

N°15

International  
Migration  
Law

# HUMAN RIGHTS OF MIGRANT CHILDREN



IOM International Organization for Migration

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*Kristina Touzenis*\*

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\* The views expressed in this article are the author's alone and do not necessarily reflect the position of IOM. The responsibility of any errors remains that of the author alone.

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## Introduction

This research summarises how international law protects migrant children. It focuses on the protection given to children by the Convention on the Rights of the Child, which is also applicable to non-nationals. The report concentrates on and examines in detail the rights that are most relevant to child migrants. Further the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other relevant human rights instruments, are considered. Finally, a brief section is dedicated to the protection afforded to child refugees and victims of trafficking under international law.

Those who migrate, including children, migrate for many reasons: to find work; to improve their personal situations; or to explore the world. Despite the fact that research suggests that children are very much involved with these diverse migration processes, policy-makers have paid little attention to broad questions about the factors prompting children to move; their experience as migrants; the effects of immigration policies upon them; or the consequences of adult migration for children who are left at home.<sup>1</sup> National and international focus has instead been on other issues, such as child trafficking, asylum-seeking and refugee children. Until recently, migration has been discussed mainly in terms of adult, male movement. Women and children have been viewed as migrating only as dependents – following their male relatives.<sup>2</sup> Consequently, child migrants have been considered as passive, vulnerable and exploited. Whilst this is a possibility, it is not necessarily a given.<sup>3</sup> Viewing child migrants exclusively in this way ignores the fact that some children do make a decision to migrate, and do so in much the same way as adults. Assuming that children can only ever be forced or persuaded into migrating is a falsehood that overlooks the reality of many children's lives.<sup>4</sup> Furthermore, having this view may actually push children into the exploitative situation from which they should be protected when they find no viable alternatives.

Generally, the ability to migrate or travel legally without an adult is quite limited for children, especially internationally. This means that children migrating alone are more likely to do so irregularly, increasing the risk of exploitation or abuse. Research into independent child migration suggests that migration is more widespread amongst older children; child migration is usually highest in regions where adult migration is high; independent child migration can be, and often is, an active decision taken by the child with the aim of improving life opportunities; and that child migrants, like adults, rely

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<sup>1</sup> C. Farrow, "Focus on children in migration - from a European research and method perspective", Warsaw Conference, Poland, 20-21 March 2007.

<sup>2</sup> Ibid.

<sup>3</sup> A. Whitehead and I. Hashim, *Children and Migration Background Paper for DFID Migration Team*, March 2005.

<sup>4</sup> C. Farrow, "Focus on children in migration - from a European research and method perspective", Warsaw Conference, Poland, 20-21 March 2007.

on their social and financial resource networks when migrating.<sup>5</sup> The research suggests, not surprisingly, that it is possible for this kind of migration to be both a positive and a negative experience.<sup>6</sup>

Children move independently of their parents within their countries of origin, very often within cross-national regions and sometimes trans-nationally. They move to rural areas, to small towns and to small and large cities. They move in response to armed conflicts, to being orphaned, to work, to gain access to education, and sometimes to replace missing children in other families. The most accurate estimates of the numbers of minors migrating concern migration to developed countries, but short distance, undocumented movements to these countries are difficult to assess. The numbers of children migrating independently of their parents is generally under-reported.<sup>7</sup>

Unaccompanied minors are children who have been separated from their parents and other relatives and are not being cared for by an adult who by law or custom is responsible for doing so. However, recent experience has highlighted that, especially in emergency situations, some children may not be unaccompanied as defined above, even though they may have been separated from their previous legal or customary caregiver. Such children, although living with extended family members, may face risks similar to those encountered by unaccompanied children. The term “separated children” is sometimes used to draw attention to the potential protection needs of this group. “Separated children” are thus defined as children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.<sup>8</sup>

The classic economic explanation for the tendency of minors to migrate is that migration is an investment, requiring individuals to incur costs to generate the returns from higher income. Costs include the financial costs of moving, finding a job, temporarily foregoing earnings, the psychological costs of leaving familiar surroundings and adapting to a new labour market.

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> A. Whitehead and I. Hashim, *Children and Migration Background Paper for DFID Migration Team*, March 2005. The number of households, adults and children involved in all forms of global migration flow is unknown. However, it is certain that minors are a high proportion of the flow of migrants, especially in migration to developing countries. The proportion of 12 to 18 year olds in total migration is much smaller in migration to countries that rely on skill-intensive admission criteria. Youth migrating to developing countries are less likely to be accompanying a parent migrating. About 80 per cent of 12 to 14 year olds accompany a parent, compared to 50 per cent of 15 to 17 year olds and less than 20 per cent of 18 to 24 year olds. There is substantial migration for the purpose of education, even to some developing countries. However, at the same time, at least 20 per cent of 18 to 24 year olds are neither in school nor working. Migrant youth tend to be more heavily concentrated in a few occupations than both older migrant workers and native youth. The age of return migration is also very young in many countries, with the median return migrant being aged 25 to 30 years old. This leaves considerable time for working in the home country.

<sup>8</sup> *Report of the Secretary-General to the United Nations General Assembly on Protection and Assistance to Unaccompanied and Separated Refugee Children*, 7 September 2001 (A/56/333).

The expected returns depend on the wage, the probability of employment and the length of time working abroad. Minors are likely to have higher lifetime returns and face lower costs from moving. Expected returns can be higher because they have more of their human capital in education than in job-specific skills compared to older workers, as well as longer working lives. In addition, the earnings sacrificed from migrating are likely to be less for the young, especially in countries with high levels of youth unemployment and lower child wages.<sup>9</sup>

The decision to migrate is often a family decision, particularly in developing countries, where imperfect credit and insurance markets create a rationale for migrating to diversify risk and finance costly household investment activities. Households can send one of their members and count on remittances to help them cope with unexpected events, such as financial crises and natural disasters. They will select that member based not just upon who will benefit most from migration, but also upon the household functions the member performs and the likelihood of the member remitting money. In many societies, parents exert greater control over daughters than sons, increasing the likelihood that young women are sent away. Further, community factors make it likely that once some young people have migrated, others will follow; for instance, the migrant social network, which lowers the costs and increases the benefits of migrating. Over time, a culture of migration may then develop in a community, with migration becoming a rite of passage for youth, with those who do not migrate being subject to social opprobrium.<sup>10</sup>

Importantly, international child protection campaigns help both to expose the plight of many child migrants and to raise awareness of the extent to which children in the developing world live away from their homes. However, as they bring some children into focus, others fade from view – making it difficult to estimate how and why many other children are moving. A generally underplayed, yet central, motivating factor is their need or desire for income. The causes of this dynamic are various: many come from rural economies in which children start earning their own independent incomes quite early, contributing to the family budget; children may be encouraged to cover their own consumption, such as clothes or school fees; they may also perceive a need to generate savings that can improve their livelihoods or prospects.<sup>11</sup>

Notwithstanding this, the dangers faced by migrant children are worth considering. There are inherent insecurities, risks and dangers in the migration process, to which children are especially vulnerable. These may include being targets for violence, theft and exploitation – this being the case particularly for those who are poor, inexperienced or undocumented.<sup>12</sup>

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<sup>9</sup> D. McKenzie, *A Profile of the World's Young Developing Country Migrants*, Development Research Group, World Bank, 2006, p. 4.

<sup>10</sup> *Ibid.*, p. 5.

<sup>11</sup> A. Whitehead and I. Hashim, *Children and Migration Background Paper for DFID Migration Team*, March 2005.

<sup>12</sup> Some of the effects of migration derive from the other hazards migrant children are likely to fall prey to, such as being homeless, working in jobs that are exploitative or

Frequently, they cannot avail themselves of the assistance of local authorities.<sup>13</sup> A child migrant may also be the subject of adult decision-making by members of the family or others, which in some cases also exposes him or her to significant harm that, in any other context, would trigger powerful child protection mechanisms.<sup>14</sup>

Even when migrating with their families, the migration process is not risk free for children. By leaving the safety net of their villages or hometowns, where neighbours and family members often contribute to the care of each other's children, families may face greater social seclusion in unfamiliar urban or rural areas, whether in their home country or abroad. Children of migrant workers – whether they migrated with their parents or were born in the host country – might be denied access to basic services, including health services and schooling, with language difficulties often being a serious impediment to the education of a child. Children who are not in school (whether due to denial of access or the pressure to contribute to family earnings) become vulnerable to the worst forms of child labour, including the sex industry.<sup>15</sup> This vulnerability is exacerbated by weak legal protection.<sup>16</sup> The migration experience depends on a variety of circumstances: from the motives for migration, the situation in the country of destination, whether the migrant children are attending school or working in exploitative situations, and whether there is support in place for the child, both institutional and informal.<sup>17</sup>

It is often assumed that children who migrate with their parents are in a more secure situation than those who migrate independently. This is, however, not always the case. Children have been found working in exploitative situations with their parents; many migrant children help in the family business, working longer and more regular hours than their national counterparts. This may lead to negative effects on their health, education and integration into the new country. Furthermore, some reports suggest that the parents of migrant children are much more likely to be working in jobs that are low-paid and demand long working hours, meaning that these children may be left without adequate child-care.<sup>18</sup>

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hazardous, or being unable to attend school. Risks migrant children face are very often the risk migrants face in general or risks other children face as well, but the particular situation of being a migrant child may, in many situations, increase the risks – both as a migrant and as a child.

<sup>13</sup> UNICEF, *A Child-rights Approach on International Migration and Child Trafficking: A UNICEF Perspective*, 2004, available online at [http://www.un.org/esa/population/meetings/thirdcoord2004/P06\\_UNICEF.pdf](http://www.un.org/esa/population/meetings/thirdcoord2004/P06_UNICEF.pdf).

<sup>14</sup> ILPA, *Child first, migrant second: ensuring that every child matters*, 2006, p. 6, available online at [http://www.ilpa.org.uk/publications/ilpa\\_child\\_first.pdf](http://www.ilpa.org.uk/publications/ilpa_child_first.pdf).

<sup>15</sup> D. McKenzie, *A Profile of the World's Young Developing Country Migrants*. Development Research Group, World Bank, 2006, p. 5.

<sup>16</sup> UNICEF, *A Child-rights Approach on International Migration and Child Trafficking: A UNICEF Perspective*, 2004.

<sup>17</sup> A. Whitehead and I. Hashim, *Children and Migration Background Paper for DFID Migration Team*, March 2005.

<sup>18</sup> C. Farrow, "Focus on children in migration - from a European research and method perspective", Warsaw Conference, Poland, 20-21 March 2007

As can be seen, the effective protection of child migrants will depend on a balanced approach, which takes into consideration both the vulnerability of the child due to his or her particular situation and the independence and resourcefulness of the child and his or her migration plans and objectives. Any protection that does not consider both these aspects will most likely fail.

Frequently, disparity is apparent between the rights of migrants under international law and the everyday reality in the countries where they live, work or travel. This disparity, between the principles agreed to by governments and the day-to-day realities of individual lives, underscores the vulnerability of migrants in terms of dignity and human rights.<sup>19</sup> Protection for migrants' human rights remains much less developed than the international refugee protection system and, as yet, no international institution has a formal protection mandate for migrants comparable to that of the UNHCR. Nonetheless, migrants have rights under various branches of international law, including human rights and labour law: the core human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), apply universally and thus protect migrants.<sup>20</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Conventions apply to migrants and, in particular, to migrant workers.<sup>21</sup>

As with migrants generally, there is no international or regional legislative framework dealing directly with child migrants. However, in addition to the ICCPR and ICESCR, norms on general child welfare and the protection of children from economic exploitation and harmful work are relevant to accompanied or unaccompanied, forced or voluntary child migrants. Similarly, the protective measures within the Convention of the Rights of the Child, the ILO Conventions on child labour,<sup>22</sup> the UN Protocol on Trafficking and various regional instruments are also pertinent.

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<sup>19</sup> S. Grant, "International Migration and Human Rights", paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 1.

<sup>20</sup> Apart from provisions that specifically apply to nationals, for example, the right to vote and take part in public affairs (ICCPR, Art. 25).

<sup>21</sup> Grant, S., "International Migration and Human Rights", paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 1.

<sup>22</sup> ILO Convention 138 (Minimum Age Convention, 1973); ILO Convention 182 (Worst Forms of Child Labour Convention, 1999); and ILO Recommendation 190 (Worst Forms of Child Labour Recommendation, 1999).



## Convention on the Rights of the Child (CRC)

As mentioned above, this report will focus on the CRC because it applies specifically to children, taking into consideration children's particular situation and needs. Furthermore, the CRC protects every child, regardless of nationality or immigration status. States have obligations, set out in the Convention, towards every child within their jurisdiction.<sup>23</sup> These obligations include, inter alia, the right to a nationality, physical integrity, the highest attainable standard of health and education, and the right to be free from discrimination, exploitation and abuse. The rights of migrant children are not addressed specifically. Nevertheless, there are several provisions particularly relevant to migrant children, including Article 10 on family reunification, Article 36<sup>24</sup> on protection from all forms of exploitation, Article 37 on protection from torture or other cruel, inhuman or degrading treatment or punishment, and from unlawful and arbitrary deprivation of liberty. These rights address extreme maltreatment but, as studies show, extreme maltreatment still occurs all too often.

Only the provisions most relevant to migrant children will be examined, including the core principles of the CRC. However, it is important to remember that the CRC applies to all children in the territory of a state, including migrant children. Thus, although not examined in detail, rights such as the right to freedom of expression, freedom of thought, conscience and religion, freedom of association and peaceful assembly, privacy, and access to information are all extremely important. Freedom of association is often overlooked and denied to children who work; even if associating may in many cases help prevent abuse in such situations, it has not been deemed "appropriate" that children form unions.<sup>25</sup> The right to freedom of religion, also in education, is evidently important for children who migrate to a country with different beliefs. These rights apply to migrant children just as to other children, in the same way as all other provisions of the CRC.

### Core Principles

The core principles of the child's best interests, participation, development, evolving capacities and non-discrimination also apply to migrant children. These principles are so fundamental that they can be thought of as underlying the entire CRC.

The non-discrimination, best interest, evolving capacity and participation principles mutually reinforce to guarantee "the survival and development" of children.<sup>26</sup> This implies that practical measures should be taken at all levels to protect children from particular risks that endanger their right to survival. Such measures could include: priority procedures for child victims of

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<sup>23</sup> Article 2 is extremely important in this context.

<sup>24</sup> Also relevant with regard to victims of trafficking.

<sup>25</sup> See below under "Work".

<sup>26</sup> CRC, Art. 6.



trafficking; the prompt appointment of guardians; the provision of information to children regarding the risks they may encounter during the migration process; and the establishment of measures to provide follow-up to particularly vulnerable children. These measures should be regularly evaluated to ensure their effectiveness.<sup>27</sup>

### *Non-discrimination*

Article 2(1) of the CRC, along with Articles 3(2)<sup>28</sup> and 4,<sup>29</sup> set out the fundamental obligations of States Parties – to “respect and ensure” all the rights in the Convention to all children in their jurisdiction without discrimination of any kind. Non-discrimination has been identified by the Committee on the Rights of the Child (“the Committee”)<sup>30</sup> as a general principle of fundamental importance to the implementation of the whole Convention. The Human Rights Committee defines discrimination as:

“any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.<sup>31</sup>

All CRC rights are to be granted to all persons under 18 years of age,<sup>32</sup> without discrimination of any kind.<sup>33</sup> The Committee has stated that State obligations under the Convention apply to each child within the State’s territory and to all children subject to its jurisdiction. These State obligations may not be avoided by arbitrary or unilateral, territorial or jurisdictional restrictions. Moreover, State obligations under the Convention apply within

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<sup>27</sup> CRC Committee, *General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 39<sup>th</sup> session, 17 May - 3 June 2005, para. 24.

<sup>28</sup> Best interests – see below.

<sup>29</sup> Implementation of the CRC.

<sup>30</sup> The Committee is the body that monitors whether and how well States are meeting their obligations under the Convention on the Rights of the Child. When a country ratifies the Convention, it assumes a legal obligation to implement the rights recognized in the Treaty. In order to monitor compliance with this obligation, State Parties should submit reports to the Committee, initially two years after joining and thereafter every five years, stating what progress and what problems there might be regarding the respect and implementation of the Rights of Children. In addition to the government report, the Committee receives information on a country’s human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press. In the light of all the available information, the Committee, together with government representatives, examines the report. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as “concluding observations”.

<sup>31</sup> Human Rights Committee, *General Comment No. 18 on Non-discrimination*, 10 November 1989, para. 7.

<sup>32</sup> CRC, Art. 1.

<sup>33</sup> CRC, Art. 2.

the borders of a State, including with respect to those children under the State's jurisdiction while attempting to enter the country's territory.<sup>34</sup>

Article 2 of the CRC emphasizes that all the rights in the Convention must apply to all children in the State,<sup>35</sup> including visitors, refugees, children of migrant workers and those irregularly in the State. The Committee has, on several occasions, raised the issue of "alien" children and pointed out that the Convention accords them equal rights:

"The Committee notes that all children who have had their asylum requests rejected but remain in the country have had their rights to health care and education provided de facto but not de jure. It is the view of the Committee that such services should be provided as a matter of principle according to the letter and spirit of Articles 2 and 3 of the Convention."<sup>36</sup>

The enjoyment of the rights stipulated in the Convention are not therefore limited to children who are nationals of a State Party and must, unless otherwise explicitly stated in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.<sup>37</sup>

The Committee has stated that discrimination based on any of the grounds listed in Article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child.<sup>38</sup> The language of Article 2 itself and its interpretation by the Committee emphasize that the obligation of States Parties to prevent discrimination is an active one, requiring, like other aspects of implementation, a range of measures that include review, strategic planning, legislation, monitoring, raising awareness, education and information campaigns, and evaluation of measures taken to reduce disparities.<sup>39</sup> It is noteworthy that States have four levels of obligations regarding human rights implementation: the obligation to respect, to protect,

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<sup>34</sup> CRC Committee, *General Comment No. 6*, 2005, para. 12. It would have been preferable if the Comment had been even stronger in its wording, saying that States *cannot* instead of *may* not void these obligations. It is, however, important to notice that this is an interpretive Comment on the Article, which aids in understanding its content and, as such, it underlines the obligations of States not to breach these obligations.

<sup>35</sup> In addition, under Article 2 of the ICCPR, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 24(1) of the Covenant also requires that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Furthermore, under Article 13 of the International Covenant on the Elimination of All Forms of Racial Discrimination, States may not discriminate against persons of any particular nationality.

<sup>36</sup> Norway IRCO, Add. 23, para. 12.

<sup>37</sup> CRC Committee, *General Comment No. 6*, 2005, para. 12.

<sup>38</sup> CRC Committee, *General Comment No. 1*, 2001 (HRI/GEN/1/Rev.5).

<sup>39</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 22.

to facilitate and to fulfil.<sup>40</sup> In terms of international law, the obligation “to respect” requires States “to refrain from any actions which would violate any of the rights of the child under the Convention”.<sup>41</sup> The obligation to protect and ensure goes well beyond “to respect”, since it implies an affirmative State obligation to do what is necessary to enable individuals to enjoy and exercise the relevant rights, including protection from third parties.<sup>42</sup>

The Committee has stressed that the principle of non-discrimination, as provided for under Article 2 of the Convention, must be vigorously applied, and that a more active approach should be taken to eliminate discrimination against certain groups of vulnerable children.<sup>43</sup> The implementation of Article 2 must be integrated into the implementation of all other Articles – ensuring that all the rights set out are available to all children without discrimination of any kind.<sup>44</sup> The emphasis on State responsibility for all children within its jurisdiction and on an active prevention of discrimination of vulnerable children is of clear importance for migrant children, who will often be facing discrimination in the form of either racism/xenophobia or of *de jure* and *de facto* discrimination in access to benefits and assistance. The non-discrimination principle does not bar affirmative action, or the legitimate differentiation in treatment of individual children; the Human Rights Committee emphasizes that States will often have to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination.<sup>45</sup> Furthermore, in its Preamble, the CRC recognizes that there are children living in exceptionally difficult conditions in all countries in the world, and that such children require special consideration. In this respect, the Committee has consistently underlined the need to give special attention to disadvantaged and vulnerable groups.<sup>46</sup> Again, migrant children fall into this category since they will, in many cases, be outside the mainstream protection of children – simply because they will have a harder time accessing education and health facilities, encounter language barriers and face a greater risk of abuse. Vulnerability refers not to the robustness of the child, but to the nature of their situation.

The principle of non-discrimination, in all its facets, applies with respect to all dealings with migrant children. In particular, it prohibits any discrimination based on the status of a child as unaccompanied or separated, as a refugee, migrant (regular or irregular), or an asylum-seeker. Nevertheless, it should be underlined that this principle, properly understood,

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<sup>40</sup> J. Symonides (ed.), *Human Rights: Concepts and Standards*, pp. 127-129.

<sup>41</sup> P. Alston, “The legal framework of the Convention on the Rights of the Child”, 91/2 *Bulletin of Human Rights*, p. 5.

<sup>42</sup> J. Symonides, (ed.), *Human Rights: Concepts and Standards*, pp. 127-129; P. Alston, “The legal framework of the Convention on the Rights of the Child”, 91/2 *Bulletin of Human Rights*, p. 5.

<sup>43</sup> Bolivia IRCO, Add.1, para. 14.

<sup>44</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 22.

<sup>45</sup> Human Rights Committee, *General Comment No. 18 on Non-discrimination*, 10 November 1989, para. 10.

<sup>46</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 19.

does not prevent (and might indeed call for) differentiation based on different protection needs, such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatisation of unaccompanied or separated children within a society.<sup>47</sup> Obviously, for independent and accompanied migrant children alike, this principle is crucial. Respect for the underlining principle found in Article 2 means that all other rights guaranteed by the CRC must also be fully enjoyed by migrant children, independent of their nationality and status.<sup>48</sup>

The prohibition on discrimination in Article 2 of the CRC<sup>49</sup> is *apropos* immigrant children. Many human rights problems affecting migrants stem from discrimination and concern integration and cultural identity. Such challenges may take the form of racial violence, or limited access to nationality or to the administration of justice. Unequal access to economic, social and cultural rights may mean that migrants, including the children of undocumented migrants or unaccompanied migrant children, are excluded from education and denied (full) access to health services, including emergency care, pursuant to policies designed to deter irregular immigration.<sup>50</sup>

### *Best interests*

The principle of the child's best interests, derived from Article 3 of the CRC, is the second core principle also applicable to non-national children. This

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<sup>47</sup> CRC Committee, *General Comment No. 6*, 2005, para. 18.

<sup>48</sup> The Committee on Human Rights has expressed how to interpret the "progressive" in the realisation of certain economic and social rights. The progressive implementation is a recognition of the fact that some States may not be able to obtain a full realisation from one day to another, but while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. The means that should be used in order to satisfy the obligation to take steps are "all appropriate means, including particularly the adoption of legislative measures". The Committee recognizes that in many instances legislation is highly desirable and, in some cases, may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers and education, legislation may also be an indispensable element for many purposes. Other measures that may also be considered "appropriate" include, but are not limited to, administrative, financial, educational and social measures. This means that States cannot put off the realisation with the excuse of lacking resources, but must start implementing the provisions immediately and work toward full implementation. Even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated because of resource constraints. Furthermore, within the obtained level of implementation of a right discrimination is absolutely prohibited (CESCR, *General Comment No. 3*, 14 December 1990, paras 2, 3, 7 and 11).

<sup>49</sup> As well as the ICESCR and ICCPR.

<sup>50</sup> CRC Committee, *General Comment No. 6*, 2005, para 18.

principle clearly recognises that the child is an agent and has rights.<sup>51</sup> The Committee has highlighted Article 3(1) as one of the general principles of the Convention on the Rights of the Child (alongside Articles 2, 6 and 12), as well as emphasizing that the best interests of the child shall be a primary consideration in all actions concerning children. Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other Articles in the Convention. The principle acquires particular significance in situations where other more specific provisions of the Convention do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact of their actions on children in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies.<sup>52</sup> The second and third paragraphs of Article 3 are also of great significance: Article 3(2) outlines the active, overall obligation of States to ensure the necessary protection and care for the child's well-being in all circumstances, without encroaching on parental rights; while Article 3(3)<sup>53</sup> mandates that standards be established by "competent bodies" for all institutions, services and facilities for children, and that the State ensures their compliance.<sup>54</sup>

Article 3 requires that the impact of government policy on children must be assessed; and that the interests of children are a "primary consideration".<sup>55</sup> It thus requires States to analyse the way in which any course of action may affect children. Because the interests of children are not always identical to adults' interests, and can at times conflict with those interests, the State must carefully identify the values at stake. In individual cases, the consequences for the child of a given course of action must be closely examined – a requirement similar to that in policy decisions.<sup>56</sup> A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including his or her nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age- and gender-related interview techniques.<sup>57</sup>

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<sup>51</sup> E. Nykanen, "Protecting Children? The European Convention on Human Rights and Child Asylum Seekers", *European Journal of Migration and Law*, Vol. 3. No. 3-4, 2001, p. 322.

<sup>52</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 39.

<sup>53</sup> 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.

<sup>54</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 40.

<sup>55</sup> S. Ruxton, *Separated Children Seeking Asylum in Europe: A Programme for Action*, Save the Children and UNHCR, p. 6.

<sup>56</sup> UNHCR, *Guidelines on Unaccompanied Children*, Geneva, 1997, Chapter 2.

<sup>57</sup> CRC Committee, *General Comment No. 6*, 2005, para. 20.

The Committee has not provided guidelines for ascertaining a child's best interests, aside from: underlining that the general values and principles of the Convention should be applied; reiterating that it should be considered as a whole; and emphasizing the interrelationships between articles – in particular amongst the provisions elevated to the status of general principles (Articles 2, 3, 6 and 12).<sup>58</sup> Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining the best interests of a child and/or groups of children. Clearly, this decision must assess both the short- and long-term. Any interpretation of best interests must respect the child's individuality, sentiments and status as a rights bearer.<sup>59</sup>

Article 3 is important principally because it is an umbrella provision directed at ensuring the well-being of the child. Secondly, its comprehensiveness means that it constitutes an important reference point in interpreting the general or overall obligations of governments in the light of the more specific obligations contained in the Convention. The explicit obligation "to ensure the child such protection and care as is necessary for his or her well-being" is absolute,<sup>60</sup> and includes both passive and active obligations. The terms "protection and care" must also be read expansively, since their objective is not stated in limited or negative terms, but rather in relation to the comprehensive ideal of ensuring the child's well-being.<sup>61</sup> Taking into consideration the migrant child's own views is particularly important if effective care is to be guaranteed.

The Committee has made frequent reference to State failures to adequately provide for groups of vulnerable children. The most common category comprises children living and/or working on the street, but the comments apply equally to migrant children. Article 3(2) makes clear that, notwithstanding the rights and duties of parents and any others legally responsible, the State has an active obligation to ensure the child's well-being. This general obligation is linked to State obligations under the other general principles of the Convention (Articles 2, 6 and 12) and to more specific duties, for example: to provide "appropriate assistance to parents and legal guardians" in their child-rearing responsibilities (Article 18(2)); to provide "special protection and assistance" to children deprived of their family environment (Article 20(1)); to recognize the rights of children to benefit from social security and to an adequate standard of living (Articles 26 and 27); and to protect children from all forms of violence and exploitation (Articles 19, 32, 33, 34, 35, 36 and 37).<sup>62</sup>

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<sup>58</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 42.

<sup>59</sup> *Ibid.*

<sup>60</sup> P. Alston, "The Legal Framework of the Convention on the Rights of the Child", *Bulletin of Human Rights*, 91/2, p. 9.

<sup>61</sup> *Ibid.*

<sup>62</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 47.

It is especially important to keep in mind that return and family reunification, or institutional placement without access to work will not always be in the best interest of the child, even if orthodoxy would so dictate. In this context, listening to the child in order to respect the best interest principle is fundamental.

### *Evolving capacities*

Article 5 of the CRC has often been referred to as the right to parental guidance. However, underlying Article 5 is respect for the child's evolving capacities. At the international level, it has repeatedly been emphasized that childhood should not be "life's waiting room", but "life itself". That is why the legal situation, in which the child on the eve of his or her eighteenth birthday is almost "right-less" but the next day has full rights, cannot be accepted. It is therefore necessary to create conditions for differentiated and gradual emancipation of children in all areas of their day-to-day life. Nevertheless, legislative changes will be made in vain if society fails to grasp the concept of a child *qua* bearer of rights.<sup>63</sup>

Article 5 mandates that 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. The wording here emphasizes the child as the subject of the rights recognized in the Convention, referring to the exercise of these rights "by the child".<sup>64</sup> The Committee has frequently expressed concern where countries do not appear to have fully accepted the concept of the child as an active subject of rights, relating this to Article 5 and to Articles 12-16<sup>65</sup> of the CRC. National law-makers and administrators should be mindful of the capacity of the child to exercise his or her rights to nationality (Article 5);<sup>66</sup> that the Convention requires protection of and care for children; and that a child should be considered a bearer of rights.<sup>67</sup>

Using the concept of "evolving capacities" has avoided the need for the Convention to set arbitrary age limits or definitions of maturity tied to particular issues. The "evolving capacities" of the child is one of the Convention's key concepts. It is linked to the Article 12 requirement that the views of children should be given "due weight in accordance with the age and maturity of the child". The concept is repeated in Article 14: parents and legal guardians may provide direction to the child, in relation to the child's right to freedom of thought, conscience and religion, in a manner consistent

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<sup>63</sup> Slovakia IRCO, para. 240.

<sup>64</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 89.

<sup>65</sup> Participation, freedom of expression, freedom of thought, conscience and religion, freedom of association and privacy.

<sup>66</sup> Mexico IRCO, Add. 13, para. 8.

<sup>67</sup> Iceland IRCO, Add. 50, para. 13.

with his or her evolving capacities.<sup>68</sup> Article 1 defines “child” as every human being below the age of 18 years, or below the age of majority if reached earlier. At the same time, Article 5 emphasizes the path to maturity, which must come from the increasing exercise of autonomy.<sup>69</sup>

The latter Article has a vital role to play when children have migrated alone – minors may have a well-planned migration project in mind. Children evolve and their maturity and capacities should be respected in the drafting and application of law. Indeed, migrant children may exhibit greater maturity than those who enjoy a “normal” childhood.

### *Life and full development*

The child’s right to life and full development, as stipulated under Article 6, is key. Article 6(2) goes beyond the fundamental right to life to promote survival and development “to the maximum extent possible”. This means that the State should promote any measures that further such development (administrative and legislative) and also make it possible for families, who have the primary responsibility for the child, to promote such development. The concept of “development” does not simply concern preparation of the child for adulthood; it is about providing optimal conditions for childhood – for the child’s life now. The Committee understands child development as a holistic concept, embracing the whole Convention. States should create an environment conducive to ensuring, to the maximum possible extent, the survival and physical, mental, spiritual, moral, psychological and social development of the child, in a manner consistent with human dignity, in order to prepare the child for an individual life in a free society.<sup>70</sup>

Many of the obligations of the Convention, particularly those related to health, adequate standard of living, education, leisure and play (Articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child. Individual Articles expand on the concept of “development”: For example, the fullest possible development of the child’s personality, talents and mental and physical abilities are among the aims of education set out in Article 29. The Convention provisions protecting the child from violence and exploitation (in particular Articles 19 and 32-39) are as vital to maximum survival and development as those on the provision of services.<sup>71</sup> The Committee expects implementation of all other Articles to be carried out with a view to achieving the survival and maximum development of the child – a concept clearly integral to the child’s “best interests”. Equally plain, is that an all-encompassing approach to children’s rights is necessary in order to fulfil the core obligations of protection; that is, respecting and ensuring the child’s sound development.

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<sup>68</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 91.

<sup>69</sup> *Ibid.*, p. 92.

<sup>70</sup> UN General Guidelines for Periodic Reports, para. 40, available online at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.58.En](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.58.En).

<sup>71</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 104.



## *Participation*

Additionally, a child enjoys the right to participate in decisions (Article 12). Participation is a theme that runs through the CRC. In one way or another, nearly every Article concerns some aspect of children's participation in society, which may take many forms, such as familial<sup>72</sup> and communal.<sup>73</sup> The recommended holistic approach to the Convention entails that what is best for the child depends on the child's view. In the Convention, the child is given a greater participatory role than is orthodox.<sup>74</sup>

Children have opinions and are able to discuss them with adults. When adults give children's opinions due weight, according to the child's age and maturity then, according to the CRC, children are participating in the decision-making process. Children evolve and, at an older age, are able to make some of their own decisions. With an increase in age and maturity, comes an increase in control over one's life.<sup>75</sup> Article 5 reflects this principle: Article 5(1) requires States to assure that any child capable of forming a view has the right freely to express views in all matters affecting him or her, and that the child's views are given due weight in accordance with age and maturity; while Article 5(2) specifically provides the child with the right to be heard in any judicial and administrative proceedings affecting him or her. This covers a wide range of court hearings as well as formal decision-making that affect the child in relation to his or her education, health, planning, environment and so on.<sup>76</sup> The child must be regarded as an active subject of rights: Article 12, together with the child's right to freedom of expression (Article 13) and other civil rights to freedom of thought, conscience and religion (Article 14), and freedom of association (Article 15), underline children's status as individuals with independent human rights, and views and feelings of their own.<sup>77</sup> The rights of the child set out in the two paragraphs of Article 12 do not provide a right to self-determination, but concern involvement in decision-making. The references to the "evolving capacities" of the child in Articles 5 and 14 emphasize the need to respect the child's developing capacity for decision-making.<sup>78</sup> At first glance, it might be considered that Article 12 is addressing the same situation as Article 13: freedom of expression and information. It is true that they are closely connected. Nevertheless, their coexistence in the Convention may be interpreted in the following manner: while Article 13 generally recognizes freedom of expression, Article 12 should prevail in all those cases where the matters at stake affect the child – stressing the right of the child to be heard.<sup>79</sup>

States Parties have a clear and precise obligation to assure the child's right to a say in situations that may affect him or her. The child should therefore not

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<sup>72</sup> CRC, Arts. 7 and 10.

<sup>73</sup> CRC, Arts. 15 and 17.

<sup>74</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 47.

<sup>75</sup> UNHCR, *Guidelines on Unaccompanied Children*, Geneva, 1997, Chapter 2.

<sup>76</sup> *Ibid.*, p. 159.

<sup>77</sup> *Ibid.*, p. 159.

<sup>78</sup> *Ibid.*, p. 160.

<sup>79</sup> *Ibid.*, p. 162.

be envisaged as a passive human being or be deprived of his or her right of intervention, unless he or she is clearly incapable of forming views. This right should therefore be ensured and respected even in situations where the child is capable of forming, but not of communicating, views. That said, a child's opinion is to be taken into consideration "in accordance with [their] age and maturity".<sup>80</sup>

Despite the widespread acknowledgement of the child's right to participate and the recognition that this is a key pillar in the maintenance of children's rights, there appears to be a lack of will to place this right at the heart of policy development. It is likely that, by involving children in the development of services, the results will be more relevant and workable than if their views were excluded. When there is a reference to involvement, it is invariably a secondary consideration.

This right needs special attention because it is far from automatically respected by asking the child what he or she wants. With respect to migration procedures, it is crucial that those encountering these children are trained to involve them and that the environment is "child friendly". Otherwise, child participation represents a mere paper right. The evolving capacities of the child also constitute an important principle, which recognises that children's needs vary according to their personality and capacities. It is essential that a comprehensive assessment of the "child's best interests" is included in both national and regional legislation and practice. It is likely that separated children will not have a clear understanding that they have a right to participate and to influence decisions in line with their best interests.<sup>81</sup> This may result in the principle not being effectively promoted or implemented in practice.

In addition to protective legislation and procedures to prevent the exploitation of working children under Article 12, respect for the child's views is crucial; indeed, in any judicial or administrative proceedings relating to child labour, the child has a right to be heard. Children must also have access to complaints procedures relating to employment. Other forms of child labour – forced labour and bonded labour, for example – are breaches of Article 12, as well as of other Articles of the Convention. However, canvassing and respecting the child's wish to contribute to a familial income is one of the challenges of ending exploitation. The ILO Recommendation (No.190), supplementing the Worst Forms of Child Labour Convention of 1999 (No.182), emphasizes the importance of taking into account the views of children directly affected by the worst forms of child labour (see below).<sup>82</sup>

These five principles of interpretation (non-discrimination, best interests, participation, full development and evolving capacities) should apply to all considerations involving children, including refugee-status determination and

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<sup>80</sup> *UN Manual on Human Rights Reporting*, 1997, p. 426.

<sup>81</sup> T. Smith, *Separated Children in Europe: Policies and Practices in European Union Member States: A Comparative Analysis*, p. 21.

<sup>82</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 176.

legislation on migrant children.<sup>83</sup> The Committee recommends that the general principles of the Convention, in particular the provisions of Articles 2, 3 and 12, be appropriately integrated in all relevant legislation concerning children; applied in all political, judicial and administrative decisions; in projects, programmes and services that have an impact on all children; in policy-making at every level; and in actions taken by social welfare and health institutions, courts of law and administrative authorities.<sup>84</sup>

When deciding what is best for the child a multitude of factors must be considered, including the desirability of continuity of culture and language,<sup>85</sup> the preservation of family and nationality<sup>86</sup> and the child's own wishes, which must be considered within the context of the child's age and maturity. The objective is to allow the child to grow up in a family environment, in an atmosphere of happiness, love and understanding. Nevertheless, this objective should not cloud the decisions as to what may be best for the individual child, who may have specific plans. There needs to be a personal, open-minded assessment of the child's best interests so that each child will receive the protection (as opposed to exploitation or overprotection) needed. Obviously, the decision regarding a child's best interests will most often be difficult and no single answer is necessarily and indisputably correct.<sup>87</sup> There has, for example, been a tendency to assume that family reunification is always a priori in the best interest of the child, but since in many cases this includes return to the country of origin, it is not necessarily true, especially not for a minor who has an economic project that has not yet been carried out. Although vulnerable, children also have much to offer. The potential contributions of children must not be overlooked. They may have suggestions, opinions and the ability to participate in decisions and activities that affect their lives.<sup>88</sup>

### **Specific Rights**

The CRC's comprehensive standards cover virtually every aspect of a child's life, from health and education to social and political rights. Some of the standards are specific, such as the Articles on juvenile justice (Articles 37 and 40), adoption (Article 21) and family rights (Articles 5, 9 and 14(2)).

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<sup>83</sup> E. Nykanen, "Protecting children? The European Convention on Human Rights and Child Asylum Seekers.", *European Journal of Migration and Law*, Vol. 3, No. 3-4, 2001, p. 320.

<sup>84</sup> Latvia IRCO, Add. 142, para. 22. See also: Mexico IRCO, Add. 13, paras 7 and 15; Indonesia IRCO, Add. 25, para. 18; Denmark IRCO, Add. 33, para. 24; Canada IRCO, Add. 37, para. 11; Sri Lanka IRCO, Add. 40, para. 25; Senegal IRCO, Add. 44, para. 25; Finland IRCO, Add. 53, para. 13.

<sup>85</sup> CRC, Art. 20.

<sup>86</sup> CRC, Art. 8.

<sup>87</sup> UNHCR, *Guidelines on Unaccompanied Children*, Geneva, 1997, Chapter 2.

<sup>88</sup> With regard to refugees, the Convention requires equality in the enjoyment of child rights for both those recognised as refugees and those seeking asylum. This should, in principle, guarantee that while children might find themselves in a legal limbo when their status is being determined, their basic rights are respected at all times. Thus, the CRC is crucial for migrant children because it establishes comprehensive standards and basic principles applicable irrespective of nationality.

Some social welfare rights are expressly qualified by the State's financial ability: the rights to health (Article 24), education (Article 28) and to an adequate standard of living (Article 27)<sup>89</sup> are all progressive rights that increase along with the State's economic development. However, these social welfare rights are not just principles or abstract goals.<sup>90</sup>

It is important to keep in mind that immigrants have no right to enter a country other than their own. The right to leave a country, including one's own, is present in most international human rights instruments.<sup>91</sup> This right poses a rather relevant ambiguity: there is no corresponding obligation on any state to receive someone who has "chosen" to leave his or her country, if this person is not seeking international protection. The Committee on Human Rights has noted that, under certain circumstances, a foreigner will benefit from the protection of the ICCPR even when entering a State,<sup>92</sup> such as when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life are in question.<sup>93</sup> There is otherwise no right of a non-national to enter into a third country.

