business accountable publicly by using business reporting on their impact on children's rights to assess their performance. In particular, national human rights institutions can be involved, for example in receiving, investigating and mediating complaints of violations; conducting public inquiries into large-scale abuses, mediating in conflict situations and undertaking legislative reviews to ensure compliance with the Convention. Where necessary, States should broaden the legislative mandate of national human rights institutions to accommodate children's rights and business.

77. When States develop national strategies and plans of action for implementation of the Convention and the Optional Protocols thereto, they should include explicit reference to the measures required to respect, protect and fulfil children's rights in the actions and operations of business enterprises. States should also ensure that they monitor progress in implementation of the Convention in the activities and operations of business. This can be achieved both internally through the use of child rights impact assessments and evaluations, as well as through collaboration with other bodies such as parliamentary committees, civil society organizations, professional associations and national human rights institutions. Monitoring should include asking children directly for their views on the impact of business on their rights. Different mechanisms for consultation can be used, such as youth councils and parliaments, social media, school councils and associations of children.

3. Child-rights impact assessments

78. Ensuring that the best interests of the child are a primary consideration in business-related legislation and policy development and delivery at all levels of government demands continuous child-rights impact assessments. These can predict the impact of any proposed business-related policy, legislation, regulations, budget or other administrative decisions which affect children and the enjoyment of their rights[224] and should complement ongoing monitoring and evaluation of the impact of laws, policies and programmes on children's rights.

79. Different methodologies and practices may be developed when undertaking child-rights impact assessments. At a minimum they must use the framework of the Convention and the Optional Protocols thereto, as well as relevant concluding observations and general comments issued by the Committee. When States conduct broader impact assessments of business-related policy, legislation or administrative practices, they should ensure that these assessments are underpinned by the general principles of the Convention and the Optional Protocols thereto and have special regard for the differentiated impact on children of the measures under consideration.[225]

80. Child-rights impact assessments can be used to consider the impact on all children affected by the activities of a particular business or sector but can also include assessment of the differential impact of measures on certain categories of children. The assessment of the impact itself may be based upon input from children, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for amendments, alternatives and improvements and be publicly available.[226]

81. To ensure an impartial and independent process, the State may consider appointing an external actor to lead the assessment process. This can have significant advantages, but the State, as the party ultimately responsible for the result, must ensure that the actor undertaking the assessment is competent, honest and impartial.

E. Collaborative and awareness-raising measures

82. While it is the State that takes on obligations under the Convention, the task of implementation needs to engage all sectors of society, including business, civil society and children themselves. The Committee recommends that States adopt and implement a comprehensive strategy to inform and educate all children, parents and caregivers that business has a responsibility to respect children's rights wherever they operate, including through child-friendly and age-appropriate communications, for example through the provision of education about financial awareness. Education, training and awareness-raising about the Convention should also be targeted at business enterprises to emphasize the status of the child as a holder of human rights, encourage active respect for all of the Convention's provisions and challenge and eradicate discriminatory attitudes towards all children and especially those in vulnerable and disadvantaged situations. In this context, the media should be encouraged to provide children with information about their rights in relation to business and raise awareness among businesses of their responsibility to respect children's rights.

83. The Committee highlights that national human rights institutions can be involved in raising awareness of the Convention's provisions amongst business enterprises, for instance by developing good practice guidance and policies for businesses and disseminating them.

84. Civil society has a critical role in the independent promotion and protection of children's rights in the context of business operations. This includes monitoring and holding business accountable; supporting children to have access to justice and remedies;

[224] General comment No. 5, para. 45.
[225] General comment No. 14, para. 99.
[226] Ibid.

contributing to child-rights impact assessments; and raising awareness amongst businesses of their responsibility to respect children's rights. States should ensure conditions for an active and vigilant civil society, including effective collaboration with and support to independent civil society organizations, child and youth-led organizations, academia, chambers of commerce and industry, trade unions, consumer associations and professional institutions. States should refrain from interfering with these and other independent organizations and facilitate their involvement in public policy and programmes relating to children's rights and business.

VII. DISSEMINATION

85. The Committee recommends that States widely disseminate the present general comment with parliament and across government, including within ministries, departments and municipal/local-level bodies working on business issues and those responsible for trade and investment abroad, such as development assistance agencies and overseas missions. The present general comment should be distributed to business enterprises, including those operating transnationally, as well as to small and medium-sized enterprises and actors in the informal sector. It should also be distributed and made known to professionals working for and with children, including judges, lawyers and legal aid providers, teachers, guardians, social workers, officials of public or private welfare institutions, as well as to all children and civil society. This will require translating it into relevant languages, making accessible and child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all relevant professionals.

86. States should include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to respect, protect and fulfil children's rights in the context of the activities and operations of business enterprises both domestically and, where appropriate, transnationally.

UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr. GENERAL

CRC/C/GC/17

17 April 2013

Original: ENGLISH

Committee on the Rights of the Child
Sixty-second session
14 January – 1 February 2013

GENERAL COMMENT NO. 17 (2013)
THE RIGHT OF THE CHILD TO REST, LEISURE, PLAY, RECREATIONAL ACTIVITIES, CULTURAL LIFE AND THE ARTS (ART. 31)*

I. INTRODUCTION

1. The importance of play and recreation in the life of every child has long been acknowledged by the international community, as evidenced by the proclamation in the 1959 Declaration of the Rights of the Child: "The child shall have full opportunity for play and recreation […]; society and the public authorities shall endeavour to promote the enjoyment of this right" (art. 7). This proclamation was further strengthened in the Convention on the Rights of the Child (the Convention) of 1989 which explicitly states in article 31 that "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 and to participate freely in cultural life and the arts."

2. However, based on its reviews of the implementation of the rights of the child under the Convention, the Committee is concerned by the poor recognition given by States to the rights contained in article 31. Poor recognition of their significance in the lives of children results in lack of investment in appropriate provisions, weak or non-existent protective legislation and the invisibility of children in national and local-level planning. In general, where investment is made, it is in the provision of structured and organized activities, but equally important is the need to create time and space for children to engage in spontaneous play, recreation and creativity, and to promote societal attitudes that support and encourage such activity.

3. The Committee is particularly concerned about the difficulties faced by particular categories of children in relation to enjoyment and conditions of equality of the rights defined in article 31, especially girls, poor children, children with disabilities, indigenous children, children belonging to minorities, among others.

4. Furthermore, profound changes in the world are having a major impact on children's opportunities to enjoy the rights provided for in article 31. The urban population, especially in developing countries, is increasing significantly, as is violence worldwide in all its forms – at home, in schools, in mass media, in the streets. The implications, along with the commercialization of play provisions, are influencing the ways children engage in recreation, as well as in cultural and artistic activities. For many children in both rich and poor countries, child labour, domestic work or increasing educational demands serve to reduce the time available for the enjoyment of these rights.

5. This general comment has been developed to address these concerns, raise the profile, awareness and understanding among States of the centrality of the rights in article 31 in the life and development of every child, and urge them to elaborate measures to ensure their implementation. The rights in article 31 have universal application in the diversity of communities and societies in the world and respect the value of all cultural traditions and forms. Every child should be able to enjoy these rights regardless of where he or she lives, his or her cultural background or his or her parental status.

6. This general comment only touches tangentially on the issue of sport, as it is a major issue in its own right. In respect of cultural life, the general comment focuses primarily on aspects related to creative or artistic activities, rather than the broader definition embraced in article 30 on the right of the child to enjoy his or her own culture.

* Adopted by the Committee at its sixty-second session (14 January – 1 February 2013).

