

18 Candles

The Convention on the Rights of the Child Reaches Majority

This booklet is a present offered to Miss Convention on the occasion of the attainment of her age of majority. It is also as a tribute to all persons who have worked and are continuing to strive to enforce children's rights. It is offered by:



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Foreword

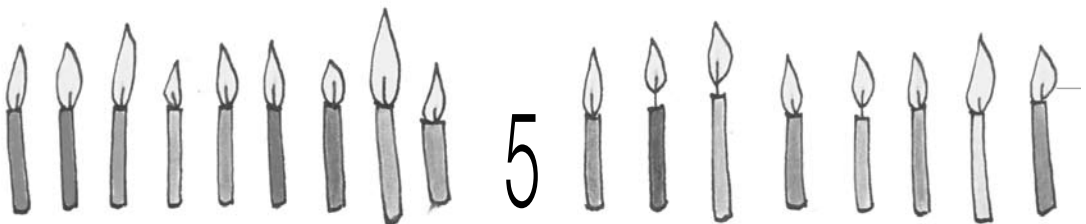
by **Jane Connors**

Senior Human Rights Officer,

Office of the High Commissioner of Human Rights

This booklet brings together eighteen articles which celebrate the eighteenth birthday of the Convention on the Rights of the Child. The authors of the articles range from the High Commissioner for Human Rights, representatives of the Council of Europe, the Chairperson and former Chairperson of the Committee on the Rights of the Child, Members and former Members of the Committee, the Secretary-General's independent expert on violence against children, child rights activists and representatives of non-governmental organizations, and representatives of UNICEF, the United Nations body which takes its inspiration from the terms of the Convention. Most importantly, several of the articles are authored by children, who in clear and frank language, write of what the Convention means to them, and in some cases, how they believe that they have not fully enjoyed its promise.

All authors make clear, however, that the Convention has transformed the way we view children, and provided the impetus for further standards to advance their rights, not least the Convention's Optional Protocols, and the child-specific provisions in the most recent treaties on the rights of persons with disabilities and for the protection of all persons from enforced disappearance. The reporting process of the Convention has also provided a space in which the claims of children can be articulated, including by themselves.



With my co-editors, Jean Zermatten, currently Vice-Chair of the Committee on the Rights of the Child and Anastasia Panayiotidis, Associate Human Rights Officer, I express the hope that the thoughts that are collected in this modest volume will testify to the broad appreciation of the impact of the Convention during its first eighteen years. It should also highlight the promise that the Convention holds for all children that the standards that it proclaims and which have been accepted almost universally will be brought home to children in every family, community and country in the world.

Happy Birthday!

By Louise Arbour

United Nations High Commissioner for Human Rights

Eighteen years ago, on 20 November 1989, the General Assembly, comprised of delegates representing a wide spectrum of legal systems, cultures and religious traditions, unanimously adopted the Convention on the Rights of the Child. The Convention, with 193 States parties, is now ratified by almost the entire international community. Incorporating the full range of human rights - civil, cultural, economic, political and social, it creates the international legal framework for the protection and promotion of the human rights and fundamental freedoms of all persons under the age of 18.

As we commemorate the Convention's eighteenth birthday, we have an opportunity to reflect on the changes it has brought about during its childhood and adolescence and those we expect it will achieve in adulthood. We do this on the eve of the sixtieth anniversary of the Universal Declaration of Human Rights, which we will celebrate on 10 December 2008.

Today, global awareness of human rights, including children's rights, is at an all time high, not least because human rights is a concept recognized, albeit at times grudgingly, by States. The Convention has brought about an understanding that children are not the property of parents or guardians, nor objects of generosity or goodwill, but are rights-holders, just like adults. This understanding has marked a shift in the way we view children, enabling us to see them as individuals with rights and



responsibilities appropriate to their age and stage of development, delineating them as girls and boys and acknowledging the impact that laws, policies, attitudes and traditions can have on their enjoyment of rights. The Convention has also provided a framework for individuals to claim rights for children and legitimately protest any violations they experience under provisions of international human rights law. At the same time, our awareness of children's rights is paralleled by profound challenges to the protection and promotion of human rights generally. Prime among these is the resurgence of arguments of cultural relativism which claim that human rights are not necessarily universal, but are to be restricted in accordance with imperatives of culture, custom, tradition and religion. It is essential that we continue to emphasize the universality of human rights, while respecting diversity, and the exceptional universality of adherence to the common standards set out in this treaty makes this point with particular vigour.

The obligations of States parties outlined in the Convention, are underpinned by the concepts of non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. With the entry into force of the Convention on 2 September 1990, the Committee on the Rights of the Child, then numbering 10 experts, drawn from each region of the world began the groundbreaking work of monitoring implementation of the Convention, translating its terms from textual aspirations into rights that would advance the state of the world's children. Through the Committee's work, we have become aware of profound challenges to children's enjoyment of their rights. We have become aware of the extent of sexual exploitation and abuse as well as the impact armed conflict has upon children, due to their use in hostilities and in other ways. We have also become aware of the insidious violence that marks the lives of many children. The Committee's work has inspired the adoption of further tools to promote and protect the rights of children, including two Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution

and child pornography and on the involvement of children in armed conflict. The Convention and the Committee's work also prompted the Secretary-General to engage in two key studies - on the involvement of children in armed conflict and on violence against children, which themselves have generated further mechanisms to promote and protect the rights of children.

In the course of its work, the experts of the Committee have emphasized the rights of children, rather than their needs, particularly in areas such as health and education, and have created a deeper understanding of accountability of States for implementation of these rights at the national level. Amongst the achievements of the Committee is its interpretation of the Convention through the formulation of thematic General Comments. These Comments represent the knowledge the Committee has acquired through the process of considering States parties' reports and outline appropriate measures that States parties should undertake to fulfil their obligations under the Convention. They also represent the Committee's consistent and progressive contribution to the clarification of the substantive content of the Convention's provisions, and to the development of international human rights law generally. The Committee has also been at the forefront of treaty bodies in welcoming the contributions of intergovernmental organizations, especially UNICEF, non-governmental organizations and other parts of civil society to its work, and has thereby established the Convention as a key mobilizing force for the realization of the rights of all children.