Consequently, what is important is that once children have entered a State they are not discriminated against and that, if they are removed, this is done with respect for their rights, including during transit or while being detained. Too commonly, "reception" centres are more like detention centres, and even basic rights, such as the rights to health and education, are violated. Often, the right to physical integrity<sup>94</sup> is also, unfortunately, at risk.<sup>95</sup> It is clear that such violations of even the most basic rights should at all times be denounced in order that they may be prevented. It should be borne in mind that the CRC imposes an obligation upon States not only to abstain from violating certain

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<sup>89</sup> The Committee states in its General Comment No. 6, 2005, that: 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 in particular provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing (para. 44).

<sup>90</sup> For progressive rights see above, under the analysis of CRC, Article 2.

<sup>91</sup> UDHR, Art. 13; ICERD, Art 5; ICCPR, Art. 12; CRC, Art. 10.

<sup>92</sup> Human Rights Committee, *General Comment No. 15*, 19 May 1989, paras 5 and 7 (UN doc. Ccpr/C/21/Rev.1).

<sup>93</sup> In addition, the European Court of Human Rights has affirmed the protection based on the right to family life (*Djeroud v France 1991*; *Lamguindaz v UK 1993*; *Beldjoudi v France 1992*).

<sup>94</sup> CRC, Art. 6 and ICCPR, Art. 6 (regarding the right to life), and CRC, Art. 37 and ICCPR, Art. 7 (regarding torture and ill treatment); Human Rights Watch, *Nowhere to Turn*, p. 12: "I was in the port intending to cross to Spain. A policeman saw me and tried to catch me, but three times I escaped. Then the police caught me, six of them, and put me in a car. [In the car] the police beat me on my arms and legs and head. Then another police officer took me to the station and hit me there with a *porra* and with his feet. They were very angry and crazy. Then they took me to the Civil Guard station. I was screaming from the pain. They asked me if I fell but I was afraid because of the other police. The Civil Guard hit me more and then put me in a room for three hours and then took me to San Antonio".

<sup>95</sup> The HRW Study mentioned above is a testimony, as well as the Article "Io Clandestino a Lampedusa", published in the Italian weekly *L'Espresso*, 6 October 2005 (which does not specifically regard children, but migrant centres in general and, in particular, in Sicily).

rights, but to take active measures to protect them.<sup>96</sup> Children, even when entering a country irregularly, have their rights guaranteed by the CRC and their development should not be interrupted by the negation of these rights. It is likewise important that those with protection claims do not face further insecurity or persecution once in the country of destination.

### *Violence, abuse and exploitation*

An additional level of specific protection is provided in the CRC against abuse and exploitation. Children are to be protected from economic, sexual, military and all other forms of exploitation.<sup>97</sup> Again, this is obviously applicable to all children, but since threats to the physical security of migrant children are often aggravated by lack of protection, lack of documentation and the disruption of traditional family and community structures, these provisions take on special significance for migrant children.

Many of the problems encountered and abuses experienced by trafficked children<sup>98</sup> and child migrants, particularly those whose status is irregular or unclear, are the same. These include lack of documentation, lack of access to services, confrontation with the law and law enforcement agents, and increased risks of exploitation.<sup>99</sup> Migrant children in an irregular situation who are separated from their parents are a particularly vulnerable group, and may inter alia be trafficked into the sex industry. The needs of trafficking victims may differ from those of smuggled migrants, but some common approaches are required, such as the focus on protecting basic rights for all.

Children travelling across international borders, perhaps separated from their families and without any network sustaining them, remain exposed to diverse forms of exploitation and human rights abuse. This may be labour exploitation, physical abuse, sexual violence and exploitation, detention or the denial of their basic right to be children, that is, to enjoy all of the rights in the CRC.

Article 19 of the CRC requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Article 19(2) sets out possible protective measures, acknowledging, that social and educational measures, as well as the provision of appropriate support to children and families, are relevant to the protection of children from violence, abuse and exploitation. Article 19 protects children from violence in the hands of government officials and private individuals. This is particularly important since migrant children may suffer from violence in detention centres or in the hands of law enforcement personnel if they are on the margins of society. The “horizontal” protection is likewise fundamental since it puts States under an obligation to protect children from

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<sup>96</sup> For example, preventing exploitation.

<sup>97</sup> CRC, Arts. 32, 33, 34, 36 and 38.

<sup>98</sup> See below.

<sup>99</sup> UNICEF, *A Child-rights Approach on International Migration and Child Trafficking: A UNICEF Perspective*, 2004, p. 2.

violent private parties. This may easily occur where migrant children do not benefit from the protection of their “own” family and environment.

Articles 34 to 36 on exploitation 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.<sup>100</sup>

Article 34 obliges the State to protect children from “all forms of sexual exploitation and sexual abuse”, requiring national, bilateral and multilateral measures to protect children from three particular (often linked) forms of exploitation: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the use of children in prostitution or other unlawful sexual practices; (c) the use of children in pornographic performances and materials. Article 19 more generally covers protection from “all forms of physical or mental violence” and specifically mentions sexual abuse. Child prostitution and pornography, which States must prevent, relate to sex trafficking and slavery. Women and young girls – and, less frequently, men and boys – are vulnerable to attack, both during travel and upon arrival if they remain at the margins of society.<sup>101</sup> Amongst the categories of refugees identified as most vulnerable to sexual violence are: unaccompanied children; those in foster care arrangements; and those in detention or detention-like situations.<sup>102</sup> There is no reason to believe that the same does not apply for migrant children. The fact that such studies are available with regard to refugee children and not to migrant children underlines the fact that attention has been on a few specific groups of children on the move, to the detriment of other groups.

Article 35 of the CRC provides protection for children at risk of abduction, sale or trafficking.<sup>103</sup> Article 11 protects against the illicit “transfer or non-return of children abroad” (usually undertaken by relatives, not for profit) by requiring States to take measures to combat the illicit transfer and non-return of children abroad; while Article 21 requires that international adoption must not involve “improper financial gain”; Article 32 (see below) protects children against exploitative or harmful work; Article 33, from involvement in drug trafficking, by requiring States to take all appropriate measures to protect children from such involvement; Article 34 requires that States take all appropriate measures to protect children from use in the sex trade; and Article 36 from all other forms of exploitation.

Moreover, Article 36 of the CRC establishes that: “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.” Any treatment of children amounting to exploitation is rarely due to the violation of a single right. Exploitation usually involves

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<sup>100</sup> CRC Committee, *General Comment No. 6*, 2005, para. 51.

<sup>101</sup> UNHCR, *Sexual Violence against Refugees: Guidelines on Prevention and Response*, 1995, preface.

<sup>102</sup> *Ibid.*, para. 1.2.

<sup>103</sup> For a more elaborate analysis of Article 35 see below, under “Trafficking – a short overview”.

cumulative breaches of several rights, the most common being unlawful interference with family life and the rights to education, health and leisure, all of which are equally essential for the healthy development and survival of the child.<sup>104</sup> Article 36 is another security-net provision that catches any kind of exploitation not mentioned in the previous Articles. However, it underlines States' general responsibility to protect children. Furthermore, the Article is formulated so that States have a positive obligation to prevent such exploitation. This means that not only shall States respect the right by not exploiting children, but they shall also effectively and actively take measures to prevent exploitation.

The Committee has produced a series of Recommendations recognising that all the rights in the Convention are indivisible and interrelated, and that action to prevent and combat economic exploitation of children must take place within the framework of the Convention's general principles (Articles 2, 3, 6 and 12). An adequate legal framework and necessary measures of implementation must be developed in conformity with the CRC. Specifically, a child's withdrawal from work should be accompanied by a whole range of supportive measures. This is especially important if children have been stunted in their development because they were in bonded labour, have worked since an early age, have been prostituted, or have been living and working on the streets without their families or any stable social environment. In addition to education, training, health services and nutrition, these children need intensive counselling, a safe environment and often legal aid. To this end, a number of action programmes for these children have set up drop-in centres where they are able to stay and recuperate.<sup>105</sup>

The duty to prevent prostitution also concerns the regulation of the contributing industries,<sup>106</sup> such as tourist industries.<sup>107</sup> Moreover, States may be under an obligation to prevent sexual exploitation since it amounts to degrading treatment<sup>108</sup> and, in some cases, ill treatment or even torture. While the primary obligation on States pursuant to Article 7 of the ICCPR is to quell such treatment, there is also a duty to protect from "horizontal" abuse; between individuals. This is to be done by enacting the relevant legislation and establishing enforcement organs and protection mechanisms in national regimes.<sup>109</sup>

Article 37 is relevant not only to protecting children from detention (referring to detention as a last resort only - see below), but also with regard to its other parts – protection from torture or other cruel, inhuman or degrading treatment or punishment. States have a duty to effectively protect children from such treatment, and not only a duty to prevent State agents from violating the

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<sup>104</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 262.

<sup>105</sup> ILO, *Child labour: Targeting the intolerable*, p.54, available online at <http://www.ilo.org/public/english/comp/child/publ/target/index.htm>.

<sup>106</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 278.

<sup>107</sup> An example is the collaboration between Ecpat and Air France, who work together with campaigns to prevent sex tourism.

<sup>108</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 279.

<sup>109</sup> J. Symonides, *Human Rights: Concepts and Standards*, p. 74.

provision.<sup>110</sup> Article 37(a) emphasizes that the absolute prohibition on torture, cruel, inhuman or degrading treatment or punishment, upheld for everyone in the Universal Declaration of Human Rights (Article 5), the ICCPR (Article 7), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, applies equally to children. This prohibition applies to all children wherever they are.<sup>111</sup>

The ILO Convention 182 on the Worst Forms of Child Labour is likewise relevant for protection against abuse and exploitation (see below). When children have been abused, Article 39 comes into play and there is a positive duty on States to provide recovery and reintegration.<sup>112</sup> This underscores that the main objective is to reintegrate children into society, so that they may grow up with respect both for themselves and others.<sup>113</sup> The Article provides that recovery and reintegration must take place in an environment that fosters the health, self-respect and dignity of the child. The general principles of the CRC require that such measures be available without discrimination to all child victims; the best interests of the child must, as always, be a primary consideration. The maximum survival and development of the child must be ensured and the views of the child should be respected, for example, in planning and implementing programmes, including in individual cases. Other rights in the Convention, such as the right to health care services (Article 24), to education (Article 28) and to an adequate standard of living (Article 27), are also relevant here; as is the obligation under Article 20 to provide special care and assistance to children temporarily or permanently deprived of their family environment.<sup>114</sup> Special provisions for the victims of trafficking are to be found in the Optional Protocol II to the CRC (see below). Unfortunately, the Committee has frequently felt the need to comment on the lack of adequate measures to rehabilitate child victims.

### *Detention*

In many cases, irregular migrants are immediately detained on discovery, and in some cases irregular entry may be a criminal offence punishable under

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<sup>110</sup> See *Z and Others v UK* (App. 29292/95), 10 May 2001; (2002) 34 EHRR 97. Paragraph 73 of the Judgment states that there is a positive obligation on States to take measures “to ensure that individuals within their jurisdiction are not subject to torture or inhuman or degrading treatment, including such ill treatment administered by private individuals... These measures should provide effective protection, in particular of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.”

<sup>111</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 543.

<sup>112</sup> *Ibid.*, p. 579.

<sup>113</sup> ILO Convention 182, Art. 40(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.

<sup>114</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 579.



national law. As a result, undocumented child migrants risk detention, including detention with adults who are not related to them. Such children may even be detained with criminals. Children in detention may suffer violations of their basic rights, including a lack of basic medical care. The conditions under which they live are frequently deplorable and inhumane; physical abuse is common and may include sexual abuse.<sup>115</sup> Much of the research findings from detention centres have focused on the fact that these centres are usually ill-equipped for housing children. There have been reports of suicides, violence, a lack of schooling and time outside of the centre, and overcrowding. Other problems for children in detention are the lack of information, the long wait, little or no access to immigration centres for outreach groups or service-providers, separation from family members, and poorly trained staff or staff ignorant to their special needs.<sup>116</sup>

A particularly relevant provision of the CRC is Article 37(b), which establishes that detention must only be used as a last resort and must always be properly justified. The Article sets out conditions for any arrest, detention or imprisonment of the child, which shall be: in conformity with the law; used only as a measure of last resort; and for the shortest possible length of time. Moreover, a child deprived of his or her liberty is to be treated with humanity and respect for the inherent dignity of the human person, in a manner which takes into account the particular needs of the child's age and the right: to be separated from adults unless it is considered in the child's best interest not to do so; to be allowed contact with family, through correspondence and visits, save in exceptional circumstances; to have prompt access to legal and other appropriate assistance; to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority; and to have a prompt decision.<sup>117</sup>

Allegations of torture and inhuman or degrading treatment of children in detention and on the streets by police, security forces and teachers are of great concern to the Committee, which has proposed formal investigations of any allegations of torture and that perpetrators should be brought to trial (in national courts) and if found guilty, punished:

*With respect to Article 37(a) of the Convention, the Committee is concerned by numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials. The Committee recommends that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee*

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<sup>115</sup> UNICEF, *A Child-rights Approach on International Migration and Child Trafficking: A UNICEF Perspective*, 2004.

<sup>116</sup> A review of European research findings on children in migration; C. Farrow, "Focus on children in migration - from a European research and method perspective", Warsaw Conference, Poland, 20-21 March 2007.

<sup>117</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 540.

*encourages the State Party to amend Sections 53 and 54 of the Code of Criminal Procedure so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals.*<sup>118</sup>

In practice, when identity documents have been destroyed or forged, a State might choose to detain an asylum seeker while identity is being established. Further, in many countries, separated children are routinely denied entry or detained by border officials or immigration officials and given no opportunity to seek asylum.<sup>119</sup> This denial of rights has two aspects: firstly, the denial of applying for asylum, which obviously puts the child in danger of *refoulement*; secondly, the harm that detention may cause the child. For immigrant children the detention is no less damaging, even if the question of a prevented asylum request is not an issue.

Pursuant to Article 37 of the Convention and the principle of the child's best interests, migrant children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of children being unaccompanied or separated, nor on their migratory or residence status. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with Article 37(b) of the Convention, which requires that detention conform to the law of the relevant country and that it only be used as a measure of last resort and for the shortest appropriate period of time. As a result, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release from detention of unaccompanied or separated children and for their placement in other forms of appropriate accommodation.<sup>120</sup>

The impropriety of detaining migrant children becomes clear when one considers that Article 37 applies to juvenile offenders who, given the reintegration aim of the CRC, should, in the case of conviction, only be deprived of liberty as a last resort.<sup>121</sup> Moreover, many migrant children (perhaps especially, but not only, those that are unaccompanied) most likely fall into the category of victims in the sense of Article 39, rather than of juvenile offenders in the sense of Article 40. Experience unfortunately shows, however, that children are routinely detained upon arrival and thus "stored away". In such cases, children may have difficulty in understanding why they are being "punished". The situation may be aggravated if children are denied information about their detention and their right to be represented by a lawyer in immigration proceedings conducted in a language that they understand. There are examples of detention of asylum-seeking and migrant children housed with juvenile offenders<sup>122</sup> and subjected to a rigid and punitive environment.<sup>123</sup>

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<sup>118</sup> India IRCO, Add. 115, paras 38 and 39.

<sup>119</sup> UNHCR Global Consultation on International Protection, 4th Meeting, "Refugee Children", April 2002, para. 6 (Ec/GC/02/9).

<sup>120</sup> CRC Committee, *General Comment No. 6*, 2005, para. 61.

<sup>121</sup> In accordance with CRC, Art. 40(1).

<sup>122</sup> A violation of Article 10 of the ICCPR: "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2.(a)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states that: “Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances.” Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention” (Rule 17). This is thought-provoking, given that many child migrants are held in administrative detention.

In addition, Article 9 of the ICCPR also provides a framework for detention: detention may never be arbitrary, it must be lawful; detainees have the right to judicial review; the conditions of detention must be humane; and minimum standards that are well-documented must be maintained. Yet the gap between these standards and practice seems to be widening.<sup>124</sup>

The UNHCR *Refugee Children – Guidelines on Protection and Care* states that, unfortunately, refugee children are sometimes detained or threatened with detention because of either their own or their parents’ irregular entry into a country of asylum. The same holds true for migrant children. Best efforts must be made to have children released from detention and placed in other accommodation. Families must be kept together at all times, both during their stay in detention as well as when being released. Detention must be in conformity with the State’s law (in accordance with the ICCPR – being applicable to all human beings), and a distinction must be made between refugees/asylum seekers and other aliens. International standards, including those of the Refugee Convention and the relevant United Nations Rules, must be honoured. Such standards should be followed not only with regard to refugee children, but also with regard to migrant children. Whereas irregular entry of a refugee should in no circumstance attract legal punishment according to Article 31 of the Refugee Convention, migrants who enter irregularly have no such protection. However, the ICCPR, the CRC and the relevant UN Rules on minors continue to apply to migrant children. This must be underlined and they must be respected.

Concern over the treatment and care migrant children receive in the country of destination – as well as in their country of origin in those cases where they are subsequently returned – has been growing. The “care” of these children may often involve unwarranted deprivations of liberty, or placement in open facilities where conditions are inappropriate; children are regularly deprived

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Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

<sup>123</sup> Human Rights Watch, “Promises Broken – Refugee Children”, available online at [www.hrw.org/campaigns/crp/promises/refugees.html](http://www.hrw.org/campaigns/crp/promises/refugees.html).

<sup>124</sup> S. Vohra, “Detention of irregular migrants and asylum seekers”, in R. Cholewinski, R. Perruchoud and E. Macdonald (eds.), *International Migration Law – Developing Paradigms and Key Challenges*, The Hague, T.M.C. Asser Press, 2007.

of the special care they require and denied access to education.<sup>125</sup> These children frequently lack the guarantees and legal representation available to other children in the country concerned. Detained children are frequently housed in the same facilities as non-related adults. Some children detained for breaches of immigration regulations are held together with individuals charged with criminal offences.

### *Juvenile justice*

Article 40 of the CRC is relevant should criminal proceedings be brought against a child for irregular entry. The purpose of this protection is that the child's well-being is promoted and that any proceedings take into account both the child's circumstances and the offence alleged.<sup>126</sup> Article 40 covers the rights of all children charged or sentenced under the penal law. Thus, it embraces treatment from the moment an allegation is made, through the investigation, arrest, charge, any pre-trial period, trial and sentence. The Article requires States to promote a distinctive system of juvenile justice for children (i.e. up to 18 years or the age of majority), with specific positive rather than punitive aims set out in paragraph 1.<sup>127</sup> Article 40 lists minimum guarantees for the child and requires States Parties to set a minimum age of criminal responsibility, to provide measures for dealing with children who may have infringed the penal law without resorting to judicial proceedings and to provide a variety of alternative solutions to institutional care.

Article 40 should always be read in connection with Articles 2, 3 and 12. Article 40(2)<sup>128</sup> on the variety of measures to be adopted to further these

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<sup>125</sup> Committee Concluding Observations on Italy CRC/C/15/Add.198 and Committee Concluding Observations on Czech Republic CRC/C/15/Add.201. See also UN, World Report on Violence Against Children, p. 202.

<sup>126</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 172.

<sup>127</sup> CRC, Art. 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.

<sup>128</sup> CRC, Art. 40(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

goals is also relevant since it requires States to take action to further children's re-integration and the respect for their human rights. Article 40(2) repeats standard procedural safeguards.

It should be noted that Article 40(2)(iv) does not give the child an express right to silence, unlike Rule 7 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules).<sup>129</sup> The obligation to communicate charges in a language the child understands also refers to relating concepts that may be difficult for the child to grasp, in an adequate manner.<sup>130</sup> This again reinforces the importance of appointing legal guardians and training staff who deal with children. When considered in the light of Article 40(1), the CRC does create important provisions for the protection of children during procedures. Article 40(3) enjoins States to promote diversionary measures without reverting to formal trial; crucially, such diversionary measures shall always fully respect human rights and legal safeguards,<sup>131</sup> and should establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The Beijing Rules expand on the encouragement of diversion from judicial proceedings in Rule 11, which provides that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings and in accordance with the criteria laid down for that purpose in the respective legal system as well as with the principles contained in these Rules. It is important that such discretionary powers are not turned against the juvenile offenders, but actually comply with the principles established in the Rules. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or his or her parents or guardian, if the decision to refer a case shall be subject to review by a competent authority.

In all cases, it is important to apply a child-focused approach, so that migrant children are not seen as delinquents but rather as individuals in need of protection, as reflected in the development of international law, which has merged juvenile justice with welfare services and protection.<sup>132</sup> In any case involving a minor, States should ensure that the child is treated in a manner consistent with their sense of dignity and worth. This not only reinforces respect for the child's human rights, but in turn promotes (or at least does not contribute to undermining) their respect for the State and the new society. Any treatment should take into account the child's age and the desirability of promoting his or her reintegration and the assumption of a constructive role

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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.

<sup>129</sup> GA Resolution A/RES/40/33 from 1985.

<sup>130</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 178.

<sup>131</sup> Such as a fair trial, presumed innocence etc., as found in Article 14 of the ICCPR.

<sup>132</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 199.

in society.<sup>133</sup> These Articles also impose obligations on States concerning their treatment of non-nationals and should thus be complied with in cases where irregular entry may be an infringement of national penal law.

In the reporting guidelines for Article 39 of the CRC, the Committee specifically asks States Parties to report on measures taken vis-à-vis children in conflict with the law. Furthermore, in its concluding observations on the reports submitted by States Parties, the Committee has frequently grouped Article 39 (rehabilitation of child victims) with Article 40 (juvenile justice),<sup>134</sup> underlining the importance of rehabilitation of the child and of the possibilities of considering children as victims and not simply criminals.

The Riyadh Guidelines for the Prevention of Juvenile Delinquency propose that development plans should include victim compensation and assistance programmes, with full participation by young people.<sup>135</sup> The Guidelines also note that schools can usefully serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and those suffering from abuse, neglect, victimization or exploitation.<sup>136</sup> Communities should provide, or strengthen where they already exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes in which to live. Government agencies should take special responsibility and provide the necessary services for homeless or street children, information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.<sup>137</sup>

Such provisions have a special significance for migrant children who have been in conflict with the law or who have simply entered the country of destination in an irregular manner. Young people are to be sustained rather than simply punished and migrant children will very often fall into the “categories” mentioned above. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty include a section on “Return to the community” and, according to Rule 79, all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end. This Rule will likewise, if respected, protect many migrant children from falling into exploitation or criminality.

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<sup>133</sup> Ibid., p. 172.

<sup>134</sup> CRC/C/58, 1996.

<sup>135</sup> Ibid., para. 9.

<sup>136</sup> Ibid., para. 26.

<sup>137</sup> Ibid., paras 33, 34 and 38.

## *Education*

The right to education, which is enshrined in Article 26 of the UDHR Article 26 and Article 13 of the ICESCR, is crucial for protecting children and aiding their development and empowerment. Importantly, respect for this right in countries of origin will create possibilities that will render migration less attractive, while respect in the country of destination will inter alia promote integration. Both Articles provide that everyone has the right to education. Furthermore, in Article 29,<sup>138</sup> the CRC recognises the role of education in enabling the development of the child's personality, talents and mental and physical abilities to develop to their fullest potential.

Article 29 emphasises the 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.<sup>139</sup> It underlines how important unwavering respect for the right to education is and its essential role in promoting integration and mutual dialogue.

The UNHCR: Guidelines on Unaccompanied Children provides a useful interpretation of the rights of refugee children. The Guidelines require that States must ensure that all refugee children, as well as those seeking asylum, have access to primary education.<sup>140</sup> They stipulate, in accordance with the Refugee Convention, that appropriate educational opportunities should be provided to children during the determination of refugee status or in reception centres.<sup>141</sup> This should apply equally to migrant children in accordance with the CRC.

Education is both a human right in itself and an indispensable means of realizing other human rights<sup>142</sup>. As an empowerment right, education is the

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<sup>138</sup> CRC, Art. 29: 1. State 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, her or his own cultural identity, language and values, for the national values of the country in which the child is living, the country from which she or he may originate, and for civilizations different from her or his 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 indigenen 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.

<sup>139</sup> CRC Committee *General Comment on the Aims of Education*, 17 April 2001 (CRC/GC/2001/1), para. 6.

<sup>140</sup> In accordance with the CRC.

<sup>141</sup> UNHCR, *Guidelines on Unaccompanied Children*, Geneva, 1997, Chapter 9.

<sup>142</sup> The Millennium Development Goals challenge countries to achieve universal primary education, promote gender equality and empower women. Corresponding targets require that by 2015 all children should be able to complete a full course of primary schooling, and that gender disparities be eliminated in primary and secondary education by 2005. Many

primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and acquire the means to participate fully in their communities.<sup>143</sup> As mentioned, Article 13 of the ICESCR directs that the right to education is to be enjoyed by “everyone”. There are no qualifications preventing non-nationals from benefiting from this right.<sup>144</sup> In its General Comment on the right to education, the UNESCO Committee held that “the principle of non-discrimination extends to all persons of school age residing in the territory of a State Party, including non-nationals, and irrespective of legal status”.<sup>145</sup>

The principle that a country’s education should be available to all regardless of nationality is also clearly expressed in Article 3(1)(e) of the UNESCO Convention Against Discrimination in Education, by which State Parties undertake “to give foreign nationals resident within their territory the same access to education as that given to their own nationals”. No person shall be denied the right to education. In the exercise of any functions relative to education and to teaching that it assumes, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.<sup>146</sup> Formal equality between migrant children and the children of nationals regarding access to schooling in the country of destination is insufficient. Any educational difficulties experienced by the children of asylum seekers and refugees or migrants need to be counteracted by special measures to ensure that they are not disadvantaged with respect to their future training, employment or entry into higher education. It is important, however, that “special measures” are not

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countries in sub-Saharan Africa and South Asia, in particular, face an uphill task to get enrolment on track for achieving the 2015 goal. Enrolment growth rates need to be strong enough to overtake increases in the school-age population, to compensate for the over-aged children still enrolled in primary schools and to cope with the impacts of poverty, child labour, poor health, malnutrition and HIV/AIDS, all of which lead to irregular or complete cessation of attendance. Even where enrolment is generally high and gender gaps are low, as in Latin America and the Caribbean, repetition and drop-out rates are often significant owing to poor quality education, classroom discrimination and weak public school systems. At least 55 countries are taking specific measures to boost girls’ progression to post-primary education. Nevertheless, factors such as sexual exploitation, violence and lack of post-school opportunities continue to present obstacles. It should be emphasized that lack of access to school, lack of post-school opportunities, violence and poor health care are all factors that will act as push factors for potential child migrants: See Report of the Secretary-General of the UN on the follow-up to the special session of the General Assembly on children (A/60/207), August 2005 para. 59.

<sup>143</sup> UN ESCOR, ESC Committee, 21st Session, *General Comment No. 13 on the right to education (Article 13)*, UN Doc. E/C, 12 October 1999, para. 1.

<sup>144</sup> R. Cholewinski, “Overview of Social and Economic Rights of Refugees and Asylum Seekers in Europe: International Obligations. Education and Employment”, ECRE Conference on Social and Economic Rights of Refugees and Asylum Seekers, Education and Employment.

<sup>145</sup> UN ESCOR, ESC Committee, *General Comment No. 13*, 1999, para. 34.

<sup>146</sup> R. Cholewinski, “Overview of Social and Economic Rights of Refugees and Asylum Seekers in Europe: International Obligations. Education and Employment”, ECRE Conference on Social and Economic Rights of Refugees and Asylum Seekers, Education and Employment.



equated with “separate” education for migrant children.<sup>147</sup> In addition, children’s rights should not be reduced to the right of education. On the contrary, all the provisions of the CRC should be taken into consideration and respected.

Certain aspects of education can inherently protect children: the sense of self-worth that comes from being identified as a student and a learner; the growth and development of social networks; the provision of adult supervision; and access to a structured, ordered schedule. Maintaining education and its “built-in” protective components can thus provide vital continuity and support for children living through crises.<sup>148</sup> The importance of education is relevant not only in preventing abuse, but also in integration processes.

Children who are taken from one country and continent to another may be traumatised by the fact that they have left behind a familiar way of life and that they find themselves in a society where the language, culture and values are quite different. As migrant and minority children grow up, they may also experience a sense of alienation and uncertainty with respect to their identities and allegiances, particularly if they encounter discrimination and xenophobia in the host country. The children of migrants in an irregular situation as well as migrant children in an irregular situation are especially vulnerable, since they may find themselves effectively stateless, and may not be able to exercise their right to education.<sup>149</sup> Once children have been accepted to a certain degree into their new society, concepts and possible conflicts regarding respect for their cultural identity, multiculturalism and integration may emerge.<sup>150</sup>

Non-nationals, including immigrants, refugees and asylum seekers, should benefit from the guarantees in the ICESCR. Indeed, reports of the Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the implementation of the ICESCR, indicate that the discriminatory treatment of non-nationals, including migrants, is clearly a matter of concern under the ICESCR.<sup>151</sup> The “progressive” nature of economic, social and cultural rights does not mean that their realisation can be postponed. The Committee has asserted that the duty “to take steps” is of immediate application.<sup>152</sup> The economic, social and cultural rights are of

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<sup>147</sup> Ibid.

<sup>148</sup> N. Tripelhorn, *The Role of Education in Protecting Children in Conflict*, p. 9.

<sup>149</sup> Global Commission on International Migration, *Migration in an Interconnected World: New Directions For Action. Report of the Global Commission on International Migration*, 2005, p. 59, available online at [www.gcim.org](http://www.gcim.org).

<sup>150</sup> Children of migrants born in the new country – second generation immigrants – also experience difficulties. And, paradoxically, it is often when they feel integrated and start exercising both their rights and duties as members of society that they experience hostility from the indigenous citizens.

<sup>151</sup> R. Cholewinski, “Overview of Social and Economic Rights of Refugees and Asylum Seekers in Europe: International Obligations. Education and Employment”, ECRE Conference on Social and Economic Rights of Refugees and Asylum Seekers, Education and Employment.

<sup>152</sup> UN, ESCOR, ESC Committee, 5th Session, *General Comment No. 3 on the Nature of States Parties’ Obligations (Art. 2, para. 1)*, UN Doc. E/1991/23, 1991, para. 2.

particular importance for children once they are in their new countries. Indeed, integration and rights are closely linked to education: first, because education is an important guarantee for their future; and second, because the place of education may be the place where they encounter the culture of their country of destination.

Arrival in the country of destination can be a shock for many children. The destination country may be very different from the countries from which they have migrated, and children often feel that they have arrived in a society that is quite strange, controlling and bureaucratic.<sup>153</sup> When children are not permitted to work or to have their residence prolonged after turning 18, they no longer feel that they have long-term opportunities in their new countries and may prefer to remain out of the reach of the authorities. Such a lack of opportunities is not only a negation of basic rights but also counterproductive to both the children's development and to the State, which will have to face problems that may have been prevented.

Even when national legislation is in conformity with the CRC, actual circumstances may hinder migrant children from enjoying their rights. The Committee has expressed its concern at the limited budget allocations for the social sector, in particular those monies earmarked (or not) for the needs of the most vulnerable groups of children. It has recommended, in light of Articles 2, 3 and 4 of the Convention, that all measures to implement economic, social and cultural rights should draw upon all "available resources".<sup>154</sup> Budget restraints and cuts will often affect groups at the margins of society, such as non-nationals.

While migrant may children have high educational aspirations, these are often not supported by the pastoral and educational practices in schools. One particular area of concern in the formal sector is the lack of policies and practice in relation to long-term language acquisition. This involves support for the development of the new language and the retention and utilisation of the children's other languages.<sup>155</sup>

In its General Comment No. 1 on the aims of education, the Committee underlines the importance of education in combating discrimination, including racism:

*Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in Article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of*

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<sup>153</sup> N. Tripelhorn, *The Role of Education in Protecting Children in Conflict*, p. 33

<sup>154</sup> Dominican Republic IRCO, Add. 150, paras 15 and 16.

<sup>155</sup> *Children in Communication about Migration New Perspectives for Learning*, Briefing Paper 48, p. 2, available online at <http://www.chicam.net/finalreports/final-policy.html>.

*the highest priorities in all campaigns against the evils of racism and related phenomena.*<sup>156</sup>

Children are at the front line in building the new social contacts necessary for successful social integration in their new countries and communities. There is a tendency to consider cultural integration on a par with linguistic integration. This means that integration is judged on linguistic ability, but the broader demands of multiculturalism as a holistic approach to understanding and exchange are ignored. This also means that the burden is on immigrants to fit in rather than an exchange and dialogue being promoted between the immigrant communities and the host culture.<sup>157</sup>

Young migrants represent a varied and heterogeneous group. They include: children; young persons who have fallen prey to traffickers or who have been smuggled into a country in the hope of escaping poverty, persecution or a situation of generalised violence; young persons who have legally migrated for study, work or family reunion; and second-generation migrants who are born in the host country. Destination countries should aim to use education as an effective instrument to foster equality, multiculturalism and mutual understanding. These measures should ensure unimpeded access to compulsory education for migrant children, irrespective of their (or their parents') legal status.<sup>158</sup> The fact that such measures are addressed to migrant children (unaccompanied or otherwise) regardless of legal status is extremely important.<sup>159</sup> Such an approach focuses on children's rights and not only on the management of migration.

States should respond to the special needs of migrant students by integrating additional classes into the ordinary curriculum that focus on tuition in the language of the host country and the study of its society and culture,<sup>160</sup> and investing additional resources in the employment of specialised staff, such as psychologists, pedagogues, social workers and cultural mediators, as well as teachers, with appropriate training to deal with young migrants.<sup>161</sup> School programmes and textbooks should not contain any national or ethnic prejudices and should not convey any discriminatory or racist interpretation of the history, culture and society of foreign countries or communities.<sup>162</sup> Indeed, a curriculum ought to inspire respect for diversity and human rights. It is opportune in this context to bear in mind that education with a human rights perspective should always promote respect for diversity and that cultural rights mean respect for one another without accepting violations of

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<sup>156</sup> CRC Committee, *General Comment No.1*, 2001 (HRI/GEN/1/Rev.5).

<sup>157</sup> *Children in Communication about Migration New Perspectives for Learning*, Briefing Paper 48, p. 1, available online at <http://www.chicam.net/finalreports/finalpolicy.html>.

<sup>158</sup> European Parliament, *Recommendation 1596*, 2003, para. 6(i).

<sup>159</sup> An OECD study from 2006 shows that with migration likely to remain high and even increase, European countries in particular need to respond more effectively to socio-economic and cultural diversity in their student populations, available online at [http://www.oecd.org/document/17/0,2340,en\\_33873108\\_33873610\\_36701777\\_1\\_1\\_1\\_1\\_0\\_0.html](http://www.oecd.org/document/17/0,2340,en_33873108_33873610_36701777_1_1_1_1_0_0.html).

<sup>160</sup> European Parliament, *Recommendation 1596*, 2003, para. 6(iii).

<sup>161</sup> *Ibid.*, para. 6(iv).

<sup>162</sup> *Ibid.*, para. 6(v).

basic human rights.<sup>163</sup> While Article 28 of the CRC 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 highlights the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities and learning needs. Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs. It must take full account of the child's evolving capacities, and teaching methods should be tailored to the different needs of different children.

UNESCO, which has special expertise in the field, has stated that in today's world, it is crucial to address Human Rights Education holistically. Human Rights Education should therefore constitute the basis for the democratization of education systems in the context of national education reforms, with a view to integrating the learning and practice of human rights. 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, including the management of education systems. Human Rights Education implies the practice as well as the learning of human rights. Therefore, Human Rights Education should not only be theoretical, but should instead provide opportunities for learners to develop and practise the skills to respect human rights and democracy through "school life". Human Rights Education should be integral to formal and non-formal education.<sup>164</sup> Freedom of expression, media pluralism, multilingualism and equal access for all cultures to cultural life, including equal access to digital and other forms of knowledge, are all guarantors of cultural diversity and consequently for respect of human rights.<sup>165</sup> Thus, Human Rights Education means not only teaching human rights law, but means including the principles of human rights in education. This will further mutual respect and hence integration and children's well-being in their new countries.

The funding and supporting of extracurricular activities aimed at highlighting the value of the culture and civilization of migrant communities and their countries of origin is essential,<sup>166</sup> as are support initiatives taken at the local level to foster contacts between immigrant parents, the school and the community.<sup>167</sup> This not only promotes integration of children within their new community, but also facilitates the reciprocal encounter between these

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<sup>163</sup> As noted in the CRC Committee's *General Comment No. 9 on the Aims of Education*, 17 April 2001 (CRC/GC/2001/1), para. 11.

<sup>164</sup> UNESCO, *Strategy on Human Rights*, 32<sup>nd</sup> session of the UNESCO General Conference, 29 September - 17 October 2003, para. 26.

<sup>165</sup> *Ibid.*, para. 3.

<sup>166</sup> European Parliament, *Recommendation 1596*, 2003, para. 6(vi).

<sup>167</sup> *Ibid.*, para. 6(vii).

new inhabitants and the new society. This, in turn, will create cultural dialogue not only on a local but, hopefully, on a global level.

### *Return*

In various countries, children under 18 years of age are granted unconditional leave to remain until they turn 18. Children who know they only have temporary residence in a country can experience serious problems in terms of integration and psychological and educational welfare. As has been noted, children who travel with their parents or carers are not, contrary to popular belief, necessarily any more secure. They are then usually dependent on their parents for immigration status. Thus, the deportation of an adult will mean the deportation of their children as well. This is also sometimes true for children who were born in the country of destination.<sup>168</sup> In the case of parents or carers who abuse or exploit their children, there is little hope for the child migrant to become independent of them. It has been suggested that families are more vulnerable to processes of deportation because there are more of them in one group. Deportations are stressful to live through, and there is evidence of children being subject to mishandling, or witnessing violence or force against their parents. There is a distinct lack of information or exploration of the effects of forced return on child migrants. Research has suggested that often children do not wish to be returned home, particularly when they, or their parents, have invested a great deal in their migration plans. Even children who have been “trafficked” and are therefore deemed to be in a vulnerable situation are not usually monitored on their return home.<sup>169</sup>

All returns must be consistent with respect for the rights (including the rights to dignity and privacy) of the child, including consideration of the child’s best interests. In no circumstances should a person be returned if there is a risk to his or her life or safety, including a risk of re-trafficking. Where possible, return assistance and support should be provided. In the case of a migrant under 18 years of age, it should be obligatory to ensure that a legal guardian is available in the country to which a young person might be returned before proceeding with repatriation.

The child’s participation is also important with regard to eventual return. The views of the child are an essential element to assessing whether return is in his or her best interests. Ideally, the return of separated children, regardless of their status, should be on a voluntary basis. When it is believed that there are exceptional circumstances, the decision to return a separated child against his or her will should always be made in a court rather than during immigration procedures. Return will be more realistic if it is voluntary because the child will assist in the necessary processes. This should facilitate better preparation and planning, which in turn should serve to safeguard the child’s immediate well-being and to ensure a long-term and durable solution. Regardless of the level of support, separated children facing forced or involuntary return may

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<sup>168</sup> C. Farrow, “Focus on children in migration - from a European research and method perspective”, Warsaw Conference, Poland, 20-21 March 2007.

<sup>169</sup> Ibid.

opt out of official procedures and avoid statutory support.<sup>170</sup> The consequence of such action is that some separated children may find themselves in the “underground” economy, where the likelihood of harm or abuse will increase.

### *Guardian*

In relation to the treatment of unaccompanied and separated children outside their country of origin, the Committee stated in its General Comment No. 6<sup>171</sup> that, “States are required to create the underlying legal framework and 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 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 be permitted to attend all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian should have the necessary expertise in the field of child care to ensure that the interests of the child are safeguarded and that the child’s legal, social, physical, psychological, material and educational needs are appropriately fulfilled by, inter alia, the guardian acting as a link between the child and specialist agencies/individuals. Agencies or individuals whose interests could potentially 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 employer should be excluded from a guardianship role. Practical measures should be taken at all levels to protect children from particular risks that endanger their right to survival. Such measures could include: prompt appointment of guardians; priority procedures for child victims of trafficking; warning children about the risks they may encounter; and following-up children particularly at risk. These measures should be regularly evaluated to ensure their effectiveness.<sup>172</sup> Additionally, the UNCHR Guidelines on Unaccompanied Minors underline the importance of a guardian,<sup>173</sup> this need is no less pressing for a migrant child.

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<sup>170</sup> D. Sutton, *Save the Children and the Separated Children in Europe Programme Position Paper on: Returns and Separated Children*, p. 8.

<sup>171</sup> 39<sup>th</sup> session, 2005, at para. 33.

<sup>172</sup> CRC Committee, *General Comment No. 6*, 2005, para. 24.