II. OBJECTIVES

7. The present general comment seeks to enhance the understanding of the importance of article 31 for children's well-being and development; to ensure respect for and strengthen the application of the rights under article 31, as well as other rights in the Convention, and to highlight the implications for the determination of:

(a) Consequent obligations of States in the elaboration of all implementation measures, strategies and programmes aimed at the realization and full implementation of the rights defined in article 31;

(b) The role and responsibilities of the private sector, including companies working in the areas of recreation, cultural and artistic activities, as well as civil society organizations providing such services for children;

(c) Guidelines for all individuals working with children, including parents, on all actions undertaken in the area of play and recreation.

III. SIGNIFICANCE OF ARTICLE 31 IN CHILDREN'S LIVES

8. Article 31 must be understood holistically, both in terms of its constituent parts and also in its relationship with the Convention in its entirety. Each element of article 31is mutually linked and reinforcing, and when realized, serves to enrich the lives of children. Together, they describe conditions necessary to protect the unique and evolving nature of childhood. Their realization is fundamental to the quality of childhood, to children's entitlement to optimum development, to the promotion of resilience and to the realization of other rights. Indeed, environments in which play and recreational opportunities are available to all children provide the conditions for creativity; opportunities to exercise competence through self-initiated play enhances motivation, physical activity and skills development; immersion in cultural life enriches playful interactions; rest ensures that children have the necessary energy and motivation to participate in play and creative engagement.

9. Play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills. They contribute to all aspects of learning;[227] they are a form of participation in everyday life and are of intrinsic value to the child, purely in terms of the enjoyment and pleasure they afford. Research evidence highlights that playing is also central to children's spontaneous drive for development, and that it performs a significant role in the development of the brain, particularly in the early years. Play and recreation facilitate children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.

10. Both play and recreation can take place when children are on their own, together with their peers or with supportive adults. Children's development can be supported by loving and caring adults as they relate to children through play. Participation with children in play provides adults with unique insights and understanding into the child's perspectives. It builds respect between generations, contributes to effective understanding and communication between children and adults and affords opportunities to provide guidance and stimulus. Children benefit from recreational activities involving adults, including voluntary participation in organized sports, games and other recreational activities. However, the benefits are diminished, particularly in the development of creativity, leadership and team spirit if control by adults is so pervasive that it undermines the child's own efforts to organize and conduct his or her play activities.

11. Involvement in a community's cultural life is an important element of children's sense of belonging. Children inherit and experience the cultural and artistic life of their family, community and society, and through that process, they discover and forge their own sense of identity and, in turn, contribute to the stimulation and sustainability of cultural life and traditional arts.

12. In addition, children reproduce, transform, create and transmit culture through their own imaginative play, songs, dance, animation, stories, painting, games, street theatre, puppetry, festivals, and so on. As they gain understanding of the cultural and artistic life around them from adult and peer relationships, they translate and adapt its meaning through their own generational experience. Through engagement with their peers, children create and transmit their own language, games, secret worlds, fantasies and other cultural knowledge. Children's play generates a "culture of childhood," from games in school and in the playground to urban activities such as playing marbles, free running, street art and so on. Children are also at the forefront in using digital platforms and virtual worlds to establish new means of communication and social networks, through which different cultural environments and artistic forms are being forged. Participation in cultural and artistic activities are necessary for building children's understanding, not only of their own culture, but other cultures, as it provides opportunities to broaden their horizons and learn from other cultural and artistic traditions, thus contributing towards mutual understanding and appreciation of diversity.

13. Finally, rest and leisure are as important to children's development as the basics of nutrition, housing, health care and education. Without sufficient rest, children will lack the energy, motivation and physical and mental capacity for meaningful participation or learning. Denial of rest can have an irreversible physical and psychological impact on the development, health and well-being of children. Children also need leisure, defined as time and space without obligations, entertainment or stimulus, which they can choose to fill as actively or inactively as they wish.

[227] UNESCO, *Education for the twenty-first century: issues and prospects* (Paris, 1998).

IV. LEGAL ANALYSIS OF ARTICLE 31

A. Article 31, paragraph 1

14. States parties recognize the right of the child to:

(a) **Rest**: The right to rest requires that children are afforded sufficient respite from work, education or exertion of any kind, to ensure their optimum health and well-being. It also requires that they are provided with the opportunity for adequate sleep. In fulfilling the right to both respite from activity and adequate sleep, regard must be afforded to children's evolving capacities and their developmental needs.

(b) **Leisure**: Leisure refers to time in which play or recreation can take place. It is defined as free or unobligated time that does not involve formal education, work, home responsibilities, performance of other life-sustaining functions or engaging in activity directed from outside the individual. In other words it is largely discretionary time to be used as the child chooses.

(c) **Play**: Children's play is any behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise. Caregivers may contribute to the creation of environments in which play takes place, but play itself is non-compulsory, driven by intrinsic motivation and undertaken for its own sake, rather than as a means to an end. Play involves the exercise of autonomy, physical, mental or emotional activity, and has the potential to take infinite forms, either in groups or alone. These forms will change and be adapted throughout the course of childhood. The key characteristics of play are fun, uncertainty, challenge, flexibility and non-productivity. Together, these factors contribute to the enjoyment it produces and the consequent incentive to continue to play. While play is often considered non-essential, the Committee reaffirms that it is a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of physical, social, cognitive, emotional and spiritual development.

(d) **Recreational activities**: Recreation is an umbrella term used to describe a very broad range of activities, including, inter alia, participation in music, art, crafts, community engagement, clubs, sports, games, hiking and camping, pursuing hobbies. It consists of activities or experiences, chosen voluntarily by the child, either because of the immediate satisfaction provided or because he or she perceives that some personal or social value will be gained by accomplishing them. Recreation often takes place in spaces specifically designed for it. While many recreational activities may be organized and managed by adults, recreation should be a voluntary activity. Compulsory or enforced games and sports or compulsory involvement in a youth organization, for example, do not constitute recreation.

(e) **Appropriate to the age of the child**: Article 31emphasizes the importance of activities appropriate to the age of the child. In respect of play and recreation, the age of the child must be taken into account in determining the amount of time afforded; the nature of spaces and environments available; forms of stimulation and diversity; the degree of necessary adult oversight and engagement to ensure safety and security. As children grow older, their needs and wants evolve from settings that afford play opportunities to places offering opportunities to socialize, be with peers or be alone. They will also explore progressively more opportunities involving risk-taking and challenge. These experiences are developmentally necessary for adolescents, and contribute to their discovery of identity and belonging.

(f) **Cultural life and the arts**: The Committee endorses the view that it is through cultural life and the arts that children and their communities express their specific identity and the meaning they give to their existence, and build their world view representing their encounter with external forces affecting their lives.[228] Cultural and artistic expression is articulated and enjoyed in the home, school, streets and public spaces, as well as through dance, festivals, crafts, ceremonies, rituals, theatre, literature, music, cinema, exhibitions, film, digital platforms and video. Culture derives from the community as a whole; no child should be denied access either to its creation or to its benefits. Cultural life emerges from within the culture and community, rather than imposed from above, with the role of States being to serve as facilitators not suppliers.[229]

(g) **Participate freely**: The right of children to participate freely in cultural life and the arts requires that States parties respect and abstain from interfering in the child's access to, choice of and engagement in such activities, subject to the obligation to ensure the protection of the child and the promotion of the child's best interests. States parties must also ensure that others do not restrict that right. The child's decision to exercise or not exercise this right is his or her choice and, as such, should be recognized, respected and protected.

[228] Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 13.
[229] See UNESCO, "Mexico City Declaration on Cultural Policies," World Conference on Cultural Policies, Mexico City, 26 July - 6 August 1982.