The Convention's eighteen years have seen significant change in national laws, policies and programmes for the benefit of girls and boys as well as a notable influence on jurisprudence at the national, regional and international levels. But much remains to be done in many States, including in relation to violence against children, juvenile justice, children's freedom of expression, thought, conscience and religion, access to information and enjoyment of economic, social and cultural rights. As States seek

to meet their obligations, encouraged by civil society, and children themselves, I have no doubt that the spirit of the Convention, and the careful guidance of the Committee, will inspire States parties to direct their activities towards improving the situation of children in their countries and ending impunity for crimes against children globally. Governments, individuals and members of the international community share an obligation to uphold the rights and freedoms of all, including children, and to ensure that those rights are a living reality.

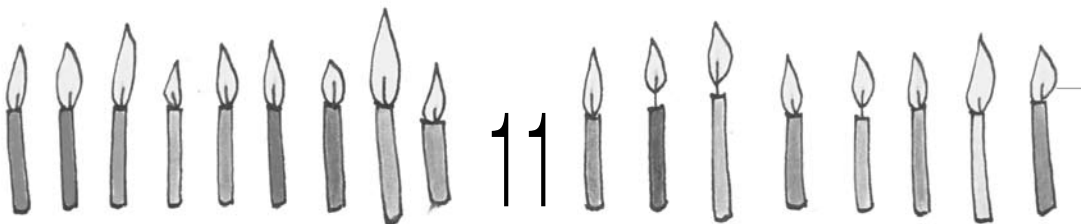
18 Candles

Yanghee Lee

Chairperson of the Committee on the Rights of the Child

On November 20 1989, the Convention on the Rights of the Child (CRC) was adopted unanimously by the General Assembly of the United Nations. With 193 ratifications to date, CRC is the only international human rights treaty that enjoys almost universal ratification. CRC provides a legal framework that sets the highest level of international standards and guidelines for regional and national implementation. It also covers the full family of human rights: economic, social, cultural, and civil and political rights, as well as special protection measures.

Almost all States Parties have submitted their initial reports to the Committee on the Rights of the Child the monitoring body established by the Convention. There are only six States that have not yet submitted their initial reports. Many countries have already been reviewed by the Committee twice and there are also some countries that have even been reviewed three times. The Committee was the first human rights treaty body to initiate a two-chamber system, thereby eliminating much of the backlog of reports. Now, review of reports by the Committee takes place within one year of submitting the report, as compared to the previous two to three years of a waiting period. To date, there are 119 ratifications to the Optional Protocol on children in armed conflict and 123 ratifications to the Optional Protocol on the sale of children, child prostitution, and child pornography. The Committee has received 44 initial reports on OPAC and 32 reports on OPSC.



We are celebrating 18 years of the Convention. Customarily, 18 years signifies the turning point from childhood to adulthood. This date brings many benefits and acknowledgements. We still have the saying «coming of age.» Every person celebrating his or her eighteenth birthday this year will celebrate it together with the eighteenth birthday of the Convention. It would be correct to name this generation the «Generation of the Rights of the Child».

French historian Philippe Aries made his famous observation that childhood was not recognized as a distinct phase of life before the seventeenth century. Children were regarded as small adults from the moment they were weaned. People were not interested in childhood because it was viewed as a brief period that passed quickly for those who survived and childhood was regarded as a period to pass through as quickly as possible. For a very long time, there existed the implicit binarism of the psychological model which viewed children as «immature, irrational, incompetent, asocial and acultural». On the other hand, adults were viewed as «mature, rational, competent, social, and autonomous».

One's eighteenth birthday should not only be a time of celebration of finally becoming an adult. It should also be a period of looking back into the years leading up to that moment. Well thought-out, careful evaluation of achievements, strengths, needs, barriers, and hurdles confronted need to be made. Drawing from this evaluation, one must plan and shape one's following years.

The Convention on the Rights of the Child celebrates 18 years with it 18 members of the Committee. Every candle should not merely represent a celebration of passing of childhood that would ultimately lead to adulthood, but each of these eighteen candles should signify recognition, reaffirmation, and celebration of childhood. Each member of the Committee holds a very special position and responsibility. Every member serves as a reminder, monitor, and advocate of the very special period of childhood.

The major preoccupation of the Committee is the present life of our children. Children are viewed not just as «future leaders’, but as important leaders of the present.

The major accomplishment of the first 18 years of the Convention is that children have become more visible. Now there is a consensus that children are bearers of rights. Unfortunately, there are many children who suffer major violations of their rights. They live in very harsh conditions, are systematically discriminated against, abused, and denied participation in decision-making processes. The coming years must be devoted to stopping all forms of violence against children in all settings; ameliorating the conditions that children live in and the challenges are exposed to; stopping all forms of discrimination; and guaranteeing children’s participation in the decision-making processes. In short, all the provisions enshrined in the Convention must be guaranteed. If the twentieth century was the century of the child, the twenty-first century should be the century of accountability of all actors for the achievement of full enjoyment of human rights for children.



Celebrating Children's Rights: a Council of Europe wish

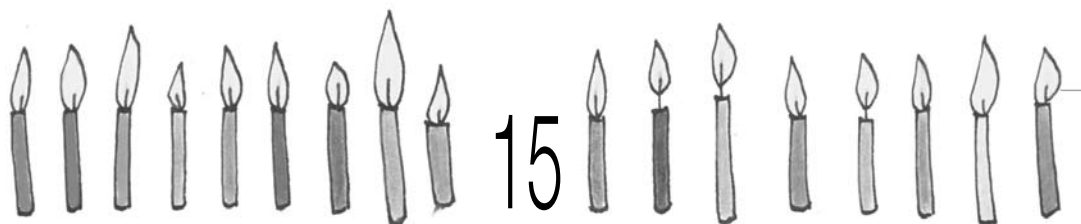
Maud de Boer-Buquicchio

Deputy Secretary General of the Council of Europe

Eighteen years ago, the United Nations offered a wonderful gift to children throughout the world: the Convention on the Rights of the Child. This gift now comes with a promise from 193 countries to respect, protect and empower children. Unfortunately, the state of the world for children shows that we still have many promises to keep.

Forty seven of the signatories of the Convention are member States of the Council of Europe. We share with the rest of the world a strong commitment to the well-being and the best interests of children and the protection of their fundamental rights. The starting point for our work is in recognizing that children are not mini-persons with mini-human rights - in fact they need more protection, not less. Adults want children to grow up and respect the world they are born in. It is high time that our adult world also respects children's rights.