<sup>173</sup> UNCHR Guidelines on Unaccompanied Minors, Article 5(7): It is suggested that an independent and formally accredited organization be identified/established in each country, which will appoint a guardian or adviser as soon as the unaccompanied child is identified. 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, medical and psychological needs are appropriately covered during the refugee status determination procedures and until a durable solution for the child has been identified and implemented. To this end, the guardian or adviser would act as a link between the child and

*Family reunion in case of separated/unaccompanied minors*

Every child has the right to be cared for by his or her parents.<sup>174</sup> According to Article 10 of the CRC, applications made by a child or their parents to enter or leave a State for the purpose of family reunification shall be dealt with by States Parties in a positive, humane, and expeditious manner.<sup>175</sup> In practice, family reunification is not that easy and unaccompanied minors may be left exposed to uncertainties and abuse. When reunification is impossible or pending, and alternative care solutions for an unaccompanied minor are required, due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background, in accordance with Article 20(1).<sup>176</sup> It is important that the child experiences continuity, that their development is not interrupted or obstructed and that, even while decisions regarding status are pending, the child is not left in limbo without rights. Naturally, for unaccompanied minors without care, placement with a family within the child's own community is preferable and care arrangements must leave open the possibility of family reunion. In the case of refugee children, efforts should be made to place the child with a relative or a family from the refugee community before adoption by a non-relative or a non-refugee family is considered.<sup>177</sup> This consideration is also relevant for migrant children when return is not an option (which it will not be where it is not in the best interest of the child).

The right to family unity remains a controversial issue for migrants. The point of contention is whether the principle of family unity requires a State to admit the non-national family members of someone residing legally on its territory. Many States do, in fact, permit the entry of spouses and minor children to join a lawfully resident immigrant, but many also place serious restrictions of the ability of families to enter.

Article 10 of the CRC is concerned with rights to family reunification of children who are, or whose parents are, involved in entering or leaving a country. The Article requires States to deal with family reunification "in a positive, humane, and expeditious manner" and to allow parents and children to visit each other if they live in different States. The families primarily affected by Article 10 are so-called "economic migrants" and refugees, although it should be noted that the children of refugee parents or the parents of child refugees may seek entry for the purposes of family reunification rather than asylum. While family unity is a fundamental principle of the

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existing specialist agencies/individuals who would provide the continuum of care required by the child.

<sup>174</sup> CRC, Art. 7.

<sup>175</sup> Article 10 of the CRC states that State 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. Thus there is no right to *enter* into a country other than one's own. The CRC does *not* attempt to extend the right to family reunification to a right to enter for family members, which remains at the discretion of each State.

<sup>176</sup> CRC, Art. 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.

<sup>177</sup> UNHCR, *Guidelines on Unaccompanied Children*, Geneva, 1997, Chapter 10(iv).

Convention, the wording of Article 10 is notably weaker than that of Article 9,<sup>178</sup> to the extent that the right to family reunification is not expressly guaranteed (even though Article 10 makes an express reference to Article 9(1)). The tentative wording of Article 10 reflects concerns about immigration control – a cause of anxiety to developed countries.<sup>179</sup> The Article does not directly address the right of children or their parents to “remain” for the purposes of family reunification, taking into account the whole question of the deportation of parents. However, by implication, since a deported parent would at once be in a position to wish to re-enter the country, these cases can be assumed to be covered by Article 10 as well as by Article 9.<sup>180</sup>

Article 9 of the CRC enshrines two essential principles of children’s rights: firstly, children should not be separated from their parents unless it is in the child’s best interests; and secondly, any separation on those grounds must be fair. It also affirms children’s rights to maintain relations and contact with both parents, and places a duty on the State to inform parent and child of each other’s whereabouts if the State has caused their separation (for example, by deportation or imprisonment). The subject is debated since some read Article 9 as applying only to domestic situations and others read Article 10 in the light of Article 9. The fear that the CRC may influence national immigration restrictions is pronounced.

Since many developed countries have in recent decades increasingly restricted the possibility of labour migration, particularly in the lower skilled sectors, family reunion has become the main legal entitlement for the settlement of migrants. This, in turn, has led to increasingly restrictive

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<sup>178</sup> CRC, Art. 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.

<sup>179</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 145.

<sup>180</sup> *Ibid.*, p. 146.



conditions being placed on the right to family reunification. Some countries require nationality status before such rights can be secured. Most countries now require applicants to prove that there are sufficient resources to support the immigrant's family members without recourse to public funds. Yet other countries have stricter conditions for foreigners who themselves entered the country for family reunion when they were children. Not all states recognize 16-18 year-olds as children and some countries require children to be "dependent", or under the exclusive responsibility of one parent if the parents are separated.

The word "humane" in Article 10 qualifies and strengthens the word "positive". For example, in cases where parents are in an irregular situation but their children have acquired the right to the host country's nationality, it is more humane to allow the family to remain in the country than to deport the parents – even though in both cases the family remains together. As well as the final decision, the procedure for making that decision must also be humane. It is essential that immigration processes respect the dignity of the applicants, including children's dignity. Treatment in detention centres can often be inhumane, as can the investigations by the authorities to authenticate the applications. The Committee has stressed the link between Article 10 and Article 37 (deprivation of liberty), pointing out that even where applicant children are housed in comfortable surroundings, their liberty is still encroached upon and their particular needs are not necessarily taken into account. Children should not be subjected to investigations that could harm their health or psychological well-being (such as traumatizing interrogations), nor should they be subjected to medical tests without their, or when possible and only if it is in their best interests, their parents' consent.<sup>181</sup>

### *Health care*

The provision of health care should be in line with Articles 24 and 39 of the CRC, and for children with disabilities, Article 23. Problems may be experienced because of language barriers, lack of awareness of available services, attitudes and values of healthcare professionals, lack of resources and cultural insensitivity.<sup>182</sup>

Article 24 of the CRC recognizes 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. It stresses the State Parties' duty to ensure that health care services are available and accessible to all. The formulation that no child should be deprived of these services highlights that there must be no discrimination in access, in accordance with Article 2 (pursuant to which the child must also be protected against any discrimination by third parties). Special attention must be given to the access to health care services for children and adolescents belonging to especially vulnerable groups,

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<sup>181</sup> Ibid., p. 148.

<sup>182</sup> T. Smith, *Separated Children in Europe. Policies and Practices in European Union Member States: a Comparative Analysis*, p. 26.

including asylum seekers, refugees, irregular migrants and minorities.<sup>183</sup> Services should be culturally appropriate, considering traditional preventive care, healing practices and medicines, unless such practices lead to neglect or abuse of the child's needs.<sup>184</sup> As with many socio-economic rights, the challenge is accessibility. For many migrants – especially when in an irregular situation – access to health care may be granted *de jure* but not *de facto*.

### *Birth registration*

Registration, which should be guaranteed according to Article 7 of the CRC, is a means of securing children's other rights, including: identification following war, abandonment or abduction; knowledge of their parentage; services and state benefits such as immunization, health care and schooling; protection through legal age limits (for example in employment, recruitment to the armed services, or in the juvenile justice system); and reducing the danger of trafficking in babies or of infanticide. At its most extreme, non-registration may threaten the physical survival of the child.<sup>185</sup>

Children born abroad, particularly to undocumented migrants, may not have access to birth registration. Consequently, many children of migrant workers are not registered and may be stateless. Without proper documents, they might experience problems in access to basic services, as well as problems with the law.

Birth registration can also be connected to reduced vulnerability to trafficking; a child who has no official recognition of his or her name or nationality and no official registration of birth is much more likely to be targeted by trafficking operations.<sup>186</sup> Non-registered children are more vulnerable to abuse and exploitation. In this context, an unregistered child does not exist.

The right to a legal identity is important since the negation of this right, which occurs easily in displacement situations, may have serious consequences for the respect of other rights later on in life. All children must be legally registered as soon as possible after birth. A birth certificate, which is only available for two out of three births worldwide, offers some degree of legal protection and is often needed to access a number of services.<sup>187</sup> It can also be very useful in efforts to reunite separated children with their families.

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<sup>183</sup> *Concluding Observations: Bosnia and Herzegovina* (UN Doc. CRC/C/15), 2005, Add. 260, para. 47.

<sup>184</sup> See Article 24(3) of the CRC.

<sup>185</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 110.

<sup>186</sup> S. Grant, *International migration and human rights*, p. 4.

<sup>187</sup> ICRC, "Displaced children - unaccompanied and separated children", International Conference on Children Affected by Armed Conflict, Valencia, 5-7 November 2000, available online at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/64DJ58>.



## **Work: CRC and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) reaffirms the rights set forth in the CRC.<sup>1</sup> This Convention applies to minors where they are migrant workers, as well as where they are family members. It should be noted, however, that no Article in the ICRMW considers children as minors migrating alone.<sup>2</sup>

The lack of support for the ICRMW and the inadequate implementation of this and other instruments concerning migrant workers have created a clear gap in protection between international rights and their enjoyment and implementation in practice.<sup>3</sup> This is valid for all migrant workers, but, as will be seen immediately below, the protection gap for minor migrant workers is particularly significant.

In Article 12(4) of the ICRMW, respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions is guaranteed. This Article may be relevant for unaccompanied minors, since one of the most important ways of protecting them is by providing them, as soon as possible, with a legal guardian who can act on their behalf and in their interests. This is not only a long-term option; it is also important pending decisions regarding permits to stay, family reunion or return – periods during which the migrant child is particularly vulnerable and needs someone who knows the system and who is wholly concerned with their best interests.

Article 17(6) establishes that whenever a migrant worker is deprived of his or her liberty, the State concerned shall pay attention to the problems that might be posed for members of their family, in particular for spouses and minor children. This Article may prevent children from becoming separated from their parents, especially in situations where irregular migration is punished by deprivation of liberty. It is important in these cases that children are not left to their own devices to become *de facto* unaccompanied migrants.

Article 29 provides that each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality. As noted above, this right is of importance as its neglect may be the basis for the neglect of other rights. Article 30, regarding education, is addressed exclusively to children of

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<sup>1</sup> By December 2007 it had been ratified by 37 States.

<sup>2</sup> UNICEF, *A Child-rights Approach on International Migration and Child Trafficking: A UNICEF Perspective*, 2004, p. 2.

<sup>3</sup> R. Cholewinski, "The Rights of Migrant workers" in R. Cholewinski, R. Perruchoud and E. Macdonald (eds.), *International Migration Law – Developing Paradigms and Key Challenges*, The Hague, T.M.C. Asser Press, 2007, p 271.

migrant workers and thus seems irrelevant to children migrating independently of their parents.

The ICRMW is binding only on ratifying States, which are few.<sup>4</sup> No specific consideration is given to the fact that minors might also end up as migrant workers and as such would have specific protection needs. It is important to recognise that “work” and “exploitation” are not synonymous,<sup>5</sup> and that, since reality is different and since minors migrate as workers, it would be preferable to have their particular needs protected. Such protection should include a special work regime that allows time for education,<sup>6</sup> leisure and special health protection. The inclusion of a duty to protect working minors would have been apposite; “work” is thus prevented from becoming “exploitation”. Working children are exploited when the financial remuneration or the services in kind are less than what would be paid to adults for equivalent work, or when it is undertaken at too young an age and is detrimental to the well-being of the child.<sup>7</sup> The need not to legitimise any kind of work done by migrant children is understandable, but strong protection of children who do find themselves in a work situation suited to them would perhaps be more effective. Obviously, the CRC will cover such situations. But the considerations above regarding the special attention needed for this group are equally valid for minors who migrate to work and who should be enabled to do so in circumstances that respect their special situation, needs and rights, facilitating their sound development and integration in their host society.

In accordance with the UDHR, the ICCPR and the ICESCR recognise that the ideal of human beings free of needs can be achieved only if conditions are created whereby everyone is able to enjoy their civil and political, economic, social and cultural rights. Article 10(3) of the ICESCR states that:

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of

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<sup>4</sup> Various obstacles have been identified to the treaty’s ratification by countries of destination, which in many cases were the drafters of the Convention, but who now do not seem to want to ratify it. Among these obstacles, those which may be called “political” seem to be the most relevant: the lack of willingness to join a multilateral cooperation on a subject that is still very much considered to be the competence of each individual state; the lack of willingness to grant rights to irregulars (actually the rights granted to irregulars under the Convention are found in the ICCPR and ICESCR, but it seems to be an obstacle that the Convention collects these rights and grants them to “all migrants”); lack of knowledge of the contents of the Convention and the fear that there is a guarantee of the “right to enter”; the general discourse in which managing migration means limiting migration and showing that the Government is “dealing” with the problem; and a fundamental need of irregulars and unofficial low-cost labour force. (Research on the lack of ratification carried out in various countries, on the initiative of UNESCO, available online at <http://unesdoc.unesco.org/images/0015/001525/152537E.pdf>.)

<sup>5</sup> The distinction is also evident in Article 32 of the CRC – which establishes that children should be protected from 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.

<sup>6</sup> See below for ILO rules on minimum age.

<sup>7</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 264.

parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

This Article is integrated into the CRC. The Article focuses mainly on protecting children and on establishing special protection, which should also be a guideline when dealing with trafficking. The word “should” is a weakness in the Article, but this is remedied since the Articles on exploitation in the CRC are mandatory. In the context of Article 32 of the CRC and Article 10 of the ICESCR, one should be mindful that children do migrate as workers. Article 10 reads:

*States Parties recognise 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 ... States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: a) Provide for a minimum age or minimum ages for admission to employment; b) Provide for appropriate regulation of the hours and conditions of employment; c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.*

Article 32 recognises that work which is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health, physical, mental, spiritual, moral or social development shall be prevented. This is a holistic approach that recognises that exploitation of children interferes with all aspects of their development. The fact that States Parties are required to take legislative, administrative, social and educational measures to ensure the implementation of the Article is a continuation of this broad approach, which recognises that legislative measures alone will not suffice, since in many situations child exploitation stems from lack of education and lack of opportunities. A specific requirement that State Parties combat economic and social causes for exploitation would have been welcome.

Article 32 sets out the right of children to be protected against economic exploitation, whereas the following Articles, somewhat inconsistently, place the duty on the State to protect the child against any exploitation without incorporating the terminology of rights.<sup>8</sup>

Article 32 (1) requires protection of the child from performing any work that is likely to “interfere with the child's education”. In its general recommendations on economic exploitation, the Committee has highlighted the interconnection between the right to education, guaranteed by Article 28,

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<sup>8</sup> Ibid., p. 262.

and exploitation in child labour. In addition, Article 28 requires States to take “measures to encourage regular attendance at schools and the reduction of drop-out rates”, for example, by introducing more relevant curricula or providing grants to poor families. The Worst Forms of Child Labour Convention of 1999 (No. 182) notes the importance of free basic education in its Preamble and requires ratifying States to ensure access to free basic education for all children removed from the worst forms of child labour.<sup>9</sup> Clearly, migrant children also have the right to education. However, irregularity, child labour and discrimination easily frustrate this right.

Minimum age and regulation of hours and conditions of employment are especially crucial with regard to children. The fact that the Article does not provide details for the content of these regulations is a weakness.<sup>10</sup> Detailed regulations should be enacted and enforced for all minors who find themselves in the labour market. The ILO Convention No. 138 establishes that States should set a minimum age for employment or work, which should be no lower than the age of compulsory schooling and in any case not lower than 15 years.<sup>11</sup> Moreover, the ILO Convention aims to protect children from any type of employment or work, which by its nature is likely to jeopardise the health, safety or morals of children.<sup>12</sup> Pursuant to the Convention, the competent authority may, after consultation with employer and worker organisations concerned (where such exist), authorise employment or work from the age of 16, on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training. These provisions are important for migrant children, who in many cases have a specific economic project. Being allowed to work and not just looked upon as dependent children is of great importance for them and for their protection. If the protection aimed at these children does not consider their plan, it will fail, and the children may easily end up in a situation where exploitation and abuse are likely. It is clear that protection within the framework of the above-mentioned rules is the better option.<sup>13</sup> Respecting children’s economic

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<sup>9</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 489.

<sup>10</sup> The details are to be found in ILO Recommendation No. 146, para. 12, which recommends that the conditions under which persons under the age of 18 are employed should be maintained at a satisfactory standard and supervised closely. However the Recommendation does not specify the exact number of hours permissible. It does recommend that the hours be strictly limited both on a daily and a weekly basis. Such limitations are obviously valid for *all* children. Nevertheless, the provisions leave much too broad a margin of appreciation.

<sup>11</sup> ILO Convention 138, Article 2(4) allows for an initial minimum age of 14 years in relation to States with an insufficiently developed economy; Article 2(5) goes on to state that: Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation a statement: ( a ) That its reason for doing so subsists; or ( b ) That it renounces its right to avail itself of the provisions in question as from a stated date.

<sup>12</sup> ILO Convention 138, Art. 3.

<sup>13</sup> Obviously, such respect must be in the best interest of the child, which is clearly affected by age (in accordance with Article 5 of the CRC). To put it simply, a minor of 10 may

migration projects must never be over-enforced, so that migrant children are regarded as resourceful little workers. Their vulnerability to severe abuse, neglect and exploitation must not be forgotten.

Further, Article 7 of the ILO Convention No. 138 determines that national laws or regulations may permit the employment or work of persons aged 13 to 15 years on light work where: it is not likely to be harmful to their health or development; it is not such as to prejudice their attendance at school; and their participation in vocational orientation or training programmes is approved by the competent authority, and their capacity to benefit from the instruction received. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age, but have not yet completed their compulsory schooling, to work which meets the above mentioned requirements.<sup>14</sup> Again, this is vital to protecting young children who might want to work and risk falling outside of normative protection if work is not permitted. However, the ability of State Parties with a weak economy to exclude the application of the Convention from entire branches of activity leave a worrying discretion to the State.<sup>15</sup> As a result, the exclusions must be read in connection with the protection of the CRC in order to have a beneficial effect. Thus, the fact that children tend to be concentrated in the lower status and worst paid employment and are vulnerable to work place accidents<sup>16</sup> needs to be addressed. Such work is not in the child's best interests even if the child has a desire to work. Work must be controlled, secure and leave space and time for education and play. The ILO Convention on its own leaves too many loopholes (with very few requirements regarding conditions of work, wage, time, etc.), but the protection of children in work needs always to be regulated in accordance with Article 32 and Article 3 of the CRC. The child's best interests and development are the core guiding principles.

If child migrants work in the same controlled conditions as nationals, when the latter have strictly controlled hours, conditions and a minimum age for admission, Article 32 is respected. Rigorous control is clearly needed and it is especially important that the principle of non-discrimination is applied. It is, however, equally clear that children's right to be children and not to lead an "adult" life should be promoted, which includes the possibility to grow up with their families without the need to go abroad "seeking their fortune" and running the risk of ending up in exploitation and misery. It should also be emphasised that children's right to work should not overshadow other rights. Work must never turn into exploitation: the standard for what constitutes

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want to work in a mine to make money, but that would not be in his or her best interest and other options should be found; a minor of 16 may want to work as a mason, which may be an option if there is attention to the kind of work he does – for example, heavy work should be avoided, as should long hours.

<sup>14</sup> ILO Convention 138, Art. 7(4): In these cases, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

<sup>15</sup> ILO Convention 138, Art. 5(1)-(2).

<sup>16</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 269.



exploitation of a child is clearly lower than that for an adult. It should lastly be emphasised that the right to work, and respect for the wish for economic gain through a migration project will be conditioned upon the child's age. It must be clear that a minor of 16 can work in controlled circumstances and for limited hours, whereas a child of 12 or 14 would be in another situation all together. Again, the underlying principles of Articles 3 and 6 come into play.

Article 32, perhaps more than other Articles in the CRC, should be read with Article 31 on the right to leisure, play and culture. Children's right to play is sometimes referred to as the "forgotten right", perhaps because it appears to the adult world as a luxury rather than a necessity of life and because children always find ways and means of playing, even in the worst circumstances. Nevertheless, play is also an essential facet of development and children who are unable to play, for whatever reason, may lack important social and personal skills.<sup>17</sup> The right to leisure encompasses more than just having sufficient time to sleep at night. Articles 29 and 32 need to be balanced so that children who need or want to work can do so but still receive an education. Article 31 is necessary as a reminder that, in addition, children need some time for themselves between work and education (the right to privacy in Article 16 also addresses this need). Article 31 is especially, but by no means only, relevant to children who fall outside the protection of the ILO Conventions on Child Labour. For example, children in domestic service and children working in non-hazardous occupations with their families may be exempted, yet millions of children across the world work long hours in conditions of near slavery as domestic workers, and many more are forced by their family circumstances to work in family enterprises without adequate rest or education throughout most of their childhood.<sup>18</sup> Such situations can be more hazardous to children since their invisible nature makes it easier for abuse to go unchecked and more difficult for the state machinery, such as police or labour inspectors, to monitor.<sup>19</sup> For child migrants who lack the protective environment normally enjoyed by non-migrants, this provision is of the utmost importance. Otherwise, some types of employment often performed by migrant children fall outside these protections.

It should not be forgotten that children have the right to free association, including the right to form unions. There is often difficulty in many destination countries in reconciling the application of the right to form trade unions with the view that childhood should be strictly separated from work. However, this is not the reality, not even for national children. As noted above, work in protected and controlled circumstances may be better for the child than misconceived overprotection and a complete prohibition of work. However, children who have tried to obtain an influence, not just as children but as working children, and to obtain the right to work in dignity have been met with resistance. Nonetheless, it should be recognised that these children

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<sup>17</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 465.

<sup>18</sup> *Ibid.*, p. 467.

<sup>19</sup> NGO Group for the CRC Sub-Group on Child Labour, *The impact of discrimination on working children and on the phenomenon of child labour*, June 2002, available online at <http://www.antislavery.org/homepage/resources/Discriminationpaper.pdf>.

see work as an important feature of participation and that they claim a right as active social subjects.<sup>20</sup> Again, it should be underlined that an acceptance of children working should be for the *benefit* of the child and not a tacit approval of abuse and exploitation. The fact that many migrant children work at the expense of school attendance<sup>21</sup> is, for instance, unacceptable.

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<sup>20</sup> M. Liebel, *A will of their own*, p. 29.

<sup>21</sup> *Ibid.*, p. 116.



## UN General Assembly Resolutions

The UN General Assembly has included the need to pay special attention to migrant children's rights in various Resolutions. Resolution 55/79 on the Rights of the Child from December 2000 called upon States to protect all human rights of migrant children, in particular unaccompanied migrant children, and to ensure that the best interests of the child are a primary consideration.<sup>1</sup> It also called upon States to co-operate fully with, and to assist, the Special Rapporteur of the Commission on Human Rights<sup>2</sup> on the human rights of migrants when addressing the particularly vulnerable conditions of migrant children.<sup>3</sup> This formulation is repeated in paragraphs 12 and 13 of A/RES/57/190<sup>4</sup> of February 2003. In the same month, the General Assembly amplified its concerns and underlined the need for all States Parties to fully protect the universally recognised human rights of migrants, especially women and children, regardless of their legal status, and to treat them humanely, in particular with regard to assistance and protection.<sup>5</sup> The consideration of women and children as one group is common, and recognises the fact that women and children often suffer from the same violations. It fails, however, to recognise that the two groups have different needs and different corresponding rights. The emphasis on the importance of protection regardless of legal status is nevertheless most welcome. There is a particular need to protect the human rights of migrant children, in particular unaccompanied migrant children, and to ensure that the best interests of the children and the importance of reuniting them with their parents, when

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<sup>1</sup> A/RES/55/79, para. 11.

<sup>2</sup> The Commission, which has now been replaced by the Human Rights Council, was a functional Commission of the Economic and Social Council; whereas the Human Rights Council is a subsidiary body of the General Assembly. However, the Assembly will review its status in 2011 and at that time the Council may be elevated to a full organ of the UN (in accordance with General Assembly Resolution 60/251 of 2006). The council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all (...) it should address situations of violations of human rights, including gross and systematic violations and make recommendation thereon and it should promote the effective coordination and mainstreaming of human rights within the UN. The work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation with a view to enhancing the promotion and protection of all human rights (...) including the right to development. The Council shall inter alia: promote human rights education, technical assistance and capacity building; serve as a forum for dialogue; make recommendations to the GA for the further development of law in the field of human rights; undertake universal periodical reviews; contribute through dialogue and cooperation towards the prevention of human rights violations; assume the role and responsibilities of the Human Rights Commission related to the work of the OHCHR; work in close collaboration in the field of human rights with Governments, regional organisations, national human rights institutions and civil society; make recommendations with regard to the promotions and protection of human rights; and submit annual reports to the GA. For a discussion on this reform see "Reform of the UN Human Rights Machinery", *Human Rights Law Review*, Volume 7.1,

<sup>3</sup> A/RES/55/79, para. 12.

<sup>4</sup> A/RES/57/190 on the rights of the child.

<sup>5</sup> A/RES/57/218 on protection of migrants, para. 7.

possible and appropriate, are respected.<sup>6</sup> Resolution 58/190 calls on States to facilitate family reunification and underlines that such reunification has a positive effect on the integration of migrants.<sup>7</sup> This Resolution further considers an often overlooked aspect, namely, the promotion and protection of the rights of migrant worker's families that remain in the countries of origin. It pays particular attention to children and adolescents whose parents have emigrated.<sup>8</sup> If these children are not with their family, they run many of the risks of other unaccompanied minors and are more exposed to insecurity and instability: they need special attention. A/RES/59/261<sup>9</sup> of February 2005 requires the enjoyment of all human rights for migrant children, including access to health care, social services and education of a good quality.<sup>10</sup> This emphasis on economic, social and cultural rights should not be underestimated, since these liberties are often violated when a child has entered a new society or when awaiting decisions. Further, these rights ensure the child's continued development and the basic respect for the child as such. The Resolution also calls for special protection and assistance for migrant children, especially those who are unaccompanied or victims of violence and exploitation. Resolutions 60/231<sup>11</sup> and 61/146<sup>12</sup> of January 2006 and 2007 respectively, repeat the exact same wording, as does the Report of the Third Committee on Human Rights on Promotion and Protection of the Rights of Children.<sup>13</sup>

In the follow-up to the special session of the General Assembly on Children, the Report of the Secretary-General of August 2005, notes that the most prominent gaps in protecting children worldwide are in the following areas: sexual abuse and exploitation, including in armed conflict; the use of children as soldiers; trafficking; hazardous work; harmful practices; and the situation of children not in the care of their families or in conflict with the law.<sup>14</sup>

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<sup>6</sup> Ibid., para. 16.

<sup>7</sup> A/RES/58/190 on protection of migrants, para. 20.

<sup>8</sup> Ibid., para. 21.

<sup>9</sup> A/RES/59/261 on the rights of the child.

<sup>10</sup> Ibid., para. 33.

<sup>11</sup> Ibid., para. 23.

<sup>12</sup> Ibid., para. 26.

<sup>13</sup> A/61/439, November 2006.

<sup>14</sup> Ibid., para. 68.

# Trafficking

A peculiarity about the crime of trafficking is that the victim is very often subject to a crime that should traditionally be punished by criminal law and not a human rights crime, with the latter conventionally being understood as an act committed by the state. However, trafficking discourse nonetheless suggests its acceptance into the human rights regime.<sup>1</sup>

Explicit protection against trafficking in the CRC is found in Article 35, which provides that “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”. The Article does not elaborate the terms, but the words “for any purpose or in any form” suggest that it is to be interpreted broadly. The responsibility for taking measures to avoid trafficking is expressly placed on the State, which implies a State responsibility if it does not succeed in prosecuting offenders, thus making the international obligation applicable at the “trafficker-level”.<sup>2</sup> In accordance with Article 35,<sup>3</sup> States Parties should respond appropriately to prevent such trafficking. Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement established with respect to labour regulations and border-crossing.<sup>4</sup> This implies that Article 35 obliges States to prevent trafficking not only with criminal measures, but with a full range of rights-based measures. Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP II), which has entered into force as part of the CRC for the ratifying States, helps clarify the definition of trafficking in Article 35, defining the sale of children as “...any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”. A very important Article in OP II is Article 3, which provides that:

“States Parties shall ensure the definition of the following acts as a crime, irrespective of whether they are committed domestically or trans-

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<sup>1</sup> For a detailed discussion on this aspect of trafficking, see R. Pitrowicz, “Trafficking of Human Beings and Their Human Rights” in R. Cholewinski, R. Perruchoud and E. Macdonald (eds.), *International Migration Law – Developing Paradigms and Key Challenges*, The Hague, T.M.C. Asser Press, 2007. On the human rights obligations of non-state actors, see A. Chapham, *Human Rights Obligations of Non-State Actors*, Oxford University Press, 2006.

<sup>2</sup> This principle is clearly stated in Article 3 of the Second Protocol to the CRC, which provides that States Parties shall ensure the definition of certain acts as a crime, irrespective of whether they are committed domestically or trans-nationally, on an individual or organised basis – this will be discussed immediately below.

<sup>3</sup> Article 35 of the CRC is also important because it applies to all forms of sale – including inter-country adoption, which have caused grave problems. See G. van Bueren, *The International Law on the Rights of the Child*, p. 281 and pp. 94-103.

<sup>4</sup> CRC Committee, *General Comment No. 6*, 2005, para. 52.

nationally, on an individual or organised basis: Offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child; Transfer of organs *of the child for profit*; *Engagement of the child in forced labour.*”

The OP II thus extends jurisdiction over adults involved in the “sale” of children and it strengthens existing CRC provisions regarding the sexual exploitation of minors. It only refers directly to child *trafficking* in the Preamble, where it is said that States Parties are:

“gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution, and child pornography”.

Many forms of trafficking fit into the definition of “sale of children”, and it must be borne in mind that very often the purpose for which children are sold coincides with the purpose for which they are trafficked, which falls within the scope of Article 2. Pursuant to the CRC, States must undertake all efforts to prevent or eliminate child trafficking and they can be held accountable for not so doing.<sup>5</sup> Furthermore, the UN Convention against Transnational Organised Crime and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol), which is not a human rights instrument but a convention on international crime, provides additional protection to victims of trafficking (see below).

Here, other Articles of the CRC, requiring States to take a range of actions to prevent violence, neglect and exploitation of children, are pertinent. Article 39 (above) requires appropriate action for those who fall prey to these dangers. This is further emphasized in the OP II. States Parties must adopt “appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process” (Article 8). The Trafficking Protocol, in its section on “Assistance to and protection of victims of trafficking in persons”, requires that assistance is given to enable children to express their views and their concerns and that these are considered at appropriate stages of criminal proceedings against offenders (Article 6(2)(b)).

The OP II, in addition to refining the definition of trafficking in Article 2 (see above), states in Article 3 that a wide range of offences shall be established under national penal law.<sup>6</sup> Articles 4 and 5 establish that jurisdiction should be extraterritorial. This is of importance since, in most cases, international justice does not have jurisdiction over these crimes and thus national law and

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<sup>5</sup> The monitoring body is the Committee on the Rights of the Child. See footnote 30.

<sup>6</sup> Article 3: 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

the principles of extraterritoriality are crucial to combat traffickers. The OP II also addresses the issues of protecting child victims and recognising their vulnerability, but emphasises that the views and concerns of the child must be taken into consideration and that the child should be informed of his or her rights.<sup>7</sup> Moreover, it ensures that States are under an obligation to protect the child victim and his or her family from retaliation, which in many cases is most relevant.<sup>8</sup> Measures such as personnel training and special treatment in criminal procedures are also included. It is significant that obligations to prevent trafficking through raising awareness and the education and social integration of victims are imposed on States.<sup>9</sup> This ensures a holistic approach to the problem and thus avoids focusing exclusively on the criminal aspect. It underlines that children should be at the centre of any actions against trafficking and that it is necessary to take all aspects of this crime into consideration. Article 10 addresses root causes and ensures international cooperation. This is important since international cooperation very often is mentioned in terms of international crime prevention and investigation. It is noteworthy that States “shall” implement these measures.

The Trafficking Protocol<sup>10</sup> contains the most comprehensive legal definition of “human trafficking” under international law. As previously noted, the Protocol is not a human rights instrument, but rather is an instrument in the fight against international organised crime; it is, however, relevant to the protection of victims and thus for the respect of their human rights. The definition of trafficking is found in Article 3:

- a. ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery.
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant when any of the means set forth in subparagraph (a) has been used.
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in Paragraph (a) of this Article.
- d. Child shall mean any person under eighteen years of age.

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<sup>7</sup> OP II, Art. 8.

<sup>8</sup> Ibid., Art. 8(1)(f).

<sup>9</sup> Ibid., Art. 9.

<sup>10</sup> Having 116 Parties by December 2007.



The Protocol contains an important distinction between “smuggling” and “trafficking”, useful for remembering that the smuggling of migrants and trafficking in human beings are two different concepts, necessitating different responses. It also contains the important provision that children may never consent to trafficking. Where consent is alleged, in order to be dealt with as victims and not irregular migrants, adults must show that their consent came about due to threat, force, abduction, deception or abuse of power; but as far as children are concerned, no consent is valid.<sup>11</sup>

The Protocol is important for various reasons. It provides, for the first time, a detailed and comprehensive definition of trafficking. It applies to all people, but particularly women and children, since States Parties have recognised their specific vulnerability. It also offers tools in order to empower law enforcement and to strengthen border control through, for example, the exchange of information,<sup>12</sup> the training of law enforcement and border police,<sup>13</sup> and measures aiming at ensuring the quality of travel documents.<sup>14</sup> The Protocol integrates the foregoing by strengthening the response of the judiciary through the obligation for States Parties to criminalise trafficking; to create penalties that reflect the grave nature of these offences; and to create the possibility to investigate, prosecute and convict traffickers.<sup>15</sup>

Importantly, it expands the scope of protection and support to victims through: granting privacy;<sup>16</sup> access to information regarding proceedings;<sup>17</sup> physical and psychological recovery;<sup>18</sup> special requirements for children and safety for victims;<sup>19</sup> and measures to avoid immediate deportation and to

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<sup>11</sup> This has been taken to mean that a child cannot consent to a migration project since consent to smuggling, for instance, is void. Closer reading of the definition, however, reveals that, what a child cannot consent to is being trafficked – and trafficking depends not only on the intermediary, but also on the element of exploitation. According to the definition in Article 3, trafficking occurs when an element of exploitation is present, in other words, a person who has been smuggled is free to do “what he or she wants” once arriving at the destination, whereas a trafficked person remains under the control of the trafficker or their accomplice upon destination, in order to be exploited. The distinction is important because cases of trafficking, due to the exploitation factor, involve persons who have been abused and who have been subjected to violations other than those to which persons who are smuggled are subjected. In many cases, of course, what initiates as smuggling ends up as trafficking. This is another reason why the definition in this Article is so important: the case can only be determined upon arrival. This is not to say that those smuggled who do “what they want” do not end up being exploited. Nevertheless, this does not constitute trafficking and such persons should be protected by general human rights instruments and national law. It is imperative to distinguish between smuggling and trafficking to give victims of trafficking adequate help and to be cognisant of the difficulties and dangers faced by smuggled children. Focusing exclusively on trafficking will conceal many children from the protection radar.

<sup>12</sup> Trafficking Protocol, Art. 10(1).

<sup>13</sup> *Ibid.*, Art. 10(2).

<sup>14</sup> *Ibid.*, Art. 12.

<sup>15</sup> *Ibid.*, Art. 5.

<sup>16</sup> *Ibid.*, Art. 6(1).

<sup>17</sup> *Ibid.*, Art. 6(2)(a).

<sup>18</sup> *Ibid.*, Art. 6(3)(c).

<sup>19</sup> *Ibid.*, Art. 6(4).

ensure safe repatriation.<sup>20</sup> Witness protection is considered a crucial measure. The main goal is to catch and prosecute the trafficker, yet at the same time protect the victim. Assistance to victims is crucial to law enforcement, since the victim can provide the evidence necessary to prosecute the trafficker successfully.

One point that must be emphasised is that Article 6(3) of the Protocol requires States to consider implementing measures to provide for:

physical, psychological and social recovery of victims of trafficking in persons (...) in particular the provision of: (a) appropriate housing, (b) counselling and information, in particular as regards their legal rights (...) (c) medical, psychological and material assistance; and (d) employment, education and training opportunities.

This provision is significant as it underlines that trafficked persons are to be protected and sheltered – not treated as criminals.

Article 3 of the ILO Convention on the Worst Forms of Child Labour states that each Member:

shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: (a) prevent the engagement of children in the worst forms of child labour; (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls.

This Article highlights the importance of social reintegration and the need to combat the worst forms of forced labour by ways of education and vocational training. It also includes prevention, which is most often ignored when focusing on assisting victims or punishing criminals. In Article 3, the ILO Convention includes child slavery among the worst forms of child labour.<sup>21</sup> The ICRMW is relevant here, since it aims at preventing and eliminating the exploitation of migrant workers throughout the entire migration process. Articles 68<sup>22</sup> and 69<sup>23</sup> in particular, seek to put an end to the illegal or

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<sup>20</sup> Ibid., Art. 8(2).

<sup>21</sup> ILO Convention 182, Art. 3: a. Child slavery (including the sale and trafficking of children, debt bondage and forced recruitment for armed conflict) b. Child prostitution and pornography c. The use of children for illicit activities (such as drug trafficking) d. Any work which is likely to harm the health, safety or morals of children.

<sup>22</sup> ICRMW, Art. 68:

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an

clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in an irregular or undocumented situation. By providing a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of source and receiving States, it could help to prevent trafficking by rendering clandestine immigration less profitable.

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 where there is indication that international protection needs exist, have access to asylum procedures.<sup>24</sup>

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irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by these measures.

<sup>23</sup> ICRMW, Art. 69:

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

<sup>24</sup> CRC Committee, *General Comment No. 6*, 2005, para. 53.

## Refugees

The basic needs and rights of young refugees are no different from those of young people living within their own countries and communities. The CRC applies to refugee children and children seeking asylum. However, the circumstances in which young refugees find themselves are particularly hazardous.<sup>1</sup> It is therefore necessary to consider these children's particular needs. Article 22 of the CRC reads:

State 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.

When the underlying principle of the Convention, that “child refugees are children first and refugees second”, is truly respected, the protection provided by the CRC is sound.<sup>2</sup> Moreover, Article 22(2) ensures that unaccompanied minors are entitled to special protection and assistance provided by the State – or rather, they are entitled to the same protection as other children entitled to this assistance. The Article must be read in conjunction with Article 9 (separation from parents only when necessary in the best interests of the child), Article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), Article 20 (protection of children without families), Article 37 (prohibition of torture and ill-treatment, and deprivation of liberty only as a measure of last resort) and Article 39 (recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse). The guidelines of the United Nations High Commissioner for Refugees (UNHCR), notably the 1994 *Refugee children – Guidelines on Protection and Care*, should also be kept in mind.<sup>3</sup>

The CRC provides equality in the enjoyment of children's applicable rights, both for those recognised as refugees and for those seeking asylum.<sup>4</sup> Thus, in principle, the CRC should guarantee that although children might find themselves in a legal limbo while their status is being determined, their basic rights as children are respected at all times.

In terms of special consideration of children's rights, the Final Act of the Conference that adopted the Refugee Convention, and not the 1951 Refugee

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<sup>1</sup> J. Crisp, “Meeting the needs and realizing the rights of refugee children and adolescents: from policy to practice”, *Refugee Survey Quarterly*, vol. 15, No. 3, 1996, p. 3.

<sup>2</sup> E. Nykanen, “Protecting children? The European Convention on Human Rights and Child Asylum Seekers”, *European Journal of Migration and Law*, Vol. 3, No. 3-4, 2001, p. 319.

<sup>3</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 2002, p. 306.

<sup>4</sup> G. van Bueren, *The International Law on the Rights of the Child*, p. 362.

Convention itself,<sup>5</sup> does no more than recommend measures to ensure family unity and protection. In one Article, the 1951 Refugee Convention provides standards of special importance to children: “refugees must receive the “same treatment” as nationals in primary education and treatment at least as favourable as that given to non-refugee aliens in secondary education”.<sup>6</sup>

Although not explicitly outlined in the Convention, the principle of assuring family unity<sup>7</sup> is respected by most States in the refugee context. According to UNCHR, the obligation to respect refugees’ right to family unity is a basic human right that applies irrespective of whether or not a country is a party to the 1951 Convention.<sup>8</sup> Respect for the right to family unity requires not only that States refrain from action that would result in family separations, but that they also take measures to maintain the unity of the family and to reunite family members who have been separated. Refusal to allow family reunification may be considered as an interference with the right to family life or to family unity, especially in cases where the family has no realistic chance to enjoy that right elsewhere. Equally, deportation or expulsion could constitute an interference with the right to family unity unless justified by reference to international standards.<sup>9</sup> This principle ensures that when the “head of the family” meets the criteria of the refugee definition, the dependants are granted refugee status as well.<sup>10</sup> It is of importance that the principle also applies when the family has been separated during flight

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<sup>5</sup> Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 189 U.N.T.S. 37, 1951 (Section IV B on the Principle of the Unity of the Family).

<sup>6</sup> G. Goodwin-Gill, *The Refugee in International Law*, p. 257; Article 22 of the Refugee Convention regarding education.