B. Article 31, paragraph 2

15. States Parties shall respect and promote the right of the child:

(a) **Participate fully in cultural and artistic life**: The right to participate fully has three inter-related and mutually reinforcing dimensions:

(i) **Access** necessitates that children are provided the opportunities to experience cultural and artistic life and to learn about a wide range of different forms of expression;

(ii) **Participation** requires that concrete opportunities are guaranteed for children, individually or as a group, to express themselves freely, to communicate, act and engage in creative activities, with a view to the full development of their personalities;

(iii) **Contribution to cultural life** encompasses the right of children to contribute to the spiritual, material, intellectual and emotional expressions of culture and the arts, thereby furthering the development and transformation of the society to which he or she belongs.

(b) **Encourage the provision of appropriate opportunities**: Although the requirement to encourage the provision of appropriate opportunities specifies cultural, artistic, recreational and leisure activity, the Committee interprets it as including play also, further to article 4 of the Convention. States parties must therefore ensure the necessary and appropriate preconditions for participation to facilitate and promote opportunities for the realization of the rights under article 31. Children can only realize their rights if the necessary legislative, policy, budgetary, environmental and service frameworks are in place.

(c) **Provision of equal opportunities**: Every child must be afforded equal opportunities to enjoy his or her rights under article 31.

V. ARTICLE 31 IN THE BROADER CONTEXT OF THE CONVENTION

A. Links with the general principles of the Convention

16. **Article 2 (non-discrimination)**: The Committee emphasizes that States parties shall take all appropriate measures to ensure that all children have the opportunity to realize their rights under article 31 without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Particular attention should be given to addressing the rights of certain groups of children, including, inter alia, girls, children with disabilities, children living in poor or hazardous environments, children living in poverty, children in penal, health-care or residential institutions, children in situations of conflict or humanitarian disaster, children in rural communities, asylum-seeking and refugee children, children in street situations, nomadic groups, migrant or internally displaced children, children of indigenous origin and from minority groups, working children, children without parents and children subjected to significant pressure for academic attainment.

17. **Article 3 (best interests of the child)**: The Committee emphasizes that the realization of the rights under article 31 is, by definition, in the child's best interests. The obligation to consider the child's best interests applies to children as individuals and as a group or constituency. All legislative, policy and budgetary measures, as well as measures relating to environmental or service provision, which are likely to impact on the rights provided for in article 31 must take into consideration the best interests of children. This would apply, for example, to regulations relating to health and safety, solid waste disposal and collection, residential and transportation planning, design and accessibility of the urban landscape, provision of parks and other green spaces, determination of school hours, child labour and education legislation, planning applications or legislation governing privacy on the Internet, among others.

18. **Article 6 (life, survival and development)**: State parties must ensure, to the maximum extent possible, the life, survival and development of the child. In this regard, the Committee draws attention to the need to recognize the positive value of each dimension of article 31 in promoting the development and evolving capacities of children. This also requires that the measures introduced to implement article 31 are in accordance with the developmental needs of children at all ages. States parties should promote awareness and understanding of the centrality of play for children's development among parents, caregivers, government officials and all professionals working with and for children.

19. **Article 12 (right to be heard)**: Children, as individuals and as a group, have the right to express their views on all matters of concern to them, which should be given due weight, in accordance with their age and maturity, and they should receive adequate support to express their views, where necessary. Children are entitled to exercise choice and autonomy in their play and recreational activities, as well as in their participation in cultural and artistic activities. The Committee underlines the importance of providing opportunities for children to contribute to the development of legislation, policies, strategies and design of services to ensure the implementation of the rights under article 31. Such contribution could include their involvement, for example, in consultations on policies related to play and recreation, on legislation affecting educational rights and school organization and curriculum or protective legislation relating to child labour, on the development of parks and other local facilities, on urban planning and design for child-friendly communities and environments, and their feedback could be sought on opportunities for play or recreation and cultural activities within the school and the wider community.[230]

[230] See the Committee's general comment No.12 (2009) on the right of the child to be heard.

B. Links with other relevant rights

20. **Article 13**: The right to freedom of expression is fundamental to the right to participate freely in cultural and artistic activity. Children have the right to express themselves in whatever way they choose, subject only to restrictions as defined by law and when necessary to ensure respect for the rights and reputations of others, and for the protection of national security, public order and public health or morals.

21. **Article 15**: Children have the right to exercise choice in their friendships, as well as membership of social, cultural, sporting and other forms of organization. Freedom of association represents an integral dimension of their rights under article 31, as children together create forms of imaginative play that are rarely achieved in adult-child relations. Children need to engage with peers of both sexes, as well as with people of different abilities, classes, cultures and ages, in order to learn cooperation, tolerance, sharing and resourcefulness. Play and recreation create the opportunities for the formation of friendships and can play a key role in strengthening civil society, contributing towards the social, moral and emotional development of the child, shaping culture and building communities. State parties must facilitate opportunities to enable children to meet freely with their peers at the community level. They must also respect and support the right of children to establish, join and leave associations, and the right to peaceful assembly. However, children should never be compelled to participate or join organizations.

22. **Article 17**: Children are entitled to information and materials which are of social and cultural benefit and which derive from a diversity of community, national and international sources. Access to such information and materials is essential for their realization of the right to participate fully in cultural and artistic activity. States parties are encouraged to ensure that children are provided with the widest possible access, through different media, to information and materials related to their own culture and to other cultures, in a language that they understand, including sign language and Braille, and by permitting exceptions to copyright laws in order to ensure the availability of printed materials in alternative formats. In so doing, care must be taken to protect and preserve cultural diversity and to avoid cultural stereotypes.

23. **Article 22**: Refugee and asylum-seeking children face profound challenges in realizing their rights under article 31 as they often experience both dislocation from their own traditions and culture and exclusion from the culture of the host country. Efforts must be made to ensure that refugee and asylum-seeking children have equal opportunities with children from the host country to enjoy the rights provided for in article 31. Recognition must also be afforded to the right of refugee children to preserve and practice their own recreational, cultural and artistic traditions.

24. **Article 23:** Accessible and inclusive environments and facilities must be made available[231] to children with disabilities to enable them to enjoy their rights under article 31. Families, caregivers and professionals must recognize the value of inclusive play, both as a right and as a means of achieving optimum development, for children with disabilities. States parties should promote opportunities for children with disabilities, as equal and active participants in play, recreation and cultural and artistic life, by awareness-raising among adults and peers, and by providing age-appropriate support or assistance.

25. **Article 24:** Not only does the realization of the rights provided for in article 31 contribute to the health, well-being and development of children, but also appropriate provision for children to enjoy the rights under article 31 when they are ill and/or hospitalized will play an important role in facilitating their recovery.

26. **Article 27**: Inadequate standard of living, insecure or overcrowded conditions, unsafe and unsanitary environments, inadequate food, enforced harmful or exploitative work can all serve to limit or deny children the opportunity to enjoy their rights under article 31. States parties are encouraged to take into account the implications for children's rights under article 31 when developing policies relating to social protection, employment, housing and access to public spaces for children, especially those living without opportunities for play and recreation in their own homes.

27. **Articles 28 and 29**: Education must be directed to the development of the child's personality, talents and mental and physical abilities to the fullest potential. Implementation of the rights under article 31 is essential to achieving compliance with the right provided for in article 29. For children to optimize their potential, they require opportunities for cultural and artistic development as well as participation in sports and games. The Committee also emphasizes that the rights under article 31 are of positive benefit to children's educational development; inclusive education and inclusive play are mutually reinforcing and should be facilitated during the course of every day throughout early childhood education and care (preschool) as well as primary and secondary school. While relevant and necessary for children of all ages, play is particularly significant in the early years of schooling. Research has shown that play is an important means through which children learn.

28. **Article 30**: Children from ethnic, religious or linguistic minorities should be encouraged to enjoy and participate in their own cultures. States should respect the cultural specificities of children from minority communities as well as children of indigenous origin, and ensure that they are afforded equal rights with children from majority communities to participate in cultural and artistic activities reflecting their own language, religion and culture.