The Council of Europe is working to promote children's rights, to protect and empower children and to prevent child rights violations. We do this not just because children are «our future», but because we are clearly responsible for our children's present. A human rights violation has a context or a «past» - the conditions which made it possible -, a «present» - which includes the child's suffering -, and a «future» - the child's physical or



psychological scars. For the rights of the child to be guaranteed, we have to act now to prevent and to challenge current violations, and to look after the children who have already suffered.

The Council of Europe is a regional organization, but our messages and tools apply worldwide. We combine highly effective tools such as standard-setting, monitoring, policy development, assistance programmes, awareness-raising, training and capacity building. We also mobilize Governments, parliaments, local authorities and NGOs to take action; these are key groups in society which can make a difference to the lives of ordinary people.

As many lawyers and policy-makers know, one of the Council of Europe's most important and successful ways of building a human rights culture lies in its capacity to set standards. Council of Europe legal instruments relevant to the rights of children start with the European Convention on Human Rights, and include the European Social Charter and the revised Social Charter.

Other more specific legal instruments cover action against trafficking in human beings, protection of children from cybercrime, adoption of children and protection of children against sexual exploitation and sexual abuse.

The links established between the standards developed by the Council of Europe and the United Nations are strong. In some cases, the Council of Europe paves the way for global instruments. In other cases, we take global instruments as a starting point to develop more ambitious and far-reaching standards, including monitoring mechanisms across Europe. In all cases, regional and global action help to advance the human rights cause. This is certainly what is happening with Council of Europe instruments and the United Nations Convention on the Rights of the Child.

Setting standards is one thing. States' compliance with them is, of course, critical to actually changing the lives of children and adults. Monitoring compliance with human

rights standards is of the highest importance. The Council of Europe has several monitoring systems, ranging from parliamentary monitoring and peer reviews, to independent expert monitoring based on reports. The Commissioner for Human Rights, also an intrinsic part of the Council of Europe, is a high profile commentator who monitors a number of human rights areas, including those aimed to protect children. We also have procedures which enable people to complain as individuals or in groups - most famously to the European Court of Human Rights.

Many cases concerning children's rights have been brought before the European Court of Human Rights in Strasbourg. These cases have raised issues such as the prohibition of degrading and humiliating treatment, the right of children to a fair trial and the right to the respect for private and family life. Cases concerning corporal punishment of children provide us with a good illustration of how the Strasbourg Court increasingly applies the standards of the UN Convention in judgments related to children.

Judgments of the Court have progressively condemned corporal punishment, first in penal systems and schools, and more recently in the home. The Court has for instance challenged the concept of «reasonable» chastisement by parents. In September 1998, the Court unanimously found that the corporal punishment of a young English boy by his stepfather was degrading punishment in breach of article 3 of the European Convention on Human Rights (*A v. United Kingdom*, 1998). Prosecution of the stepfather in a UK court had failed on the grounds that the punishment was «reasonable chastisement». The Court found that the United Kingdom was responsible because the domestic law allowing «reasonable chastisement» failed to provide children with adequate protection, including «effective deterrence». The Court ordered the UK to pay £10'000 compensation to the boy who had been repeatedly hit with a garden cane.

The judgement in *A v. United Kingdom* cites articles of the UN Convention on the Rights of the Child, including article 19 which requires states to protect children from «all forms of physical or mental violence» while in the care of parents and others.

Many Court decisions have greatly contributed to developing national laws and policies in the areas of private and public family law, giving children better legal protection from violence and developing juvenile justice standards. Soon after the entry into force of the UN Convention, the Court started referring to the Convention when interpreting the European Convention provisions. In this way, a link is established between a right enshrined in both conventions and an individual case.

The European Social Charter contains explicit and far-reaching provisions on the rights of the child. The Charter was revised in 1996 and the Convention on the Rights of the Child inspired the drafters who strengthened provisions concerning children.

A collective complaints mechanism which entered into force in 1998 allows, inter alia, certain NGOs and groups to lodge complaints on behalf of children against States parties alleging a breach of the European Social Charter. The procedure is child-friendly. Many complaints have concerned children's rights, child labour, the right of children with disabilities to education, the right of children to protection against violence (notably corporal punishment), and access to health care for children of irregular migrants.

The European Committee of Social Rights, responsible for monitoring States' compliance with the Charter, has developed substantial case law under the children-related provisions and seeks its inspiration not only from the UN Convention provisions, but also from the observations and conclusions of the Committee on the Rights of the Child.

As the Committee on the Rights of the Child points out, even if a country adopts legislation, this does not guarantee the effective protection of the rights of the child. Protecting children's rights also calls for a co-ordinated effort at policy level. Children's rights need to be mainstreamed into all public policies, especially in the fields of justice, education, family, culture, health and social affairs. The Council of Europe has accumulated remarkable expertise on policy development in all these areas. It provides policy advice on access to education by Roma children, integration of migrants' children, rights of children with disabilities, positive parenting, children and the internet, and the rights of children in institutions, amongst other areas. Through this work, the Council of Europe translates legal standards into policy measures.

This concerted action on the infrastructure of how countries ensure and protect children's rights goes a long way, but standards and policies also need to be accompanied by awareness-raising efforts. We have been campaigning vigorously on many issues related to children's rights. In late 2007, for example, we will be launching a specific campaign to ban corporal punishment of children throughout member States, and to promote positive parenting. Such campaigns have a firm foundation in the Convention on the Rights of the Child.

Global and regional treaties must be recognized living instruments which are able to adapt to new challenges. Although these treaties must take into consideration the evolution of society, the real issue remains our joint ability to drive that evolution. This is precisely the objective of the Council of Europe Programme «Building a Europe for and with children»: putting our «evolving capacity» to work in the best interests of all children.

The UN Convention has 18 candles on its cake; and we should truly celebrate the 18 years of effort and achievement in protecting and promoting the rights of all our children. The Council of Europe, like the United Nations, strives for a world

where children are happy, can develop their full potential and are able and ready to build the world they both need and deserve. We look forward to many more «birthday parties» in the future where both children and adults can celebrate together and show that we have achieved lasting success on behalf of, and with, children across Europe and the rest of the world.

Words that Speak Volumes

A short history of the drafting of the CRC

Nigel Cantwell

Co-ordinator and general spokesperson for the NGO Ad Hoc Group throughout the drafting of the CRC. He is now a Geneva-based consultant on child protection issues

In the beginning were the wrong words

Frankly, the CRC did not have an auspicious start.