<sup>7</sup> The right to family unity is derived from, *inter alia*, Article 16 of the Universal Declaration of Human Rights 1948; Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; Article 16 of the European Social Charter 1961; Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966; Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966; Article 17 of the American Convention on Human Rights 1969; Article 74 of Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949; Article 18 of the African Charter on Human and Peoples’ Rights 1981; Articles 9, 10 and 22 of the Convention on the Rights of the Child 1989; and Articles XXIII and XXV of the African Charter on the Rights and Welfare of the Child 1990.

<sup>8</sup> UNHCR, *Family Unity*, Geneva Expert Roundtable, 8-9 November 2001, available online at [http://www.unhcr.bg/global\\_consult/family\\_unity\\_en.pdf](http://www.unhcr.bg/global_consult/family_unity_en.pdf).

<sup>9</sup> *Ibid.*

<sup>10</sup> The UNHCR *Handbook on the Procedures and Criteria for Determining Refugee Status*, para. 185, states that family members themselves are not prevented from applying for refugee status, even if the head of the family is excluded. “The principle of family unity operates in favour of dependants, and not against them”. Furthermore, in its guidelines, UNHCR stresses in paragraphs 12 and 13 that “if a refugee is excluded, derivative refugee status should also be denied to dependants. Dependents and other family members can, however still establish their own claims to refugee status. Such claims are valid even where the fear of persecution is a result of the relationship to the perpetrator of excludable acts. Family members with valid refugee claims are excludable only if there are serious reasons for considering that they, too, have knowingly participated in excludable acts. (...) Where family members have been recognised as refugees, the excluded applicant/head of family cannot rely on the principle of family unity to secure protection or assistance as a refugee”.

because, upon reunification, children will automatically benefit from the refugee status of their parents – or head of the family.<sup>11</sup> A problem arises when a child arrives unaccompanied.<sup>12</sup> Even if reunification takes place, the child may be in a highly uncertain situation during the interim period. The child must be ensured his or her basic rights during this period. It is also problematic that, since reunification is by no means certain, the child may be required to establish his or her status independent of the status of the family, thus experiencing the lack of protection examined below.

The 1951 UN Convention relating to the Status of Refugees<sup>13</sup> and the 1967 Protocol on the same issue, set standards that apply to children as they do to adults: a child who has a “well-founded fear of being persecuted” for one of the reasons stated in Article 1A<sup>14</sup> is a “refugee”; a child who holds refugee status cannot, just as adults cannot, be forced to return to his or her country of origin,<sup>15</sup> and no distinction is made between children and adults with respect to social welfare and legal rights. Procedures for status determination normally do not take into account the special situation of unaccompanied children, who thus encounter an initial legal barrier when their status as refugees is to be determined. First, it may be difficult to ascertain the facts of the child’s case because a child may have difficulty articulating the

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<sup>11</sup> Ibid. Paragraph 182 recommends Governments to take the necessary measures for the protection of the refugee’s family, especially with a view to: (1) ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country; and (2) ensuring the protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption. Paragraph 184 goes on to state that if the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity. It is obvious, however, that formal refugee status should not be granted to a dependant if this is incompatible with his personal legal status. Thus, a dependant member of a refugee family may be a national of the country of asylum or of another country, and may enjoy that country’s protection. To grant him or her refugee status in such circumstances would not be called for.

<sup>12</sup> Ibid., para. 186: The principle of the unity of the family does not only operate where all family members become refugees at the same time. It applies equally to cases where a family unit has been temporarily disrupted through the flight of one or more of its members.

<sup>13</sup> Ratified by 143 States.

<sup>14</sup> Convention on the Status of Refugees, Art. 1A: For the purposes of the present Convention, the term “refugee” shall apply to any person who: as a result of events occurring before January 1951 (the 1967 Protocol expands the scope beyond this time limit) and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

<sup>15</sup> In accordance with Article 33 of the Convention on the Status of Refugees on non refoulement.

circumstances that made him or her leave the country of origin. Moreover, it is possible that the child was sent away by parents who feared for his or her safety and hence the child does not have a clear picture of the circumstances which led to departure. To be recognised as a refugee, one must prove a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion in accordance with Article 1A(2) of the 1951 Convention.<sup>16</sup> The phrase “well-founded fear of persecution” is central to the definition,<sup>17</sup> and thus for the refugee claiming protection. When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying this criterion in his or her case.<sup>18</sup>

The subjective element in the definition requires an evaluation of the person’s statement and not only a judgement of the situation prevailing in the State of origin.<sup>19</sup> In order to obtain refugee status it is not enough to feel genuine fear; this feeling must be well-founded, which means that the state of mind of the claimant must be supported by an objective situation. Both the subjective and the objective elements must be taken into consideration when determining the status of a person applying for refugee status.<sup>20</sup> The objective element fortunately predominates in the case law of most countries.

The *UNHCR: Guidelines on Unaccompanied Children* state that a child over 16 years of age may be assumed able to feel well-founded fear, but that a younger child may be presumed not to be able to do so.<sup>21</sup> This rather rigid division is softened by stressing that the degree of the child’s mental

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<sup>16</sup> The 1969 Organization of African Unity Convention (Governing the Specific Aspects of Refugee Problems in Africa) broadened the definition of “refugee” to include persons in Africa who flee from war and other events that seriously disrupt public order. The OAU Convention makes no distinction between children and adults.

<sup>17</sup> UNHCR, *Handbook on the Procedures and Criteria for Determining Refugee Status*, para. 37. The phrase “well-founded fear of being persecuted” is the key phrase of the definition. It reflects the views of its authors as to the main elements of refugee character. It replaces the earlier method of defining refugees by categories (i.e. persons of a certain origin not enjoying the protection of their country) by the general concept of “fear” for a relevant motive. Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his or her country of origin.

<sup>18</sup> *Ibid.*, para. 213.

<sup>19</sup> *Ibid.*, para. 37.

<sup>20</sup> *Ibid.*, para. 38: To the element of fear – a state of mind and a subjective condition – is added the qualification “well-founded”. This implies that it is not only the frame of mind of the person concerned that determines his refugee status; but that this frame of mind must be supported by an objective situation. The term “well-founded fear” therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

<sup>21</sup> *Ibid.*, para. 215: Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent’s maturity. It can be assumed that – in the absence of indications to the contrary – a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.

development and maturity is important when applying the criteria. Despite this, the Guidelines obscure the fact that even a very young child may have and may be able to demonstrate well-founded fear.<sup>22</sup> It is extremely damaging to children's cases that they run the risk of being considered a priori as not capable of feeling well-founded fear. Even if this may be true in certain cases and to a certain extent, a child might be more confused than an adult as to "why the flight" and "why the fright"? A child might not necessarily be aware that belonging to a certain race or social group endangers them. This lack of understanding of the situation potentially robs the child of the special protection to which they are entitled. Ignorance of a child to the danger to which they would be exposed should be irrelevant to the availability of protection; only the objective existence of danger should count. Furthermore, the state should conduct fact-finding for the child – a child cannot be expected to evince a dangerous situation, let alone a situation of which he or she is ignorant.

The UNCHR Guidelines on Unaccompanied Children note that, although the same definition of a refugee applies to all individuals regardless of their age, particular regard should be given to the examination of the factual elements of an unaccompanied child's claim, including circumstances such as the child's stage of development, his or her possibly limited knowledge of conditions in the country of origin and the significance of those conditions to the legal concept of refugee status, as well as to his or her special vulnerability. Children may manifest their fears in ways different from adults. In the examination of their claims, it may therefore be necessary to have greater regard for certain objective factors and to determine, based upon these factors, whether a child may be presumed to have a well-founded fear of persecution.<sup>23</sup> It should be further borne in mind that, under the CRC, children are recognised as having certain specific human rights and that the manner in which those rights may be violated, as well as the nature of such violations, may be different from violations concerning adults. Certain policies and practices constituting gross violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the scope of the Refugee Convention. Examples of such policies and practices are: the recruitment of children for regular or irregular armies; their subjection to forced labour; the trafficking of children for prostitution and sexual exploitation; and the practice of female genital mutilation.<sup>24</sup> Such specific, child-related violations should be kept in mind when deciding if individual persecution is a risk, or if children in some cases could be defined as a social group.

For children, the burden of proving well-founded fear of prosecution may be inappropriate if their particular situation is taken into account. Thus, if there

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<sup>22</sup> E. Nykanen, "Protecting children? The European Convention on Human Rights and Child Asylum Seekers", *European Journal of Migration and Law*, Vol. 3, No. 3-4, 2001, p. 318.

<sup>23</sup> UNCHR, Handbook on the Procedures and Criteria for Determining Refugee Status, section 8.6.

<sup>24</sup> *Ibid.*, section 8.7.



is doubt as to the credibility of the child's story<sup>25</sup> or as to the possibility that the child is capable of feeling well-founded fear, the burden of proof should not lie upon the child. Rather, the child should benefit from a generous application of the principle of the benefit of the doubt, a supposed right of all asylum seekers.<sup>26</sup> In children's cases it would be sensible to set the threshold of the benefit of the doubt even "lower", so that the requirement of proof and of credibility does not disregard the particular difficulties of the child.

The Refugee Convention also grants economic and social rights, which are most often left out of the analysis of the refugee rights regime. Such rights include the right to wage-earning employment, housing, public education, public relief and social security.<sup>27</sup> Refugees are to be given "most-favoured-nation" treatment with respect to employment and the same treatment accorded to aliens generally with regard to housing and education other than elementary education. Treatment equal to that afforded to nationals, or "national treatment", is to apply with respect to elementary education, public relief and social security.<sup>28</sup> With the exception of the right to public education, these rights are limited to those refugees "lawfully staying" on the territory of States Parties. It might, however, be possible to argue that "lawful residence" accrues to asylum seekers at some point, particularly after they have spent a certain amount of time in a country, which is often the case if the time taken to arrive at a definitive decision on their claim is excessively lengthy.<sup>29</sup> It is extremely important, as has been discussed above, that children's basic economic and social rights as granted by the CRC are not neglected in periods pending decisions, since such rights are crucial to their development.

Naturally, the child may also have left for reasons outside the scope of the Refugee Convention and thus be categorised as a migrant and not a refugee. Between these "categories" lies the possibility of being granted subsidiary protection, such as temporary care or humanitarian aid. The justification for granting subsidiary protection is to avoid sending people back to human rights abuse and insecurity when they are in need of protection but do not fall within the Article 1A definition in the Refugee Convention. When it is possible to reunite a child who does not qualify as a Convention Refugee with a family member in the country of destination, this option should be considered favourably whenever it is in the best interests of the child.

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<sup>25</sup> Ibid., para. 43.

<sup>26</sup> UNHCR, *Refugee Children, Guidelines on Protection and Care*, 1994, p. 43.

<sup>27</sup> Refugee Convention, Arts. 17, 21, 22, 23 and 24.

<sup>28</sup> R. Cholewinski, "Overview of Social and Economic Rights of Refugees and Asylum Seekers in Europe: International Obligations. Education and Employment", ECRE Conference on Social and Economic Rights of Refugees and Asylum Seekers, Education and Employment.

<sup>29</sup> Ibid.

## Conclusion

International law on children's rights has developed with considerable speed over the last two decades. It is with the entry into force of the CRC that children have gained a position as rights bearers and not only objects of adult charity. Even within this relatively short period, the way children are considered has changed. Only recently has it become, more or less, accepted to admit that minors can have and may have an economic migration plan. Not yet fully developed is the notion that children should not only be "protected", but also "respected" as agents; such respect will not only prevent abuse and exploitation, but also will facilitate independence in accordance with the basic principles in Articles 5 and 12 of the CRC.

The CRC is extremely important for migrant children: both its underlying fundamental principles and specific Articles grant them comprehensive protection; so too are the ILO Conventions and the UN Convention on the Protection of All Migrant Workers and Members of Their Families. The ICCPR, ICESCR and other core human rights conventions also cover child migrants<sup>1</sup>. The legal obligations under the CRC are both negative and positive in nature, requiring States not only to refrain from measures infringing on children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. This implies that active measures are required by States in the protection of all children, nationals and non-nationals alike.

It is important that children's particular needs are at all times respected. It is equally crucial that they are treated with dignity since their character will be framed during this period and they are naturally fragile. Similarly vital is that children's migration projects and goals are respected and that children may benefit from working in a safe, respectful environment. Finally, of the utmost importance is that both the child's vulnerability and their independence and resourcefulness are taken into consideration when protection is planned. Ensuring adequate protection requires a careful balance of these considerations.

Child migrants are children before they are migrants. It is a common problem that child migrants are not considered primarily as children, but "only" as migrants. This is true not only from a practical protection point of view, but also legally, since the respect due to any child on the basis of the CRC is superior to the protection offered to migrants (especially irregular migrants) in most national legislation.

Articles 5 and 12 of the CRC, involving the child's evolving capacities and right to participation, are fundamental since the "wrong" protection that can

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<sup>1</sup> The entire CRC, as well as many provisions in the ICCPR and ICESCR, are valid for migrant children no matter what their legal status might be. However, this is in theory only. As shown, in practice, the situation is different and discrimination, both *de facto* and *de jure*, prevents children from enjoying their basic rights. This may often be the case when children's economic and social rights are concerned. The neglect of these rights will hamper the child's development.

result from not listening to the child may push them into the situations of abuse the CRC seeks to avoid. The discussion must never go from an exclusive “protection” discussion to an exclusive “resourcefulness” discussion. Many migrant children face severe exploitation and abuse at the hands of foster-families, employers and criminals, both during their journey and upon arrival. Even if minors have a migration project and leave independently, separation from their families heightens risks and may in itself cause severe trauma. In too many cases, migrant children end up in the worst forms of child labour or in exploitative situations.<sup>2</sup> Unsurprisingly, most children choose to remain with their families, finances permitting.

In any case, acknowledging the reality that children do migrate, do have a plan and do work does not mean accepting exploitation, the neglect of education or of the time to play and grow up safely. It is a grave mistake to talk either only of “strong and resourceful migrant children” or only of “vulnerable migrant children”. It must be acknowledged that children are both quintessentially resilient and fragile. Children’s rights need to be safeguarded; this requires that children are kept safe from harm, such as violence, abuse, injury and a lack of health protection. This basic protection must always be ensured. Further protection may then vary depending on the context, taking into consideration the child’s evolution, age, wishes and development.

In national legislation different problems occur at different protection levels. Generally, there is a problem with effective implementation of the basic principles of the CRC, which in some systems may lead to a lack of respect for basic human rights – *de facto* if not *de jure*. Many States do not have any special legislation on migrant minors whatsoever, even though they do have such migrants present on their territory. In such cases relevant “parallel” legislation needs to be taken into consideration. Such problems almost always leave space for unfortunate interpretation and protection gaps and will, in most cases, result in an absence of specific considerations of the CRC principles regarding migrant minors.

Migrant children are often in a vulnerable position and *do* need special attention and protection. However, at the same time they will have gone through experiences other children have not faced, which will inherently influence their maturity. Listening to children is of paramount importance

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<sup>2</sup> “I migrated to the city with a relative. It was a sudden decision, taken on a whim. I was tired of rural life which was tedious and joyless. When I reached Dhaka I was afraid. I regretted leaving home. I began to cry and wished to go back. My relative explained that it was not possible for her to take me back right away or even in the immediate future. She had a job and she could not leave at will. I was stuck. At the beginning I stayed with my relative. Subsequently, I started to roam the streets. I soon got involved with bad activities. I once wandered into an unknown area in Dhaka where I came across a few child sex workers. I joined the group and engaged in sex work. I also carried drugs like heroin. Initially, I did not get any work. I used to steal. I have given up stealing now. I lead a risky life. There is no way I can now return to my parents. So I have decided to stay on.” Part of a story told in “Voices of Child Migrants” published by Development Research Centre on Migration, Globalisation and Poverty, available online at [http://www.migrationdrc.org/publications/other\\_publications/Voices\\_of\\_Children.pdf](http://www.migrationdrc.org/publications/other_publications/Voices_of_Children.pdf).

since it will help find a solution tailored to the individual. What is imperative is that children are respected at all times and that their life and development are promoted in a secure environment.



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## **ANNEX**



# 1. HUMAN RIGHTS LAW

## 1.1 TREATIES

### Convention on the Rights of the Child (excerpts)<sup>1</sup>

**Adoption: 20 November 1989**

**Entry into force: 2 September 1990**

#### *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,*

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<sup>1</sup> Source: 1577 U.N.T.S. 3.

*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 to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

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

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.



## **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

## **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

## **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1,

States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs 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 counseling 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 programs, 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 practice 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; counseling; probation; foster care; education and vocational training programs 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.
- (...)

# **International Covenant on Economic, Social and Cultural Rights (excerpts)<sup>1</sup>**

**Adoption: 16 December 1966**

**Entry into force: 3 January 1976**

(...)

## **PART I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

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<sup>1</sup> Source: U.N.G.A. Res. 2200 A (XXI), 993 U.N.T.S. 3.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **Article 4**

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## **PART III**

### **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

### **Article 8**

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.



## **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

## **Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

## **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

(...)

# **International Covenant on Civil and Political Rights (excerpts)<sup>1</sup>**

**Adoption: 16 December 1966**

**Entry into force: 23 March 1976**

(...)

## **PART I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

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<sup>1</sup> Source: U.N.G.A. Res. 2200 A (XXI), 999 U.N.T.S. 171.

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### **Article 4**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## **PART III**

### **Article 6**

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

### **Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.
  - (a) No one shall be required to perform forced or compulsory labour;
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
  - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### **Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
  - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
  - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

(...)

#### **Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### **Article 13**

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:



- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

### **Article 15**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

### **Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

### **Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

### **Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.(...)

### **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

### **Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

### **Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

(...)

#### **Article 26**

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

#### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

(...)



# **International Convention on the Elimination of All Forms of Racial Discrimination (excerpts)<sup>1</sup>**

**Adoption: 21 December 1965**

**Entry into force: 4 January 1969**

(...)

## **PART I**

### **Article I**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

### **Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

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<sup>1</sup> Source: U.N.G.A. Res. 2105 A (XX), 660 U.N.T.S. 195.

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

## **Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;



(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

### **Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

### **Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

(...)

# Convention against Discrimination in Education (excerpts)<sup>1</sup>

**Adoption: 14 December 1960**

**Entry into force: 22 May 1962**

(...)

## Article 1

1. For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
- (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

## Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

- (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
- (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or

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<sup>1</sup> Source: 429 U.N.T.S. 93.

approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

### **Article 3**

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;

(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;

(d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

### **Article 4**

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(d) To provide training for the teaching profession without discrimination.

### **Article 5**

1. The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its - activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

2. The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article.

(...)



## **1.2 DECLARATIONS AND OTHER NON-BINDING INSTRUMENTS**

### **Universal Declaration of Human Rights (excerpts)<sup>1</sup>**

**Adoption: 10 December 1948**

(...)

#### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

(...)

#### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### **Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(...)

#### **Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

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<sup>1</sup> Source: U.N.G.A. Res. 217 A (III).

(...)

### **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

### **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

(...)

## **Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live (excerpts)<sup>1</sup>**

**Adoption: 13 December 1985**

(...)

### **Article 5**

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligations of the State in which they are present, in particular the following rights:

(a) The right to life and security of person; no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law;

(b) The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence;

(c) The right to be equal before the courts, tribunals and all other organs and authorities administering justice and, when necessary, to free assistance of an interpreter in criminal proceedings and, when prescribed by law, other proceedings;

(d) The right to choose a spouse, to marry, to found a family;

(e) The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, 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;

(f) The right to retain their own language, culture and tradition;

(g) The right to transfer abroad earnings, savings or other personal monetary assets, subject to domestic currency regulations.

2. Subject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens shall enjoy the following rights:

(a) The right to leave the country;

(b) The right to freedom of expression;

(c) The right to peaceful assembly;

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<sup>1</sup> Source: U.N.G.A. Res. 40/144.



(d) The right to own property alone as well as in association with others, subject to domestic law.

3. Subject to the provisions referred to in paragraph 2, aliens lawfully in the territory of a State shall enjoy the right to liberty of movement and freedom to choose their residence within the borders of the State.

4. Subject to national legislation and due authorization, the spouse and minor or dependent children of an alien lawfully residing in the territory of a State shall be admitted to accompany, join and stay with the alien.

#### **Article 6**

No alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular, no alien shall be subjected without his or her free consent to medical or scientific experimentation.

(...)

#### **Article 8**

1. Aliens lawfully residing in the territory of a State shall also enjoy, in accordance with the national laws, the following rights, subject to their obligations under article 4:

(a) The right to safe and healthy working conditions, to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(b) The right to join trade unions and other organizations or associations of their choice and to participate in their activities. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary, in a democratic society, in the interests of national security or public order or for the protection of the rights and freedoms of others;

(c) The right to health protection, medical care, social security, social services, education, rest and leisure, provided that they fulfil the requirements under the relevant regulations for participation and that undue strain is not placed on the resources of the State.

2. With a view to protecting the rights of aliens carrying on lawful paid activities in the country in which they are present, such rights may be specified by the Governments concerned in multilateral or bilateral conventions.

(...)

## General Assembly Resolution 58/190, Protection of Migrants, 2004 (excerpts)<sup>1</sup>

**Adoption: 22 March 2004**

(...)

6. *Strongly condemns* also all forms of racial discrimination and xenophobia with regard to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public, and welcomes the active role played by governmental and non-governmental organizations in combating racism and assisting individual victims of racist acts, including migrant victims;

7. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, firmly to prosecute violations of labour law with regard to the conditions of work of migrant workers, including those related to, inter alia, their remuneration and the conditions of health and safety at work;

8. *Calls upon* all States to consider reviewing and, where necessary, revising immigration policies, with a view to eliminating all practices which victimize migrants and their families, and to provide specialized training for policy-making, law enforcement, immigration and other concerned government officials, including in cooperation with non-governmental organizations and civil society, thus underlining the importance of effective action to create conditions that foster greater harmony and tolerance within societies;

9. *Reiterates* the need for all States parties to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status, and to treat them humanely, in particular with regard to assistance and protection;

(...)

13. *Encourages* Member States that have not yet done so to enact domestic criminal legislation to combat the international trafficking of migrants, which should take into account, in particular, trafficking that endangers the lives of migrants or includes different forms of servitude or exploitation, such as any form of debt bondage or sexual or labour exploitation, and to strengthen international cooperation to combat such trafficking;

(...)

18. *Calls upon* all States to protect the human rights of migrant children, in particular unaccompanied migrant children, ensuring that the best interests of the children and the importance of reuniting them with their parents, when possible and appropriate, are the paramount consideration, and encourages the relevant United Nations bodies, within the framework of their respective mandates, to pay special attention to the conditions of migrant children in all

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<sup>1</sup> Source: U.N.G.A. Res. 58/190.

States and, where necessary, to put forward recommendations for strengthening their protection;

(...)

## **General Assembly Resolution 59/194, Protection of Migrants, 2005 (excerpts)<sup>1</sup>**

**Adoption: 18 March 2005**

(...)

12. Urges all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants and to take action to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

13. Calls upon States to observe national legislation and applicable international legal instruments to which they are party when enacting national security measures in order to respect the human rights of migrants;

(...)

15. Encourages Member States that have not yet done so to enact domestic legislation and to take further effective measures to combat international trafficking in and smuggling of migrants, recognizing that these crimes may endanger the lives of migrants or subject them to harm, servitude or exploitation, which may include debt bondage, slavery, sexual exploitation or forced labour, and also encourages Member States to strengthen international cooperation to combat such trafficking and smuggling;

(...)

17. Calls upon States to facilitate family reunification in an expeditious and effective manner, with due regard to applicable laws, as such reunification has a positive effect on the integration of migrants;

18. Calls upon all States to protect and promote all human rights of migrant children, in particular unaccompanied migrant children, ensuring that the best interests of the children are a primary consideration, underlines the importance of reuniting them with their parents, when possible, and encourages the relevant United Nations bodies, within the framework of their respective mandates, to pay special attention to the conditions of migrant children in all States and, where necessary, to put forward recommendations for strengthening their protection;

19. Encourages States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated, and encourages international organizations to consider supporting States in this regard;

(...)

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<sup>1</sup> U.N.G.A. Res. 59/194



# **General Assembly Resolution 61/146, Rights of the Child, 2007 (excerpts)<sup>1</sup>**

**Adoption: 23 January 2007**

(...)

## **II. Promotion and protection of the rights of the child**

### **Registration, family relations and adoption or other forms of alternative care**

7. Once again urges all States parties to intensify their efforts to comply with their obligations under the Convention on the Rights of the Child<sup>2</sup> to preserve the child's identity, including nationality, name and family relations, as recognized by law, to allow for the registration of the child immediately after birth, to ensure that registration procedures are simple, expeditious and effective and provided at minimal or no cost and to raise awareness of the importance of birth registration at the national, regional and local levels;

8. Encourages States to adopt and enforce laws and improve the implementation of policies and programmes to protect children growing up without parents or caregivers, recognizing that, where alternative care is necessary, family-and community-based care should be promoted over placement in institutions;

9. Calls upon States to guarantee, to the extent consistent with the obligations of each State, the right of a child whose parents reside in different States to maintain, on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents by providing enforceable means of access and visitation in both States and by respecting the principle that both parents have common responsibilities for the upbringing and development of their children;

10. Also calls upon States to address and pay particular attention to cases of international parental or familial child abduction, and encourages States to engage in multilateral and bilateral cooperation to resolve these cases, preferably by accession to or ratification of the Hague Convention on the Civil Aspects of International Child Abduction,<sup>3</sup> and therefore to be in full compliance with the Convention, and to facilitate, inter alia, the return of the child to the country in which he or she resided immediately before the removal or retention;

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<sup>1</sup> Source: U.N.G.A. Res. 61/146. See also General Assembly Resolution, Rights of the Child, 60/231 of 2006.

<sup>2</sup> United Nations, Treaty Series, vol. 1577, No. 27531.

<sup>3</sup> United Nations, Treaty Series, vol. 1343, No. 22514.

11. Further calls upon States to take all necessary measures to prevent and combat illegal adoptions and all adoptions that are not in the best interests of the child;

### **Economic and social well-being of children**

12. Calls upon States and the international community to create an environment in which the well-being of the child is ensured, inter alia, by:

(a) Cooperating, supporting and participating in the global efforts for poverty eradication at the global, regional and country levels, recognizing that strengthened availability and effective allocation of resources are required at all these levels, in order to ensure that all the internationally agreed development and poverty eradication goals, including those set out in the United Nations Millennium Declaration,<sup>4</sup> are realized within their time framework, and reaffirming that investments in children and the realization of their rights are among the most effective ways to eradicate poverty;

(b) Recognizing the right to education on the basis of equal opportunity and non-discrimination by making primary education compulsory and available free to all children, ensuring that all children have access to education of good quality, as well as making secondary education generally available and accessible to all, in particular through the progressive introduction of free education, bearing in mind that special measures to ensure equal access, including affirmative action, contribute to achieving equal opportunity and combating exclusion, and ensuring school attendance, in particular for girls and children from low-income families;

(c) Taking all necessary measures to ensure the right of the child to the enjoyment of the highest attainable standard of health and developing sustainable health systems and social services, ensuring access to such systems and services without discrimination, paying special attention to adequate food and nutrition, to the special needs of adolescents and to reproductive and sexual health, and securing appropriate prenatal and post-natal care for mothers, including measures to prevent mother-to-child transmission of HIV;

(d) Assigning priority to developing and implementing activities and programmes aimed at treating and preventing addictions, in particular addiction to alcohol and tobacco, and the abuse of narcotic drugs, psychotropic substances and inhalants;

(e) Supporting adolescents to be able to deal positively and responsibly with their sexuality in order to protect themselves from HIV/AIDS infection and implementing measures to increase their capacity to protect themselves from HIV/AIDS through, inter alia, the provision of health care, including for sexual and reproductive health, and through preventive education that promotes gender equality;

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<sup>4</sup> See resolution 55/2.

(f) Putting in place strategies, policies and programmes that identify and address those factors that make individuals particularly vulnerable to HIV infection in order to complement prevention programmes that address activities that place individuals at risk for HIV infection, such as risky and unsafe behaviour and injecting drug use;

(g) Designing and implementing programmes to provide social services and support to pregnant adolescents and adolescent mothers, in particular by enabling them to continue and complete their education;

### **Violence against children**

13. Welcomes the United Nations study on violence against children, led by the independent expert for the study,<sup>5</sup> takes fully into account its recommendations, and encourages Member States and requests United Nations entities, regional organizations and civil society, including non-governmental organizations, to widely disseminate and follow up on the study;

14. Commends the independent expert for the participatory process through which the report was prepared in close collaboration with Member States, United Nations bodies and organizations, other relevant intergovernmental organizations and civil society, including non-governmental organizations, and in particular for the unprecedented level and quality of participation by children;

15. Condemns all forms of violence against children, and urges States to take effective legislative and other measures to prevent and eliminate all such violence, including physical, mental, psychological and sexual violence, torture, child abuse and exploitation, hostage-taking, domestic violence, trafficking in or sale of children and their organs, paedophilia, child prostitution, child pornography, child sex tourism, gang-related violence and harmful traditional practices in all settings;

16. Also condemns the abduction of children, in particular extortive abduction and abduction of children in situations of armed conflict, including for the recruitment and use of children in armed conflicts, and urges States to take all appropriate measures to secure their unconditional release, rehabilitation, reintegration and reunification with their families;

17. Urges States:

(a) To strengthen efforts to prevent and protect children from all forms of violence through a comprehensive approach and to develop a multifaceted and systematic framework to respond to violence against children, including by giving priority attention to prevention and addressing its underlying causes, which is integrated into national planning processes;

(b) To strive to change attitudes that condone or normalize any form of violence against children;

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<sup>5</sup> See A/61/299.



- (c) To end impunity for perpetrators of crimes against children, investigate and prosecute such acts of violence and impose appropriate penalties;
- (d) To protect children from all forms of violence or abuse by government officials, such as the police, law enforcement authorities and employees and officials in detention centres or welfare institutions;
- (e) To take measures to protect children from all forms of physical and mental violence and abuse in schools, including by using non-violent teaching and learning strategies and adopting classroom management and disciplinary measures that are not based on any form of cruel or degrading punishment, and to establish complaint mechanisms that are age- and gender-appropriate and accessible to children, taking into account children's evolving capacities and the importance of respecting their views;
- (f) To take measures to promote constructive and positive forms of discipline and child development approaches in all settings, including the home, schools and other educational settings and throughout care and justice systems;
- (g) To take measures to ensure that all those who work with and for children protect children from bullying and implement preventive and anti-bullying policies;
- (h) To address the gender dimension of all forms of violence against children and incorporate a gender perspective in all policies adopted and actions taken to protect children against all forms of violence;
- (i) To ensure national research and documentation to identify vulnerable groups of children, inform policy and programmes at all levels and track progress and best practices towards preventing all forms of violence against children;
- (j) To strengthen international cooperation and mutual assistance to prevent and protect children from all forms of violence and to end impunity for crimes against children;

18. Recognizes the contribution of the International Criminal Court in ending impunity for the most serious crimes against children, including genocide, crimes against humanity and war crimes, and calls upon States not to grant amnesties for such crimes;

19. Calls upon the relevant organizations of the United Nations system, in particular the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the World Health Organization, the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the United Nations Office on Drugs and Crime and the Division for the Advancement of Women of the Secretariat, to explore ways and means, within their respective mandates, by which they can contribute more effectively to addressing the need to prevent and to respond to all forms of violence against children;

## **Non-discrimination**

20. Calls upon all States to ensure the enjoyment by children of all their civil, political, economic, social and cultural rights without discrimination of any kind;

21. Notes with concern the large number of children who are victims of racism, racial discrimination, xenophobia and related intolerance, stresses the need to incorporate special measures, in accordance with the principle of the best interests of the child and respect for his or her views, in programmes to combat racism, racial discrimination, xenophobia and related intolerance, and calls upon States to provide special support and ensure equal access to services for all children;

22. Calls upon States to take all necessary measures, including legal reforms where appropriate, to eliminate all forms of discrimination against girls and all forms of violence, including female infanticide and prenatal sex selection, rape, sexual abuse and harmful traditional or customary practices, including female genital mutilation, marriage without the free and full consent of the intending spouses, early marriage and forced sterilization, by enacting and enforcing legislation and by formulating, where appropriate, comprehensive, multidisciplinary and coordinated national plans, programmes or strategies to protect girls;

23. Also calls upon States to take the necessary measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by children with disabilities in both the public and the private spheres, including access to good quality education and health care and protection from violence, abuse and neglect, and to develop and, where it already exists, to enforce legislation to prohibit discrimination against them in order to ensure their inherent dignity, promote their self-reliance and facilitate their active participation and integration in the community, taking into account the particularly difficult situation of children with disabilities living in poverty;

### **Promoting and protecting the rights of children, including children in particularly difficult situations**

24. Calls upon all States to prevent violations of the rights of children working and/or living on the street, including discrimination, arbitrary detention and extrajudicial, arbitrary or summary executions, torture and all kinds of violence and exploitation, and to bring the perpetrators to justice, to adopt and implement policies for the protection, social and psychosocial rehabilitation and reintegration of those children and to adopt economic, social and educational strategies to address the problems of children working and/or living on the street;

25. Also calls upon all States to protect refugee, asylum-seeking and internally displaced children, in particular those who are unaccompanied, who are particularly exposed to violence and risks in connection with armed conflict, such as recruitment, sexual violence and exploitation, stressing the need for States as well as the international community to continue to pay more systematic and in-depth attention to the special assistance, protection

and development needs of those children through, inter alia, programmes aimed at rehabilitation and physical and psychological recovery, and to programmes for voluntary repatriation and, wherever possible, local integration and resettlement, to give priority to family tracing and family reunification and, where appropriate, to cooperate with international humanitarian and refugee organizations, including by facilitating their work;

26. Further calls upon all States to ensure, for children belonging to minorities and vulnerable groups, including migrant children and indigenous children, the enjoyment of all human rights as well as access to health care, social services and education on an equal basis with others and to ensure that all such children, in particular victims of violence and exploitation, receive special protection and assistance;

27. Calls upon all States to address, as a matter of priority, the vulnerabilities faced by children affected by and living with HIV, by providing support and rehabilitation to those children and their families, women and the elderly, particularly in their role as caregivers, promoting child-oriented HIV/AIDS policies and programmes and increased protection for children orphaned and affected by HIV/AIDS, ensuring access to treatment and intensifying efforts to develop new treatments for children, and building, where needed, and supporting the social security systems that protect them;

28. Also calls upon all States to protect, in law and in practice, the inheritance and property rights of orphans, with particular attention to underlying gender-based discrimination, which may interfere with the fulfilment of these rights;

29. Further calls upon all States to translate into concrete action their commitment to the progressive and effective elimination of child labour 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, to eliminate immediately the worst forms of child labour, to promote education as a key strategy in this regard, including the creation of vocational training and apprenticeship programmes and the integration of working children into the formal education system, and to examine and devise economic policies, where necessary, in cooperation with the international community, that address factors contributing to these forms of child labour;

(...)

### **Prevention and eradication of the sale of children, child prostitution and child pornography**

34. Calls upon all States:

(a) To criminalize and penalize effectively all forms of sexual exploitation and sexual abuse of children, including all acts of paedophilia, including within the family or for commercial purposes, child pornography and child prostitution, child sex tourism, trafficking in children, the sale of children and the use of the Internet for these purposes, and to take effective measures against the criminalization of children who are victims of exploitation;

(b) To ensure the prosecution of offenders, whether local or foreign, by the competent national authorities, either in the country in which the crime was committed, in the country of which the offender is a national or resident, in the country of which the victim is a national, or on any other basis permitted under domestic law, and for these purposes to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings;

(c) To criminalize and penalize effectively the sale of children, including for the purposes of transfer of organs of the child for profit, to increase cooperation at all levels to prevent and dismantle networks trafficking or selling children and their organs and, for those States that have not yet done so, to consider signing and ratifying or acceding to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;<sup>6</sup>

(d) In cases of trafficking in children, the sale of children, child prostitution and child pornography, to address effectively the needs of victims, including their safety and protection, physical and psychological recovery and full reintegration into society, including through bilateral and multilateral technical cooperation and financial assistance;

(e) To combat the existence of a market that encourages such criminal practices against children, including through the adoption, effective application and enforcement of preventive, rehabilitative and punitive measures targeting customers or individuals who sexually exploit or sexually abuse children, as well as by ensuring public awareness;

(f) To contribute to the elimination of the sale of children, child prostitution and child pornography by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structures, dysfunctional families, lack of education, urban-rural migration, gender discrimination, criminal or irresponsible adult sexual behaviour, child sex tourism, organized crime, harmful traditional practices, armed conflicts and trafficking in children;

(...)

### **III. Children and poverty**

42. Reiterates that eradicating poverty is the greatest global challenge facing the world today and an indispensable requirement for sustainable development, in particular for developing countries, and recognizes that chronic poverty remains the single biggest obstacle to meeting the needs and protecting and promoting the rights of children, and that urgent national and international action is therefore required to eliminate it;

43. Recognizes that the number of people living in extreme poverty in many countries continues to increase, with women and children constituting the

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<sup>6</sup> Resolution 55/25, annex II.

majority and the most affected groups, in particular in the least developed countries and in sub-Saharan Africa;

44. Also recognizes that growing inequality within countries is a major challenge to poverty eradication, particularly affecting those living in middle-income countries, and stresses the need to support the development efforts of those countries;

45. Reaffirms that democracy, development, peace and security, and the full and effective enjoyment of human rights and fundamental freedoms are interdependent and mutually reinforcing and contribute to the eradication of extreme poverty;

46. Recognizes that children living in poverty are deprived of nutrition, water and sanitation facilities, access to basic health-care services, shelter, education, participation and protection, and that while a severe lack of goods and services hurts every human being, it is most threatening and harmful to children, leaving them unable to enjoy their rights, to reach their full potential and to participate as full members of society;

47. Emphasizes the critical role of education, both formal and non-formal, in particular basic education and training, especially for girls, in empowering those living in poverty, and in this regard reaffirms the importance of Education for All programmes and the need to bridge the divide between formal and non-formal education, taking into account the need to ensure the good quality of educational services;

48. Recognizes the devastating effect of HIV/AIDS, malaria, tuberculosis and other infectious and contagious diseases on human development, economic growth, food security and poverty eradication efforts in all regions, in particular in the least developed countries and in sub-Saharan Africa, and urges Governments and the international community to give urgent priority to preventing and combating those diseases;

49. Also recognizes that countries struggle to develop when their children grow up malnourished, poorly educated or ravaged by disease, as these factors can perpetuate the generational cycle of poverty;

50. Reaffirms that the primary responsibility for ensuring an enabling environment for securing the well-being of children, in which the rights of each and every child are promoted and respected, rests with each individual State;

51. Calls upon all States and the international community to mobilize all necessary resources, support and efforts to eradicate poverty, according to national plans and strategies and in consultation with national Governments, including through an integrated and multifaceted approach based on the rights and well-being of children;

52. Also calls upon all States, and the international community, where appropriate:

(a) To integrate the international obligations related to the rights and well-being of the child and the internationally agreed development goals,

including the Millennium Development Goals, in national development strategies and plans, including poverty reduction strategy papers where they exist, and calls upon the international community to continue to support developing countries in the implementation of those development strategies and plans;

(b) To ensure a continuum of care from pregnancy through childhood, recognizing that maternal, newborn and child health are inseparable and interdependent, and that the achievement of the Millennium Development Goals must be based on a strong commitment to the rights of women, children and adolescents;

(c) To work for a solid effort of national and international action to enhance children's health, to promote prenatal care and to lower infant and child mortality in all countries and among all peoples;

(d) To develop a national strategy of prevention and treatment to effectively address the condition of obstetric fistula and to further develop a multisectoral, comprehensive and integrated approach to bring about lasting solutions and a meaningful response to the problem of obstetric fistula and related morbidities;

(e) To promote the provision of clean water in all communities for all their children, as well as universal access to sanitation;

(f) To take all necessary measures to eradicate hunger, malnutrition and famine;

(g) To mobilize the necessary additional resources from all sources of financing for development, including domestic resources, international investment flows, official development assistance and external debt relief, and to commit themselves to a universal, open, equitable, rule-based, predictable and non-discriminatory global trading system in order to stimulate development worldwide to ensure the well-being of the most vulnerable sectors of populations, in particular children;

(...)



# **General Assembly Resolution S-27/2, A World Fit for Children, 2002<sup>1</sup>**

## **Resolution adopted by the General Assembly**

*[on the report of the Ad Hoc Committee of the Whole (A/S-27/19/Rev.1 and Corr.1 and 2)]*

### **S-27/2. A world fit for children**

*The General Assembly*

*Adopts* the document entitled “A world fit for children” annexed to the present resolution.