29. **Article 32**: The Committee notes that in many countries, children are engaged in arduous work which denies them their rights under article 31. Furthermore, millions of children are working as domestic workers or in non-hazardous occupations with their families

[231] See Convention on the Rights of Persons with Disabilities, arts. 7, 9 and 30.

without adequate rest or education, throughout most of their childhood. States need to take all necessary measures to protect all child workers from conditions that violate their rights under article 31.

30. **Articles 19, 34, 37 and 38**: Violence, sexual exploitation, deprivation of liberty by unlawful or arbitrary means and forced service in armed conflicts impose conditions that seriously impede or even eliminate children's abilities to enjoy play, recreation and participation in cultural life and the arts. Bullying by other children can also be a major impediment to the enjoyment of the rights under article 31. Those rights can only be realized if States parties take all necessary measures to protect children from such acts.

31. **Article 39**: States parties should ensure that children who have experienced neglect, exploitation, abuse or other forms of violence are provided with support for recovery and reintegration. Children's experiences, including those which are painful and damaging, can be communicated through play or artistic expression. Opportunities to realize the rights under article 31 can provide a valuable means through which children can externalize traumatic or difficult life experiences in order to make sense of their past and better cope with their future. Play and artistic expression would enable them to communicate, better understand their own feelings and thoughts, prevent or resolve psychosocial challenges and learn to manage relationships and conflicts through a natural, self-guided, self-healing process.

VI.Creating the context for the realization of article 31

A. Factors for an optimum environment

32. Children have a spontaneous urge to play and participate in recreational activities and will seek out opportunities to do so in the most unfavourable environments. However, certain conditions need to be assured, in accordance with children's evolving capacities, if they are to realize their rights under article 31 to the optimum extent. As such, children should have:

- Freedom from stress;
- Freedom from social exclusion, prejudice or discrimination;
- An environment secure from social harm or violence;
- An environment sufficiently free from waste, pollution, traffic and other physical hazards to allow them to circulate freely and safely within their local neighbourhood;
- Availability of rest appropriate to their age and development;
- Availability of leisure time, free from other demands;
- Accessible space and time for play, free from adult control and management;
- Space and opportunities to play outdoors unaccompanied in a diverse and challenging physical environment, with easy access to supportive adults, when necessary;
- Opportunities to experience, interact with and play in natural environments and the animal world;
- Opportunities to invest in their own space and time so as to create and transform their world, using their imagination and languages;
- Opportunities to explore and understand the cultural and artistic heritage of their community, participate in, create and shape it;
- Opportunities to participate with other children in games, sports and other recreational activities, supported, where necessary, by trained facilitators or coaches;
- Recognition by parents, teachers and society as a whole of the value and legitimacy of the rights provided for in article 31.

B. Challenges to be addressed in the realization of article 31

33. **Lack of recognition of the importance of play and recreation**: In many parts of the world, play is perceived as "deficit" time spent in frivolous or unproductive activity of no intrinsic worth. Parents, caregivers and public administrators commonly place a higher priority on studying or economic work than on play, which is often considered noisy, dirty, disruptive and intrusive. Moreover, adults often lack the confidence, skill or understanding to support children's play and to interact with them in a playful way. Both the right of children to engage in play and recreation and their fundamental importance of those activities for children's well-being, health and development are poorly understood and undervalued. When play is recognized, it is usually physically active play and competitive games(sport) that are valued above fantasy or social drama, for example. The Committee emphasizes that greater recognition of the forms and locations of play and recreation preferred by older children is particularly necessary. Adolescents often seek places to meet with their peers and explore their emerging independence and transition to adulthood. This is an important dimension for the development of their sense of identity and belonging.

34. **Unsafe and hazardous environments**: Features in the environment which impact on the rights provided for in article 31 can either serve as protective or risk factors for children's health, development and safety. In respect of younger children, spaces which provide opportunities for exploration and creativity should enable parents and caregivers to maintain oversight, including by means of eye and voice contact. Children need access to inclusive spaces that are free from inappropriate hazards and close to their own homes, as well as with measures to promote safe, independent mobility as their capacities evolve.

35. The majority of the world's poorest children face physical hazards such as polluted water; open sewer systems; overcrowded cities; uncontrolled traffic; poor street lighting and congested streets; inadequate public transport; lack of safe local play areas, green spaces and cultural facilities; informal urban "slum" settlements in hazardous, violent or toxic environments. In post-conflict environments, children can also be harmed by landmines and unexploded ordnance. Indeed, children are at particular risk both because their natural curiosity and exploratory play increases the likelihood of exposure and because the impact of an explosion is greater on a child.

36. Human factors can also combine to place children at risk in the public environment: high levels of crime and violence; community unrest and civil strife; drug and gang-related violence; risk of kidnapping and child trafficking; open spaces dominated by hostile youth or adults; aggression and sexual violence towards girls. Even where parks, playgrounds, sports facilities and other provisions exist, they may often be in locations where children are at risk, unsupervised and exposed to hazards. The dangers posed by all these factors severely restrict children's opportunities for safe play and recreation. The increasing erosion of many spaces traditionally available to children creates a need for greater Government intervention to protect the rights under article 31.

37. **Resistance to children's use of public spaces**: Children's use of public space for play, recreation and their own cultural activities is also impeded by the increasing commercialization of public areas, from which children are excluded. Furthermore, in many parts of the world, there is decreasing tolerance of children in public spaces. The introduction, for example, of curfews on children; gated communities or parks; reduced noise-level tolerance; playgrounds with strict rules for "acceptable" play behaviour; restrictions on access to shopping malls builds a perception of children as "problems" and/or delinquents. Adolescents, in particular, are widely perceived as a threat by widespread negative media coverage and representation, and discouraged from using public spaces.

38. The exclusion of children has significant implications for their development as citizens. Shared experience of inclusive public spaces by different age groups serves to promote and strengthen civil society and encourage children to recognize themselves as citizens with rights. States are encouraged to promote dialogue between older and younger generations to encourage greater recognition of children as rights holders, and of the importance of networks of diverse community spaces in local areas or municipalities which can accommodate the play and recreational needs of all children.

39. **Balancing risk and safety**: Fears over the physical and human risks to which children are exposed within their local environments are leading, in some parts of the world, to increasing levels of monitoring and surveillance, with consequent constraints on their freedom to play and opportunities for recreation. In addition, children themselves can pose a threat to other children in their play and recreational activities – for example, bullying, abuse of younger children by older children and group pressure to engage in high risk-taking. While children must not be exposed to harm in the realization of their rights under article 31, some degree of risk and challenge is integral to play and recreational activities and is a necessary component of the benefits of these activities. A balance is needed between, on the one hand, taking action to reduce unacceptable hazards in children's environment, such as closing local streets to traffic, improving street lighting or creating safe boundaries for school playgrounds, and on the other hand, informing, equipping and empowering children to take the necessary precautions to enhance their own safety. The best interests of the child and listening to children's experiences and concerns should be mediating principles for determining the level of risk to which children can be exposed.

40. **Lack of access to nature**: Children come to understand, appreciate and care for the natural world through exposure, self-directed play and exploration with adults who communicate its wonder and significance. Memories of childhood play and leisure in nature strengthen resources with which to cope with stress, inspire a sense of spiritual wonder and encourage stewardship for the earth. Play in natural settings also contributes towards agility, balance, creativity, social cooperation and concentration. Connection to nature through gardening, harvesting, ceremonies and peaceful contemplation is an important dimension of the arts and heritage of many cultures. In an increasingly urbanized and privatized world, children's access to parks, gardens, forests, beaches and other natural areas is being eroded, and children in low-income urban areas are most likely to lack adequate access to green spaces.