After Poland had submitted its proposal for the convention on 17 January 1978, the United Nations' Secretary-General contacted Governments and international organizations to get their feedback on the initiative. The response was hardly a unanimous wave of unbounded enthusiasm.

Some Governments, it is true, expressed general support for both the idea and the substance of the proposal. Many, however, complained that the Polish draft was worded in a manner unsuitable for a treaty, overlooked many rights that needed to be incorporated; and lacked an adequate mechanism for overseeing implementation. For their part, the international organizations were no less circumspect about granting it their blessing.

UNICEF, for example, did not to respond to the Secretary-General's missive. The major federation of child-focused NGOs at the time - the International Union for Child Welfare - was also wary at first. It reasoned that the 1959 Declaration on the Rights of the Child had universal approval, having been adopted unanimously by the UN General Assembly, whereas a binding treaty could be seen to supersede that instrument,



yet might be ratified by only a limited number of States. Over twenty international NGOs also signed a statement requesting postponement of the process so that lessons learned from the International Year of the Child (IYC) - declared for 1979 - could be taken into account.

Poland had put forward the idea of the convention with a view to its adoption the next year as a permanent legacy of IYC. This would have required rapid consensus, so it presented a draft text that, being almost a copy of the 1959 Declaration, thus already benefited from universal agreement as «soft law». As a result, the proposed text had indeed not been adjusted to the requirements of a fully-fledged treaty and did not take account of the significant experience and developments in thinking on children's issues and human rights since the Fifties. Hence much of the considerable reluctance that was expressed towards the initiative.

At the same time, the UN could not disapprove the proposal on the very eve of a UN-proclaimed Year devoted to children. Furthermore, preparations for IYC, as well as initiatives during the Year itself, brought into the public domain a whole range of children's issues that had received scant attention before and mobilized NGOs both individually and co-operatively in an unprecedented manner. So it was that, while having in some ways been at the root of reticence over the proposed treaty, IYC also enacted the conditions necessary for taking the project forward...

Poetry in slow motion

In late 1978, and with unbounded optimism, the UN General Assembly nonetheless exhorted the Commission on Human Rights to make the question of a convention one of its priorities, with a view to adopting the text during IYC. The Commission responded by setting up a Working Group on the issue which, unbeknown to it at the time, of course, was to take ten years to bring the treaty to fruition. They proved to be years extremely well-spent.

But it was a difficult decade to begin with. The Cold War only started to thaw in the mid-80s, and negotiating an international treaty in that climate meant that politics rather than substance often prevailed: the convention had been proposed by Poland, after all. It did not help that the Commission had set up another Working Group in 1979 - to draft a convention against torture, sponsored by «the West» - the annual meetings of the working group took place simultaneously with those on the «rights of the child», and just along the same corridor at the Palais des Nations. Inevitably, any negotiations at the «torture» session had immediate repercussions on debates in the «children» meeting room. The text of the Convention Against Torture was finalized in 1984, however, and this, combined with the de-freezing of East-West relations, enabled subsequent work on the CRC to proceed on a more co-operative basis.

At first, progress was slow. The Working Group's first meeting (1979) managed no more than to adopt the title and three preambular paragraphs. Even though it then picked up a little, with preambular paragraphs and two substantive sentences adopted in 1980, this pace did nothing to stimulate interest. Government delegates and NGO observers alike became disillusioned.

The NGOs were in disarray, moreover. When invited to take the floor at the Working Group sessions - they had no automatic right to do so, unlike Government delegates - they too often used that privilege to make spontaneous, ill-prepared proposals and, in some cases, even ended up disagreeing with each other in the presence of the Chair and delegates.

In 1983 - when the USSR delegate observed wryly that at this rate, by his calculation, it would take 22 years to finalize the text - a score of NGOs decided that enough was enough. They set up the NGO Ad Hoc Group for the Convention to draw up coherent proposals, and designated spokespersons on specific themes. From then on, NGOs were taken seriously and were regularly asked

to join drafting parties set up to produce compromise texts on thorny problems. Government delegates came better prepared for the sessions, and attendance began to rise significantly. So did the rate of provisions adopted: seven full draft articles, including the longest (now article 40), were agreed in 1986, for example.

A friendly word in your ear...

The NGOs facilitated the process in other ways too.

Opportunities for vital informal contacts between, in particular, «East» and «West» were very limited since «Eastern European» delegates tended to rush away as soon as each day's Working Group meeting ended.

In the mid-80s, the representative of one NGO Group member (Rädda Barnen International) decided to invite all delegates - governmental and non-governmental alike - to an informal evening. It being winter (January), the main fare on offer was «traditional Swedish pea soup». With fifty or sixty people standing squashed together in her relatively modest Geneva apartment, desperately trying not to spill pea soup or red wine, barriers were quickly broken. «East» and «West» were finally talking - at this rather different kind of «drafting party». The atmosphere in Working Group meetings was definitively and significantly improved: how could one not enter into friendly co-operation with someone who, the night before, had managed to save you from an expensive cleaner's bill? The pilot event was so successful that the «pea soup evening» thenceforth became an eagerly-awaited item on the Working Group's annual agenda.

The NGOs also played a part in securing UNICEF's full participation in the drafting. UNICEF had been supporting the NGO Group from its inception and had been physically present at the Working Group sessions, but it had not active participation, despite intensive direct and indirect lobbying by the NGOs. In 1986, UNICEF's Deputy Executive Director made a statement to the Working Group that launched its enhanced involvement.

UNICEF then went on to play a crucial role, not least by financing «informal» meetings of the Working Group towards the end, designed to iron out controversial issues that were proving difficult to resolve in the formal sessions.

Words of wisdom

The fact that Professor Adam Lopatka of Poland was re-elected by acclamation as Chair of the Working Group each year was surely not due simply to the fact that his country had instigated the whole exercise.

His broad acceptance by the Working Group was far from a foregone conclusion, however. Throughout much of the drafting (1982-1987) Prof. Lopatka held the post of Minister of Religious Affairs in Poland, at a time when some highly criticized policies were being implemented in this domain. But his skill and even-handedness in guiding the drafting and his personal commitment to seeing the process come to fruition gained him the respect - not to mention the very real affection - of Government and NGO representatives alike. With one or two exceptions - not a bad record over ten years - he managed to steer the Group towards consensus with a combination of patience, laid-back humour and wise counsel. Consensus was what he wanted, consensus was what he invariably got, and today 193 States Parties stand as testimony to his achievement. Prof. Lopatka is no longer with us to celebrate «his» CRC's 18 candles: sadly, he passed away in 2003.