*6th plenary meeting 10 May 2002*

## **Annex**

### **I.**

#### **Declaration**

1. Eleven years ago, at the World Summit for Children, world leaders made a joint commitment and issued an urgent, universal appeal to give every child a better future.<sup>2</sup>
2. Since then, much progress has been made, as documented in the report of the Secretary-General entitled “We the Children”.<sup>3</sup> Millions of young lives have been saved, more children than ever are in school, more children are actively involved in decisions concerning their lives and important treaties have been concluded to protect children. However, these achievements and gains have been uneven, and many obstacles remain, particularly in developing countries. A brighter future for all children has proved elusive, and overall gains have fallen short of national obligations and international commitments.
3. We, the heads of State and Government and representatives of States participating in the special session of the General Assembly on children, reaffirming our commitment to the purposes and principles enshrined in the Charter of the United Nations, are determined to seize this historic opportunity to change the world for and with children. Accordingly, we reaffirm our commitment to complete the unfinished agenda of the World Summit for Children and to address other emerging issues vital to the achievement of the longer-term goals and objectives endorsed at recent major United Nations summits and conferences, in particular the United Nations

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<sup>1</sup> Source: A/RES/S-27/2.

<sup>2</sup> See A/45/625.

<sup>3</sup> A/S-27/3.



Millennium Declaration,<sup>4</sup> through national action and international cooperation.

4. We reaffirm our obligation to take action to promote and protect the rights of each child – every human being below the age of 18 years, including adolescents. We are determined to respect the dignity and to secure the well-being of all children. We acknowledge that the Convention on the Rights of the Child,<sup>5</sup> the most universally embraced human rights treaty in history, and the Optional Protocols thereto,<sup>6</sup> contain a comprehensive set of international legal standards for the protection and well-being of children. We also recognize the importance of other international instruments relevant for children.

5. We stress our commitment to create a world fit for children, in which sustainable human development, taking into account the best interests of the child, is founded on principles of democracy, equality, non-discrimination, peace and social justice and the universality, indivisibility, interdependence and interrelatedness of all human rights, including the right to development.

6. We recognize and support parents and families or, as the case may be, legal guardians as the primary caretakers of children, and we will strengthen their capacity to provide optimum care, nurturing and protection.

7. We hereby call upon all members of society to join us in a global movement that will help to build a world fit for children by upholding our commitment to the following principles and objectives:

**1. Put children first.** In all actions related to children, the best interests of the child shall be a primary consideration.

**2. Eradicate poverty: invest in children.** We reaffirm our vow to break the cycle of poverty within a single generation, united in the conviction that investments in children and the realization of their rights are among the most effective ways to eradicate poverty. Immediate action must be taken to eliminate the worst forms of child labour.

**3. Leave no child behind.** Each girl and boy is born free and equal in dignity and rights; therefore, all forms of discrimination affecting children must end.

**4. Care for every child.** Children must get the best possible start in life. Their survival, protection, growth and development in good health and with proper nutrition are the essential foundation of human development. We will make concerted efforts to fight infectious diseases, tackle major causes of malnutrition and nurture children in a safe environment that enables them to be physically healthy, mentally alert, emotionally secure, socially competent and able to learn.

**5. Educate every child.** All girls and boys must have access to and complete primary education that is free, compulsory and of good quality as a

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<sup>4</sup> See resolution 55/2.

<sup>5</sup> Resolution 44/25, annex.

<sup>6</sup> Resolution 54/263, annexes I and II.

cornerstone of an inclusive basic education. Gender disparities in primary and secondary education must be eliminated.

**6. Protect children from harm and exploitation.** Children must be protected against any acts of violence, abuse, exploitation and discrimination, as well as all forms of terrorism and hostage-taking.

**7. Protect children from war.** Children must be protected from the horrors of armed conflict. Children under foreign occupation must also be protected, in accordance with the provisions of international humanitarian law.

**8. Combat HIV/AIDS.** Children and their families must be protected from the devastating impact of the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

**9. Listen to children and ensure their participation.** Children and adolescents are resourceful citizens capable of helping to build a better future for all. We must respect their right to express themselves and to participate in all matters affecting them, in accordance with their age and maturity.

**10. Protect the Earth for children.** We must safeguard our natural environment, with its diversity of life, its beauty and its resources, all of which enhance the quality of life, for present and future generations. We will give every assistance to protect children and minimize the impact of natural disasters and environmental degradation on them.

8. We recognize that the implementation of the present Declaration and the Plan of Action requires not only renewed political will but also the mobilization and allocation of additional resources at both the national and international levels, taking into account the urgency and gravity of the special needs of children.

9. In line with these principles and objectives, we adopt the Plan of Action contained in section III below, confident that together we will build a world in which all girls and boys can enjoy childhood — a time of play and learning, in which they are loved, respected and cherished, their rights are promoted and protected, without discrimination of any kind, in which their safety and well-being are paramount and in which they can develop in health, peace and dignity.

## II. Review of progress and lessons learned

10. The World Declaration and the Plan of Action of the World Summit for Children<sup>7</sup> are among the most rigorously monitored and implemented international commitments of the 1990s. Annual reviews were held at the national level and progress reports presented to the General Assembly. A mid-decade review<sup>8</sup> and an extensive global end-decade review<sup>9</sup> were conducted. The latter included high-level regional meetings in Beijing, Berlin, Cairo, Kathmandu and Kingston, which reviewed progress, ensured

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<sup>7</sup> A/45/625, annex.

<sup>8</sup> A/51/256.

<sup>9</sup> A/51/256.

follow-up to the Summit and other major conferences, promoted renewed commitment to the achievement of the goals of the Summit and guided actions for the future. Complementing efforts by Governments, a wide range of actors participated in the reviews, including children, young people's organizations, academic institutions, religious groups, civil society organizations, parliamentarians, the media, United Nations agencies, donors and major national and international non-governmental organizations.

11. As documented in the end-decade review of the Secretary-General on follow-up to the World Summit for Children, the 1990s was a decade of great promises and modest achievements for the world's children. On the positive side, the Summit and the entry into force of the Convention on the Rights of the Child helped to accord political priority to children. A record 191 countries ratified, acceded to or signed the Convention. Some 155 countries prepared national programmes of action to implement the Summit goals. Regional commitments were made. International legal provisions and mechanisms strengthened the protection of children. Pursuit of the Summit goals has led to many tangible results for children: this year, 3 million fewer children will die than a decade ago; polio has been brought to the brink of eradication; and, through salt iodization, 90 million newborns are protected every year from a significant loss of learning ability.

12. Yet much more needs to be done. The resources that were promised at the Summit at both the national and international levels have yet to materialize fully. Critical challenges remain: more than 10 million children die each year, although most of those deaths could be prevented; 100 million children are still out of school, 60 per cent of them girls; 150 million children suffer from malnutrition; and HIV/AIDS is spreading with catastrophic speed. There is persistent poverty, exclusion and discrimination, and inadequate investment in social services. Also, debt burdens, excessive military spending, inconsistent with national security requirements, armed conflict, foreign occupation, hostage-taking and all forms of terrorism, as well as the lack of efficiency in the use of resources, among other factors, can constrain national efforts to combat poverty and to ensure the well-being of children. The childhood of millions continues to be devastated by hazardous and exploitative labour, the sale and trafficking of children, including adolescents, and other forms of abuse, neglect, exploitation and violence.

13. The experience of the past decade has confirmed that the needs and rights of children must be a priority in all development efforts. There are many key lessons: change is possible – and children's rights are an effective rallying point; policies must address both the immediate factors affecting or excluding groups of children and the wider and deeper causes of inadequate protection and rights violations; targeted interventions that achieve rapid successes need to be pursued, with due attention to sustainability and participatory processes; and efforts should build on children's own resilience and strength. Multisectoral programmes focusing on early childhood and support to families, especially in high-risk conditions, merit special support because they provide lasting benefits for child growth, development and protection.

### **III. Plan of Action**

#### **A. Creating a world fit for children**

14. A world fit for children is one in which all children get the best possible start in life and have access to a quality basic education, including primary education that is compulsory and available free to all, and in which all children, including adolescents, have ample opportunity to develop their individual capacities in a safe and supportive environment. We will promote the physical, psychological, spiritual, social, emotional, cognitive and cultural development of children as a matter of national and global priority.

15. The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support. The primary responsibility for the protection, upbringing and development of children rests with the family. All institutions of society should respect children's rights and secure their well-being and render appropriate assistance to parents, families, legal guardians and other caregivers so that children can grow and develop in a safe and stable environment and in an atmosphere of happiness, love and understanding, bearing in mind that in different cultural, social and political systems, various forms of the family exist.

16. We also recognize that a considerable number of children live without parental support, such as orphans, children living on the street, internally displaced and refugee children, children affected by trafficking and sexual and economic exploitation and children who are incarcerated. Special measures should be taken to support such children and the institutions, facilities and services that care for them, and to build and strengthen children's own abilities to protect themselves.

17. We are determined to promote access by parents, families, legal guardians, caregivers and children themselves to a full range of information and services to promote child survival, development, protection and participation.

18. Chronic poverty remains the single biggest obstacle to meeting the needs, protecting and promoting the rights of children. It must be tackled on all fronts, from the provision of basic social services to the creation of employment opportunities, from the availability of microcredit to investment in infrastructure, and from debt relief to fair trade practices. Children are hardest hit by poverty because it strikes at the very roots of their potential for development — their growing bodies and minds. Eradication of poverty and the reduction of disparities must therefore be a key objective of development efforts. The goals and strategies agreed upon at recent major United Nations conferences and their follow-ups, in particular the Millennium Summit, provide a helpful international framework for national strategies for poverty reduction to fulfil and protect the rights and promote the well-being of children.

19. We recognize that globalization and interdependence are opening new opportunities through trade, investment and capital flows and advances in technology, including information technology, for the growth of the world

economy, development and the improvement of living standards around the world. At the same time, there remain serious challenges, including serious financial crises, insecurity, poverty, exclusion and inequality within and among societies. Considerable obstacles to further integration and full participation in the global economy remain for developing countries, in particular the least developed countries, as well as for some countries with economies in transition. Unless the benefits of social and economic development are extended to all countries, a growing number of people in all countries and even entire regions will remain marginalized from the global economy. We must act now in order to overcome those obstacles affecting peoples and countries and to realize the full potential of opportunities presented for the benefit of all, in particular children. We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system. Investment in, inter alia, education and training will assist in enabling children to partake of the benefits of the breakthroughs in information and communication technologies. Globalization offers opportunities and challenges. The developing countries and countries with economies in transition face special difficulties in responding to those challenges and opportunities. Globalization should be fully inclusive and equitable, and there is a strong need for policies and measures at the national and international levels, formulated and implemented with the full and effective participation of developing countries and countries with economies in transition to help them to respond effectively to those challenges and opportunities, giving high priority to achieving progress for children.

20. Discrimination gives rise to a self-perpetuating cycle of social and economic exclusion and undermines children's ability to develop to the fullest. We will make every effort to eliminate discrimination against children, whether rooted in 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.

21. We will take all measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms, including equal access to health, education and recreational services, by children with disabilities and children with special needs, to ensure the recognition of their dignity, to promote their self-reliance, and to facilitate their active participation in the community.

22. Indigenous children and children belonging to minorities and vulnerable groups are disproportionately disadvantaged in many countries owing to all forms of discrimination, including racial discrimination. We will take appropriate measures to end discrimination, to provide special support, and to ensure equal access to services for these children.

23. The achievement of goals for children, particularly for girls, will be advanced if women fully enjoy all human rights and fundamental freedoms, including the right to development, are empowered to participate fully and equally in all spheres of society and are protected and free from all forms of violence, abuse and discrimination. We are determined to eliminate all forms of discrimination against the girl child throughout her life cycle and to provide special attention to her needs in order to promote and protect all her

human rights, including the right to be free from coercion and from harmful practices and sexual exploitation. We will promote gender equality and equal access to basic social services, such as education, nutrition, health care, including sexual and reproductive health care, vaccinations, and protection from diseases representing the major causes of mortality, and will mainstream a gender perspective in all development policies and programmes.

24. We also recognize the need to address the changing role of men in society, as boys, adolescents and fathers, and the challenges faced by boys growing up in today's world. We will further promote the shared responsibility of both parents in education and in the raising of children, and will make every effort to ensure that fathers have opportunities to participate in their children's lives.

25. It is vital that national goals for children include targets for reducing disparities, in particular those which arise from discrimination on the basis of race, between girls and boys, rural and urban children, wealthy and poor children and those with and without disabilities.

26. A number of environmental problems and trends, such as global warming, ozone layer depletion, air pollution, hazardous wastes, exposure to hazardous chemicals and pesticides, inadequate sanitation, poor hygiene, unsafe drinking water and food and inadequate housing, need to be addressed to ensure the health and well-being of children.

27. Adequate housing fosters family integration, contributes to social equity and strengthens the feeling of belonging, security and human solidarity, all of which are essential for the well-being of children. Accordingly, we will attach a high priority to overcoming the housing shortage and other infrastructure needs, particularly for children in marginalized peri-urban and remote rural areas.

28. We will take measures to manage our natural resources and protect and conserve our environment in a sustainable manner. We will work to change unsustainable patterns of production and consumption, bearing in mind principles, including the principle that, in view of different contributions to global and environmental degradation, States have common but differentiated responsibilities. We will help to educate all children and adults to respect the natural environment for their health and well-being.

29. The Convention on the Rights of the Child and the Optional Protocols thereto contain a comprehensive set of international legal standards for the protection and well-being of children. We also recognize the importance of other international instruments relevant for children. The general principles of, inter alia, the best interests of the child, non-discrimination, participation and survival and development provide the framework for our actions concerning children, including adolescents. We urge all countries to consider, as a matter of priority, signing and ratifying or acceding to the Convention on the Rights of the Child, the Optional Protocols thereto, as well as

International Labour Organization Conventions Nos. 138<sup>10</sup> and 182.<sup>11</sup> We urge States parties to implement fully their treaty obligations and to withdraw reservations incompatible with the object and purpose of the Convention and to consider reviewing reservations with a view to withdrawing them.

30. We welcome the entry into force of the 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 urge States parties to implement them fully.

31. We, the Governments participating in the special session, commit ourselves to implementing the Plan of Action through consideration of such measures as:

(a) Putting in place, as appropriate, effective national legislation, policies and action plans and allocating resources to fulfil and protect the rights and to secure the well-being of children;

(b) Establishing or strengthening national bodies such as, inter alia, independent ombudspersons for children, where appropriate, or other institutions for the promotion and protection of the rights of the child;

(c) Developing national monitoring and evaluation systems to assess the impact of our actions on children;

(d) Enhancing widespread awareness and understanding of the rights of the child.

### **Partnerships and participation**

32. In order to implement the present Plan of Action, we will strengthen our partnership with the following actors, who have unique contributions to make, and encourage the use of all avenues for participation to advance our common cause — the well-being of children and the promotion and protection of their rights:

1. Children, including adolescents, must be enabled to exercise their right to express their views freely, according to their evolving capacity, and build self-esteem, acquire knowledge and skills, such as those for conflict resolution, decision-making and communication, to meet the challenges of life. The right of children, including adolescents, to express themselves freely must be respected and promoted and their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child. The energy and creativity of children and young people must be nurtured so that they can actively take part in shaping their environment, their societies and the world they will inherit. Disadvantaged and marginalized children, including adolescents in particular, need special attention and support to access basic services, to build self-esteem and to prepare them to take responsibility for their own lives. We

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<sup>10</sup> Convention concerning the Minimum Age for Admission to Employment, 1973.

<sup>11</sup> Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.

will strive to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels.

2. Parents, families, legal guardians and other caregivers have the primary role and responsibility for the well-being of children, and must be supported in the performance of their child-rearing responsibilities. All our policies and programmes should promote the shared responsibility of parents, families, legal guardians and other caregivers, and society as a whole in this regard.

3. Local governments and authorities through, inter alia, strengthened partnerships at all levels, can ensure that children are at the centre of agendas for development. By building on ongoing initiatives, such as child-friendly communities and cities without slums, mayors and local leaders can improve significantly the lives of children.

4. Parliamentarians or members of legislatures are key to the implementation of the present Plan of Action, the success of which will require that they promote awareness-raising, adopt necessary legislation, facilitate and appropriate the financial resources needed for this purpose, and monitor their effective utilization.

5. Non-governmental organizations and community-based organizations will be supported in their work and mechanisms should be established, where appropriate, to facilitate the participation of civil society in matters relating to children. Civil society actors have a special role to play in promoting and supporting positive behaviour and creating an environment that is conducive to the well-being of children.

6. The private sector and corporate entities have a special contribution to make, from adopting and adhering to practices that demonstrate social responsibility to providing resources, including innovative sources of financing and community improvement schemes that benefit children, such as microcredits.

7. Religious, spiritual, cultural and indigenous leaders, with their tremendous outreach, have a key role as front-line actors for children to help to translate the goals and targets of the present Plan of Action into priorities for their communities and to mobilize and inspire people to take action in favour of children.

8. The mass media and their organizations have a key role to play in raising awareness about the situation of children and the challenges facing them. They should also play a more active role in informing children, parents, families and the general public about initiatives that protect and promote the rights of children, and should also contribute to educational programmes for children. In this regard, the media should be attentive to their influence on children.

9. Regional and international organizations, in particular all United Nations bodies, as well as the Bretton Woods institutions and other multilateral



agencies, should be encouraged to collaborate and play a key role in accelerating and achieving progress for children.

10. People who work directly with children have great responsibilities. It is important to enhance their status, morale and professionalism.

## **B. Goals, strategies and actions**

33. Since the World Summit for Children, many goals and targets relevant to children have been endorsed by major United Nations summits and conferences and their review processes. We strongly reaffirm our commitment to achieve these goals and targets, and to offer this and future generations of children the opportunities denied to their parents. As a step towards building a strong foundation for attaining the 2015 international development targets and Millennium Summit goals, we resolve to achieve the unmet goals and objectives as well as a consistent set of intermediate targets and benchmarks during the course of this decade (2000–2010) in the following priority areas of action.

34. Taking into account the best interests of the child, we commit ourselves to implement the following goals, strategies and actions with appropriate adaptations to the specific situation of each country and the diverse situations and circumstances in different regions and countries throughout the world.

### **1. Promoting healthy lives**

35. Owing to poverty and lack of access to basic social services, more than 10 million children under five years of age, nearly half of them in their neonatal period, die every year of preventable diseases and malnutrition. Complications related to pregnancy and childbirth and maternal anaemia and malnutrition kill more than half a million women and adolescents each year, and injure and disable many more. More than one billion people cannot obtain safe drinking water, 150 million children under five years of age are malnourished, and more than two billion people lack access to adequate sanitation.

36. We are determined to break the intergenerational cycle of malnutrition and poor health by providing a safe and healthy start in life for all children; providing access to effective, equitable, sustained and sustainable primary health-care systems in all communities, ensuring access to information and referral services; providing adequate water and sanitation services; and promoting a healthy lifestyle among children and adolescents. Accordingly, we resolve to achieve the following goals in conformity with the outcomes of recent United Nations conferences, summits and special sessions of the General Assembly, as reflected in their respective reports:

(a) Reduction in the infant and under-five mortality rate by at least one third, in pursuit of the goal of reducing it by two thirds by 2015;

(b) Reduction in the maternal mortality ratio by at least one third, in pursuit of the goal of reducing it by three quarters by 2015;

(c) Reduction of child malnutrition among children under five years of age by at least one third, with special attention to children under two years of age, and reduction in the rate of low birth weight by at least one third of the current rate;

(d) Reduction in the proportion of households without access to hygienic sanitation facilities and affordable and safe drinking water by at least one third;

(e) Development and implementation of national early childhood development policies and programmes to ensure the enhancement of children's physical, social, emotional, spiritual and cognitive development;

(f) Development and implementation of national health policies and programmes for adolescents, including goals and indicators, to promote their physical and mental health;

(g) Access through the primary health-care system to reproductive health for all individuals of appropriate age as soon as possible, and no later than 2015.

37. To achieve these goals and targets, taking into account the best interests of the child, consistent with national laws, religious and ethical values and cultural backgrounds of the people, and in conformity with all human rights and fundamental freedoms, we will carry out the following strategies and actions:

1. Ensure that the reduction of maternal and neonatal morbidity and mortality is a health sector priority and that women, in particular adolescent expectant mothers, have ready and affordable access to essential obstetric care, well-equipped and adequately staffed maternal health-care services, skilled attendance at delivery, emergency obstetric care, effective referral and transport to higher levels of care when necessary, post-partum care and family planning in order, inter alia, to promote safe motherhood.

2. Provide access to appropriate, user-friendly and high-quality health-care services, education and information to all children.

3. Address effectively, for all individuals of appropriate age, the promotion of their healthy lives, including their reproductive and sexual health, consistent with the commitments and outcomes of recent United Nations conferences and summits, including the World Summit for Children, the United Nations Conference on Environment and Development, the International Conference on Population and Development, the World Summit for Social Development and the Fourth World Conference on Women, their five-year reviews and reports.

4. Promote child health and survival and reduce disparities between and within developed and developing countries as quickly as possible, with particular attention to eliminating the pattern of excess and preventable mortality among girl infants and children.

5. Protect, promote and support exclusive breastfeeding of infants for six months and continued breastfeeding with safe, appropriate and adequate complementary feeding up to two years of age or beyond. Provide infant-

feeding counselling for mothers living with HIV/AIDS so that they can make free and informed choices.

6. Special emphasis must be placed on prenatal and post-natal care, essential obstetric care and care for newborns, particularly for those living in areas without access to services.

7. Ensure full immunization of children under one year of age, at 90 per cent coverage nationally, with at least 80 per cent coverage in every district or equivalent administrative unit; reduce deaths due to measles by half by 2005; eliminate maternal and neonatal tetanus by 2005; and extend the benefits of new and improved vaccines and other preventive health interventions to children in all countries.

8. Certify by 2005 the global eradication of poliomyelitis.

9. Eradicate guinea worm disease.

10. Strengthen early childhood development by providing appropriate services and support to parents, including parents with disabilities, families, legal guardians and caregivers, especially during pregnancy, birth, infancy and early childhood, so as to ensure children's physical, psychological, social, spiritual and cognitive development.

11. Intensify proven, cost-effective actions against diseases and malnutrition that are the major causes of child mortality and morbidity, including reducing by one third deaths due to acute respiratory infections; reducing by one half deaths due to diarrhoea among children under the age of five; reducing by one half tuberculosis deaths and prevalence; and reducing the incidence of intestinal parasites, cholera, sexually transmitted infections, HIV/AIDS and all forms of hepatitis, and ensure that effective measures are affordable and accessible, particularly in highly marginalized areas or populations.

12. Reduce by one half the burden of disease associated with malaria and ensure that 60 per cent of all people at risk of malaria, especially children and women, sleep under insecticide-treated bednets.

13. Improve the nutrition of mothers and children, including adolescents, through household food security, access to basic social services and adequate caring practices.

14. Support populations and countries suffering from severe food shortages and famine.

15. Strengthen health and education systems and expand social security systems to increase access to integrated and effective health, nutrition and childcare in families, communities, schools and primary health-care facilities, including prompt attention to marginalized boys and girls.

16. Reduce child injuries due to accidents or other causes through the development and implementation of appropriate preventive measures.

17. Ensure effective access by children with disabilities and children with special needs to integrated services, including rehabilitation and health care,

and promote family-based care and appropriate support systems for parents, families, legal guardians and caregivers of these children.

18. Provide special help to children suffering from mental illnesses or psychological disorders.

19. Promote physical, mental and emotional health among children, including adolescents, through play, sports, recreation, artistic and cultural expression.

20. Develop and implement policies and programmes for children, including adolescents, aimed at preventing the use of narcotic drugs, psychotropic substances and inhalants, except for medical purposes, and at reducing the adverse consequences of their abuse, as well as support preventive policies and programmes, especially against tobacco and alcohol.

21. Develop policies and programmes aimed at children, including adolescents, for the reduction of violence and suicide.

22. Achieve sustainable elimination of iodine deficiency disorders by 2005 and vitamin A deficiency by 2010; reduce by one third the prevalence of anaemia, including iron deficiency, by 2010; and accelerate progress towards reduction of other micronutrient deficiencies, through dietary diversification, food fortification and supplementation.

23. In efforts to ensure universal access to safe water and adequate sanitation facilities, pay greater attention to building family and community capacity for managing existing systems and promoting behavioural change through health and hygiene education, including in the school curriculum.

24. Address any disparities in health and access to basic social services, including health-care services for indigenous children and children belonging to minorities.

25. Develop legislation policies and programmes, as appropriate, at the national level and enhance international cooperation to prevent, inter alia, the exposure of children to harmful environmental contaminants in the air, water, soil and food.

## **2. Providing quality education**

38. Education is a human right and a key factor to reducing poverty and child labour and promoting democracy, peace, tolerance and development. Yet more than 100 million children of primary school age, the majority of them girls, are not enrolled in school. Millions more are taught by untrained and underpaid teachers in overcrowded, unhealthy and poorly equipped classrooms. And one third of all children do not complete five years of schooling, the minimum required for basic literacy.

39. As agreed at the World Education Forum in Dakar,<sup>12</sup> which reconfirmed the mandated role of the United Nations Educational, Scientific and Cultural Organization in coordinating “Education For All” partners and maintaining

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<sup>12</sup> See United Nations Educational, Scientific and Cultural Organization, *Final Report of the World Education Forum, Dakar, Senegal, 26–28 April 2000* (Paris, 2000)

their collective momentum within the process of securing basic education, we will accord high priority to ensuring by 2015 that all children have access to and complete primary education that is free, compulsory and of good quality. We will also aim at the progressive provision of secondary education. As a step towards these goals, we resolve to achieve the following targets:

- (a) Expand and improve comprehensive early childhood care and education, for girls and boys, especially for the most vulnerable and disadvantaged children;
- (b) Reduce the number of primary school-age children who are out of school by 50 per cent and increase net primary school enrolment or participation in alternative, good quality primary education programmes to at least 90 per cent by 2010;
- (c) Eliminate gender disparities in primary and secondary education by 2005; and achieve gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality;
- (d) Improve all aspects of the quality of education so that children and young people achieve recognized and measurable learning outcomes, especially in numeracy, literacy and essential life skills;
- (e) Ensure that the learning needs of all young people are met through access to appropriate learning and life skills programmes;
- (f) Achieve a 50 per cent improvement in levels of adult literacy by 2015, especially for women.

40. To achieve these goals and targets, we will implement the following strategies and actions:

1. Develop and implement special strategies to ensure that schooling is readily accessible to all children and adolescents, and that basic education is affordable for all families.
2. Promote innovative programmes that encourage schools and communities to search more actively for children who have dropped out or are excluded from school and from learning, especially girls and working children, children with special needs and children with disabilities, and help them to enrol in and attend schools, and successfully complete their education, involving Governments as well as families, communities and non-governmental organizations as partners in the educational process. Special measures should be put in place to prevent and reduce dropout due to, inter alia, entry into employment.
3. Bridge the divide between formal and non-formal education, taking into account the need to ensure good quality in terms of educational services, including the competence of providers, and acknowledging that non-formal education and alternative approaches provide beneficial experiences. In addition, develop complementarity between the two delivery systems.

4. Ensure that all basic education programmes are accessible, inclusive and responsive to children with special learning needs and for children with various forms of disabilities.
5. Ensure that indigenous children and children belonging to minorities have access to quality education on the same basis as other children. Efforts must be directed to providing this education in a manner that respects their heritage. Efforts must also be directed to providing educational opportunities so that indigenous children and children belonging to minorities can develop an understanding of and sustain their cultural identity, including significant aspects such as language and values.
6. Develop and implement special strategies for improving the quality of education and meeting the learning needs of all.
7. Create, with children, a child-friendly learning environment, in which they feel safe, are protected from abuse, violence and discrimination, and are healthy and encouraged to learn. Ensure that education programmes and materials reflect fully the promotion and protection of human rights and the values of peace, tolerance and gender equality, using every opportunity presented by the International Decade for a Culture of Peace and Non-Violence for the Children of the World, 2001–2010.
8. Strengthen early childhood care and education by providing services, developing and supporting programmes directed toward families, legal guardians, caregivers and communities.
9. Provide education and training opportunities to adolescents to help them to acquire sustainable livelihoods.
10. Design, where appropriate, and implement programmes that enable pregnant adolescents and adolescent mothers to continue to complete their education.
11. Urge the continued development and implementation of programmes for children, including adolescents, especially in schools, to prevent and discourage the use of tobacco and alcohol and detect, counter and prevent trafficking in and the use of narcotic drugs and psychotropic substances except for medical purposes by, inter alia, promoting mass media information campaigns on their harmful effects as well as the risk of addiction, and taking necessary actions to deal with the root causes.
12. Promote innovative programmes to provide incentives to low-income families with school-age children to increase the enrolment and attendance of girls and boys and to ensure that they are not obliged to work in a way that interferes with their schooling.
13. Develop and implement programmes that specifically aim to eliminate gender disparities in enrolment and gender-based bias and stereotypes in education systems, curricula and materials, whether derived from any discriminatory practices, social or cultural attitudes or legal and economic circumstances.

14. Enhance the status, morale, training and professionalism of teachers, including early childhood educators, ensuring appropriate remuneration for their work and opportunities and incentives for their development.

15. Develop responsive, participatory and accountable systems of educational governance and management at the school, community and national levels.

16. Meet the specific learning needs of children affected by crises, by ensuring that education is provided during and after crises, and conduct education programmes to promote a culture of peace in ways that help to prevent violence and conflict and promote the rehabilitation of victims.

17. Provide accessible recreational and sports opportunities and facilities at schools and in communities.

18. Harness the rapidly evolving information and communication technologies to support education at an affordable cost, including open and distance education, while reducing inequality in access and quality.

19. Develop strategies to mitigate the impact of HIV/AIDS on education systems and schools, students and learning.

### **3. Protecting against abuse, exploitation and violence**

41. Hundreds of millions of children are suffering and dying from war, violence, exploitation, neglect and all forms of abuse and discrimination. Around the world, children live under especially difficult circumstances – permanently disabled or seriously injured by armed conflict; internally displaced or driven from their countries as refugees; suffering from natural and man-made disasters, including such perils as exposure to radiation and dangerous chemicals; as children of migrant workers and other socially disadvantaged groups; as victims of racism, racial discrimination, xenophobia and related intolerance.

Trafficking, smuggling, physical and sexual exploitation and abduction, as well as the economic exploitation of children, even in its worst forms, are daily realities for children in all regions of the world, while domestic violence and sexual violence against women and children remain serious problems.

In several countries, there have been social and humanitarian impacts from economic sanctions on the civilian population, in particular women and children.

42. In some countries, the situation of children is adversely affected by unilateral measures not in accordance with international law and the Charter of the United Nations that create obstacles to trade relations among States, impede the full realization of social and economic development and hinder the well-being of the population in the affected countries, with particular consequences for women and children, including adolescents.

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

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

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

### **General protection**

1. Develop systems to ensure the registration of every child at or shortly after birth, and fulfil his or her right to acquire a name and a nationality, in accordance with national laws and relevant international instruments.
2. Encourage all countries to adopt and enforce laws, and improve the implementation of policies and programmes to protect children from all forms of violence, neglect, abuse and exploitation, whether at home, in school or other institutions, in the workplace, or in the community.
3. Adopt special measures to eliminate discrimination against children on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, and ensure their equal access to education, health and basic social services.
4. End impunity for all crimes against children by bringing perpetrators to justice and publicizing the penalties for such crimes.
5. Take steps with a view to the avoidance of and refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that impedes the full achievement of economic and social development by the population of the affected countries, in particular children and women, that hinders their well-being and that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services. Ensure that food and medicine are not used as tools for political pressure.
6. Raise awareness about the illegality and harmful consequences of failing to protect children from violence, abuse and exploitation.
7. Promote the establishment of prevention, support and caring services as well as justice systems specifically applicable to children, taking into account



the principles of restorative justice and fully safeguard children's rights and provide specially trained staff to promote children's reintegration in society.

8. Protect children from torture and other cruel, inhuman or degrading treatment or punishment. Call upon the Governments of all States, in particular States in which the death penalty has not been abolished, to comply with the obligations they have assumed under relevant provisions of international human rights instruments, including in particular articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the International Covenant on Civil and Political Rights.<sup>13</sup>

9. End harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violate the rights of children and women.

10. Establish mechanisms to provide special protection and assistance to children without primary caregivers.

11. Adopt and implement policies for the prevention, protection, rehabilitation and reintegration, as appropriate, of children living in disadvantaged social situations and who are at risk, including orphans, abandoned children, children of migrant workers, children working and/or living on the street and children living in extreme poverty, and ensure their access to education, health, and social services as appropriate.

12. Protect children from adoption and foster care practices that are illegal, exploitative or that are not in their best interest.

13. Address cases of international kidnapping of children by one of the parents.

14. Combat and prevent the use of children, including adolescents, in the illicit production of and trafficking in narcotic drugs and psychotropic substances.

15. Promote comprehensive programmes to counter the use of children, including adolescents, in the production of and trafficking in narcotic drugs and psychotropic substances.

16. Make appropriate treatment and rehabilitation accessible for children, including adolescents, dependent on narcotic drugs, psychotropic substances, inhalants and alcohol.

17. Provide protection and assistance to refugees and internally displaced persons, the majority of whom are women and children, in accordance with international law, including international humanitarian law.

18. Ensure that children affected by natural disasters receive timely and effective humanitarian assistance through a commitment to improved contingency planning and emergency preparedness, and that they are given all possible assistance and protection to help them to resume a normal life as soon as possible.

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<sup>13</sup> See resolution 2200 A (XXI), annex.

19. Encourage measures to protect children from violent or harmful web sites, computer programmes and games that negatively influence the psychological development of children, taking into account the responsibilities of the family, parents, legal guardians and caregivers.

### **Protection from armed conflict**

20. Strengthen the protection of children affected by armed conflict and adopt effective measures for the protection of children under foreign occupation.

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

22. End the recruitment and use of children in armed conflict contrary to international law, ensure their demobilization and effective disarmament and implement effective measures for their rehabilitation, physical and psychological recovery and reintegration into society.

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

24. Take concrete action against all forms of terrorism, which causes serious obstacles to the development and well-being of children.

25. Provide appropriate training and education in children's rights and protection as well as in international humanitarian law to all civilian, military and police personnel involved in peacekeeping operations.

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

27. Resolve to strengthen international cooperation, including burden-sharing in and coordination of humanitarian assistance to countries hosting refugees, and to help all refugees and displaced persons, including children and their families, to return voluntarily to their homes in safety and dignity and to be smoothly reintegrated in their societies.

28. Develop and implement policies and programmes, with necessary international cooperation, for the protection, care and well-being of refugee children and children seeking asylum and for the provision of basic social services, including access to education, in addition to health care and food.

29. Give priority to programmes for family tracing and reunification, and continue to monitor the care arrangements for unaccompanied and/or separated refugee and internally displaced children.

30. Assess and monitor regularly the impact of sanctions on children and take urgent and effective measures in accordance with international law with a view to alleviating the negative impact of economic sanctions on women and children.

31. Take all necessary measures to protect children from being taken as hostages.

32. Develop specific strategies to protect and provide for the special needs and particular vulnerabilities of girls affected by armed conflict.

### **Combating child labour**

33. Take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Provide for the rehabilitation and social integration of children removed from the worst forms of child labour by, inter alia, ensuring access to free basic education and, whenever possible and appropriate, vocational training.

34. Take appropriate steps to assist one another in the elimination of the worst forms of child labour through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education.

35. Elaborate and implement strategies to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

36. In this context, protect children from all forms of economic exploitation by mobilizing national partnerships and international cooperation, and improve the conditions of children by, inter alia, providing working children with free basic education and vocational training, and integration into the education system in every way possible, and encourage support for social and economic policies aimed at poverty eradication and at providing families, particularly women, with employment and income-generating opportunities.

37. Promote international cooperation to assist developing countries upon request in addressing child labour and its root causes, inter alia, through social and economic policies aimed at poverty eradication, while stressing that labour standards should not be used for protectionist trade purposes.

38. Strengthen the collection and analysis of data on child labour.

39. Mainstream action relating to child labour into national poverty eradication and development efforts, especially in policies and programmes in the areas of health, education, employment and social protection.

### **Elimination of trafficking and sexual exploitation of children**

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

41. Raise awareness of the illegality and harmful consequences of sexual exploitation and abuse, including through the Internet, and trafficking in children.
42. Enlist the support of the private sector, including the tourism industry and the media, for a campaign against sexual exploitation of and trafficking in children.
43. Identify and address the underlying causes and the root factors, including external factors, leading to sexual exploitation of and trafficking in children and implement preventive strategies against sexual exploitation of and trafficking in children.
44. Ensure the safety, protection and security of victims of trafficking and sexual exploitation and provide assistance and services to facilitate their recovery and social reintegration.
45. Take necessary action, at all levels, as appropriate, to criminalize and penalize effectively, in conformity with all relevant and applicable international instruments, all forms of sexual exploitation and sexual abuse of children, including within the family or for commercial purposes, child prostitution, paedophilia, child pornography, child sex tourism, trafficking, the sale of children and their organs, engagement in forced child labour and any other form of exploitation, while ensuring that, in the treatment by the criminal justice system of children who are victims, the best interests of the child shall be a primary consideration.
46. Monitor and share information regionally and internationally on the cross-border trafficking of children; strengthen the capacity of border and law enforcement officials to stop trafficking and provide or strengthen training for them to respect the dignity, human rights and fundamental freedoms of all those, particularly women and children, who are victims of trafficking.
47. Take necessary measures, including through enhanced cooperation between Governments, intergovernmental organizations, the private sector and non-governmental organizations to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents.

#### **4. Combating HIV/AIDS**

45. The HIV/AIDS pandemic is having a devastating effect on children and those who provide care for them. This includes the 13 million children orphaned by AIDS, the nearly 600,000 infants infected every year through mother-to-child transmission and the millions of HIV-positive young people living with the stigma of HIV but without access to adequate counselling, care and support.
46. To combat the devastating impact of HIV/AIDS on children, we resolve to take urgent and aggressive action as agreed at the special session of the

General Assembly on HIV/AIDS,<sup>14</sup> and to place particular emphasis on the following agreed goals and commitments:

(a) By 2003, establish time-bound national targets to achieve the internationally agreed global prevention goal to reduce by 2005 HIV prevalence among young men and women aged 15 to 24 in the most affected countries by 25 per cent and by 25 per cent globally by 2010, and intensify efforts to achieve these targets as well as to challenge gender stereotypes and attitudes, and gender inequalities in relation to HIV/AIDS, encouraging the active involvement of men and boys;

(b) By 2005, reduce the proportion of infants infected with HIV by 20 per cent, and by 50 per cent by 2010, by ensuring that 80 per cent of pregnant women accessing antenatal care have information, counselling and other HIV-prevention services available to them, increasing the availability of and providing access for HIV-infected women and babies to effective treatment to reduce mother-to-child transmission of HIV, as well as through effective interventions for HIV-infected women, including voluntary and confidential counselling and testing, access to treatment, especially anti-retroviral therapy and, where appropriate, breast-milk substitutes and the provision of a continuum of care;

(c) By 2003, develop and by 2005 implement national policies and strategies to build and strengthen governmental, family and community capacities to provide a supportive environment for orphans and girls and boys infected and affected by HIV/AIDS, including by providing appropriate counselling and psychosocial support, ensuring their enrolment in school and access to shelter, good nutrition and health and social services on an equal basis with other children; and protect orphans and vulnerable children from all forms of abuse, violence, exploitation, discrimination, trafficking and loss of inheritance.

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

1. By 2003, ensure the development and implementation of multisectoral national strategies and financing plans for combating HIV/AIDS that address the epidemic in forthright terms; confront stigma, silence and denial; address gender and age-based dimensions of the epidemic; eliminate discrimination and marginalization; involve partnerships with civil society and the business sector and the full participation of people living with HIV/AIDS, those in vulnerable groups and people mostly at risk, particularly women and young people; are resourced to the extent possible from national budgets without excluding other sources, inter alia, international cooperation; promote and protect fully all human rights and fundamental freedoms, including the right to the highest attainable standard of physical and mental health; integrate a gender perspective; address risk, vulnerability, prevention, care, treatment and support and reduction of the impact of the epidemic; and strengthen health, education and legal system capacity.

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<sup>14</sup> See resolution S-26/2.

2. By 2005, ensure that at least 90 per cent, and by 2010 at least 95 per cent of young men and women aged 15 to 24 have access to the information, education, including peer education and youth-specific HIV education, and services necessary to develop the life skills required to reduce their vulnerability to HIV infection, in full partnership with young people, parents, families, educators and health-care providers.