41. **Pressure for educational achievement**: Many children in many parts of the world are being denied their rights under article 31 as a consequence of an emphasis on formal academic success. For example:

- Early childhood education is increasingly focused on academic targets and formal learning at the expense of participation in play and attainment of broader development outcomes;
- Extracurricular tuition and homework are intruding on children's time for freely chosen activities;
- The curriculum and daily schedule often lack recognition of the necessity of or provision for play, recreation and rest;
- The use of formal or didactic educational methods in the classroom do not take advantage of opportunities for active playful learning;
- Contact with nature is decreasing in many schools with children having to spend more time indoors;
- Opportunities for cultural and artistic activities and the provision of specialist arts educators in school are, in some countries, being eroded in favour of more academic subjects.
- Restrictions on the type of play in which children can engage in school serve to inhibit their opportunities for creativity, exploration and social development.

42. **Overly structured and programmed schedules**: For many children, the ability to realize the rights provided for in article 31 is restricted by the imposition of adult-decided activities, including, for example, compulsory sports, rehabilitative activities for children with disabilities or domestic chores, particularly for girls, which allow little or no time for self-directed activities. Where Government investment exists, it tends to focus on organized competitive recreation, or sometimes children are required or pressured to participate in youth organizations not of their own choosing. Children are entitled to time that is not determined or controlled by adults, as well as time in which they are free of any demands – basically to do "nothing, if they so desire. Indeed, the absence of activity can serve as a stimulus to creativity. Narrowly focusing all of a child's leisure time into programmed or competitive activities can be damaging to his or her physical, emotional, cognitive and social well-being.[232]

43. **Neglect of article 31 in development programmes**: Early childhood care and development work in many countries focuses exclusively on issues of child survival with no attention paid to the conditions that enable children to thrive. Programmes often only deal

[232] Marta Santos Pais, "The Convention on the Rights of the Child," in OHCHR, *Manual on Human Rights Reporting* (Geneva, 1997), pp. 393 to 505.

with nutrition, immunization and preschool education with little or no emphasis on play, recreation, culture and the arts. The personnel running the programmes are not appropriately trained to support these aspects of the child's development needs.

44. **Lack of investment in cultural and artistic opportunities for children**: Children's access to cultural and artistic activities are often restricted by a range of factors, including lack of parental support; cost of access; lack of transport; the adult-centred focus of many exhibitions, plays and events; failure to engage children in the content, design, location and forms of provision. Greater emphasis is needed in the creation of spaces to stimulate creativity. Operators of arts and cultural venues should look beyond their physical spaces to consider how their programmes reflect and respond to the cultural lives of the community they represent. Children's participation in the arts requires a more child-centred approach which commissions and displays children's creations and also engages them in the structure and programmes offered. Such engagement during childhood can serve to stimulate cultural interests for life.

45. **Growing role of electronic media**: Children in all regions of the world are spending increasing periods of time engaged in play, recreational, cultural and artistic activities, both as consumers and creators, via various digital platforms and media, including watching television, messaging, social networking, gaming, texting, listening to and creating music, watching and making videos and films, creating new art forms, posting images. Information and communication technologies are emerging as a central dimension of children's daily reality. Today, children move seamlessly between offline and online environments. These platforms offer huge benefits – educationally, socially and culturally – and States are encouraged to take all necessary measures to ensure equality of opportunity for all children to experience those benefits. Access to the Internet and social media is central to the realization of article 31 rights in the globalized environment.

46. However, the Committee is concerned at the growing body of evidence indicating the extent to which these environments, as well as the amounts of time children spend interacting with them, can also contribute to significant potential risk and harm to children.[233] For example:

- Access to the Internet and social media is exposing children to cyberbullying, pornography and cybergrooming. Many children attend Internet cafes, computer clubs and game halls with no adequate restrictions to access or effective monitoring systems;
- The increasing levels of participation, particularly among boys, in violent video games appears to be linked to aggressive behaviour as the games are highly engaging and interactive and reward violent behaviour. As they tend to be played repeatedly, negative learning is strengthened and can contribute to reduced sensitivity to the pain and suffering of others as well as aggressive or harmful behaviour toward others. The growing opportunities for online gaming, where children may be exposed to a global network of users without filters or protections, are also a cause for concern.
- Much of the media, particularly mainstream television, fail to reflect the language, cultural values and creativity of the diversity of cultures that exist across society. Not only does such monocultural viewing limit opportunities for all children to benefit from the potential breadth of cultural activity available, but it can also serve to affirm a lower value on non-mainstream cultures. Television is also contributing to the loss of many childhood games, songs, rhymes traditionally transmitted from generation to generation on the street and in the playground;
- Growing dependence on screen-related activities is thought to be associated with reduced levels of physical activity among children, poor sleep patterns, growing levels of obesity and other related illnesses.

47. **Marketing and commercialization of play**: The Committee is concerned that many children and their families are exposed to increasing levels of unregulated commercialization and marketing by toy and game manufacturers. Parents are pressured to purchase a growing number of products which may be harmful to their children's development or are antithetical to creative play, such as products that promote television programmes with established characters and storylines which impede imaginative exploration; toys with microchips which render the child as a passive observer; kits with a pre-determined pattern of activity; toys that promote traditional gender stereotypes or early sexualization of girls; toys containing dangerous parts or chemicals; realistic war toys and games. Global marketing can also serve to weaken children's participation in the traditional cultural and artistic life of their community.

VII. CHILDREN REQUIRING PARTICULAR ATTENTION TO REALIZE THEIR RIGHTS UNDER ARTICLE 31

48. **Girls**: A combination of significant burdens of domestic responsibilities and sibling and family care, protective concerns on the part of parents, lack of appropriate facilities and cultural assumptions imposing limitations on the expectations and behaviour of girls can serve to diminish their opportunities to enjoy the rights provided for in article 31, particularly in the adolescent years. In addition, gender differentiation in what is considered girls' and boys' play and which is widely reinforced by parents, caregivers, the media and producers/manufacturers of games and toys serve to maintain traditional gender-role divisions in society. Evidence indicates that whereas boys' games prepare them for successful performance in a wide range of professional and other settings in modern society, girls' games, in contrast, tend to direct them towards the private sphere of the home and future roles as wives and mothers. Adolescent boys and girls are often discouraged from engaging in joint recreational activities. Furthermore, girls generally have lower participation rates in physical activities and organized games as a consequence of either external cultural or self-imposed exclusion or lack of appropriate provision. This pattern is of concern in the light of the proven physical, psychological, social and intellectual benefits associated with participation in sports activities.[234] Given these widespread and pervasive barriers impeding girls' realization of their rights under article 31, the Committee urges States parties to take action to challenge gender stereotypes which serve to compound and reinforce patterns of discrimination and inequality of opportunity.

[233] UNICEF, *Child Safety Online: Global Challenges and Strategies. Technical report* (Florence, Innocenti Research Centre, 2012).
[234] UNESCO, International Charter of Physical Education and Sport, 1978.

49. **Children living in poverty**: Lack of access to facilities, inability to afford the costs of participation, dangerous and neglected neighbourhoods, the necessity to work and a sense of powerlessness and marginalization all serve to exclude the poorest children from realizing the rights provided for in article 31. For many, the risks to their health and safety outside the home are compounded by home environments which provide no or little space or scope for play or recreation. Children without parents are particularly vulnerable to loss of their rights under article 31; children in street situations are not afforded play provisions, and are commonly actively excluded from city parks and playgrounds, although they use their own creativity to utilize the informal setting of the streets for play opportunities. Municipal authorities must recognize the importance of parks and playgrounds for the realization of the rights provided for under article 31 by children living in poverty and engage in dialogue with them in respect of policing, planning and development initiatives. States need to take action to ensure both access to and opportunities for cultural and artistic activities for all children, as well as equal opportunities for play and recreation.