Off the written record

Surely the most contested and disturbing outcome of all of the debates on draft provisions was that resulting in age 15 being set as the minimum for direct participation in armed conflicts. And it was not only the NGOs that were unhappy: this was to be the only issue on which certain States, when ratifying the CRC, made reservations or declarations qualifying the standard set as too low, and it subsequently prompted the negotiation of the Optional Protocol on the involvement of children in armed conflict.

It was 7 December 1988 and we were two days from the end of, ostensibly, the final session of the Working Group, a special two-week meeting devoted to the Second Reading of the entire draft text. But disagreements remained over standards to be set in article 38, including notably the one regarding minimum age of recruitment and participation. The Chair wanted to achieve consensus on this. However, the US delegate maintained the view he was defending: essentially, that this was neither the time nor the place to consider raising the age set in the Geneva Conventions, i.e. 15 years - even though the ICRC itself was saying the opposite. The exchange dragged on. The Chair suddenly announced that the only possible compromise would be the lowest common denominator age of 15. He brought down his gavel and immediately swept out, leaving his deputy to calm a meeting in uproar. So that is why article 38 reads as it does.

Chapter and verse

The above, not surprisingly, is among the many things that cannot be found in the Working Group records. These include another incident at that same Second Reading, when a delegate of a Western European country took the floor to present a document circulated by his country. The position paper, in essence, put into question the entire text of the future convention - this, remember, at the very end of a 10-year process in which his country had been fully involved. He advocated that the CRC contain only rights that were specifically child-related and not covered by existing international instruments, notably the Covenant on Civil and Political Rights. «Never in a thousand years», he thundered, would his delegation allow it to go through in its present form, declaring to boot that the text seemed to have been «drawn up by amateur lawyers».

Understandably, this outburst met with less than a round of applause. Some delegates assiduously countered his arguments, others chose to make self-deprecating, sarcastic remarks about their own drafting skills. But the delegate of India outshone

them all by coming up instantly with a quotation from Omar Khayyám's Rubaiyat LXXIII on the difficulties of starting all over again. To the pure delight of his peers, he intoned gravely:

*«Ab Love! Could thou and I with Fate conspire,
To grasp this sorry scheme of things entire,
Would not we shatter it to bits - and then
Remould it nearer to the Heart's desire!»*

For the record, we can note that the objecting delegate's country made no further attempt to block the draft, and indeed ratified the CRC some three years later...

There were no words...

A specific event can somehow set its mark on the way an international text is formulated. In the singular case of the 1948 Genocide Convention, the «event» in question did nothing less than inspire the whole idea - and determination - to develop the treaty. During the drafting of the 1993 Hague Convention on Intercountry Adoption, the Romanian delegate declared that the largely unregulated adoption abroad of 10,000 children from her country in 1990-1991 constituted a «national tragedy». Her statement greatly influenced the drafting group's approach to the issue, and contributed to that treaty becoming arguably one of the most substantive texts of private international law to date.

For this author, the most striking event now reflected in the CRC was the programmed «disappearance» of scores of babies and young children born to dissidents during the military regime in Argentina from 1976 to 1983. These children had been forcibly removed from their parents, stripped of their identity (they were referred to as «NN», *ningún nombre*) and then in many cases given in adoption to the regime's sympathisers. It was this that prompted the 1985 Argentinean delegation to propose a specific

provision on the preservation of the child's identity, and its re-establishment if that principle had been violated, which finally found its place in the CRC as article 8.

South-Side Story?

A constant concern expressed during the drafting was that the developing countries - particularly those of Africa and the Islamic States - were under-represented. The evolving text was consequently criticized as reflecting an overwhelmingly Northern approach.

The burden of setting forth the South's point of view indeed fell on relatively few shoulders, and at the time, it was not clear if the absence of the others was due to lack of interest or simply to scarce resources. Countries such as Algeria and Senegal often acted as unofficial spokespersons and put up a spirited defence throughout, with concrete results. Islamic States, however, only appeared en masse at the very end of the drafting, raising a significant number of problems that needed to be addressed if consensus was to be preserved. Attempts to resolve these were only partially successful: some amendments were made and there was agreement not to hold up adoption of the text, but the number and scope of reservations that many of these States notified on ratification showed that several issues were left outstanding...

One still hears, though far less frequently, the complaint that the CRC is based on Western concepts - of both children and human rights. However, developments since 1989 have, on balance, tended to illustrate that its precepts are more universally accepted than might have appeared initially. Many States have now withdrawn some or all of the reservations notified on ratification. And the decision of the then Organization of African Unity to draft an African Charter reflecting the continent's specific approach and concerns gave rise to a treaty that not only complements the CRC, but also sets higher standards than the latter in a number of respects. Perhaps, then, the CRC is not seen as unacceptable but, if anything, rather as incomplete.

The letter and the spirit

Drawing up treaties is invariably a protracted diplomatic exercise, but drafting the CRC was much more. It gave rise to extraordinary co-operation among NGOs, still evident today, and to a blueprint for organizing civil society's input into the formulation of international standards: NGOs had unprecedented impact on the draft text. Above all, the lengthy process provided a human rights forum and a stimulus to carry out an in-depth review of attitudes towards children, so that their welfare, development and protection were established once and for all as human rights issues. And out of this, among other things, emerged the «child participation» ethic now so fundamental to rights-based work.

Not only did drafting produce the letter of the Convention, it also created a spirit that lives on.



The CRC General Principles

Jaap E. Doek

Former Chairperson of the Committee on the Rights of the Child

Some General Remarks

In its general guidelines on periodic reporting, adopted in October 1996 the Committee on the right of the child introduced the term «General Principles» and identified these as the articles 2, 3, 6 and 12 of the Convention. In the guidelines the Committee does not explain what it means by «General Principles» nor why they are limited to these four articles - one could argue that e.g. articles 4 and 5 of the Convention could also be qualified as general principles.

But if we follow the ordinary meaning of this term we may assume that these principles should be taken into account when implementing the (other) articles of the CRC. This is confirmed in various general comments of the CRC Committee such as general comment No. 6 on unaccompanied and separated children outside their country of origin and general comment No. 9 on the rights of children with disabilities.