3 By 2005, develop and make significant progress in implementing comprehensive care strategies to: strengthen family and community-based care, including that provided by the informal sector, and health-care systems to provide and monitor treatment to people living with HIV/AIDS, including infected children, and to support individuals, households, families and communities affected by HIV/AIDS; and improve the capacity and working conditions of health-care personnel, and the effectiveness of supply systems, financing plans and referral mechanisms required to provide access to affordable medicines, including anti-retroviral drugs, diagnostics and related technologies, as well as quality medical, palliative and psychosocial care.

4. By 2005, implement measures to increase capacities of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and health services, including for sexual and reproductive health, and through prevention education that promotes gender equality within a culturally and gender-sensitive framework.

5. By 2003, develop and/or strengthen strategies, policies and programmes which recognize the importance of the family in reducing vulnerability, inter alia, in educating and guiding children and take account of cultural, religious and ethical factors, to reduce the vulnerability of children and young people by ensuring access of both girls and boys to primary and secondary education, including HIV/AIDS in curricula for adolescents; ensuring safe and secure environments, especially for young girls; expanding good-quality, youth-friendly information and sexual health education and counselling services; strengthening reproductive and sexual health programmes; and involving families and young people in planning, implementing and evaluating HIV/AIDS prevention and care programmes, to the extent possible.

6. By 2003, develop and begin to implement national strategies that incorporate HIV/AIDS awareness, prevention, care and treatment elements into programmes or actions that respond to emergency situations, recognizing that populations destabilized by armed conflict, humanitarian emergencies and natural disasters, including refugees, internally displaced persons, and in particular women and children, are at increased risk of exposure to HIV infection; and, where appropriate, factor HIV/AIDS components into international assistance programmes.

7. Ensure non-discrimination and full and equal enjoyment of all human rights through the promotion of an active and visible policy of destigmatization of children orphaned and made vulnerable by HIV/AIDS.

8. Urge the international community to complement and supplement efforts of developing countries that commit increased national funds to fight the

HIV/AIDS epidemic through increased international development assistance, particularly those countries most affected by HIV/AIDS, particularly in Africa, especially in sub-Saharan Africa, the Caribbean, countries at high risk of expansion of the HIV/AIDS epidemic and other affected regions whose resources to deal with the epidemic are seriously limited.

### **C. Mobilizing resources**

48. Promoting healthy lives, including good nutrition and control of infectious diseases, providing quality education, protecting children from abuse, exploitation, violence and armed conflict and combating HIV/AIDS are achievable goals and are clearly affordable for the global community.

49. The primary responsibility for the implementation of the present Plan of Action and for ensuring an enabling environment for securing the well-being of children, in which the rights of each and every child are promoted and respected, rests with each individual country, recognizing that new and additional resources, both national and international, are required for this purpose.

50. Investments in children are extraordinarily productive if they are sustained over the medium to long term. Investing in children and respecting their rights lays the foundation for a just society, a strong economy, and a world free of poverty.

51. Implementation of the present Plan of Action will require the allocation of significant additional human, financial and material resources, nationally and internationally, within the framework of an enabling international environment and enhanced international cooperation, including North-South and South-South cooperation, to contribute to economic and social development.

52. Accordingly, we resolve to pursue, among others, the following global targets and actions for mobilizing resources for children:

(a) Express our appreciation to the developed countries that have agreed to and have reached the target of 0.7 per cent of their gross national product for overall official development assistance, and urge the developed countries that have not done so to strive to meet the yet to be attained internationally agreed target of 0.7 per cent of their gross national product for overall official development assistance as soon as possible. We take it upon ourselves not to spare any efforts to reverse the declining trends of official development assistance and to meet expeditiously the targets of 0.15 per cent to 0.20 per cent of gross national product as official development assistance to least developed countries, as agreed, taking into account the urgency and gravity of the special needs of children;

(b) Without further delay, implement the enhanced Heavily Indebted Poor Countries Initiative and agree to cancel all bilateral official debts of heavily indebted poor countries as soon as possible, in return for demonstrable commitments by them to poverty eradication, and urge the use of debt service savings to finance poverty eradication programmes, in particular those related to children;

(c) Call for speedy and concerted action to address effectively the debt problems of least developed countries, low-income developing countries and middle-income developing countries in a comprehensive, equitable, development-oriented and durable way through various national and international measures designed to make their debt sustainable in the long term and thereby to improve their capacity to deal with issues relating to children, including, as appropriate, existing orderly mechanisms for debt reduction such as debt swaps for projects aimed at meeting the needs of children;

(d) Increase and improve access of products and services of developing countries to international markets through, inter alia, the negotiated reduction of tariff barriers and the elimination of non-tariff barriers, which unjustifiably hinder trade of developing countries, according to the multilateral trading system;

(e) Believing that increased trade is essential for the growth and development of LDCs, aim at improving preferential market access for LDCs by working towards the objective of duty-free and quota-free market access for all LDCs' products in the markets of developed countries;

(f) Mobilize new and substantial additional resources for social development, both at national and international level, to reduce disparities within and among countries, and ensure the effective and efficient use of existing resources. Further, ensure to the greatest possible extent, that social expenditures that benefit children are protected and prioritized during both short-term and long-term economic and financial crises;

(g) Explore new ways of generating public and private financial resources, inter alia, through the reduction of excessive military expenditures and the arms trade and investment in arms production and acquisition, including global military expenditures, taking into consideration national security requirements;

(h) Encourage donor and recipient countries, based on mutual agreement and commitment, to implement fully the 20/20 initiative, in line with the Oslo and Hanoi Consensus documents,<sup>15</sup> to ensure universal access to basic social services.

53. We will give priority attention to meeting the needs of the world's most vulnerable children in developing countries, in particular in least developed countries and sub-Saharan Africa.

54. We will also give special attention to the needs of children in small island developing States, landlocked and transit developing countries and other developing countries, as well as countries with economies in transition.

55. We will promote technical cooperation between countries in order to share positive experience and strategies in the implementation of the present Plan of Action.

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<sup>15</sup> Adopted at meetings on the 20/20 initiative held at Oslo from 23 to 25 April 1996 (A/51/140, annex) and at Hanoi from 27 to 29 October 1998 (A/53/684, annex).



56. Meeting our goals and aspirations for children merits new partnerships with civil society, including with non-governmental organizations and the private sector, and innovative arrangements for mobilizing additional resources, both private and public.

57. Bearing in mind that corporations must abide by national legislation, we encourage corporate social responsibility so that it contributes to social development goals and the well-being of children, inter alia, by:

1. Promoting increased corporate awareness of the interrelationship between social development and economic growth.

2. Providing a legal, economic and social policy framework that is just and stable to support and stimulate private sector initiatives aimed at achieving these goals.

3. Enhancing partnerships with business, trade unions and civil society at the national level in support of the goals of the Plan of Action.

We urge the private sector to assess the impact of its policies and practices on children and to make the benefits of research and development in science, medical technology, health, food fortification, environmental protection, education and mass communication available to all children, particularly to those in greatest need.

58. We resolve to ensure greater policy coherence and better cooperation between the United Nations, its agencies, and the Bretton Woods institutions, as well as other multilateral bodies and civil society, with a view to achieving the goals of the present Plan of Action.

#### **D. Follow-up actions and assessment**

59. To facilitate the implementation of actions committed to in this document, we will 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 the present Plan of Action, taking into account the best interests of the child, consistent with national laws, religious and ethical values and cultural backgrounds of the people and in conformity with all human rights and fundamental freedoms.

We will therefore strengthen our national planning and ensure the necessary coordination, implementation and resources. We will integrate the goals of the present Plan of Action into our national Government policies as well as national and subnational development programmes, poverty eradication strategies, multisectoral approaches and other relevant development plans, in cooperation with relevant civil society actors, including non-governmental organizations working for and with children, as well as children, in accordance with their age and maturity, and their families.

60. We will monitor regularly at the national level and, where appropriate, at the regional level and assess progress towards the goals and targets of the present Plan of Action at the national, regional and global levels. Accordingly, we will strengthen our national statistical capacity to collect,

analyse and disaggregate data, including by sex, age and other relevant factors that may lead to disparities, and support a wide range of child-focused research. We will enhance international cooperation to support statistical capacity-building efforts and build community capacity for monitoring, assessment and planning.

61. We will conduct periodic reviews at the national and subnational levels of progress in order to address obstacles more effectively and accelerate actions. At the regional level, such reviews will be used to share best practices, strengthen partnerships and accelerate progress. Therefore:

(a) We encourage States parties to the Convention on the Rights of the Child 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;

(b) As the world's lead agency for children, the United Nations Children's Fund is requested to continue to prepare and disseminate, in close collaboration with Governments, relevant funds, programmes and the specialized agencies of the United Nations system, and all other relevant actors, as appropriate, information on the progress made in the implementation of the Declaration and the Plan of Action. The governing bodies of the relevant specialized agencies are requested to ensure that, within their mandates, the fullest possible support is given by these agencies for the achievement of the goals outlined in the Plan of Action and to keep the General Assembly of the United Nations, through the Economic and Social Council, fully informed of progress to date and additional action required during the decade ahead, using existing reporting frameworks and procedures;

(c) We request the Secretary-General to report regularly to the General Assembly on the progress made in implementing the present Plan of Action.

62. We hereby recommit ourselves to spare no effort in continuing with the creation of a world fit for children, building on the achievements of the past decade and guided by the principles of first call for children. In solidarity with a broad range of partners, we will lead a global movement for children that creates an unstoppable momentum for change. We make this solemn pledge secure in the knowledge that, in giving high priority to the rights of children, to their survival and to their protection and development, we serve the best interests of all humanity and ensure the well-being of all children in all societies.



**Report of the Secretary General, Follow-up to the Special  
Session of the General Assembly on Children, 2005  
(excerpts)<sup>1</sup>**

**Adoption: 8 August 2005**

**Follow-up to the outcome of the special session on children**

**Promotion and protection of the rights of the child**

**Follow-up to the special session of the General Assembly on children,  
Report of the Secretary-General**

(...)

**II. Progress in follow-up to the special session on children**

**A. Global trends in the follow-up process**

7. A year ago it was clear that, while many countries had taken concrete actions to translate the commitments made at the 2002 special session into national actions plans for children or to integrate them into other national policies and planning processes, the overall rate of progress had been uneven. The global picture is now more encouraging.

8. Information received by the United Nations Children's Fund (UNICEF) as of May 2005 indicates that 41 countries have completed national plans of action for children since the special session and that an additional 45 national plans for children are under formulation. A further 14 countries foresee the development of such a plan. Some 14 countries had already developed national plans for children near the beginning of the decade, and several of them are under revision.

9. In addition, as envisaged by the special session, many countries have chosen to incorporate the goals and commitments of "A world fit for children" into other national policy and planning instruments, such as poverty reduction strategies, national development plans and sector plans, including sector-wide approaches. Some 145 countries have used one or more of the instruments for their follow-up activities. Of those, some 61 countries are using poverty reduction strategies as a primary method for pursuing their national goals for children; 24 countries are using national development plans; and 60 countries are using mainly sectoral or cross-sectoral plans.

10. In all, at least 172 countries have either taken or foresee taking some form of action to put the goals of the special session on children into operation. Priority issues for children are thus being increasingly reflected in mainstream national planning processes. Many countries have also launched more specific initiatives in the priority areas of the Plan of Action of "A

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<sup>1</sup> Source: A/60/207.

world fit for children” or are reviewing relevant national legislation in order to achieve greater consistency with the Convention on the Rights of the Child.

11. Many Governments used a broadly consultative process for developing plans of action for children and other responses. In most cases, inputs were obtained from a range of government ministries, non-governmental organizations (NGOs), agencies and organizations of the United Nations, parliamentary representatives and local government authorities. Involvement of children and young people in the preparation of national plans of action for children and sectoral plans in child-related areas has also increased since the special session. Children and young people played substantial roles in the preparation of a majority of the national plans of action for children prepared in 2004. There is scope for more active participation of children and young people in the preparation of poverty reduction strategies.

12. In some cases, however, the follow-up process was slowed by external factors, including political instability, armed conflict and other crises. Nonetheless, some Governments faced with those problems have recognized the potential of the goals of “A world fit for children” and of the Millennium Development Goals to provide a unifying agenda in the process of social recovery.

## **B. Progress and trends among regions**

13. Regions have pursued the follow-up to the special session on children at different speeds and have shown different preferences with regard to the best way to proceed. Central and Eastern Europe, the Commonwealth of Independent States and the Baltic States have made outstanding progress in the initial planning phase. Almost all countries in the region have completed follow-up plans or are well advanced in doing so.

14. Both Latin America and the Caribbean and Asia have made widespread efforts since the special session on children. In Latin America and the Caribbean, there has been a major focus on developing new national plans for children or revising existing ones. Countries in South Asia and in East Asia and the Pacific have used a wider range of instruments, including national development plans, poverty reduction strategies and sectoral plans.

15. Of 35 industrialized countries at the special session, some 21 have developed or are preparing national plans of action for children, and 6 are following up through sectoral plans. Many of those countries have undertaken consultations and media initiatives with the general public, often with the support of civil society organizations and in collaboration with the national committees for UNICEF. Some industrialized countries are also seeking to reflect the commitments of the special session on children through their official development assistance.

16. In sub-Saharan Africa, some 35 countries have opted to integrate the goals of the special session on children into their poverty reduction strategies. In addition, some 18 countries have developed or intend to develop a national plan of action or policy paper on children. A number of countries are

complementing their poverty reduction plans with specific policies and programmes on such issues as orphan care and protection, girls' education, prevention of child trafficking and the reform of juvenile justice.

17. Progress was also recorded in the Middle East and North Africa, though at a more limited pace. Ten countries in the region have developed or intend to develop a national plan of action or policy paper on children; 8 countries are integrating efforts for children into their national development plans or poverty reduction strategies; and 6 are developing sectoral plans relevant to the goals of the special session on children.

### **C. The role of regional mechanisms**

18. In every region, Governments have continued to use intergovernmental mechanisms to follow up on the special session.

19. The second Intergovernmental Conference on Children in Europe and Central Asia, which was held in Sarajevo in May, 2004, has resulted in an increased focus on protection issues, including violence against children. The regional consultation for the United Nations Study on Violence against Children, which took place in Slovenia in July 2005, considered violence in the various settings where it occurs. The Sarajevo conference has further stimulated national review and planning on children's rights. A fourth regional meeting of NGO coalitions in Europe was held in March 2005, focusing on children's rights in Europe, including the development of plans of action and advocacy with the European Union.

20. The African Union held a special summit in Ouagadougou in September 2004, in which 18 Heads of State participated to discuss poverty reduction efforts. A declaration was adopted, with an action plan that included increased support for programmes in the areas of HIV/AIDS, tuberculosis and malaria. At the subregional level, a unit was established within the Secretariat of the Economic Community of Western African States to strengthen the monitoring of the annual peer review of progress towards the commitments made at the special session and other international conferences.

21. In Latin America and the Caribbean, the sixth Ibero-American ministerial meeting on children and adolescents, held in Costa Rica, focused on the protection of children from violence and other forms of exploitation. The Ministers called for intensified efforts to prevent and combat violence and exploitation of children and asked for the establishment of a system to monitor progress towards achievement of the goals for children. At the Ibero-American summit, the leaders issued a declaration on education, including a call for "debt-for-education" sector plans.

22. In South Asia, a network of statistical bureaus was established in 2004 to monitor the Millennium Development Goals related to children. The network will explore monitoring the millennium and special session commitments in 2005. In East Asia and the Pacific, countries are tracking progress in achieving the commitments of the Bali Consensus, which lists focus areas for regional cooperation, recommends partnerships and identifies principles of action for realizing the global commitments. The seventh East Asia and

Pacific Ministerial Consultation on Children was held in March 2005 and promoted greater commitment by 26 Governments to improve the lives of the region's children.

23. The Arab Parliamentary Union hosted the first Arab parliamentary conference on child protection in Amman in November 2004, with the collaboration of the Inter-Parliamentary Union and UNICEF. A declaration was adopted, calling for all Arab parliaments and consultative councils to consider establishing a national parliamentary committee on children's rights as an oversight mechanism for all parliamentary work related to children. The Declaration also highlighted a range of specific actions that could be undertaken to strengthen the protection of children and their rights. The Arab Parliamentary Union was requested to organize a regional meeting every two years to take stock of progress.

24. Throughout all regions, coalitions and networks of religious leaders, children's rights groups, development NGOs, women's organizations, professional associations, United Nations and other organizations continue to follow up on the goals of the special session, helping to keep them high on the political agenda and contributing to their implementation. The Global Movement for Children, launched in conjunction with the special session, organized the "Lesson for Life" initiative, which mobilized 4 million children and adults in 67 countries to discuss HIV/AIDS and its impact on children on the occasion of World AIDS Day. This provided children with the opportunity to hold discussions with policymakers and contribute to national HIV/AIDS action plans.

#### **D. Strengths and weaknesses in the follow-up process**

25. **Coverage of major goal areas.** The Plan of Action of the special session emphasizes the importance of monitoring progress towards the established goals, which have provided guidance for the preparation of national plans. All the national plans of action for children prepared in 2004 address in specific terms the four areas of the Plan of Action. Other national plans — poverty reduction strategies and national development plans — refer to measures already undertaken by Governments to track the realization of the goals, including improvement of statistical systems and assessment of plan implementation. However, few of the poverty reduction strategies give significant focus to child protection issues, and many place only limited emphasis on early childhood development.

26. **Participation of civil society in the follow-up process.** Civil society is frequently involved in the preparation of plans, but less so in their implementation, monitoring and review. The preparation of poverty reduction strategies and national development plans has often involved trade unions, parliamentarians and the private sector, while the national plans of action for children have more often involved children and young people, through task forces, polls or children's parliaments. However, it appears that in many countries that are now in the implementation phase, the levels of participation have not been fully maintained.

27. **Meaningful participation of children.** The special session increased the momentum for the participation of children in national decision-making. The participation of children and young people in the preparation of national plans and in specific initiatives such as back-to-school or immunization campaigns has since increased. However, much more advocacy is needed for their participation in the full cycle of national planning.

28. **Planning for children at the subnational level.** Decentralization reforms in many countries are providing opportunities for supporting children at subnational levels. The process of developing child-related goals at the provincial and municipal levels has been completed in several countries, based on local assessments and participatory planning. There is growing recognition of the benefits of addressing challenges that children face at decentralized levels of Government, where community ownership can more readily be fostered.

29. **Provisions to reach the most disadvantaged groups.** The majority of plans and policies include approaches that focus specifically on the most disadvantaged groups. The national plans of action for children tend to address the needs of disadvantaged children more explicitly than other instruments. In most cases, the generation of data to support programmes specifically oriented to disadvantaged families and children remains a challenge.

30. **Convergence in planning for child-related goals.** The strong focus of the United Nations Millennium Declaration on the lives of children has created a positive synergy with the goals of “A world fit for children” and has led to the convergence of national planning processes around a common set of goals. Many national plans refer to both. The fact that the Millennium Development Goals benefit from widespread support from agencies whose mandate is not specifically for children means that issues relating to children are now high on the international agenda. The special session goals, for their part, provide greater specificity and also encompass the crucial area of child protection, which is not directly addressed by the Goals. Nevertheless, the impact of that convergence on programmes should be carefully monitored to ensure that it does not result in decreased visibility for children’s issues.

31. **Budget allocations to meet the goals.** Several countries are mobilizing additional resources and protecting expenditures for the four areas identified in the Plan of Action of “A world fit for children”. Poverty reduction strategies and national development plans have been useful instruments in mobilizing resources. However, few of the national plans of action for children have well-developed budget information. Efforts are needed to strengthen the link between national plans of action and national budgets.

32. **Increased attention to the Convention on the Rights of the Child.** The majority of the national plans of action for children make reference to the Convention or to the concluding observations of the Committee on the Rights of the Child on the respective country reports. Other human rights instruments, such as International Labour Organization (ILO) Convention No. 138 concerning the Minimum Age for Admission to Employment and ILO Convention No. 182 concerning the Prohibition and Immediate Action



for the Elimination of the Worst Forms of Child Labour, and the two optional protocols to the Convention on the Rights of the Child, are also increasingly recognized as part of the framework for national plans of action. Almost all the national plans of action on children prepared since the special session anticipate the need to review national legislation in relation to the provisions of the Convention. A number also propose strategies to increase the attention given to the views of children. In addition, poverty reduction strategies are increasingly taking into account elements of the Convention on the Rights of the Child.

#### **E. Strengthening of monitoring mechanisms for child goals**

33. The Plan of Action of “A world fit for children” emphasizes the importance of monitoring progress towards the adopted goals. Many countries that are implementing poverty reduction strategies or national development plans have established rigorous monitoring mechanisms, often coordinated by the central finance or planning ministry. Poverty reduction strategies normally include provisions for the involvement of major stakeholders in annual assessments and for public progress reports.

34. The mechanisms foreseen in the national plans of action for children are more variable. Some do not include a central monitoring mechanism, while in others, the body that was entrusted with the preparatory process is also responsible for monitoring and annual reporting. Many of the plans of action recognize reporting obligations to the general public and see civil society organizations as partners in monitoring progress. However, such participation in monitoring has not yet been widely institutionalized.

35. The concern for strengthening national statistical capacity, recognized in the Plan of Action, is reflected in many of the national plans for children. This includes heightened attention to disaggregated data. While many countries have well-established systems for monitoring trends related to health and education, data availability remains weak in the area of child protection.

36. The impetus behind the goals of the special session, combined with the broad international focus on the goals contained in the United Nations Millennium Declaration, has led to improvement of national monitoring systems. Many countries have moved towards unified data collection and monitoring systems for these international goals. The organizations and agencies of the United Nations and other international actors continue to collaborate in supporting a consolidated system of data collection, monitoring the goals and reporting to the Committee on the Rights of the Child.

37. Some 44 countries have adopted the *DevInfo* database system for compiling and presenting child-related data and data on the goals contained in the Millennium Declaration. United Nations agencies have made major efforts to support national capacity for regular reporting on the goals and, in some countries, to strengthen information systems on child-related goals at the subnational level. The various data collection and analysis systems will be used to generate information for reports on progress towards the goals of the Millennium Declaration and of “A world fit for children”.

38. A response related to the monitoring of child-related goals has been the widespread national reporting in the last few years on the Millennium Development Goals. As of July 2005, at least 102 countries had issued monitoring reports on the Goals.

39. UNICEF and other agencies are supporting a new round of Multiple Indicator Cluster Surveys (MICS) that will provide the largest single source of data for reporting on progress towards the Millennium Development Goals and the goals of “A world fit for children”. Comparable child-related data will also be produced by Demographic and Health Surveys. Nearly 90 countries will be engaged in household surveys during 2005 and early 2006. The surveys will provide a rich source of data for reporting to the commemorative plenary meeting in 2007 on the special session on children, on a date to be decided by the General Assembly at its sixtieth session (resolution 58/282, para. 8). It will also assist in closing some of the major gaps in information in such areas as child protection.

40. Since the special session on children, the Committee on the Rights of the Child has discussed the status of follow-up with reporting countries, and its concluding observations include comments on the oral responses of Governments on the issue. There are indications that countries preparing reports to the Committee on the Rights of the Child in 2005 and beyond will incorporate an assessment of progress in following up on the commitments of the special session.

### **III. Progress in the four major areas of “A world fit for children”**

#### **A. Promoting healthy lives**

41. Of the 10.8 million children that die each year, 6 million fall victim to diseases that could be prevented or effectively treated. The high-impact, cost-effective interventions needed to substantially reduce under-five mortality are available, but remain beyond the reach of many of the families who need them most. Other actions — such as proper infant feeding and breastfeeding — are still not practised by many families.

42. According to the child health goals of “A world fit for children” and the Millennium Development Goals, infant and under-five mortality are to be reduced by two thirds by 2015. At present, only a small proportion of countries are on track to attain these goals, and most regions are in danger of falling short if efforts are not stepped up. In support of acceleration towards the goals, the international community is launching a renewed partnership effort for child survival, including the Global Immunization Vision and Strategy for 2006-2015 prepared by the World Health Organization (WHO) and UNICEF with other partners.

43. In recent years, routine immunization has consistently benefited about three quarters of the world’s children. Current strategies, using a mix of routine services and accelerated disease-control programmes, have contributed significantly to child survival, averted an estimated 2.5 million deaths every year and prevented countless episodes of illness and disability. Still, over 29 million children, mainly in disadvantaged communities, are not

reached by routine immunization. By 2003, coverage had increased to 76 per cent in developing countries, from 73 per cent in 2001. The Global Immunization Vision and Strategy includes recommendations for a set of mutually reinforcing strategies to close the remaining gaps in coverage.

44. International partnerships have helped to spur the reduction of measles. During the period 2001-2004, about 200 million additional children were vaccinated in sub-Saharan Africa, reducing measles deaths to fewer than 240,000 in 2004. Meanwhile, the Global Polio Eradication Initiative saw an almost 50-per-cent decline in the number of reported cases in 2004 in Asia. However, setbacks occurred in Africa, and the global number of reported polio cases increased to more than 1,200, compared to 784 in 2003. Most countries continue to implement supplementary immunization activities for both polio eradication and measles control. Nevertheless, there is a critical need to strengthen routine immunization services in order to sustain the gains achieved.

45. Of the 58 countries still seeking to eliminate maternal and neonatal tetanus, 33 have initiated or expanded supplemental immunization activities for tetanus toxoid in high-risk districts over the past four years, protecting almost 46 million women. Elimination efforts have significantly reduced the number of annual neonatal tetanus deaths. However, uncertainty about future funding continues to jeopardize the attainment of this goal.

46. Efforts to improve maternal health include the strengthening of referral systems and the inclusion of emergency obstetrical care as a priority programme in national poverty reduction strategies. However, despite intensified efforts in some countries, notably in parts of Asia and Latin America, safe motherhood initiatives still tend to suffer from a shortage of resources and a lack of adequate attention.

47. The Integrated Management of Childhood Illnesses initiative is a major effort for the convergent delivery of services for child survival, growth and development. West African countries have piloted a complementary initiative for Accelerated Child Survival and Development. Those initiatives, in over 90 countries, have supported expanded coverage of high-impact health and nutrition interventions to address major causes of child death.

48. The use of insecticide treated nets to combat malaria has expanded in some 35 African countries as well as in parts of Asia and the Pacific, with a focus on promoting access among the groups most at risk. The scaling up of coverage remains a challenge, and the rates of re-treatment of the nets with the recommended insecticide remain very low in many affected countries. Long-lasting nets have now been developed, and the partners in the Roll Back Malaria initiative are working to increase both production capacity and demand. UNICEF, WHO and other partners also supported the introduction of artemisinin-based combination therapy for malaria in a number of countries during 2004.

49. The prevention of anaemia is increasingly recognized as vital to women's health and to the intellectual development of infants and young children. Food fortification and iron supplementation are widely ranked among the

most cost-effective interventions for poverty reduction. The current approach of providing iron-folate supplements during pregnancy has had limited impact on anaemia rates during pregnancy, owing to problems in distribution. Efforts are needed to scale up food fortification in many countries.

50. Iodine deficiency disorders are the most widespread cause of preventable mental retardation among children. An alliance of United Nations agencies, Governments, business, donors and NGOs is leading a successful campaign for universal salt iodization. As a result, some 54 countries faced iodine deficiency as a public health problem in 2003, down from 110 in 1993.

51. Up to 40 per cent of child deaths could be prevented with improved family care. Some 94 countries have now developed a set of recommended family and community practices to promote child survival, growth and development. Meanwhile, the number of countries with a national policy on early childhood development increased from 17 in 2002 to 34 in 2004. As a result, child development and family issues have been incorporated more fully in national programmes.

52. More than two thirds of the children in the least developed countries received vitamin A supplements in 2004. Despite the reduced use of National Immunization Days, vitamin A supplementation coverage remained steady. Most countries now have alternative strategies in place. Some 21 countries achieved over 70-per-cent coverage of children under five years of age with two rounds of supplementation. Measles vaccinations and vitamin A supplementation have also been prioritized as life-saving interventions in a number of recent emergency and post-conflict situations.

53. Revised United Nations inter-agency guidelines have emphasized the need to assist HIV-positive mothers in selecting the most appropriate infant feeding options while reducing the risk of child mortality and increasing support for breastfeeding among the general population. The introduction of the WHO/UNICEF Global Strategy for Infant and Young Child Feeding has refocused efforts, including the baby-friendly hospital initiative, on support to women and families.

54. Although the world remains on track to reach the international target for safe drinking water, it represents a significant challenge in terms of future resource requirements. South Asia has made rapid progress but continues to have the largest population without access to facilities. The lowest coverage levels continue to be in sub-Saharan Africa, despite recent progress there. Meanwhile, action on sanitation has stalled in most developing regions. More than a dozen countries in Asia and Central America now have to implement arsenic detection and mitigation programmes. Major water and sanitation interventions have also been necessary in several crisis situations, in response to conflicts and floods.

55. There is an urgent need for increased access to improved water and sanitation systems to control waterborne diseases that undermine child survival and development, reduce productivity and raise health care costs and to reduce the burdens that fall particularly on girls and women. Substantial efforts are needed for the scaling-up of locally planned interventions for poor

families; community-based hygiene improvement and water safety; and strengthened sector plans, policies and budgets for hygiene, sanitation and water supply.

### **B. Providing quality education**

56. The Millennium Development Goals promise to give all children a full primary education by 2015, and “A world fit for children” adopted targets explicitly designed to help achieve this. Problems such as armed conflict, child labour, child trafficking and HIV/AIDS create serious impediments. However, investing in basic education is clearly a major preventive measure against HIV/AIDS and child labour and is central to winning the fight against poverty.

57. The Millennium Development Goals challenge countries to achieve universal primary education, promote gender equality and empower women. Corresponding targets require that by 2015 all children should be able to complete a full course of primary schooling, and that gender disparities be eliminated in primary and secondary education by 2005. Despite progress in some regions, an estimated 115 million primary school-age children, including 62 million girls, were out of school in 2001. The bulk of the children live in South Asia or sub-Saharan Africa, but countries in other regions also have significant pockets where outcomes are poor in terms of enrolment, completion and educational achievement.

58. Many countries in sub-Saharan Africa and South Asia, in particular, face an uphill task to get enrolment on track for achieving the 2015 goal. Enrolment growth rates need to be strong enough to overtake increases in the school-age population, to compensate for the over-aged children still enrolled in primary schools and to cope with the impacts of poverty, child labour, poor health and nutrition, and HIV/AIDS, which lead to irregular attendance and dropping out. While some countries have made commendable progress in enrolment growth rates in the past 20 years, they would need to improve that performance by up to 3 times over the next 10 years. Increases in girls’ enrolment will need to be even greater. For those countries and regions on track for achieving access and parity goals, a heightened focus will be needed on issues of quality and equality.

59. Even where enrolment is generally high and gender gaps are low, as in Latin America and the Caribbean, repetition and dropout rates are often significant owing to poor quality education, classroom-level discrimination and weak public school systems. At least 55 countries are taking specific measures to boost girls’ progression to post-primary education. Nevertheless, factors such as sexual exploitation, violence and lack of post-school opportunities continue to present obstacles.

60. Although in some countries boys are disadvantaged in terms of dropout rates and learning achievement, it is mainly girls who are disadvantaged — both as a group and as a subgroup of the disadvantaged, such as rural poor, ethnic minorities and indigenous populations. For all of the groups, disadvantage begins in the early years. These children are more likely to start school later than the prescribed age, less likely to be developmentally ready

or well prepared for school and more prone to drop out or fail to achieve in school.

61. The Millennium Summit and the special session on children aspired to eliminate gender disparities in primary and secondary education by 2005. However, the United Nations Educational, Scientific and Cultural Organization (UNESCO) estimates that 76 countries are likely to miss reaching gender parity at the primary and secondary levels by 2005. Increases in enrolment have not necessarily been accompanied by reductions in the gender gap. UNICEF estimates that while the ratio of girls' to boys' gross enrolment increased from 86 per cent to 92 per cent in developing countries during the 1990s, girls' primary school completion rates still lagged behind those of boys by almost 10 per cent in 2002. That highlights the importance of targeted interventions to address the specific factors affecting the education of girls.

62. Advocacy on Education for All and the urgency of the target for gender parity in basic education by 2005 have helped to create a climate for action in most regions. Some 79 countries now have national plans relating to Education for All that include explicit measures to reduce the number of out-of-school girls. Those measures are helping to boost access through interventions ranging from advocacy and the provision of school meals and classroom materials to intersectoral efforts that incorporate health, nutrition, water and sanitation and sometimes protection initiatives in schools.

63. Meanwhile, the United Nations Girls' Education Initiative is providing a basis for greater strategic focus in building alliances for girls' education. Regional focal points and a global advisory committee have been set up, and a work plan has been developed that commits partners to working on specific tasks. The Education for All — Fast Track Initiative, launched by the World Bank in 2002, has also helped to increase the focus on disparities in dropout and completion rates.

64. The most widespread gains in enrolment and gender parity have generally come about through mainstreaming efforts or through large-scale campaigns, such as "back-to-school" programmes in post-conflict situations. In other cases, such gains have been associated with major policy changes such as the abolition of school fees.

65. The assessment of progress in improving the quality of education has been hampered by a lack of widely used indicators. There remains a need for a comprehensive strategy for the monitoring and assessment of education quality. At the policy level, there is now greater emphasis on conditions that are likely to contribute to quality improvements, such as gender-sensitive curricula and teaching methods, adequate learning materials in both regular and post-crisis situations, clean water and sanitation facilities in schools and the promotion of hygiene and life skills education. About 41 countries have adopted a "child-friendly" package approach which promotes physical improvements in schools together with the training of teachers and such interventions as school meals.

### **C. Protecting against abuse, exploitation and violence**

66. An estimated 300 million children worldwide are subjected to violence, exploitation and abuse, including the worst forms of child labour; violence and abuse in communities, schools, institutions and workplaces or during armed conflict; and such harmful practices as female genital mutilation or cutting and child marriage. During armed conflict and natural disasters, and in areas where HIV/AIDS is prevalent, children deprived of or separated from their families become especially vulnerable to such practices. Children in institutions also frequently face adverse conditions.

67. Conflicts have continued to create large numbers of refugee and internally displaced children whose human rights, including the right to survival, are put at great risk. Globally, poverty and family breakdown still leave many millions of children living on the streets, working in hazardous occupations, exposed to violence and abuse or deprived of access to education. The growing numbers of HIV/AIDS orphans puts many more children at risk of child labour or in need of alternative forms of family care.

68. The most prominent gaps in protecting children worldwide are in the following areas: sexual abuse and exploitation, including in armed conflict; the use of children as soldiers; trafficking; hazardous work; harmful practices; and the situation of children not in the care of their families or in conflict with the law.

69. As the prevalence and severity of child protection issues have become better known, Governments have responded by ratifying human rights conventions and making a commitment to new standards, such as the optional protocols addressing trafficking, child prostitution and child pornography, and children in armed conflict. Countries continue to commit themselves to improved international standards for child protection.

70. Substantial progress has been made in the adoption by Governments of the Optional Protocols to the Convention on the Rights of the Child. International Labour Organization Convention 182 on the worst forms of child labour had been ratified by 156 countries by July 2005, an increase of 41 since 2001.

71. Progress is especially apparent in the reform of juvenile justice systems, although custodial sentencing continues to be too heavily used as a response to children in conflict with the law. More than 80 countries have adopted specific action plans and concrete programmes to address child labour. Progress on the review and strengthening of legal standards to protect children from violence has been encouraging, particularly in Central and Eastern Europe and in Latin America and the Caribbean. Guidelines have also been developed on justice in matters involving child victims and witnesses of crime.

72. The Department of Peacekeeping Operations and UNICEF have collaborated to ensure the consideration of child protection in peacekeeping missions. Those offices and agencies, the World Bank, the International Labour Office and non-governmental organizations have also supported the demobilization and reintegration of child soldiers in several countries. Work

has been stepped up to protect women and children from sexual violence in emergencies, including through the training of humanitarian workers and the establishment of procedures for the reporting of abuse.

73. United Nations agencies and other partners have continued to work with Governments and civil society to generate support for laws and systems that protect children. Those partnerships have helped strengthen both the provision of preventive and protective services — for example, by the reform of juvenile justice systems — and community-led efforts to keep children safe. Such efforts have helped to establish a more protective environment in some countries and need to be pursued more widely.

74. Growth in information, combined with continued advocacy for policy reform, has helped to raise awareness of violence against and exploitation and abuse of children. With it has come increased political will to act, as seen in the response to the Indian Ocean tsunami. Global initiatives, such as the mid-term review of the outcomes of the second World Congress against Commercial Sexual Exploitation of Children, held in Yokohama, Japan, in 2001, based on regional consultations and with the involvement of young people, and the United Nations Study on Violence against Children have also increased attention to child protection.

75. Birth registration rates have risen sharply in parts of Africa, Asia, Latin America and the Caribbean. New legislation and measures to reduce the costs to parents have contributed to a greater demand for birth registration. However, stronger partnerships are needed to build capacity in the civil administration systems on which sustained birth registration depends.

76. Intercountry cooperation and the involvement of groups, such as parliamentarians, can be effective in tackling such sensitive issues as cross-border trafficking and the commercial sexual exploitation of children. However, the incorporation of child protection in wider development frameworks has not been extensive enough, owing in part to a lack of attention to the wider concerns of the United Nations Millennium Declaration.

#### **D. Combating HIV/AIDS**

77. The Millennium Development Goals articulated the global commitment to halt and begin to reverse the spread of HIV/AIDS by 2015. Almost all affected or vulnerable countries are now implementing plans and programmes to meet that commitment. Despite those efforts, many affected people, including children, have yet to receive the attention they need in AIDS-specific and related initiatives and in funding mechanisms.

78. The impact of HIV/AIDS is devastating and is likely to get worse. In 2004, 40 million people were living with HIV/AIDS. Of those, 2.2 million were children under 15. In addition, some 510,000 children below 15 years of age died of AIDS, and 640,000 were newly infected with HIV, mostly through a failure to prevent mother-to-child transmission. Between 2001 and 2003, the number of children estimated to have been orphaned by AIDS rose from 11.5 to 15 million. By 2010, the number of children orphaned by AIDS



in sub-Saharan Africa alone is projected to exceed 18 million. The epidemic is also increasing in intensity in other regions, including South and East Asia, the Caribbean, Latin America and Eastern Europe.

79. In the worst-affected countries in sub-Saharan Africa, children's lives are being radically worsened by the impact of HIV/AIDS on their families and communities and on education, health care, food security and welfare systems. Many millions of adolescents are at risk and vulnerable to HIV infection as they approach adulthood. In regions where prevalence is still low and/or concentrated in specific areas or population groups, the challenge is to halt the epidemic before it spreads to the general population.

80. Increasingly, the face of HIV/AIDS is young and female. Women and girls now account for half of all people infected with HIV. The numbers are likely to rise since biological and social factors make them more vulnerable to infection than men or boys. Poverty, gender inequality and exploitation are at the root of those vulnerabilities.

81. Where HIV/AIDS is declining, it is primarily because young people have learned to practice safe behaviours. Responses are increasingly focused on meeting young people's needs for appropriate information, skills and services. A number of countries are now developing or have national strategies in place for preventing HIV among young people. A key challenge is often to ensure that young people are reached early in adolescence and that skills development continues through to young adulthood. Rapid expansion of appropriate life skills-based education is a priority.

82. At the end of 2004, the Joint United Nations Programme on HIV/AIDS (UNAIDS) reported that less than 1 per cent of adults were utilizing voluntary counselling and testing services in the 73 countries most affected by AIDS, that fewer than 10 per cent of pregnant women had access to effective services for the prevention of mother-to-child transmission and that less than 3 per cent of orphans and vulnerable children were receiving adequate support. This picture gives some indication of how far the global fight still has to go.

83. In 2004, the WHO/UNAIDS 3 by 5 Initiative provided the impetus for greatly increased access to treatment and could remove many barriers to future prevention, such as stigma and lack of access to HIV testing. There was a significant increase in the availability of funds from such sources as the Global Fund to Fight AIDS, Tuberculosis and Malaria; the President of the United States of America's Emergency Plan for AIDS Relief; and the World Bank Multi-Country AIDS Programme. Several United Nations agencies provided technical assistance for the development of funding proposals and, in some cases, procurement services. Nonetheless, country proposals need to do more to encourage attention to affected or vulnerable children and adolescents.

84. To date, an estimated 89 countries have adopted national strategies for the prevention of mother-to-child transmission of HIV/AIDS; 79, for school-based life skills education; and 47, for the protection and care of orphans and vulnerable children. While progress has been encouraging, greater efforts are

still needed, including in countries with low prevalence. A further key challenge is to ensure that successful interventions are in fact implemented on a national scale. In 2003, only 2 per cent of HIV-positive women identified through prevention programmes received antiretroviral treatment. Only a very limited number of children in poor countries have access to cotrimoxazole to prevent common infections.