50. **Children with disabilities**: Multiple barriers impede access by children with disabilities to the rights provided for in article 31, including exclusion from school; informal and social arenas where friendships are formed and where play and recreation take place; isolation at the home; cultural attitudes and negative stereotypes which are hostile to and rejecting of children with disabilities; physical inaccessibility of, inter alia, public spaces, parks, playgrounds and equipment, cinemas, theatres, concert halls, sports facilities and arenas; policies that exclude them from sporting or cultural venues on the grounds of safety; communication barriers and failure to provide interpretation and adaptive technology; lack of accessible transport. Children with disabilities can also be hindered in the enjoyment of their rights if investment is not made to render radio, television, computers and tablets accessible, including through the use of assistive technologies. In this regard, the Committee welcomes article 30 of the Convention on the Rights of Persons with Disabilities which emphasizes the obligations of States parties to ensure that children with disabilities have equal access with other children to participation in play, recreation, sporting and leisure activities, including in the mainstream school system. Pro-active measures are needed to remove barriers and promote accessibility to and availability of inclusive opportunities for children with disabilities to participate in all these activities.[235]

51. **Children in institutions**: Many children spend all or part of their childhood in institutions, including, inter alia, residential homes and schools, hospitals, detention centres, remand homes and refugee centres, where opportunities for play, recreation and participation in cultural and artistic life may be limited or denied. The Committee stresses the need for States to work towards the de-institutionalization of children; but until that goal is reached, States should adopt measures to ensure that all such institutions guarantee both spaces and opportunities for children to associate with their peers in the community, to play and to participate in games, physical exercise, cultural and artistic life. Such measures should not be restricted to compulsory or organized activities; safe and stimulating environments are needed for children to engage in free play and recreation. Wherever possible, children should be afforded these opportunities within local communities. Children living in institutions for significant periods of time also require appropriate literature, periodicals and access to the Internet, as well as support to enable them to make use of such resources. Availability of time, appropriate space, adequate resources and equipment, trained and motivated staff and provision of dedicated budgets are needed to create the necessary environments to ensure that every child living in an institution can realize his or her rights under article 31.

52. **Children from indigenous and minority communities**: Ethnic, religious, racial or caste discrimination can serve to exclude children from realizing their rights under article 31. Hostility, assimilation policies, rejection, violence and discrimination may result in barriers to enjoyment by indigenous and minority children of their own cultural practices, rituals and celebrations, as well as to their participation in sports, games, cultural activities, play and recreation alongside other children. States have an obligation to recognize, protect and respect the right of minority groups to take part in the cultural and recreational life of the society in which they live, as well as to conserve, promote and develop their own culture.[236] However, children from indigenous communities also have the right to experience and explore cultures beyond the boundaries of their own family traditions. Cultural and artistic programmes must be based on inclusion, participation and non-discrimination.

53. **Children in situations of conflict, humanitarian and natural disasters**: The rights provided for in article 31 are often given lower priority in situations of conflict or disaster than the provision of food, shelter and medicines. However, in these situations, opportunities for play, recreation and cultural activity can play a significant therapeutic and rehabilitative role in helping children recover a sense of normality and joy after their experience of loss, dislocation and trauma. Play, music, poetry or drama can help refugee children and children who have experienced bereavement, violence, abuse or exploitation, for example, to overcome emotional pain and regain control over their lives. Such activities can restore a sense of identity, help them make meaning of what has happened to them, and enable them experience fun and enjoyment. Participation in cultural or artistic activities, as well as in play and recreation, offers children an opportunity to engage in a shared experience, to re-build a sense of personal value and self-worth, to explore their own creativity and to achieve a sense of connectedness and belonging. Settings for play also provide opportunities for monitors to identify children suffering from the harmful impact of conflict.

VIII. STATES PARTIES' OBLIGATIONS

54. Article 31 imposes three obligations on States parties to guarantee that the rights it covers are realized by every child without discrimination:

(a) The obligation **to respect** requires States parties to refrain from interfering, directly or indirectly, in the enjoyment of the rights provided for in article 31;

[235] General comment No. 9 (2006) on the rights of children with disabilities.
[236] United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295, annex).

(b) The obligation **to protect** requires States parties to take steps to prevent third parties from interfering in the rights under article 31;

(c) The obligation **to fulfil** requires States parties to introduce the necessary legislative, administrative, judicial, budgetary, promotional and other measures aimed at facilitating the full enjoyment of the rights provided for in article 31 by undertaking action to make available all necessary services, provision and opportunities.

55. While the International Covenant on Economic, Social and Cultural Rights provides for the progressive realization of economic, social and cultural rights and recognizes the problems arising from limited resources, it imposes on States parties the specific and continuing obligation, even where resources are inadequate, to "strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances"[237]. As such, no regressive measures in relation to the rights under article 31 are permitted. Should any such deliberate measure be taken, the State would have to prove that it has carefully considered all the alternatives, including giving due weight to children's expressed views on the issue, and that the decision was justified, bearing in mind all other rights provided for in the Convention.

56. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of every child, individually or in association with others, to realise his or her rights under article 31, including:

(a) **Support for caregivers**: Guidance, support and facilitation with regard to the rights under article 31 should be provided to parents and caregivers in line with article 18, paragraph 2, of the Convention. Such support could be in the form of practical guidance, for example, on how to listen to children while playing; create environments that facilitate children's play; allow children to play freely and play with children. It could also address the importance of encouraging creativity and dexterity; balancing safety and discovery; the developmental value of play and guided exposure to cultural, artistic and recreational activities.

(b) **Awareness raising**: States should invest in measures to challenge widespread cultural attitudes which attach low value to the rights provided for in article 31, including:

- Public awareness of both the right to and the significance of play, recreation, rest, leisure and participation in cultural and artistic activities for both boys and girls of all ages in contributing to the enjoyment of childhood, promoting the optimum development of the child and building positive learning environments;
- Measures to challenge the pervasive negative attitudes, particularly towards adolescents, which lead to restrictions on the opportunities for the enjoyment of their rights under article 31. In particular, opportunities should be created for children to represent themselves in the media.

57. The obligation to protect requires that States parties take action to prevent third parties from interfering in or restricting the rights provided for in article 31. Accordingly, States are obliged to ensure:

(a) **Non-discrimination**: Legislation is required to guarantee access for every child, without discrimination on any ground, to all recreational, cultural and artistic environments, including public and private spaces, natural spaces, parks, playgrounds, sporting venues, museums, cinemas, libraries, theatres, as well as to cultural activities, services and events;

(b) **Regulation of non-State actors:** Legislation, regulations and guidelines should be introduced, together with the necessary budgetary allocation and effective mechanisms for monitoring and enforcement, to ensure that all members of civil society, including the corporate sector, comply with the provisions of article 31, including, inter alia:

- Employment protection for all children to guarantee appropriate limitations on the nature, hours and days of work, rest periods and facilities for recreation and rest, consistent with their evolving capacities. States are also encouraged to ratify and implement ILO conventions Nos. 79, 90, 138 and 182;[238]
- Establishment of safety and accessibility standards for all play and recreational facilities, toys and games equipment;
- Obligations to incorporate provision and opportunity for the realization of the rights under article 31 in urban and rural development proposals;
- Protection from cultural, artistic or recreational material which might be injurious to children's well-being, including protection and classification systems governing media broadcasting and film, taking into account the provisions of both article 13 on freedom of expression and article 18 on the responsibilities of parents;
- Introduction of regulations prohibiting the production of realistic war games and toys for children;

(c) **Protection of children from harm**: Child protection policies, procedures, professional ethics, codes and standards for all professionals working with children in the field of play, recreation, sports, culture and the arts must be introduced and enforced. Recognition must also be given to the need to protect children from potential harm that may be imposed by other children in the exercise of their rights under article 31;[239]