Some of the general principles are applicable beyond the implementation of the provisions of the CRC. Article 2 links the right to non-discrimination to «the rights set forth in the present Convention».

The best interests of the child shall be a primary consideration in all actions concerning children (art. 3) and the right of the child to express her/his views freely is applicable in all «matters



affecting the child». Article 6 is to a certain degree a «fremd Körper» in the list of general principles. The inherent right to life is much more than a «general principle»; it is one of, if not, the most fundamental human right. But the survival and development of the child are concepts not limited to the implementation of the Convention.

I would like to suggest that the Committee elaborates on the meaning and the role of the general principles in a general comment. This would allow it inter alia to discuss the use of the term «General Principles» in relation to provisions that are rights of the child. The ordinary meaning of «principles» is weaker than the legal obligations of States Parties. Principles are usually guiding notions and allow for exceptions. Articles 2, 3, 6 and 12 of the Convention are much more than guiding notions.

Another problem that could be addressed is the way the general principles are used in the dialogue with States parties.

Questions raised with regard to the implementation of the general principles often - and unavoidably - pertain to other provisions of the Convention.

This often results in a widening of the discussion to various aspects of education, health care, child protection and juvenile justice, a practice which is called «front loading» by Bruce Abramson. The challenge seems to be to find a balance between general questions regarding the general principles and the more specific questions that should be raised in relation to the other clusters the Committee discusses in its dialogue with State Parties.

2. Some specific comments on each of the general principles

Article 2: the right to non-discrimination

This article defines the group of children entitled to the enjoyment of the rights set forth in the Convention: «each child within their jurisdiction». This means that the rights recognized in the CRC are applicable to any child residing or

otherwise present in the territory of the State Party, whether or not the child is a national of that State. Therefore the obligation to respect and ensure the rights in the Convention applies also to refugee or asylum seeking children and other non-nationals on the State's territory (see also the general comment 15 of the Committee on Civil and Political rights on the position of aliens under the Covenant (1986). Second, and based on the concluding observations of the Committee, it can be concluded that article 2 requires the States Parties to take the following measures:

- legislative measures to prohibit all forms of discrimination together with effective remedies in case of violations of the prohibition. The Committee regularly recommends to States to include such a prohibition in the Constitution to give it the necessary weight and general applicability. But at the same time, it may be necessary to introduce specific non-discrimination provisions for areas like health care and education. Legislative measures should ensure that all forms of discrimination explicitly mentioned in article 2 are addressed. Particularly, attention should be paid to ethnic origin and disability, grounds of discrimination which are not mentioned in article 2(1) of the ICCPR;
- social and other appropriate measures to prevent and combat de- facto discrimination. In this regard the Committee often recommends to undertake awareness-raising and educational measures to address prejudices and other negative opinions or attitudes regarding minority groups in the society.

Another matter of concern the Committee often addresses under article 2 are disparities that exist between children living in urban and rural/remote areas and/or especially vulnerable children (such as children with disabilities, children belonging to minorities and/or poor families) and other children.

These disparities often amount to de-facto discrimination against certain groups of children in the enjoyment of their rights set forth in the Convention such as in the area of health care, education and social services.

Special measures are often needed to reduce and eliminate these disparities. In legal terms it is quite difficult to prove de facto discrimination and legal remedies are either absent or are not effective.

By way of example: in some East-European countries the number of Roma children in special schools is disproportionately high, but it is not easy to prove that this amounts to discrimination.

Some Roma people filed a complaint with the European Court of Human Rights regarding their placement in special schools for children with learning difficulties. They stated that they had suffered discrimination in the enjoyment of their right to education on account of their Roma origin. The Court held that the rules governing children's placement in special schools did not refer to the pupils' ethnic origin but pursued the legitimate aim of adopting the education system to the needs and aptitudes or disabilities of the children. The Court concluded that, despite the worrying overall situation of the Roma people it could not be found that the measures taken (placement in special schools) had been discriminatory and based on racial prejudice. Nevertheless the reality remains that a relatively (very) high number of Roma children are not attending regular education. This leaves us with the question whether indeed significant more Roma than other children have learning difficulties. And if so, why?

Article 3: The best interests of the child

The rule that the best interest of the child shall be a primary consideration in all actions concerning children is not found for the first time in the CRC. On the contrary, it is a rule that was accepted in many countries far before the adoption of the CRC in 1989. At the same time this «general principle» has been the source of discussion and extensive academic or other articles and books. Article 3(1) of the Convention sets out a rule of a procedural nature: when actions concerning children are undertaken the best interest of the child must be taken into account as a primary consideration. Given the wording «all actions concerning children» this must be applied not only in actions concerning a specific group of children, but also to actions

regarding an individual child. In this regard I like to commend the office of the UN High Commissioner for Refugees for the development of Guidelines for the Formal Determination of the Best Interests of the Child (May 2006), a very detailed set of rules on how to determine best interests of the child and who should be responsible for this determination in the different decisions which have to be made e.g. on the identification of durable solutions, on the temporary care arrangements and in situations which may involve separation of the child from her/his parents.

The concept also means that the rules should be applied in a very broad manner, not limited to actions directly or exclusively concerning children.

Finally article 3(1) does not mention actions undertaken by individual private persons. But article 18(1) requires that the best interests of the child will be the basic concern of parents in discharging their responsibilities for the upbringing and development of their child.

Article 3 has (of course) a substantive meaning and is therefore a leading principle for the implementation of all substantive articles of the CRC. But the Convention provides little information on the practical meaning of «the best interests of the child» such as in respect of decisions made by State organs in the field child protection health and education. The same applies for decisions to be made by parents: the question what concretely is in the best interests of the child has to be answered by themselves. But if their answer is detrimental to the development of the child the State has the right and obligation to take action to protect the child.

This lack of specificity in the articles of the Convention results in a reporting and examination process that focuses mainly on article 3. Concerns and recommendations of the CRC Committee are usually of a general nature, e.g. the principle should be better integrated in legislation and/or the decision-making process.

This is unavoidable given the fact that the meaning of the «best interests» is different in different contexts and depends on various factors.