85. There is also increasing awareness of the importance of nutrition for children infected by HIV, with wider development of policies and guidelines on infant feeding and measures to ensure that HIV-positive women receive support in using safe child-feeding options. Nutritional security initiatives for children affected by HIV/AIDS are also being supported by the United Nations in selected countries, including the Food and Agriculture Organization of the United Nations (FAO), UNICEF and the World Food Programme (WFP).

86. Support for orphans and vulnerable children and for the families and communities that provide the immediate response is still reaching only limited numbers. Greater attention to these children is needed in most national development plans. In 2004, 16 African countries and international partners undertook planning exercises to expand interventions and funding. The global partners forum on orphans and vulnerable children, convened by the World Bank and UNICEF, provides a mechanism for tracking responses and for coordinated action on such issues as removal of financial barriers to schooling.

87. To promote harmonization, effective use of resources, rapid action and results-based management, the “three ones” principles were adopted by developing countries and key partners in 2004. The principles call for support of one national plan, one coordinating mechanism and one monitoring and evaluation system in each country. United Nations country theme groups are working with other partners to put the principles into effect. There has been progress in establishing indicators, and approximately 74 countries now have monitoring mechanisms in place or under development.

88. The partners in the fight against AIDS face strategic challenges in deploying available resources to curb the spread of the epidemic among children and adolescents while at the same time providing care, support and treatment to those already affected. Overall, since the special sessions of the General Assembly on HIV/AIDS and on children, there has been stronger leadership at all levels, and new resources have been mobilized. Access to antiretroviral treatment has become an international priority, although preventing and addressing paediatric AIDS remain a major challenge. The progress achieved still pales in comparison with the epidemic’s spread and impact, especially on children and young people.

#### **IV. Ways forward**

89. The United Nations special session on children adopted a set of goals that complement and strongly reinforce the Millennium Declaration and the Millennium Development Goals, bringing more specificity to the actions that are needed to achieve them. The updated analysis of progress in the present

report suggests that most of the goals of “A world fit for children” will be achieved only through a major intensification of action for disadvantaged children and families across the world.

90. During the three years since the special session, there have been numerous but often isolated examples of rapid progress in individual countries and in regions. The examples demonstrate that accelerated progress is possible but also that current efforts need to be expanded and better supported by resource allocations, and at the political level.

91. Of the 190 countries that adopted “A world fit for children”, at least 172, subsequently joined by Timor-Leste, have now taken or foresee taking action to operationalize its goals. Of those, some 114 have opted for national plans of action or policies specifically for children, while others have incorporated the goals, to a greater or lesser extent, in macroplanning or sectoral planning instruments. Many of the plans of action, however, have yet to fully develop linkages to national budgeting, implementation and monitoring mechanisms.

92. The goals of “A world fit for children” are benefiting from the widespread support among Governments and international agencies for the goals adopted at the Millennium Summit, since the two are mutually enhancing. However, the lack of inclusion of child protection targets in the Millennium Development Goals continues to pose the challenge of ensuring that this priority area is appropriately considered in macrolevel plans, including in poverty reduction strategies. The plans should take account of the ways in which the protection of children affects the fulfilment of human rights and of how an insufficient focus on addressing such problems as child trafficking, child labour and violence against children is likely to hinder progress in national development significantly.

93. Much work remains to be done in order to ensure adequate and sustained national budget allocations for children, supplemented by donor assistance where needed. Countries with poverty reduction strategies and national development plans generally have well elaborated budgets, and those instruments provide an important means for directing resources to programmes that benefit children.

94. In many countries, the implementation of programmes for children will continue to be a challenge owing to weaknesses of institutional capacity in addition to budgetary constraints and, in a number of cases, conflict and instability. Among the possible ways forward are the establishment of high-level national councils for children, capacity-building of national children’s agencies and collaboration with parliamentarians and civil society organizations in the promotion of child-focused budgets. Some of the most notable successes have been at subnational levels. Strengthening local government agencies can assist in the development, implementation and monitoring of child-centred programmes and can lead to greater integration and relevance of efforts as well as to local mobilization.

95. The more inclusive processes that have been used in the initial follow-up to the special session on children have resulted in a greater sense of ownership by civil society organizations and in the expectation that they will

continue to be involved in subsequent phases. High priority should be given to developing structures and processes for facilitating the ongoing involvement of civil society — including children and young people — as a key part of the effort to mobilize society's resources to fulfil the rights of children.

96. Especially innovative has been the recognition of children and young people as a major constituency, in addition to their involvement in many government-led decision-making processes. During the period since the special session, activities undertaken by and with children and young people have proliferated. Those trends have also increased the need for adequate support and standards for the continued participation of children in reviews of progress.

97. Building on the efforts already made by Governments, regular reporting to the public on progress towards the goals of the United Nations Millennium Declaration and of “A world fit for children” should be ensured as an important means of social mobilization for development and as a way to strengthen accountability. In addition, civil society and community groups could be helped to generate information in specific areas, such as on the protection and care of children orphaned owing to AIDS. Greater emphasis should also be placed on the generation and use of data that is disaggregated by gender, location and other key variables in order to address disparities and support local follow-up actions.

98. Regional mechanisms are playing an important role in maintaining political support for the goals of the special session on children and in monitoring progress across countries through peer reviews. The mechanisms could be further used to facilitate the intercountry exchange of experience and good practices in child-related programmes.

99. At the international level, the Committee on the Rights of the Child has the potential to promote a closer linkage between follow-up on the special session goals, the Millennium Development Goals and periodic reports by State parties on the Convention on the Rights of the Child. Use should be made of the Committee's concluding observations on State party reports to maintain government and public mobilization with respect to the goals for children. The United Nations system should continue to assist Member States in their follow-up to the Observations where required.

100. “A world fit for children”, the outcome document adopted at the twenty-seventh special session of the General Assembly, and subsequent resolutions have called on the Secretary-General to report regularly to the Assembly on progress in implementing the Declaration and Plan of Action contained in that document. A further update on progress will, accordingly, be provided to the Assembly in 2006, leading up to a more detailed report and analysis to be presented to the commemorative plenary meeting to be scheduled for 2007. The review process leading to the detailed report will be based on national sources, and all countries will be requested to hold a participatory review with stakeholders and provide a progress report in standardized format before the end of 2006.

101. The United Nations system remains committed to providing support to national and regional initiatives where required. UNICEF will continue to work closely with Governments and with other United Nations and international partners, including for the collection and dissemination of information on progress and experience gained in the implementation of the Declaration and Plan of Action of “A world fit for children”.

## 1.3 GENERAL COMMENTS

### Convention on the Rights of the Child, General Comment no. 1, The Aims of Education, Art. 29 (1) (2001)<sup>1</sup>

Adoption: 17 April 2001

#### Appendix

#### GENERAL COMMENT 1 (2001): THE AIMS OF EDUCATION

##### *The significance of article 29 (1)*

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

2. Article 29 (1) not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.<sup>2</sup> The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

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<sup>1</sup> Source: CRC/GC/2001/1.

<sup>2</sup> 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.

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.<sup>3</sup> 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

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<sup>3</sup> 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.

(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 recognition of the fact that every child has unique characteristics,



interests, abilities, and learning needs.<sup>4</sup> 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.<sup>5</sup> Children with HIV/AIDS are also heavily discriminated against in both settings.<sup>6</sup> 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.

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<sup>4</sup> United Nations Educational, Scientific and Cultural Organization, *The Salamanca Statement and Framework for Action on Special Needs Education*, 1994, p. viii.

<sup>5</sup> See General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.

<sup>6</sup> 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).

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 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.<sup>7</sup>

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.<sup>8</sup> 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

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<sup>7</sup> See General Assembly resolution 49/184 of 23 December 1994 proclaiming the United Nations Decade for Human Rights Education.

<sup>8</sup> Education for All: Meeting our Collective Commitments, adopted at the World Education Forum, Dakar, 26-28 April 2000.

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".<sup>9</sup>

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

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<sup>9</sup> 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).

ensure that children, parents and teachers can have an input in decisions relevant to education.

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

24. The design and implementation of programmes to promote the values reflected in this article should become part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred. Thus, for example, where major incidents of racism, racial discrimination, xenophobia and related intolerance occur which involve those under 18, it can reasonably be presumed that the Government has not done all that 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).



## **Convention on the Rights of the Child, General Comment no. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (2005)<sup>1</sup>**

**Adoption: 1 September 2005**

### **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.

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<sup>1</sup> Source: CRC/GC/2005/6.



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 1977. 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.<sup>2</sup>

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

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<sup>2</sup> 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.

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,<sup>3</sup> 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

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<sup>3</sup> 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.

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.

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<sup>4</sup>**

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,

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<sup>4</sup> 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”.

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.

## **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.

**Convention on the Rights of the Child, General Comment  
no. 10, Children’s Rights in Juvenile Justice (2007)  
(excerpts)<sup>1</sup>**

**Adoption: 25 April 2007**

(...)

**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

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<sup>1</sup> Source: CRC/C/GC/10.



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).<sup>2</sup>

### **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.

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<sup>2</sup> 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.





# **Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment no. 13, The Right to Education (1999) (excerpts)<sup>1</sup>**

**Adoption: 08 December 1999**

## **I. NORMATIVE CONTENT OF ARTICLE 13**

(...)

### **Article 13 (1): Aims and objectives of education**

4. States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1). The Committee notes that these educational objectives reflect the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 (2) of the Universal Declaration of Human Rights, although article 13 (1) adds to the Declaration in three respects: education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups. Of those educational objectives which are common to article 26 (2) of the Universal Declaration of Human Rights and article 13 (1) of the Covenant, perhaps the most fundamental is that "education shall be directed to the full development of the human personality".

5. The Committee notes that since the General Assembly adopted the Covenant in 1966, other international instruments have further elaborated the objectives to which education should be directed. Accordingly, the Committee takes the view that States parties are required to ensure that education conforms to the aims and objectives identified in article 13 (1), as interpreted in the light of the World Declaration on Education for All (Jomtien, Thailand, 1990) (art. 1), the Convention on the Rights of the Child (art. 29 (1)), the Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para. 80), and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2). While all these texts closely correspond to article 13 (1) of the Covenant, they also include elements which are not expressly provided for in article 13 (1), such as specific references to gender equality and respect for the environment. These new elements are implicit in, and reflect a contemporary interpretation of article 13 (1). The Committee obtains support for this point of view from the widespread endorsement that the previously mentioned texts have received from all regions of the world.<sup>2</sup>

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<sup>1</sup> Source: E/C.12/1999/10.

<sup>2</sup> The World Declaration on Education for All was adopted by 155 governmental delegations; the Vienna Declaration and Programme of Action was adopted by 171 governmental delegations; the Convention on the Rights of the Child has been ratified or

## **Article 13 (2): The right to receive an education - some general remarks**

6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:<sup>3</sup>

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education;

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1)

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acceded to by 191 States parties; the Plan of Action of the United Nations Decade for Human Rights Education was adopted by a consensus resolution of the General Assembly (49/184).

<sup>3</sup> This approach corresponds with the Committee's analytical framework adopted in relation to the rights to adequate housing and food, as well as the work of the United Nations Special Rapporteur on the right to education. In its General Comment 4, the Committee identified a number of factors which bear upon the right to adequate housing, including "availability", "affordability", "accessibility" and "cultural adequacy". In its General Comment 12, the Committee identified elements of the right to adequate food, such as "availability", "acceptability" and "accessibility". In her preliminary report to the Commission on Human Rights, the Special Rapporteur on the right to education sets out "four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability", (E/CN.4/1999/49, para. 50).

and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

7. When considering the appropriate application of these "interrelated and essential features" the best interests of the student shall be a primary consideration.

#### **Article 13 (2) (a): The right to primary education**

8. Primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>4</sup>

9. The Committee obtains guidance on the proper interpretation of the term "primary education" from the World Declaration on Education for All which states: "The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community" (art. 5). "[B]asic learning needs" are defined in article 1 of the World Declaration.<sup>5</sup>

While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by UNICEF: "Primary education is the most important component of basic education."<sup>6</sup>

10. As formulated in article 13 (2) (a), primary education has two distinctive features: it is "compulsory" and "available free to all". For the Committee's observations on both terms, see paragraphs 6 and 7 of General Comment 11 on article 14 of the Covenant.

#### **Article 13 (2) (b): The right to secondary education**

11. Secondary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>7</sup>

12. While the content of secondary education will vary among States parties and over time, it includes completion of basic education and consolidation of

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<sup>4</sup> See para. 6.

<sup>5</sup> The Declaration defines "basic learning needs" as: "essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning" (art. 1).

<sup>6</sup> Advocacy Kit, Basic Education 1999 (UNICEF), section 1, p. 1.

<sup>7</sup> See para. 6.

the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.<sup>8</sup>

Article 13 (2) (b) applies to secondary education "in its different forms", thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. The Committee encourages "alternative" educational programmes which parallel regular secondary school systems.

13. According to article 13 (2) (b), secondary education "shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education". The phrase "generally available" signifies, firstly, that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all. For the Committee's interpretation of "accessible", see paragraph 6 above. The phrase "every appropriate means" reinforces the point that States parties should adopt varied and innovative approaches to the delivery of secondary education in different social and cultural contexts.

14. "[P]rogressive introduction of free education" means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education. For the Committee's general observations on the meaning of the word "free", see paragraph 7 of General Comment 11 on article 14.

### **Technical and vocational education**

15. Technical and vocational education (TVE) forms part of both the right to education and the right to work (art. 6 (2)). Article 13 (2) (b) presents TVE as part of secondary education, reflecting the particular importance of TVE at this level of education. Article 6 (2), however, does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping "to achieve steady economic, social and cultural development and full and productive employment". Also, the Universal Declaration of Human Rights states that "[t]echnical and professional education shall be made generally available" (art. 26 (1)). Accordingly, the Committee takes the view that TVE forms an integral element of all levels of education.<sup>9</sup>

16. An introduction to technology and to the world of work should not be confined to specific TVE programmes but should be understood as a component of general education. According to the UNESCO Convention on Technical and Vocational Education (1989), TVE consists of "all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the

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<sup>8</sup> See International Standard Classification of Education 1997, UNESCO, para. 52.

<sup>9</sup> A view also reflected in the Human Resources Development Convention 1975 (Convention No. 142) and the Social Policy (Basic Aims and Standards) Convention 1962 (Convention No. 117) of the International Labour Organization.

various sectors of economic and social life" (art. 1 (a)). This view is also reflected in certain ILO Conventions.<sup>10</sup> Understood in this way, the right to TVE includes the following aspects:

- (a) It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party's economic and social development;
- (b) It takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification needed in the various sectors of the economy; and occupational health, safety and welfare;
- (c) Provides retraining for adults whose current knowledge and skills have become obsolete owing to technological, economic, employment, social or other changes;
- (d) It consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;
- (e) It consists, in the context of the Covenant's non-discrimination and equality provisions, of programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities and other disadvantaged groups.

#### **Article 13 (2) (c): The right to higher education**

17. Higher education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms at all levels.<sup>11</sup>

18. While article 13 (2) (c) is formulated on the same lines as article 13 (2) (b), there are three differences between the two provisions. Article 13 (2) (c) does not include a reference to either education "in its different forms" or specifically to TVE. In the Committee's opinion, these two omissions reflect only a difference of emphasis between article 13 (2) (b) and (c). If higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education have to be available "in different forms". As for the lack of reference in article 13 (2) (c) to technical and vocational education, given article 6 (2) of the Covenant and article 26 (1) of the Universal Declaration, TVE forms an integral component of all levels of education, including higher education.<sup>12</sup>

19. The third and most significant difference between article 13 (2) (b) and (c) is that while secondary education "shall be made generally available and

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<sup>10</sup> See note 8.

<sup>11</sup> See para. 6.

<sup>12</sup> See para. 15.

accessible to all", higher education "shall be made equally accessible to all, on the basis of capacity". According to article 13 (2) (c), higher education is not to be "generally available", but only available "on the basis of capacity". The "capacity" of individuals should be assessed by reference to all their relevant expertise and experience.

20. So far as the wording of article 13 (2) (b) and (c) is the same (e.g. "the progressive introduction of free education"), see the previous comments on article 13 (2) (b).

#### **Article 13 (2) (d): The right to fundamental education**

21. Fundamental education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.<sup>13</sup>

22. In general terms, fundamental education corresponds to basic education as set out in the World Declaration on Education For All.<sup>14</sup> By virtue of article 13 (2) (d), individuals "who have not received or completed the whole period of their primary education" have a right to fundamental education, or basic education as defined in the World Declaration on Education For All.

23. Since everyone has the right to the satisfaction of their "basic learning needs" as understood by the World Declaration, the right to fundamental education is not confined to those "who have not received or completed the whole period of their primary education". The right to fundamental education extends to all those who have not yet satisfied their "basic learning needs".

24. It should be emphasized that enjoyment of the right to fundamental education is not limited by age or gender; it extends to children, youth and adults, including older persons. Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.

#### **Article 13 (2) (e): A school system; adequate fellowship system; material conditions of teaching staff**

25. The requirement that the "development of a system of schools at all levels shall be actively pursued" means that a State party is obliged to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the Covenant requires States parties to prioritize primary education (see para. 51). "[A]ctively pursued" suggests that the overall strategy should attract a degree of governmental priority and, in any event, must be implemented with vigour.

26. The requirement that "an adequate fellowship system shall be established" should be read with the Covenant's non-discrimination and

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<sup>13</sup> See para. 6.

<sup>14</sup> See para. 9.

equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.

27. While the Covenant requires that "the material conditions of teaching staff shall be continuously improved", in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States parties in recent years. Not only is this inconsistent with article 13 (2) (e), but it is also a major obstacle to the full realization of students' right to education. The Committee also notes the relationship between articles 13 (2) (e), 2 (2), 3 and 6-8 of the Covenant, including the right of teachers to organize and bargain collectively; draws the attention of States parties to the joint UNESCO-ILO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997); and urges States parties to report on measures they are taking to ensure that all teaching staff enjoy the conditions and status commensurate with their role.

### **Article 13 (3) and (4): The right to educational freedom**

28. Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>15</sup>

The Committee is of the view that this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

29. The second element of article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to "such minimum educational standards as may be laid down or approved by the State". This has to be read with the complementary provision, article 13 (4), which affirms "the liberty of individuals and bodies to establish and direct educational institutions", provided the institutions conform to the educational objectives set out in article 13 (1) and certain minimum standards. These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).

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<sup>15</sup> This replicates article 18 (4) of the International Covenant on Civil and Political Rights (ICCPR) and also relates to the freedom to teach a religion or belief as stated in article 18 (1) ICCPR. (See Human Rights Committee General Comment 22 on article 18 ICCPR, forty-eighth session, 1993.) The Human Rights Committee notes that the fundamental character of article 18 ICCPR is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of that Covenant.



30. Under article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to "bodies", i.e. legal persons or entities. It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education. Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.

### **Article 13: Special topics of broad application**

#### **Non-discrimination and equal treatment**

31. The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination. The Committee interprets articles 2 (2) and 3 in the light of the UNESCO Convention against Discrimination in Education, the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the ILO Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169), and wishes to draw particular attention to the following issues.

32. The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.

33. In some circumstances, separate educational systems or institutions for groups defined by the categories in article 2 (2) shall be deemed not to constitute a breach of the Covenant. In this regard, the Committee affirms article 2 of the UNESCO Convention against Discrimination in Education (1960).<sup>16</sup>

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<sup>16</sup> According to article 2:

"When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such

34. The Committee takes note of article 2 of the Convention on the Rights of the Child and article 3 (e) of the UNESCO Convention against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.

35. Sharp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant.

36. The Committee affirms paragraph 35 of its General Comment 5, which addresses the issue of persons with disabilities in the context of the right to education, and paragraphs 36-42 of its General Comment 6, which address the issue of older persons in relation to articles 13-15 of the Covenant.

37. States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.

(...)

### *Discipline in schools*<sup>18</sup>

41. 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 of Human Rights and both Covenants: the dignity of the individual.<sup>19</sup> Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States parties which actively encourage schools to introduce "positive", non-violent approaches to school discipline.

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standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level."

<sup>18</sup> In formulating this paragraph, the Committee has taken note of the practice evolving elsewhere in the international human rights system, such as the interpretation given by the Committee on the Rights of the Child to article 28 (2) of the Convention on the Rights of the Child, as well as the Human Rights Committee's interpretation of article 7 of ICCPR.

<sup>19</sup> The Committee notes that, although it is absent from article 26 (2) of the Declaration, the drafters of ICESCR expressly included the dignity of the human personality as one of the mandatory objectives to which all education is to be directed (art. 13 (1)).

## **Limitations on article 13**

42. The Committee wishes to emphasize that the Covenant's limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.

## **II. STATES PARTIES' OBLIGATIONS AND VIOLATIONS**

### **General legal obligations**

43. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect.<sup>20</sup>

States parties have immediate obligations in relation to the right to education, such as the "guarantee" that the right "will be exercised without discrimination of any kind" (art. 2 (2)) and the obligation "to take steps" (art. 2 (1)) towards the full realization of article 13.<sup>21</sup>

Such steps must be "deliberate, concrete and targeted" towards the full realization of the right to education.

44. The realization of the right to education over time, that is "progressively", should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive realization means that States parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realization of article 13.<sup>22</sup>

45. There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.<sup>23</sup>

46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to

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<sup>20</sup> See the Committee's General Comment 3, para. 1.

<sup>21</sup> See the Committee's General Comment 3, para. 2.

<sup>22</sup> See the Committee's General Comment 3, para. 9.

<sup>23</sup> See the Committee's General Comment 3, para. 9.

protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

48. In this respect, two features of article 13 require emphasis. First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the "development of a system of schools at all levels shall be actively pursued" (art. 13 (2) (e)). Secondly, given the differential wording of article 13 (2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party's obligation to fulfil (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. The Committee observes that this interpretation of the obligation to fulfil (provide) in relation to article 13 coincides with the law and practice of numerous States parties.

### **Specific legal obligations**

49. States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1).<sup>24</sup> They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1).

50. In relation to article 13 (2), States have obligations to respect, protect and fulfil each of the "essential features" (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and

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<sup>24</sup> There are numerous resources to assist States parties in this regard, such as UNESCO's Guidelines for Curriculum and Textbook Development in International Education (ED/ECS/HCI). One of the objectives of article 13 (1) is to "strengthen the respect of human rights and fundamental freedoms"; in this particular context, States parties should examine the initiatives developed within the framework of the United Nations Decade for Human Rights Education - especially instructive is the Plan of Action for the Decade, adopted by the General Assembly in 1996, and the Guidelines for National Plans of Action for Human Rights Education, developed by the Office of the High Commissioner for Human Rights to assist States in responding to the United Nations Decade for Human Rights Education.

of good quality for all; fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries. 51. As already observed, the obligations of States parties in relation to primary, secondary, higher and fundamental education are not identical. Given the wording of article 13 (2), States parties are obliged to prioritize the introduction of compulsory, free primary education.<sup>25</sup> This interpretation of article 13 (2) is reinforced by the priority accorded to primary education in article 14. The obligation to provide primary education for all is an immediate duty of all States parties.

52. In relation to article 13 (2) (b)-(d), a State party has an immediate obligation "to take steps" (art. 2 (1)) towards the realization of secondary, higher and fundamental education for all those within its jurisdiction. At a minimum, the State party is required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education in accordance with the Covenant. This strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored. 53. Under article 13 (2) (e), States parties are obliged to ensure that an educational fellowship system is in place to assist disadvantaged groups.<sup>26</sup> The obligation to pursue actively the "development of a system of schools at all levels" reinforces the principal responsibility of States parties to ensure the direct provision of the right to education in most circumstances.<sup>27</sup>

54. States parties are obliged to establish "minimum educational standards" to which all educational institutions established in accordance with article 13 (3) and (4) are required to conform. They must also maintain a transparent and effective system to monitor such standards. A State party has no obligation to fund institutions established in accordance with article 13 (3) and (4); however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.

55. States parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7 (2) of the Worst Forms of Child Labour Convention, 1999 (Convention No. 182).<sup>28</sup> Additionally, given article 2 (2), States parties are

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<sup>25</sup> On the meaning of "compulsory" and "free", see paragraphs 6 and 7 of General Comment 11 on article 14.

<sup>26</sup> In appropriate cases, such a fellowship system would be an especially appropriate target for the international assistance and cooperation anticipated by article 2 (1).

<sup>27</sup> In the context of basic education, UNICEF has observed: "Only the State can pull together all the components into a coherent but flexible education system". UNICEF, The State of the World's Children, 1999, "The education revolution", p. 77.

<sup>28</sup> According to article 7 (2), "(e)ach Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to: (c)

obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.

56. In its General Comment 3, the Committee drew attention to the obligation of all States parties to take steps, "individually and through international assistance and cooperation, especially economic and technical", towards the full realization of the rights recognized in the Covenant, such as the right to education.<sup>29</sup> Articles 2 (1) and 23 of the Covenant, Article 56 of the Charter of the United Nations, article 10 of the World Declaration on Education for All, and Part I, paragraph 34 of the Vienna Declaration and Programme of Action all reinforce the obligation of States parties in relation to the provision of international assistance and cooperation for the full realization of the right to education. In relation to the negotiation and ratification of international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to education. Similarly, States parties have an obligation to ensure that their actions as members of international organizations, including international financial institutions, take due account of the right to education.

57. In its General Comment 3, the Committee confirmed that States parties have "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels" of each of the rights enunciated in the Covenant, including "the most basic forms of education". In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (art. 13 (3) and (4)).

### **Violations**

58. When the normative content of article 13 (Part I) is applied to the general and specific obligations of States parties (Part II), a dynamic process is set in motion which facilitates identification of violations of the right to education. Violations of article 13 may occur through the direct action of States parties (acts of commission) or through their failure to take steps required by the Covenant (acts of omission).

59. By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of

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ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour" (ILO Convention 182, Worst Forms of Child Labour, 1999).

<sup>29</sup> See the Committee's General Comment 3, paras 13-14.

curricula inconsistent with the educational objectives set out in article 13 (1); the failure to maintain a transparent and effective system to monitor conformity with article 13 (1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take "deliberate, concrete and targeted" measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational institutions; the failure to ensure private educational institutions conform to the "minimum educational standards" required by article 13 (3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.

### **III. OBLIGATIONS OF ACTORS OTHER THAN STATES PARTIES**

60. Given article 22 of the Covenant, the role of the United Nations agencies, including at the country level through the United Nations Development Assistance Framework (UNDAF), is of special importance in relation to the realization of article 13. Coordinated efforts for the realization of the right to education should be maintained to improve coherence and interaction among all the actors concerned, including the various components of civil society. UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the regional development banks, the International Monetary Fund and other relevant bodies within the United Nations system should enhance their cooperation for the implementation of the right to education at the national level, with due respect to their specific mandates, and building on their respective expertise. In particular, the international financial institutions, notably the World Bank and IMF, should pay greater attention to the protection of the right to education in their lending policies, credit agreements, structural adjustment programmes and measures taken in response to the debt crisis.<sup>30</sup> When examining the reports of States parties, the Committee will consider the effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under article 13. The adoption of a human rights-based approach by United Nations specialized agencies, programmes and bodies will greatly facilitate implementation of the right to education.

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<sup>30</sup> See the Committee's General Comment 2, para. 9.

## 2. INTERNATIONAL LABOUR LAW

### ILO Convention 138, Minimum Age Convention, 1973 (excerpts)<sup>1</sup>

**Adoption: 26 June 1973**

**Entry into force: 19 June 1976**

#### Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

#### Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement--

(a) That its reason for doing so subsists; or

(b) That it renounces its right to avail itself of the provisions in question as from a stated date.

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<sup>1</sup> Source: International Labour Organization, available online at <http://www.ilo.org/ilolex>.  
*The ILO shall accept no responsibility for any inaccuracy, errors or omissions or for the consequences arising from the use of the Text.*



### **Article 3**

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.
2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.
3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

### **Article 4**

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.
3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

### **Article 5**

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.
3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity,

gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

4. Any Member which has limited the scope of application of this Convention in pursuance of this Article--

(a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

(b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

#### **Article 6**

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--

(a) A course of education or training for which a school or training institution is primarily responsible;

(b) A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or

(c) A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

#### **Article 7**

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

(a) Not likely to be harmful to their health or development; and

(b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this

Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

### **Article 8**

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

### **Article 9**

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

(...)

# ILO Convention 182, Worst Forms of Child Labour Convention, 1999 (excerpts)<sup>1</sup>

**Adoption: 17 June 1999**

**Entry into force: 19 November 2000**

## **Article 1**

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

## **Article 2**

For the purposes of this Convention, the term **child** shall apply to all persons under the age of 18.

## **Article 3**

For the purposes of this Convention, the term **the worst forms of child labour** comprises:

- (a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

## **Article 4**

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.

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<sup>1</sup> Source: International Labour Organization, available online at <http://www.ilo.org/ilolex>.  
*The ILO shall accept no responsibility for any inaccuracy, errors or omissions or for the consequences arising from the use of the Text.*

2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.

3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

#### **Article 5**

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

#### **Article 6**

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

#### **Article 7**

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.

2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) Prevent the engagement of children in the worst forms of child labour;

(b) Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

(c) Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;

(d) Identify and reach out to children at special risk; and

(e) Take account of the special situation of girls.

3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

#### **Article 8**

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation

and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

(...)



# **ILO Recommendation 190, Worst Forms of Child Labour Recommendation, 1999<sup>1</sup>**

**Adoption: 17 June 1999**

*The General Conference of the International Labour Organization,*

*Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-seventh Session on 1 June 1999, and*

*Having adopted the Worst Forms of Child Labour Convention, 1999, and*

*Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and*

*Having determined that these proposals shall take the form of a Recommendation supplementing the Worst Forms of Child Labour Convention, 1999;*

*adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Recommendation, which may be cited as the Worst Forms of Child Labour Recommendation, 1999.*

1. The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999 (hereafter referred to as "the Convention"), and should be applied in conjunction with them.

## **I. Programmes of action**

2. The programmes of action referred to in Article 6 of the Convention should be designed and implemented as a matter of urgency, in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and this Recommendation. Such programmes should aim at, inter alia:

(a) Identifying and denouncing the worst forms of child labour;

(b) Preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs;

(c) Giving special attention to:

(i) Younger children;

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<sup>1</sup> Source: International Labour Organization, available online at <http://www.ilo.org/ilolex>.  
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- (ii) The girl child;
- (iii) The problem of hidden work situations, in which girls are at special risk;
- (iv) Other groups of children with special vulnerabilities or needs;
- (d) Identifying, reaching out to and working with communities where children are at special risk;
- (e) Informing, sensitizing and mobilizing public opinion and concerned groups, including children and their families.

## **II. Hazardous work**

3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, *inter alia*, to:

- (a) Work which exposes children to physical, psychological or sexual abuse;
- (b) Work underground, under water, at dangerous heights or in confined spaces;
- (c) Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

## **III. Implementation**

5. (1) Detailed information and statistical data on the nature and extent of child labour should be compiled and kept up to date to serve as a basis for determining priorities for national action for the abolition of child labour, in particular for the prohibition and elimination of its worst forms as a matter of urgency.

(2) As far as possible, such information and statistical data should include data disaggregated by sex, age group, occupation, branch of economic activity, status in employment, school attendance and geographical location. The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account.

(3) Relevant data concerning violations of national provisions for the prohibition and elimination of the worst forms of child labour should be compiled and kept up to date.

6. The compilation and processing of the information and data referred to in Paragraph 5 above should be carried out with due regard for the right to privacy.

7. The information compiled under Paragraph 5 above should be communicated to the International Labour Office on a regular basis.

8. Members should establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour, after consultation with employers' and workers' organizations.

9. Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities.

10. National laws or regulations or the competent authority should determine the persons to be held responsible in the event of non-compliance with national provisions for the prohibition and elimination of the worst forms of child labour.

11. Members should, in so far as it is compatible with national law, cooperate with international efforts aimed at the prohibition and elimination of the worst forms of child labour as a matter of urgency by:

(a) Gathering and exchanging information concerning criminal offences, including those involving international networks;

(b) Detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances;

(c) Registering perpetrators of such offences.

12. Members should provide that the following worst forms of child labour are criminal offences:

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

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

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons.

13. Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention.

14. Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

15. Other measures aimed at the prohibition and elimination of the worst forms of child labour might include the following:

(a) Informing, sensitizing and mobilizing the general public, including national and local political leaders, parliamentarians and the judiciary;

(b) Involving and training employers' and workers' organizations and civic organizations;

(c) Providing appropriate training for the government officials concerned, especially inspectors and law enforcement officials, and for other relevant professionals;

(d) Providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country;

(e) Simplifying legal and administrative procedures and ensuring that they are appropriate and prompt;

(f) Encouraging the development of policies by undertakings to promote the aims of the Convention;

(g) Monitoring and giving publicity to best practices on the elimination of child labour;

(h) Giving publicity to legal or other provisions on child labour in the different languages or dialects;

(i) Establishing special complaints procedures and making provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention, as well as establishing helplines or points of contact and ombudspersons;

(j) Adopting appropriate measures to improve the educational infrastructure and the training of teachers to meet the needs of boys and girls;

(k) As far as possible, taking into account in national programmes of action:

(i) The need for job creation and vocational training for the parents and adults in the families of children working in the conditions covered by the Convention; and

(ii) The need for sensitizing parents to the problem of children working in such conditions.

16. Enhanced international cooperation and/or assistance among Members for the prohibition and effective elimination of the worst forms of child labour should complement national efforts and may, as appropriate, be developed and implemented in consultation with employers' and workers' organizations. Such international cooperation and/or assistance should include:

- (a) Mobilizing resources for national or international programmes;
- (b) Mutual legal assistance;
- (c) Technical assistance including the exchange of information;
- (d) Support for social and economic development, poverty eradication programmes and universal education.



# **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (excerpts)<sup>1</sup>**

**Adoption: 18 December 1990**

**Entry into force: 1 July 2003**

## **Article 1**

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

## **Article 2**

For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2.

(a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;

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<sup>1</sup> Source: U.N.G.A. Res. 45/158.

(e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;

(h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

### **Article 3**

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

(f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

#### **Article 4**

For the purposes of the present Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

#### **Article 5**

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

(...)

### **Part II: Non-discrimination with respect to rights**

#### **Article 7**

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

### **Part III: Human rights of all migrant workers and members of their families**

#### **Article 8**

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.



2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

### **Article 9**

The right to life of migrant workers and members of their families shall be protected by law.

### **Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### **Article 11**

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

### **Article 12**

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.

2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public

safety, order, health or morals or the fundamental rights and freedoms of others.

4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

### **Article 13**

1. Migrant workers and members of their families shall have the right to hold opinions without interference.

2. Migrant workers and members of their families 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 their choice.

3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputation of others;
- (b) For the protection of the national security of the States concerned or of public order ( ordre public ) or of public health or morals;
- (c) For the purpose of preventing any propaganda for war;
- (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

### **Article 14**

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks.

### **Article 15**

No migrant worker or member of his or her family shall be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, the assets of a migrant worker or a member of his or her family are expropriated in whole or in part, the person concerned shall have the right to fair and adequate compensation.

## Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.
2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.
3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.
4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.
5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.
6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.
7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:
  - (a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;
  - (b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;
  - (c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.
8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a

court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

#### **Article 17**

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

#### **Article 18**

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals.

In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When a migrant worker or a member of his or her family has, by a final decision, been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to that person.

7. No migrant worker or member of his or her family shall be liable to be tried or punished again for an offence for which he or she has already been

finally convicted or acquitted in accordance with the law and penal procedure of the State concerned.

#### **Article 19**

1. No migrant worker or member of his or her family shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when it was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, he or she shall benefit thereby.

2. Humanitarian considerations related to the status of a migrant worker, in particular with respect to his or her right of residence or work, should be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his or her family.

(...)

#### **Article 21**

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

#### **Article 22**

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her.

### **Article 23**

Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

### **Article 24**

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

### **Article 25**

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

#### **Article 26**

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

#### **Article 27**

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

#### **Article 28**

Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical



care shall not be refused them by reason of any irregularity with regard to stay or employment.

#### **Article 29**

Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.

#### **Article 30**

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

#### **Article 31**

1. States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.

2. States Parties may take appropriate measures to assist and encourage efforts in this respect.

(...)

### **Part IV: Other rights of migrant workers and members of their families who are documented or in a regular situation**

#### **Article 39**

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The rights mentioned in paragraph 1 of the present article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 40**

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

### **Article 41**

1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

### **Article 42**

1. States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

### **Article 43**

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

#### **Article 44**

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

#### **Article 45**

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

### **3. DETAINEES**

#### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>1</sup>**

**Adoption: 14 December 1990**

##### **I. Fundamental Perspectives**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

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<sup>1</sup> Source: GA RES 45/113

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## **II. Scope and Application of the Rules**

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles

are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

### **III. Juveniles under Arrest or Awaiting Trial**

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

### **IV. The Management of Juvenile Facilities**

#### *A. Records*

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

*B. Admission, registration, movement and transfer*

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

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

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

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

### *C. Classification and placement*

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

### *D. Physical environment and accommodation*

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and



to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

#### *E. Education, vocational training and work*

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention

facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

#### *F. Recreation*

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these

activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

### *G. Religion*

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

### *H. Medical care*

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the

independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testers in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

#### *I. Notification of illness, injury and death*

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

### *J. Contacts with the wider community*

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

### *K. Limitations of physical restraint and the use of force*

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

### *L. Disciplinary procedures*

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental

objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

#### *M. Inspection and complaints*

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

#### *N. Return to the community*

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

## V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or



degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

# United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)<sup>1</sup>

**Adoption: 14 December 1990**

## **I. Fundamental principles**

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth

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<sup>1</sup> Source: GA RES 45/112.

process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

## **II. Scope of the Guidelines**

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

## **III. General prevention**

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care,

health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

#### **IV. Socialization processes**

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

##### *A. Family*

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards

child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

### *B. Education*

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

### *C. Community*

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to

respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

#### *D. Mass media*

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by

relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

## **V. Social policy**

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations:

(a) where the child or young person has suffered harm that has been inflicted by the parents or guardians;

(b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians;

(c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians;

(d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and

(e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.



51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

## **VI. Legislation and juvenile justice administration**

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

## **VII. Research, policy development and coordination**

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health

agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.



# **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")<sup>1</sup>**

**Adoption: 29 November 1985**

## **PART ONE**

### **GENERAL PRINCIPLES**

#### **1. Fundamental perspectives**

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

#### *Commentary*

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

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<sup>1</sup> Source: GA RES 40/33.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

## **2. Scope of the Rules and definitions used**

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.

### *Commentary*

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

### **3. Extension of the Rules**

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

#### *Commentary*

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

### **4. Age of criminal responsibility**

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too

low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

*Commentary*

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

### **5. Aims of juvenile justice**

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

*Commentary*

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

## **6. Scope of discretion**

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

### *Commentary*

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

## **7. Rights of juveniles**

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

### *Commentary*

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence,



for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights. Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## **8. Protection of privacy**

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### *Commentary*

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle (The general contents of rule 8 are further specified in rule 2.1).

## **9. Saving clause**

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

### *Commentary*

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application (See also rule 27.).

## **PART TWO**

### **INVESTIGATION AND PROSECUTION**

#### **10. Initial contact**

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or hi m, with due regard to the circumstances of the case.

#### *Commentary*

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

#### **11. Diversion**

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that

purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

### *Commentary*

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are

especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

## **12. Specialization within the police**

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

### *Commentary*

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

## **13. Detention pending trial**

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

### *Commentary*

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

## **PART THREE**

### **ADJUDICATION AND DISPOSITION**

#### **14. Competent authority to adjudicate**

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

### *Commentary*

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority"

is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

### **15. Legal counsel, parents and guardians**

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

#### *Commentary*

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may pro fit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

### **16. Social inquiry reports**

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

### *Commentary*

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

## **17. Guiding principles in adjudication and disposition**

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

### *Commentary*

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1 , in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## **18. Various disposition measures**

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization



to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

#### *Commentary*

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

### **19. Least possible use of institutionalization**

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

#### *Commentary*

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the

success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

## **20. Avoidance of unnecessary delay**

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

### *Commentary*

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

## **21. Records**

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

### *Commentary*

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include among others, researchers.

## **22. Need for professionalism and training**

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### *Commentary*

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

## **PART FOUR**

### **NON-INSTITUTIONAL TREATMENT**

#### **23. Effective implementation of disposition**

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

#### *Commentary*

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'execution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

#### **24. Provision of needed assistance**

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

#### *Commentary*

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

#### **25. Mobilization of volunteers and other community services**

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

#### *Commentary*

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the

directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

## **PART FIVE**

### **INSTITUTIONAL TREATMENT**

#### **26. Objectives of institutional treatment**

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

#### *Commentary*

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of

the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

## **27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations**

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

### *Commentary*

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the

scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

## **28. Frequent and early recourse to conditional release**

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

### *Commentary*

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1 or with some other authority. In view of this, it is adequate to refer here to the "appropriate", rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

## **29. Semi-institutional arrangements**

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

### *Commentary*

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

## **PART SIX**

### **RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION**

#### **30. Research as a basis for planning, policy formulation and evaluation**

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

#### *Commentary*

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.