(d) **Online safety**: Measures should be introduced to promote online access and accessibility, as well as safety for children. These should include action to empower and inform children to enable them to act safely online, to become confident and responsible citizens of digital environments and to report abuse or inappropriate activity when it is encountered. Measures are also needed to

[237] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties obligations, para. 11.
[238] ILO conventions No. 79 - Night Work of Young Persons (Non-Industrial Occupations); No. 90 - Night Work of Young Persons (Industry); No. 138 - Minimum Age Convention; No. 182 - Worst Forms of Child Labour Convention.
[239] General comment No. 13 (2011) on the right of the child to freedom from all forms of violence.

reduce impunity of abusive adults through legislation and international collaboration; limit access to harmful or adult-rated material and gaming networks; improve information for parents, teachers and policymakers to raise awareness of the potential harm associated with violent games and develop strategies for promoting safer and attractive options for children;

(e) **Post-conflict safety:** Active measures should be taken to restore and protect the righhts under article 31in post-conflict and disaster situations, including, inter alia:

- Encouraging play and creative expression to promote resilience and psychological healing;
- Creating or restoring safe spaces, including schools, where children can participate in play and recreation as part of the normalization of their lives;
- In areas where landmines pose a threat to the safety of children, investment must be made to ensure the complete clearing of landmines and cluster-bombs from all affected areas[240];

(f) **Marketing and media**: Action should be initiated to:

- Review policies concerning the commercialization of toys and games to children, including through children's television programmes and directly related advertisements, with particular regard to those promoting violence, girls or boys in a sexual way and reinforcing gender and disability stereotypes;
- Limit exposure to advertising during peak viewing hours for children;

(g) **Complaint mechanisms**: Independent, effective, safe and accessible mechanisms must be in place for children to make complaints and seek redress if their rights under article 31 are violated[241]. Children need to know who they can complain to and how (what procedure) to do so. State are encouraged to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC), which will allow individual children to submit complaints of violations.

58. The obligation to fulfil requires that States parties adopt a wide range of measures to ensure the fulfilment of all the rights provided for under article 31. In accordance with article 12 of the Convention, all such measures, both at the national and local levels, and including planning, design, development, implementation and monitoring should be developed in collaboration with children themselves, as well as NGOs and community-based organizations, through, for example, children's clubs and associations, community arts and sports groups, representative organizations of children and adults with disabilities, representatives from minority communities and play organisations[242]. In particular, consideration should be given to the following:

(a) **Legislation and planning**: The Committee strongly encourages States to consider introducing legislation to ensure the rights under article 31 for every child, together with a timetable for implementation. Such legislation should address the principle of sufficiency – all children should be given sufficient time and space to exercise these rights. Consideration should also be given to the development of a dedicated plan, policy or framework for article 31 or to its incorporation into an overall national plan of action for the implementation of the Convention. Such a plan should address the implications of article 31 for boys and girls of all age groups, as well as children in marginalized groups and communities; it should also recognize that creating time and space for children's self-directed activity is as important as the provision of facilities and opportunities for organized activities;

(b) **Data collection and research**: Indicators for compliance, as well as mechanisms for monitoring and evaluating implementation need to be developed in order to ensure accountability to children in the fulfilment of obligations under article 31. States need to collect population-based data, disaggregated by age, sex, ethnicity and disability, to gain an understanding of the extent and nature of children's engagement in play, recreation and cultural and artistic life. Such information should inform planning processes, and provide the basis for measuring progress in implementation. Research is also needed into the daily lives of children and their caregivers and the impact of housing and neighbourhood conditions in order to understand how they use local environments; the barriers they encounter in enjoying the rights under article 31; the approaches they adopt to surmount those barriers and the action needed to achieve greater realization of those rights. Such research must actively involve children themselves, including children from the most marginalized communities;

(c) **Cross departmental collaboration in national and municipal government**: Planning for play, recreation and cultural and artistic activities requires a broad and comprehensive approach involving cross-departmental collaboration and accountability between national, regional and municipal authorities. Relevant departments include not only those dealing directly with children, such as health, education, social services, child protection, culture, recreation and sports, but also those concerned with water and sanitation, housing, parks, transport, environment and city planning, all of which impact significantly on the creation of environments in which children can realize their rights under article 31;

(d) **Budgets**: Budgets should be reviewed to ensure that the allocation for children, in respect of cultural, artistic, sports, recreational and play activities, is inclusive and consistent with their representation as a proportion of the population as a whole, and distributed across the provision for children of all ages, for example: budgetary support for the production and dissemination of children's books, magazines and papers; various formal and non-formal artistic expressions for children; accessible equipment and buildings and public spaces; resources for facilities such as sports clubs or youth centres. Consideration should be given to the cost of measures required to ensure access for the most marginalized children, including the obligation to provide reasonable accommodation to ensure equality of access for children with disabilities;

[240] Protocol on Explosive Remnants of War (Protocol V to the Convention on Certain Conventional Weapons).
[241] General comment No. 2 (2002) on te role of independent national human rights institutions in the promotion and protection of the rights of the child.
[242] General comment No. 12 (2009) on the right of the child to be heard.

(e) **Universal design**[243]: Investment in universal design is necessary with regard to play, recreational, cultural, arts and sports facilities, buildings, equipment and services, consistent with the obligations to promote inclusion and protect children with disabilities from discrimination. States should engage with non-State actors to ensure the implementation of universal design in the planning and production of all materials and venues, for example, accessible entrances to be used by wheelchair users and inclusive design for play environments, including those in schools;

(f) **Municipal planning**: Local municipalities should assess provision of play and recreation facilities to guarantee equality of access by all groups of children, including through child-impact assessments. Consistent with the obligations under article 31, public planning must place a priority on the creation of environments which promote the well-being of the child. In order to achieve the necessary child-friendly urban and rural environments, consideration should be given to, inter alia:

- Availability of inclusive parks, community centres, sports and playgrounds that are safe and accessible to all children;
- Creation of a safe living environment for free play, including design of zones in which players, pedestrians and bikers have priority;
- Public safety measures to protect areas for play and recreation from individuals or groups who threaten children's safety;
- Provision of access to landscaped green areas, large open spaces and nature for play and recreation, with safe, affordable and accessible transport;
- Road traffic measures, including speed limits, levels of pollution, school crossings, traffic lights, and calming measures to ensure the rights of children to play safely within their local communities;
- Provision of clubs, sports facilities, organized games and activities for both girls and boys of all ages and from all communities;
- Dedicated and affordable cultural activities for children of all ages and from all communities, including theatre, dance, music, art exhibitions, libraries and cinema. Such provision should comprise opportunities for children to produce and create their own cultural forms as well as exposure to activities produced by adults for children;
- Review of all cultural policies, programmes and institutions to ensure their accessibility and relevance for all children and to ensure that they take into account the needs and aspirations of children and support their emerging cultural practices;

(g) **Schools**: Educational environments should play a major role in fulfilling the obligations under article 31, including:

- **Physical environment of settings**: States parties should aim to ensure the provision of adequate indoor and outdoor space to facilitate play, sports, games and drama, during and around school hours; active promotion of equal opportunities for both girls and boys to play; adequate sanitation facilities for boys and girls; playgrounds, play landscapes and equipment that are safe and properly and regularly inspected; playgrounds with appropriate boundaries; equipment and spaces designed to enable all children, including children with disabilities, to participate equally; play areas which afford opportunities for all forms of play; location and design of play areas with adequate protection and with the involvement of children in the design and development;
- **Structure of the day**: Statutory provision, including homework, should guarantee appropriate time during the day to ensure that children have sufficient opportunity for rest and play, in accordance with their age and developmental needs;
- **School curriculum**: Consistent with obligations under article 29 concerning the aims of education, appropriate time and expertise must be allocated within the school curriculum for children to learn, participate in and generate cultural and artistic activities, including music, drama, literature, poetry and art, as well as sports and games;[244]
- **Educational pedagogy**: Learning environments should be active and participatory and offer, especially in the early years, playful activities and forms of engagement;

(h) **Training and capacity-building**: All professionals working with or for children, or whose work impacts on children (Government officials, educators, health professionals, social workers, early years and care workers, planners and architects, etc.), should receive systematic and ongoing training on the human rights of children, including the rights embodied in article 31. Such training should include guidance on how to create and sustain environments in which the rights under article 31 can be most effectively realized by all children.