But the Committee should try to elaborate more in the dialogue with States Parties on the meaning of the best interests of the child in relation to articles in which this principle is explicitly mentioned. For instance: what kind of factors should be taken into account to lead to a decision that a separation of the child from her/his parents is necessary in her/his best interests (articles 9(1) and 20(1) CRC). Similar questions can be raised regarding adoption (best interests shall be the paramount consideration; article 21 CRC), separation from adults (article 37(c) CRC) and the (non)presence of the parents during a juvenile justice trial (article 40(2)(b)(iii) CRC). The Committee could provide more information on what the interpretation of the best interests principle is in the different States parties. The Committee should also consider developing guidelines similar to those developed by the UNHCR for other fields covered by the Convention, e.g. on determination of the best interests in cases of child protection (perhaps distinguishing different settings in which protection is needed).

Article 6: The right to life, survival and development

The child's inherent right to life is (one of) her/his most fundamental human right(s). There is a clear link between the right to life and the second paragraph of article 6: respect for the inherent right to life comes with the obligation of States parties to ensure to the maximum extent possible the survival of the child. One could also make the link to the development of the child which would mean that the inherent right to life goes beyond the physical existence of the child.

Article 6 (2) (to ensure to the maximum extent possible the survival and development of the child) requires that States parties take the necessary measures in this regard to the maximum extent of their available resources (see article 4 CRC).

One could conclude that article 6 qualifies the measures a State Party has to undertake in implementing all other articles of the Convention, because they can all be considered as contributing to the survival and/or development of the child (ensure to the maximum extent possible). But one can also raise questions:

-why would we call «the inherent right to life» a general principle and what is the role and (or the added value) of this principle in the implementation of the (other) articles of the CRC?

In the concluding observations the Committee sometimes raises concerns under article 6(1) regarding traffic accidents and suicide. But this «principle» is almost never mentioned in relation to other articles of the CRC. The same applies to article 6(2). Or in other words:

- what could be the added value (e.g. the guiding force) of article 6(2) in the implementation of the other articles of the CRC next to the second part of article 4 CRC.

In short: the role of article 6 as a general principle should be carefully considered and discussed.

Article 12: right to express views/to be heard/child participation

The right of the child to express her/his views regarding all matters affecting the child means inter alia that this right should be considered as a general principle in all activities relating to the implementation of the CRC. The right also applies to the obligation of States parties to ensure that the views of the child are given due weight in accordance with the age and maturity of the child. One tool to ensure enjoyment and respect of this right of the child is the obligation to provide the child with the opportunity to be heard in any judicial and administrative proceedings affecting the child.

Article 12 is also seen as one of the pillars - together with articles 13 and 15 - for the development and implementation of the concept of child participation.

In its examination of States parties' reports the Committee has paid considerable attention to the implementation of article 12 in relation to the development and implementation of legislative and other measures regarding other articles of the CRC. Article 12 has been most frequently - together with article 2 - used as a «general principle» in monitoring the implementation of the CRC.

This is reflected in the fact that article 12 was the theme for the Day of General Discussion 2006 and through recommendations resulting from it. It is also recognized as an article of relevance in the implementation of the provisions of the CRC in many of the General Comments of the CRC Committee.

But article 12 and the related concept of child participation raises many questions which cannot be addressed in the concluding observations in great detail. I am confident that the General Comment on article 12 the Committee is preparing will provide the States parties and all others involved in the implementation of the Convention with helpful guidance and recommendations.

3. Concluding observations

Over the past 18 years, articles 2, 3, 6 and 12 of the CRC have been considered to be general principles of the CRC. As such they have a well-established and widely accepted position in the reporting on and monitoring of the CRC. It is understandable that there be an inclination not to change something as widely known as the «general principles» in the context of the CRC. Everyone knows what is meant when «the general principles of the CRC» are discussed. But do we really know what these principles mean and why these four articles are the general principles? It is not only a matter of name (why call a right a principle?) but also of substance. The Committee so far has not clearly explained what it means if an article is called a «general principle» and what its role is in the implementation/interpretation of the (other) CRC provisions.

A critical and analytical discussion of the (role of the) general principles is required in order to clarify what the Committee means when it refers to the general principles and how they should be used/implemented. The Committee may thereby provide the States parties and other stakeholders of the CRC, in particular children and parents, with better guidance for the implementation of articles 2, 3, 6 and 12 of the CRC.







Contributions of Children on Child's Participation





Youth Claiming Governance: We Are the Now

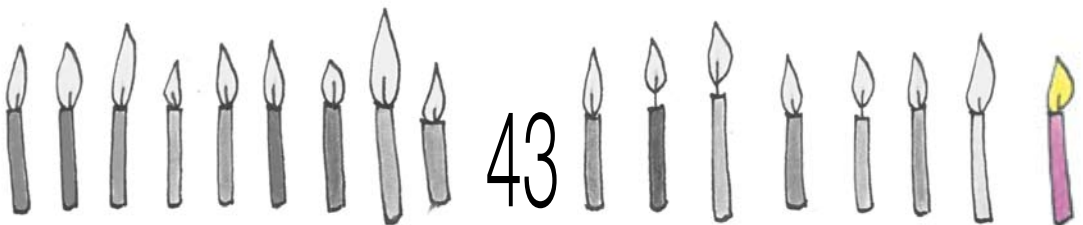
MCFD Youth Advisory Council, Canada

On June 20, 2007 the Honourable Tom Christensen, British Columbia's Minister of Children and Family Development (MCFD) announced «As part of the Ministry's transformation, a province wide Youth Advisory Council and an Aboriginal Elder's council were established.» MCFD is committed to improving services to children and youth and supporting them in becoming engaged in Government.

«We are pleased to be one of the first jurisdictions in Canada to have such advisory councils established within a Ministry. We are fortunate to have their guidance as we strengthen our system of support for children, youth, families and communities.»

The Province of British Columbia's legal framework includes laws that encourage youth participation and the Youth Advisory Council is an emerging example of this. Two positive aspects of these laws are that: «every child has the right to be involved in decisions that affect their lives» and «children and youth in care have the right to be consulted and express their views according to their abilities about significant decisions affecting them.»

Youth participation is a right. It is acknowledged and celebrated that balance is being restored by this Ministry by including and respecting the voices of youth. The Government of British



Columbia has acknowledged that including youth participation in its planning will lead to better decisions being made and creating better outcomes for young people.