The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

## 4. TRAFFICKING AND SMUGGLING

### **Optional Protocol II to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (excerpts)<sup>1</sup>**

**Adoption: 25 May 2000**

**Entry into force: 18 January 2002**

*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,*

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<sup>1</sup> Source: U.N.G.A. Res. 54/263.

*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.
- (...)





**Protocol to Prevent, Suppress and Punish Trafficking in  
Persons Especially Women and Children, supplementing the  
United Nations Convention against Transnational Organized  
Crime (excerpts)<sup>1</sup>**

**Adoption: 15 November 2000**

**Entry into force: 25 December 2003**

*Preamble*

*The States Parties to this Protocol,*

*Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,*

*Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,*

*Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,*

*Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,*

*Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,*

*Have agreed as follows:*

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<sup>1</sup> Source: U.N.G.A. Res. 55/25.

## **I. General provisions**

### **Article 1**

#### **Relation with the United Nations Convention against Transnational Organized Crime**

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

### **Article 2**

#### **Statement of purpose**

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

### **Article 3**

#### **Use of terms**

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons"

even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

#### **Article 4**

##### **Scope of application**

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

#### **Article 5**

##### **Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

#### **Article 6**

##### **Assistance to and protection of victims of trafficking in persons**

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

## **Article 7**

### **Status of victims of trafficking in persons in receiving States**

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

## **Article 8**

### **Repatriation of victims of trafficking in persons**

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### **Article 9**

##### **Prevention of trafficking in persons**

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons,

especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

(...)

## **Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (excerpts)<sup>1</sup>**

**Adoption: 15 November 2000**

**Entry into force: 28 January 2004**

### *Preamble*

*The States Parties to this Protocol,*

*Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,*

*Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,*

*Convinced of the need to provide migrants with humane treatment and full protection of their rights,*

*Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,*

*Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,*

*Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,*

*Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,*

*Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the*

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<sup>1</sup> Source : U.N.G.A. Res. 55/25.



*smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,*

*Have agreed as follows:*

## **I. General provisions**

### **Article 1**

#### **Relation with the United Nations Convention against Transnational Organized Crime**

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

### **Article 2**

#### **Statement of purpose**

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

### **Article 3**

#### **Use of terms**

For the purposes of this Protocol:

- (a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document:
  - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
  - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
  - (iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

#### **Article 4**

##### **Scope of application**

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

#### **Article 5**

##### **Criminal liability of migrants**

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

#### **Article 6**

##### **Criminalization**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- (a) The smuggling of migrants;
- (b) When committed for the purpose of enabling the smuggling of migrants:
  - (i) Producing a fraudulent travel or identity document;
  - (ii) Procuring, providing or possessing such a document;
- (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic

concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

## **II. Smuggling of migrants by sea**

### **Article 7**

#### **Cooperation**

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

### **Article 8**

#### **Measures against the smuggling of migrants by sea**

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

- (a) To board the vessel;
- (b) To search the vessel; and
- (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

## **Article 9**

### **Safeguard clauses**

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

- (a) Ensure the safety and humane treatment of the persons on board;
- (b) Take due account of the need not to endanger the security of the vessel or its cargo;
- (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

### **III. Prevention, cooperation and other measures**

#### **Article 10**

##### **Information**

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

(...)

## **Article 15**

### **Other prevention measures**

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

## **Article 16**

### **Protection and assistance measures**

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

## **Article 17**

### **Agreements and arrangements**

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

## **Article 18**

### **Return of smuggled migrants**

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all

appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

#### **IV. Final provisions**

##### **Article 19**

##### **Saving clause**

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

(...)





## **5. REFUGEES**

### **Convention relating to the Status of Refugees (excerpts)<sup>1</sup>**

**Adoption: 28 July 1951**

**Entry into force: 22 April 1954**

(...)

#### **Chapter IV**

#### **WELFARE**

(...)

#### **Article 22. - Public education**

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

(...)

#### **Chapter V**

#### **ADMINISTRATIVE MEASURES**

(...)

#### **Article 31. - Refugees unlawfully in the country of refuge**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such

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<sup>1</sup> Source : 189 U.N.T.S 150.

refugees a reasonable period and all the necessary facilities to obtain admission into another country.

(...)

**Article 33. - Prohibition of expulsion or return ("refoulement")**

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

(...)

# **Report of the Secretary-General, Protection and Assistance to Unaccompanied and Separated Refugee Children, 2001<sup>1</sup>**

**Adoption: 7 September 2001**

## **I. Introduction**

1. On 17 December 1999, the General Assembly adopted resolution 54/145, in which it noted the efforts of the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organizations to protect and assist unaccompanied and separated refugee children. It recalled that these refugees are among the most vulnerable and are the most at risk of neglect, violence, forced military recruitment, sexual assault and other abuses.
2. The present report includes information on actions taken by the United Nations and other organizations in compliance with resolution 54/145.

## **II. Background**

3. “Unaccompanied children” (also called “unaccompanied minors”) are children under 18 years of age who have been separated from both parents and are not being cared for by an adult who, by law or custom, is responsible for doing so. However, experience, notably in the Great Lakes region of Africa, has highlighted that even in emergency situations, not all children are found to be unaccompanied as defined above, even though many have been separated from their previous legal or customary caregiver. Such children, although living with extended family members, may face risks similar to those encountered by unaccompanied refugee children. Consequently, the term “separated child” is now widely used to draw attention to the potential protection needs of this group. “Separated children” are thus defined as children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.
4. To ensure that all such children are entitled to international protection under a broad range of international and regional instruments and that they benefit from efforts to trace and reunify them with their previous primary caregivers, UNHCR, together with the United Nations Children’s Fund (UNICEF), the International Committee of the Red Cross (ICRC), the International Save the Children Alliance and other agencies involved, adopted the broader term of “separated child” as the basis for such action. It sought and obtained support for global acceptance of this broadened principle in order to highlight the possible protection needs of separated children, including adolescents.
5. Unaccompanied and separated children are entitled to international protection under international human rights law, international refugee law, international humanitarian law and various regional instruments.

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<sup>1</sup> 56<sup>th</sup> Session, Item 126 of the Provisional Agenda, A/56/333.

6. The risk of children being separated from their families and caregivers increases in the turmoil of conflict and flight. In the past year, there have been notable examples in the Horn of Africa, Central and West Africa. Separation increases the risks faced by internally displaced, refugee and other war-affected children. Such risks include military recruitment, exploitation, abuse and even death. The past decade has seen a dramatic increase in the number of persons who are internally displaced or directly affected by warfare, but who do not cross international borders and therefore do not benefit from the protection extended under international refugee law. Many of them are children who have become separated from their families or whose parents have lost their lives in conflict.

7. The aim of UNHCR, UNICEF and other organizations working on the ground is, where possible, to prevent separations, identify children who have become separated from their families, ensure that such children receive the protection and assistance they need and reunify them with their families in a timely manner.

### **III. New developments**

8. This section covers a number of new developments related to the implementation of resolution 54/145. Cooperation with other United Nations agencies, intergovernmental and non-governmental organizations (NGOs) and, in some cases, with governmental counterparts has played an important role in addressing the protection and assistance needs of unaccompanied and separated children since 2000.

#### *A. Family tracing and reunification*

9. Together with UNICEF, ICRC and specialized NGOs such as the International Rescue Committee (IRC) and the International Save the Children Alliance, UNHCR has been involved in collaborative efforts to strengthen the tracing and reunification of separated children, notably in Guinea and Sierra Leone. Although cross-border tracing and reunification was not possible for Burundian and Congolese refugee children owing to the volatile situation in their respective countries of origin, documentation, inter-camp tracing and reunification continued in the United Republic of Tanzania. Efforts were made to increase the coordination and accuracy of the databases established by the relevant organizations, together with the continued use of tools such as “photo-tracing albums” and radio broadcasts.

10. The Inter-agency Working Group on Unaccompanied and Separated Children is an initiative involving notably UNHCR, UNICEF, ICRC, IRC, World Vision and Save the Children United Kingdom. It seeks to develop capacities for a more coordinated response to the problem of separation from the emergency phase until the attainment of appropriate durable solutions. To this end, the Working Group has prepared *Guiding Principles on Unaccompanied and Separated Children: Inter-agency Standards and Policies*. A number of working meetings were held by UNHCR, ICRC and UNICEF to review various drafts of the text. This document is scheduled to be issued before the end of 2001.

11. In Liberia, Save the Children United Kingdom organized a series of training sessions within the refugee community to raise awareness about the dangers of family separations and how these can be prevented. Specific training was also carried out for adolescents on how to protect themselves better from and during separation. Adolescents are now actively involved in monitoring and reporting in this area.

12. Concerns regarding separated children remain a critical problem in the Great Lakes region of Africa. The issue was recently the subject of a regional meeting, convened by UNHCR in Dar es Salaam in April 2000. The meeting included expert presentations on new methodologies and techniques being used at the field level for tracing and reunification, including examples from the West African experience. Owing to the prevailing security situation, little progress has been made in the identification and repatriation of separated Rwandan children in the eastern part of the Democratic Republic of the Congo. However, despite the constraints posed by the continuing conflict, an average of 20 children per month are currently being reunited with their families in Rwanda.

13. Support for the reunification of separated children with their families has been strengthened and expanded in a number of countries, including Angola, Eritrea, Ethiopia, Sierra Leone, Sudan, Uganda and the United Republic of Tanzania. Similar support was also provided during the crises in Kosovo and East Timor.

#### *B. Separated Children in Europe Programme (SCEP)*

14. SCEP is a joint UNHCR and International Save the Children Alliance initiative on behalf of separated children arriving in European countries. It aims to safeguard the rights and best interests of separated children who have come to Europe by establishing a shared policy and commitment to best practice at the national and European levels. As part of this process, the Programme has strengthened partnerships with government and NGO counterparts working with separated children in European countries.

15. Activities include capacity-building and advocacy, as well as remedial actions where the rights of separated children are not fully respected. In October 2000, UNHCR and the International Save the Children Alliance revised the *Statement of Good Practice*, a key information and advocacy tool developed under the Programme, to incorporate recent developments in international law, including the adoption of the 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 (see General Assembly resolution 54/263). Based on this Statement, a draft training guide was prepared and used initially in three training-of-trainers workshops.

16. Country assessments were undertaken by NGOs in western and central European countries and in the Baltic States. Summary reports of 16 western European countries were collated as a report entitled *Separated Children Seeking Asylum in Europe: A Programme for Action*. This action was officially launched in Brussels in June 2000, constituting the first attempt to

gather systematic information on separated children in western Europe. The report concluded that while there are many examples of good practices in all countries concerned, the particular rights and needs of separated children are, in general, insufficiently understood and acknowledged in most countries. Publication of the summary report for the central European countries and Baltic States is planned for 2001.

17. In 2000, there was also a first attempt to gather statistics systematically on unaccompanied and separated children in Europe. So far, 23 out of 28 European countries have submitted statistics on such children.

*C. Action for the Rights of Children (ARC) training and capacity-building initiative*

18. ARC is an inter-agency initiative that includes UNHCR, the Save the Children Alliance and, since 1999, UNICEF and the Office of the High Commissioner for Human Rights (OHCHR). A child rights-based training and capacity-building project, ARC aims to increase the capacity of, in particular, UNHCR, government and NGO staff to protect and care for children in emergency situations through to the durable solutions phase. ARC also plays an important role in disseminating information on experience accumulated in the protection and provision of assistance to separated children in the field. This includes comprehensive training materials, “resource packs”, focusing on different aspects relating to child and adolescent rights and developmental needs. One of the resource packs, *Separated Children*, focuses specifically on issues concerning such children.

19. UNHCR headquarters and regional staff continued to play a key role in this project, which was further developed in 2000 and the first half of 2001, both in terms of geographical coverage and issues addressed. Three further training-of-trainers workshops took place in West Africa, the Great Lakes region of Africa and southern Africa. For the first time, a workshop was held in Afghanistan, in which staff of the United Nations, NGOs and the Taliban authorities participated.

20. Regional follow-up activities continued throughout the year. Among these, as the result of a meeting of experts in Turkey, a series of country studies identifying legal issues affecting children within the eastern European region was launched. Other follow-up activities included the collaboration with Save the Children United Kingdom in the training of peacekeepers and military personnel in West Africa, and the integration of ARC materials into the capacity-building initiative of the Office for the Coordination of Humanitarian Affairs (OCHA) in Angola. Also worthy of note were several regional workshops on separated children held in the Horn of Africa, East and West Africa, and the enlargement of the ARC inter-agency training team in Pakistan. An advanced training-of-trainers workshop took place in East Africa, bringing together participants of previous workshops, to evaluate progress, share experience and further develop in-country plans.

21. The resource packs were progressively finalized. With a view to making these more accessible, the materials have been included on the UNHCR web

page and reproduced on CD-ROM. Wide dissemination of the CD-ROM is foreseen during the second half of 2001.

#### *D. Convention on the Rights of the Child*

22. As referred to in paragraph 15 above, by its resolution 54/263 of 25 May 2000, the General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. UNHCR was actively involved in the advocacy work during the drafting process leading to its adoption. The Optional Protocol represents an important step towards ending the use of children under the age of 18 in armed conflict. It raises the age at which direct participation in armed conflict is permitted from 15 to 18 years and establishes a ban on compulsory recruitment below 18 years. States parties are also required to make a declaration, upon ratification, regarding the age at which national forces will permit voluntary recruitment as well as the steps that States parties will take to ensure that such recruitment is never forced or coerced.

23. The Optional Protocol requires 10 ratifications to enable its entry into force. All States are encouraged to ratify the Optional Protocol so that it will be in force by the time the United Nations Special Session on Children takes place in September 2001. Currently, 80 countries have signed the Optional Protocol and four — Andorra, Bangladesh, Canada and Sri Lanka — have ratified it.

24. A second Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography was also adopted by the General Assembly in resolution 54/263. This Optional Protocol, welcomed by the United Nations, prohibits the use of children as forced labour and prostitutes and all forms of sexual exploitation of the child and calls on States parties to put into place the necessary legislation to render such acts criminal offences and provide appropriate sanctions under their national law.

25. In November 2000 UNHCR issued directives to its field offices in more than 120 countries, requesting them to encourage States to accede to the two Optional Protocols to the Convention on the Rights of the Child.

26. The Convention on the Rights of the Child and its Optional Protocols, in conjunction with the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967, as well as other relevant international and regional instruments, constitute the normative framework within which UNHCR bases its activities for providing international protection and assistance to refugee children and other children of concern to the Office.

(...)

#### *G. Sexual violence, exploitation and abuse*

34. Sexual violence, exploitation and abuse are strongly associated with situations of forced population movement. Unaccompanied and separated children are particularly at risk for a range of reasons, including their age and



vulnerability. In some cases, boys are also victims of sexual violence. UNHCR, in collaboration with its operational partners, is seeking to address these problems through preventive measures such as education, sensitization, awareness-raising and appropriate camp layout, as well as through the provision of curative services such as health facilities for victims of violence, counselling and information and follow-up on sexually transmitted diseases and HIV/AIDS.

35. In 1995 UNHCR published *Sexual Violence against Refugees: Guidelines on Prevention and Response* to offer guidance and a useful tool to the field. For the past two years, with the support of the United Nations Foundation (which allocates Ted Turner funds), UNHCR has established multisectoral prevention and response initiatives addressing the needs of adolescent girls in Guinea, Kenya, Liberia, Sierra Leone and the United Republic of Tanzania. In addition, UNHCR and its partners have been developing programmes and activities that address prevention and response to sexual and gender-based violence in a variety of refugee settings around the world.

36. In March 2001, UNHCR convened an inter-agency lessons learned conference on prevention and response to sexual and gender-based violence. The conference gathered a range of actors from the field to share experience, collectively review progress and impact to date, identify lessons learned and plan the next steps for addressing sexual and gender-based violence in refugee and internally displaced settings. Participants included representatives from refugee communities, the UNHCR community, the protection, security and health sectors, human rights organizations, NGOs, United Nations sister agencies, government representatives, academics and interested individuals.

(...)

#### **IV. Other issues of concern**

##### *A. The girl child*

40. In the case of unaccompanied or separated children, the girl child is particularly vulnerable to negligence and exploitation. Disabled girls, in particular, face the threat of being abandoned. Furthermore, many girls experience sexual exploitation and abuse and are more exposed than young males of the same age to the risk of contracting sexually transmitted diseases and HIV/AIDS. Many are also being exploited as domestic labour. Particular emphasis needs to be given to the provision of access to basic educational opportunities. It is also of crucial importance to raise community awareness about the specific problems that separated girls may face. In India, for example, discussions and campaigns have been organized on subjects such as sexual exploitation, sexual harassment, domestic violence, gender equality and the status of girl children.

41. UNHCR is currently finalizing a manual on the rights of children and women: awareness training for adult refugees. Its purpose is to raise awareness about women's and children's rights under national and international law among refugee communities. The rights awareness training

for adult refugees is an important initial step towards the empowerment of women and girls and will ultimately improve their protection. This draft manual has been tested in workshops held in three field locations (Kasulu Kibondo and Ngara) in the United Republic of Tanzania with Burundian, Rwandan and Congolese refugees. Similar rights awareness workshops have been held in Kenya, Mexico and Nepal. Refugee communities in the field-testing phase have been enthusiastic about this awareness training, since it is adapted to addressing the particular problems which they face in their asylum country.

### *B. Adoption of separated children*

42. UNHCR and a number of its partners have long advocated the policy that refugee children in an emergency context are not available for adoption. Since most unaccompanied and separated children are not orphans, they do not need to be adopted, but rather must receive suitable interim care with a view to possible reunification with their families. Staying with relatives in extended family units is generally a better solution than uprooting the child completely. Serious efforts to trace family members are essential before a child is considered eligible for adoption and such efforts are particularly difficult, if not impossible, within the context of an emergency. Any adoption of a separated or unaccompanied child of concern to UNHCR must be determined as being in the child's best interests and carried out in accordance with applicable national and international law, notably the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and the 1994 Recommendation concerning the Application to Refugee Children and other Internationally Displaced Children. This policy is also informed by relevant provisions of the Convention on the Rights of the Child.

### *C. Child-headed households and self-reliance of unaccompanied and separated children*

43. Unaccompanied and separated adolescents may find themselves in situations in which they have great responsibility, not only for themselves but also for other children, including younger siblings. Such child-headed households are especially vulnerable to abuse and thus require careful monitoring and protection. Access to post-primary education, vocational training and income-generating activities is key to supporting their rights and capacities and to helping them become self-sufficient. Examples of such activities are the vocational and skills-training programmes in Azerbaijan and Russia. In Ethiopia, re-registration of unaccompanied children in camps made it possible to identify those who had reached 18 years of age, so that vocational training and small enterprise resources could be provided in order to help support their transition into maturity and self-sufficiency. Nevertheless, there is still a need to develop further opportunities for post-primary education, which was, moreover, the reason why UNHCR launched the Refugee Education Trust in 2000.

## **V. Conclusion**

44. Notwithstanding the progress recorded in meeting the basic protection and assistance needs of unaccompanied and separated refugee children by UNHCR, UNICEF, OHCHR, OCHA, ICRC, NGOs and a number of government counterparts, many of these children's basic needs remain unmet. One key challenge is the lack of adequate human and financial resources to address identified needs. Community-based strategies in addressing this issue require further emphasis and support in humanitarian interventions. Likewise, strengthened inter-agency coordination and more effective registration and tracing systems need to be pursued. In order to respond effectively to the protection needs of unaccompanied and separated children, States are urged to accede to and ratify the 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, which enhance the legal protection of refugee children against military recruitment and other forms of exploitation. Finally, increased emphasis on and commitment to monitoring of compliance and accountability for violations are crucial in order to ensure that the protection and assistance needs of unaccompanied and separated refugee children are more effectively addressed.

**UNHCR Handbook on Procedures and Criteria for  
Determining Refugee Status under the 1951 Convention and  
the 1967 Protocol relating to the Status of Refugees  
(excerpts)<sup>1</sup>**

(...)

**(2) Unaccompanied minors**

213. There is no special provision in the 1951 Convention regarding the refugee status of persons under age. The same definition of a refugee applies to all individuals, regardless of their age. When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of “well-founded fear” in his case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor's own refugee status will be determined according to the principle of family unity (paragraphs 181 to 188 above).

214. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enrol the services of experts conversant with child mentality. A child--and for that matter, an adolescent--not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor's best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.

215. Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent's maturity. It can be assumed that--in the absence of indications to the contrary--a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.

216. It should, however, be stressed that these are only general guidelines and that a minor's mental maturity must normally be determined in the light of his personal, family and cultural background.

217. Where the minor has not reached a sufficient degree of maturity to make it possible to establish well-founded fear in the same way as for an adult, it may be necessary to have greater regard to certain objective factors. Thus, if an unaccompanied minor finds himself in the company of a group of

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<sup>1</sup> Source : HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979

refugees, this may--depending on the circumstances--indicate that the minor is also a refugee.

218. The circumstances of the parents and other family members, including their situation in the minor's country of origin, will have to be taken into account. If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear.

219. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.

(...)

# UNHCR Global Consultation on International Protection, 4th Meeting, “Refugee Children,” April 2002<sup>1</sup>

Date: 25 April 2002

## REFUGEE CHILDREN

### I. INTRODUCTION

1. Refugee children, including adolescents under the age of 18, make up 45 per cent of refugee populations world-wide; yet despite the many valuable guidelines and standards developed to ensure their protection and care, inadequate implementation of protection activities for refugee children, including limited accountability, have often rendered these guidelines ineffectual. A recently conducted independent evaluation<sup>2</sup> of the impact of UNHCR’s activities in relation to refugee children also concluded that, in practice, refugee children “are often overlooked and considered ‘on-the-sidelines’ of core protection and assistance work.” Although an evaluation of UNHCR’s programmes, findings can equally apply to the actions of States and others on behalf of refugee children.

2. This paper analyses the six most salient and sometimes inter-related protection concerns facing refugee children today: separation; sexual exploitation, abuse and violence; military recruitment; education; detention; and registration and documentation. After briefly discussing the problems and their underlying causes, the paper proposes concrete recommendations for action, drawn from the independent evaluation of UNHCR’s activities for refugee children, international human rights law, Executive Committee Conclusions, guidelines and policies. It builds on a series of meetings held over the last two years within and outside the Global Consultations process.<sup>3</sup>

(...)

### II. SEPARATION

4. By its very nature, displacement often results in the separation of families. Given the fundamental role the family plays in the protection, physical care and emotional well being of its members,<sup>4</sup> separation from families is particularly devastating for refugee children. Separated children, whether

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<sup>1</sup> Source: Ec/GC/02/9.

<sup>2</sup> See Valid International, *An independent evaluation of the impact of UNHCR’s activities in meeting the rights and protection needs of refugee children*, EPAU/2002/02, forthcoming (May 2002).

<sup>3</sup> See updated *Overview of events relating to the protection of refugee women and refugee children*, available online at [www.unhcr.org](http://www.unhcr.org), under Global Consultations.

<sup>4</sup> See *Summary conclusions on family unity* of the Expert Geneva Roundtable, 8–9 November 2001.

unaccompanied<sup>5</sup> or separated from their previous primary caregiver, face a greater risk of sexual exploitation and abuse, military recruitment, child labour, denial of access to education and basic assistance, and detention.

5. Experience has shown that in emergency situations refugee children may be with an extended family member (e.g. uncle who is not the previous primary caregiver), therefore “accompanied”, but they may still face risks similar to those faced by unaccompanied refugee children. To ensure that all such children benefit from efforts to trace and to reunify them with their previous primary caregivers, UNHCR, UNICEF, ICRC, the International Save the Children Alliance and other organisations have adopted the broader concept, “separated child”. UNHCR, in its conference room paper presented to the Standing Committee in February 2000, sought and received wide support for the adoption of this broader understanding.<sup>6</sup>

6. In many countries, separated children are routinely denied entry or detained by border officials or immigration officials and given no opportunity to seek asylum. In some countries, they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age-sensitive manner. In some situations, children have no access to proper and appropriate identification, registration, age assessment, family tracing, legal advice and guardianship systems. Even where guardians are appointed, there is no consistency in practice: in some States, guardians have wide-ranging and long-term responsibilities for the child, whilst elsewhere only short-term guardianship is an option.

7. Some countries prohibit separated children who are recognised as refugees from applying for family reunification; others do permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many separated children are granted temporary status that ends when they turn 18; and there are few effective return programmes for separated children.

(...)

9. To address the protection concerns of separated children, the following recommendations are made:

- States are encouraged to apply the expanded definition of “separated children”.
- Early identification, proper registration,<sup>7</sup> appropriate interim care and family reunification<sup>8</sup> should be ensured for separated children. In particular:

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<sup>5</sup> Use of the term “unaccompanied children” has declined. It was used to define those who are separated from both parents and are not being cared for by any adult who, by law or custom, is responsible for doing so.

<sup>6</sup> See EC/50/SC/CRP.7 of 7 February 2000, which provides the following definition: “Separated children are thus defined as children under 18 years who are separated from both parents or from their previous legal or customary primary caregiver.”

<sup>7</sup> For more details on registration, see section VI below.

<sup>8</sup> See reference in footnote 3.

- Border officials should be trained on appropriate identification and registration of children, including age-and gender-sensitive interview techniques;
- States, UNHCR and NGOs, should work with the refugee community, including foster families, in order to establish an appropriate system for the placement of children with foster families, and the monitoring of this arrangement as well as that of children in child-headed households.
- Governments, public and private bodies should ascertain the impact of their actions on children in order to ensure that the best interests of the child are a primary consideration. Children should be consulted and their views taken into account whenever decisions affecting them are made.
- Separated children should be provided with a guardian or advisor, well trained in child welfare matters, who promotes decisions in the best interests of the child and assists them in the asylum process, including in contacts with other governmental authorities.
- States and UNHCR should ensure an age-sensitive approach to refugee status determination. In particular:<sup>9</sup>
  - Children should be properly heard in the refugee status determination process;
  - Eligibility officers and others involved in the refugee status determination; process should be specially trained in interviewing children and take account of child-specific forms of persecution in the assessment of the claim;
  - If age assessments need to be carried out, methods used should be safe and respect human dignity and the "benefit of doubt" principle.
- States which have not yet done so should accede to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption. Those States which have signed this Convention should ensure the establishment of adequate mechanisms for the application of the Convention, including the necessary legal reforms conducive to the full implementation of the Convention.<sup>10</sup>

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<sup>9</sup> See the *Statement of good practice*, published jointly by the International Save the Children Alliance and UNHCR in 1999. The Statement has been translated into 14 European languages and has become an acknowledged reference document for European Governments in their asylum processes with regard to separated children. See also paragraphs 46, 47 and 50(n) of *Asylum processes (fair and efficient asylum procedures)*, EC/GC/01/12, 31 May 2001, as well as the recommendations for the EU Seminar on *Children Affected by Armed Conflict and Forced Displacement - A Child Rights Perspective in Development Co-operation and Migration Policies*, Norrköping, Sweden, 1-2 March 2001.

<sup>10</sup> See Berlin Conference on children in Europe and Central Asia, 16-18 May 2001



- Adoption should not be considered during the emergency phase of any operation. In the event of adoption to separated children, States should ensure that their adoption is consistent with the 1993 Hague Convention, and its recommendation concerning the application to refugee children and other internationally displaced children of the aforementioned Convention.
- All requests for family reunification should be dealt with in a positive, humane and expeditious manner, with particular interest being paid to the best interests of the child.<sup>11</sup>
- Rejected child asylum-seekers should only be returned after final determination that they are not in need of international protection, and subject to the identification of an appropriate family member or caregiver in the country of origin, willing to receive and care for the child.

### **III. SEXUAL EXPLOITATION, ABUSE AND VIOLENCE**

10. In most refugee and returnee situations, children face an increased risk of sexual exploitation, abuse and violence<sup>12</sup> given their age and circumstances. Weak or ineffective legal systems, limited investigative capacities of the local police force, and isolation and social stigma associated with reporting contribute to the incidence of sexual abuse and violence. Such abuse violates the most fundamental rights of the child set out in the Convention on the Rights of the Child (CRC)<sup>13</sup> and has a devastating effect on the children, their families and their communities.

11. Both boys and girls are at risk of sexual exploitation, abuse and violence, but girls are the principal targets. Separated girls, including those living in foster care, with relatives or heading a household, are particularly at risk. As most cases involve female victims and male perpetrators, sexual exploitation, abuse and violence should be analysed in terms of its disproportionate impact on women and girls. Consequently, an effective response to sexual exploitation and abuse requires an understanding of inequitable gender/power relations in a given society.

(...)

14. To address sexual exploitation, abuse and violence, the following recommendations are made:

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<sup>11</sup> See footnote 3.

<sup>12</sup> This includes: female infanticide; child marriage; female genital mutilation; sexual abuse by family members and acquaintances; rape; sexual harassment and sexual exploitation for access to protection, goods and services.

<sup>13</sup> This would include: the rights to survival and development; to protection from all physical or mental violence, injury or abuse, neglect or negligent mistreatment, maltreatment or exploitation, including sexual abuse; to the enjoyment of the highest attainable standard of health; to protection from all forms of sexual exploitation and abuse. These rights are also set out in other international as well as regional human rights instruments.

- States should accede to and implement the 1989 Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.
- Measures should be taken to prevent sexual exploitation, abuse and violence, as well as trafficking, addressing the rights and needs of child victims through the provision of appropriate legal and rehabilitative remedies and by following up on the Yokohama Global Commitment.<sup>14</sup>
- States and UNHCR in, collaboration with other humanitarian actors, should develop and implement comprehensive gender and age-sensitive programmes to prevent sexual exploitation of children, including educational and awareness-building programmes to combat harmful traditional practices, such as female genital mutilation. Children, including adolescents, particularly those who are themselves survivors, are to be encouraged to participate in this process.<sup>15</sup>
- States, UNHCR, and other humanitarian actors should develop or strengthen programmes to respond to sexual and gender-based violence (SGBV), in particular, to provide basic health and psycho-social rehabilitative services<sup>16</sup> as well as confidential age-sensitive complaints mechanisms to protect and assist child victims to report perpetrators. In this context, community support structures, such as drop in centres, where girls and boys could gain the confidence to discuss problems and to seek help, require strengthening.<sup>17</sup>
- Working with males of all ages on the root causes of SGBV and gender inequalities and their impact on families is crucial to prevention and changing attitudes. To this end, UNHCR and NGOs should work closely with men in order to increase an understanding of the value of gender equality and in order for men, and women alike, to understand their roles and responsibilities in ending sexual exploitation, abuse and violence.<sup>18</sup>
- United Nations agencies and their partners should implement fully the Policy on Protection from Sexual Exploitation, which is being developed by the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation.
- UNHCR should vigorously ensure that a Code of Conduct is respected in all humanitarian operations.

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<sup>14</sup>Second World Congress Against the Commercial Sexual Exploitation, held in Yokohama, Japan, 17-20 December 2001.

<sup>15</sup> Recommendation from the Inter-Agency Lessons Learned Conference on *Prevention and Responses to Sexual and Gender-Based Violence in Refugee Situations* (Inter Agency Conference on SGBV), held in Geneva, 27-29 March 2001.

<sup>16</sup> See the *Agenda for action* relating to the promotion of health and well-being, as agreed at the International Conference on War-affected Children, held in Winnipeg.

<sup>17</sup> See the suggested actions to be taken to address the safety and security of refugee women, as outlined in EC/GC/02/8, which are equally applicable to refugee children.

<sup>18</sup> Recommendation from the Inter-Agency Conference on SGBV.

- States, UNHCR and other actors should conduct training and capacity-building on the rights and needs of child survivors of sexual exploitation, abuse and violence, using in particular the module "Abuse and Exploitation" as developed under ARC.<sup>19</sup>
- Given that poverty is frequently a root cause leading to prostitution and abuse, States, UNHCR and other humanitarian actors should take all possible steps to meet the basic humanitarian needs of refugee children.<sup>20</sup>

#### IV. MILITARY RECRUITMENT

15. Refugee children become child soldiers in many ways: some are conscripted, others are press-ganged, and yet others join as a way to protect their families from victimization. In some situations, the proximity of refugee camps to conflict zones exposes adolescents to the risk of forcible recruitment, either by State or non-State entities. Separated children face a greater risk of military recruitment. Most child soldiers are adolescents, but there are also many who are under 10 years. Recruitment affects boys and girls in different ways: boys are used in combat and other military activities, whereas girls are more frequently used for sexual slavery and forced labour.

16. UNHCR continues to advocate against the use of child soldiers in all circumstances and encourages States that have not yet done so to accede to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. In some countries, UNHCR, in close collaboration with UNICEF, supports "children's zones of peace" that provide alternatives to child recruitment by, for example, creating education and recreational opportunities.

17. To prevent military recruitment, and work towards the rehabilitation and reintegration of former male and female child soldiers into their communities, the following recommendations are made:

- States should accede to and implement the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. Consistent with Article 3 of the Protocol, States should submit a binding declaration setting 18 as the standard minimum age for voluntary recruitment and participation in hostilities.
- States and non-State entities should prevent the recruitment of refugee and returnee children, *inter alia*, by providing the financial resources for educational, vocational, economic or recreational activities.<sup>21</sup>
- States, UNHCR and other actors should raise awareness and conduct training on the prevention of recruitment, demobilization and social

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> For details of actions see section V below.

reintegration based on the CRC and its Optional Protocol, using in particular the module "Child Soldiers" as developed under ARC.

- Special programmes to disarm, demobilize and reintegrate child soldiers should be set up by States and other actors, including UNHCR where needed. Programmes seeking to support child soldiers should equally benefit and address the particular situation of male and female child soldiers.

## V. EDUCATION

18. Education is not only a fundamental human right, but it is also an important protection tool. Refugees often say that education is a priority, even before shelter and food, because going to school gives children some sense of normalcy and stability and protects them against forced labour, military recruitment and sexual exploitation. Education must, therefore, be available throughout the displacement cycle.

19. While more refugee children are attending primary school – an estimated 44 per cent in 2000 compared to 36 per cent in 1993 – more can be done to increase primary education opportunities and ensure equal access for all refugee children, including adolescents. Even when girls have, in theory, access to education, responsibilities for childcare and household tasks, and the lack of sanitary products, often result in irregular attendance and higher female drop-out rates.

20. Secondary, vocational and tertiary education opportunities for refugee teenagers must also be expanded, and pupils must have their schooling certified so that they are assured a smooth reentry into the educational system in their country of origin.

21. To address education-related problems, the following recommendations are made:

- States should not discriminate against children on their territories, regardless of the child's and the parents' legal status, and should provide equal access to primary and secondary education for all children.<sup>22</sup>
- The approach to education should be broadened to include subjects such as conflict resolution skills, life-skills training (including nutrition), landmine awareness (if applicable), HIV/AIDS prevention, human rights, peace education and psycho-social support within the core education curriculum.<sup>23</sup>
- The necessary financial means should be provided to trust funds (e.g. Refugee Education Trust) or scholarship schemes (e.g. Albert Einstein

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<sup>22</sup> See Article 28 of CRC and paragraph 18 of the Preamble of the Berlin Conference, 16-18 May 2001.

<sup>23</sup> See *Framework for commitment to war-affected children* of the International Conference on Children, 10-17 September 2000, Winnipeg (Canada).

Academic Scholarship Programme for Refugees) to expand secondary, vocational and tertiary education opportunities for refugee teenagers.

- In addition, education budgets and programming should be broadened to include non-formal opportunities for all adolescents, with special consideration for youth clubs and expanded curriculum linkages to sexual and reproductive health and life skills.
- Refugee girls should have equal access to formal and informal education, including vocational programmes at all levels, and barriers should be removed so that they are able to take advantage of educational opportunities.<sup>24</sup> In this respect recruitment and training programmes for potential female teachers should be supported to redress the gender imbalance among teachers.
- States, in co-operation with relevant agencies, should ensure that the learning environment enhances prevention of possible sexual exploitation or abuse and military recruitment. Of equal importance is an infrastructure providing physical security and emotional stability.
- States should certify educational qualifications earned abroad by refugee children and establish systems of validation of such certificates.
- States should assist, where necessary, in rehabilitating school facilities in the country of origin; in addition, host States and countries of origin should support voluntary return programmes targeting professionals, including teachers, to ensure the immediate availability of education upon return.

## VI. DETENTION

22. In principle, asylum-seeking children should not be detained. Detention of asylum-seekers may be resorted to in individual cases only for reasons set out in the UNHCR Guidelines on Detention,<sup>25</sup> and as long as the detention is clearly prescribed by national law and in conformity with international human rights law. Yet asylum-seeking children are detained in many countries around the world. Too many of them are held in detention facilities and prisons along with adults, including convicted criminals, which has damaging consequences for the psychological development of these children.

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<sup>24</sup> This could be realized through a variety of measures, such as: monitoring attendance statistics for girls at regular intervals; identifying root causes, including any discriminatory practices, for lower attendance of girls in schools (e.g. lack of sanitary products, household chores); sensitizing parents and the general community about the importance of education for girls; in collaboration with parents, the community, younger and adolescent girls, devising ways of ensuring equal access and continued attendance in school for girls.

<sup>25</sup> See *Guidelines on applicable criteria and standards relating to the detention of asylum-seekers* (UNHCR., February 1999).

23. To protect asylum-seeking children from arbitrary detention, the following recommendations are made:<sup>26</sup>

- States, in principle, should not detain asylum-seeking children.
- States, keeping in mind that detention should be a measure of last resort and for the shortest possible period of time and in light of the best interest of the child principle, should provide appropriate alternatives to the detention of children, exploring in full the options of reporting obligations, guarantor requirements, supervised group accommodation or quality extra-familial care services through fostering or residential care arrangements.<sup>27</sup>
- States should consider all appropriate alternatives to detention in the case of children accompanying their parents and detention, in such cases, should be considered only if it is the sole means of maintaining family unity.
- Where exceptional circumstances necessitate the detention of asylum-seeking children, States should apply in full, the standards and principles contained particularly in the CRC and the UNHCR Guidelines on Detention. In particular:
  - Provision should be made for independent monitoring of the mental health of detained asylum-seeking children and facilitated by access to appropriate NGOs and other competent service providers. Monitoring of mental health should continue after release to preclude any long lasting adverse effects on the child;
  - During detention, children should retain their right to education, which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release;
  - Additional steps should be taken to guarantee that child specific needs, such as the right to leisure and playtime, are fully respected during detention.

## VII. REGISTRATION AND DOCUMENTATION

24. Registration is an important protection tool for all refugees, but it is particularly important for refugee children as it can provide protection against refoulement and military recruitment, ensure access to basic rights, including assistance, and facilitate family reunification. Proper registration can also help to identify the specific needs of adolescents, separated children, disabled children and child-headed households. Birth registration and the issuance of birth certificates are critical as they ensure a refugee child's right to identity and legal status and thus prevent statelessness or the creation of a "shadow"

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<sup>26</sup> See paragraph 11 of the *Summary conclusions on Article 31 of the 1951 Convention of the Geneva Expert Round Table*, 8-9 November 2001.

<sup>27</sup> See paragraph 22 of the recommendations from the Berlin Conference, 16–18 May 2001.

population in the host country. Valid birth certificates also help to deter under-age military recruitment.

25. To ensure proper registration and the issuance of basic documentation to refugee children, the following recommendations are made:

- States and UNHCR should strengthen registration and data management procedures in line with Executive Committee Conclusion No. 91 (LII) of 2001 to ensure that information is available for protection and assistance purposes concerning refugee children, including adolescents.
- States and UNHCR should use the registration process as one of the initial mechanisms to identify separated children and to ensure appropriate follow-up.
- States, with the support of the international community where necessary, should institute legislative measures and administrative mechanisms to ensure that all births are registered and certified.<sup>28</sup>

### **VIII. CONCLUSION**

26. In all actions undertaken concerning refugee children, whether by public or private actors, the best interest of the child, as contained in Article 3 of the CRC, must be a primary consideration. Non-discrimination and the right to participation should also be respected. In addition, the ability of the refugee community to respond to the needs of its children should be strengthened. Incorporating, or “mainstreaming”, children’s issues into all protection and assistance activities is also crucial, as is co-ordinating with other UN agencies, particularly UNICEF, and with NGOs. The overall purpose of all these actions is to ensure the survival and development of the refugee child.

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<sup>28</sup> See footnote 25, States were also encouraged at the Winnipeg Conference to ensure universal implementation of birth registration by 2015, with particular attention to children who are refugees, internally displaced or belonging to minority groups.







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