59. **International cooperation**: The Committee encourages international cooperation in the realization of the rights provided for in article 31 through the active engagement of United Nations agencies including UNICEF, UNESCO, UNHCR, UN Habitat, UNOSDP, UNDP, UNEP and WHO, as well as international, national and local NGOs.

IX.DISSEMINATION

60. The Committee recommends that States parties disseminate this general comment widely within Government and administrative structures, to parents, other caregivers, children, professional organizations, communities and civil society at large. All channels of dissemination, including print media, the Internet and children's own communication means should be used. This will necessitate translation into relevant languages, including sign languages, Braille and easy-to-read formats for children with disabilities. It also requires making culturally appropriate and child-friendly versions available.

61. States parties are also encouraged to report fully to the Committee on the Rights of the Child on the measures they have adopted to encourage the full implementation of article 31 for all children.

[243] The term "universal design" was coined by Ronald Mace to describe the concept of designing all products and the built environment to be aesthetic and usable to the greatest extent possible by everyone, regardless of their age, ability or status in life; see also art. 4, para. 1 (f) of the Convention on the Rights of Persons with Disabilities.

[244] General comment No. 1 (2001) on the aims of education.

Annex A

United Nations Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
Entry into force 2 September 1990, in accordance with article 49 Ratified by South Africa on 16 June 1995

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I
Article 1
For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

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

Article 3
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

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

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

Article 4
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6
1. States Parties recognize that every child has the inherent right to life.

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

Article 7
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9
1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10
1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11
1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others; or
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14
1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15
1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, or to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17
States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:
(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
(c) Encourage the production and dissemination of children's books;
(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20
1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21
States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23
1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties

to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24
1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
(a) To diminish infant and child mortality;
(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
(d) To ensure appropriate pre-natal and post-natal health care for mothers;
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28
1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
(a) Make primary education compulsory and available free to all;
(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
(c) Make higher education accessible to all on the basis of capacity by every appropriate means;
(d) Make educational and vocational information and guidance available and accessible to all children;
(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29
1. States Parties agree that the education of the child shall be directed to:
(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32
1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

Article 35
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37
States Parties shall ensure that:
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be

separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40
1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
(i) To be presumed innocent until proven guilty according to law;
(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:
(a) The law of a State party; or
(b) International law in force for that State.

PART II

Article 42
States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention[i]. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
(a) Within two years of the entry into force of the Convention for the State Party concerned;
(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:
(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The

Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46
The present Convention shall be open for signature by all States.

Article 47
The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48
The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49
1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50
1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51
1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52
A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53
The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54
The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

[1] The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

United Nations Convention on the Rights of the Child Optional Protocol Prohibiting the Sale of Children, Child Prostitution and Pornography

Entry into force on 18 January 2001 **Ratified by South Africa on 30 June 2003**

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1
States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2
For the purposes of the present Protocol:
(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3
1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
(a) In the context of sale of children as defined in article 2:
(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;
c. Engagement of the child in forced labour;
(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4
1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5
1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6
1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7
States Parties shall, subject to the provisions of their national law:
(a) Take measures to provide for the seizure and confiscation, as appropriate, of:
(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
(ii) Proceeds derived from such offences;
(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8
1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
(d) Providing appropriate support services to child victims throughout the legal process;
(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9
1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10
1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11
Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;
(b) International law in force for that State.

Article 12
1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13
1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.

Article 14
1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15
1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16
1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17
1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

United Nations Convention on the Rights of the Child Optional Protocol on Involvement of Children in Armed Conflict

Entry into force on 12 February 2002 **Ratified by South Africa on 24 September 2009**

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflict and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflict,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2
States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3
1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4
1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5
Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6
1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7
1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8
1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9
1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10
1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11
1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12
1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13
1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Optional Protocol to the Convention on the Rights of the Child on a communications procedure

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Entry into force: After 10th ratification **Ratified by South Africa: Not on date of this publication**

The States parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the States parties to the Convention on the Rights of the Child (hereinafter referred to as "the Convention") recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming also the status of the child as a subject of rights and as a human being with dignity and with evolving capacities,

Recognizing that children's special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights,

Considering that the present Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights,

Recognizing that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

Encouraging States parties to develop appropriate national mechanisms to enable a child whose rights have been violated to have access to effective remedies at the domestic level,

Recalling the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard,

Considering that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as "the Committee") to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Part I
General provisions

Article 1
Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.

2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.

3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.

Article 2
General principles guiding the functions of the Committee

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3
Rules of procedure
1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.

2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests.

Article 4
Protection measures
1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.

2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.

Part II
Communications procedure

Article 5
Individual communications
1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:
(*a*) The Convention;
(*b*) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
(*c*) The Optional Protocol to the Convention on the involvement of children in armed conflict.

2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 6
Interim measures
1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 7
Admissibility
The Committee shall consider a communication inadmissible when:
(*a*) The communication is anonymous;
(*b*) The communication is not in writing;
(*c*) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
(*d*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
(*e*) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
(*f*) The communication is manifestly ill-founded or not sufficiently substantiated;
(*g*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;
(*h*) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

Article 8
Transmission of the communication
1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.

2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.

Article 9
Friendly settlement
1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.

2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.

Article 10
Consideration of communications
1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications received under the present Protocol.

3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.

4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.

5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

Article 11
Follow-up
1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.

2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendations or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Article 12
Inter-State communications
1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:
(*a*) The Convention;
(*b*) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
(*c*) The Optional Protocol to the Convention on the involvement of children in armed conflict.

2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.

3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.

4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

Part III
Inquiry procedure
Article 13
Inquiry procedure for grave or systematic violations
1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.

3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.

4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.

5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.

7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.

8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 14
Follow-up to the inquiry procedure
1. The Committee may, if necessary, after the end of the period of six months referred to in article 13, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to an inquiry conducted under article 13 of the present Protocol.

2. The Committee may invite the State party to submit further information about any measures that the State party has taken in response to an inquiry conducted under article 13, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

Part IV
Final provisions

Article 15
International assistance and cooperation
1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

Article 16
Report to the General Assembly
The Committee shall include in its report submitted every two years to the General Assembly in accordance with article 44, paragraph 5, of the Convention a summary of its activities under the present Protocol.

Article 17
Dissemination of and information on the Optional Protocol
Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate and active means and in accessible formats to adults and children alike, including those with disabilities.

Article 18
Signature, ratification and accession
1. The present Protocol is open for signature to any State that has signed ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 19
Entry into force
1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20
Violations occurring after the entry into force
1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol.

2. If a State becomes a party to the present Protocol after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol for the State concerned.

Article 21
Amendments
1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 22
Denunciation
1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

Article 23
Depositary and notification by the Secretary-General

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.

2. The Secretary-General shall inform all States of:
(*a*) Signatures, ratifications and accessions under the present Protocol;
(*b*) The date of entry into force of the present Protocol and of any amendment thereto under article 21;
(*c*) Any denunciation under article 22 of the present Protocol.

Article 24
Languages
1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.