The Youth Advisory Council is an active system that allows young people to express themselves freely, openly and in a supportive youth friendly environment. The Council supports appropriate means to generate thoughts, ideas and solutions and allows access to information. The Council is comprised of 30 young people between the ages of 16 and 24 years old. They are representative of the five regions of the province. The Council members come from various backgrounds, experiences and cultures. All voices are important and respected, particularly those of the most marginalized and vulnerable youth. The Youth Advisory Council aims at bringing together young people from across the province to contribute their knowledge, skills and experiences within the overall ministry governance. Our Council gives voice to the unheard voices of children and youth within British Columbia. The Council is currently working with youth to move past barriers and include them in the decision making process regarding transformation and seek their recommendations linking policy, programme and the continuum of service delivery. Transformation is a process of changing the Provinces' existing approach to its support, programmes, policies and legislation regarding child and youth protection and wellbeing. The Council has a responsibility to ensure that the methods of participation by all children are accessible and child friendly. Youth engagement strategies are developing in relation to various local needs. Through the Council, the Ministry will identify issues facing young people, particularly Aboriginal/Indigenous youth, and will become informed on what types of decisions they make and what their needs are in order to build healthy, sustainable communities. The Council will produce its 07/08 strategic plan in April 2007.



Strengths based developmental approach

Currently the Ministry of Children and Family Development is shifting its practice from a risk management approach, to one that supports a strength-based developmental system. Our Council is working to give input into how this would be developed from the perspective of a young person who receives the service. Children are born with natural assets and substantial strengths which need to be supported in order to achieve their potential, including providing necessary support for families regardless of their difficulties.

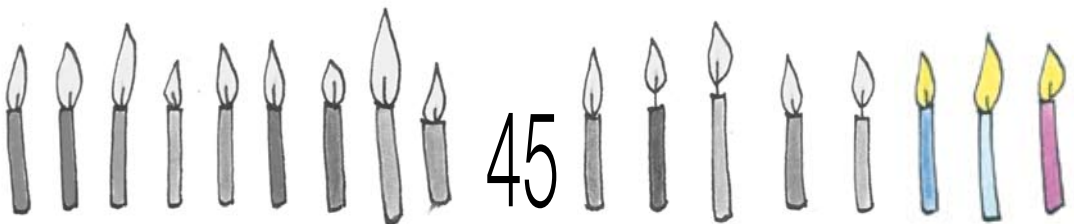
Decision-making processes

To date the Council has engaged in creating meaningful youth participation through consultations with other young people and collaboration with Government decision-makers. Its future plans are to develop youth led processes that are integrated within the system of child protection. The Council is working to integrate youth-led decision-making processes in collaboration with key Government processes, within a youth-encouraging environment.

Ideas into action

The following is a range of areas that the Council is currently working towards:

- Strength-based development approach for services for children throughout their lives into healthy adulthood;
- The Youth Advisory Council is working to ensure accountability for the quality of services delivered by the Ministry and that these meet the needs of youth and children;
- Identifying the necessary supports needed for youth transitioning from Government care;
- Advocacy for youth and children's rights;



- Changing educational practice of service providers, Government and generating awareness of positive youth development;
- Participating in the development of the General Comment on the Rights of Indigenous Children.

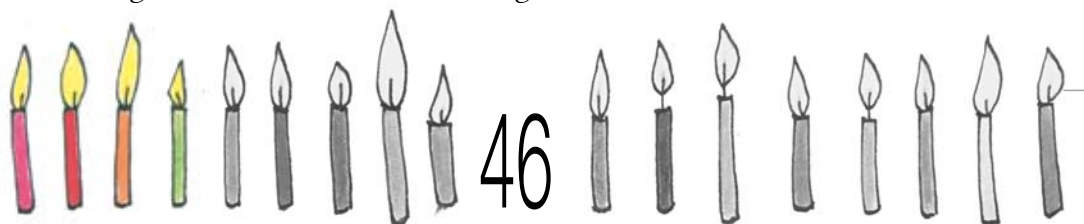
Celebrating and embracing diversity

(Elder and youth connections are important - the disconnection between the elders and the youth and needs to be addressed). Intergenerational support of child development. Diversity and cohesive group positive goal - different walks of life, this is a perfect example of how many backgrounds and lives together to create a diverse planning towards a cohesive voice for children and youth and identity presence both individually and collectively connecting youth. Many people in different walks of life, when their paths come together their strength to create change possess a resilience towards the forces of the status quo.

Closing

Our goals are permanent youth participation and integration in all Governmental processes provincially. The Council hopes that youth/child rights are mainstreamed across all provincial ministry arenas. You as a young person have the right to express yourself freely, to access information, and to become engaged in processes that affect your life. As the Convention reaches its age of majority, the Council is working to ensure that the voices of youth around the world do not fall on deaf ears.

The Council is living proof that the «voices of youth» are being heard in Government and society to create a positive healthy environment for youth to develop, in accordance with the UN Convention on the Rights of the Child. Through the Council feels that the age old «maxim» that youth are leaders of tomorrow - is being transformed into that of one that is happening today, which is a fulfillment of the goal of the Convention on the Rights of the Child.

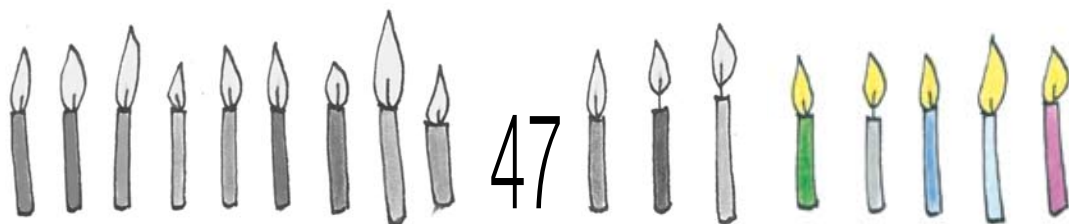


Homelessness, Aid and Returning Home

Du Linda, China

This afternoon, Mum took my two younger brothers and me to Songshan Hotel to participate in a conference on children's rights. At the beginning of the conference there was a presentation by a foreign aunty, on the work done by aid agencies back in their countries. She spoke about the steps they had taken so far, and what had been achieved. Through her presentation I learned that they not only help children, but can also train them to become little teachers and little doctors. They are able to improve their language skills and become more articulate, and also learn some basic first aid skills. The education is similar to a normal school, it takes place in classes which are divided according to the students' levels of knowledge, and they have to sit an exam at the end of every year. The only difference is that at the end of their studies they receive a diploma signed by the Minister of Education rather than the headmaster of the school. After hearing this presentation, I think that our aid agency in Zhengzhou should also begin to train us as little teachers, so that we can set out to spread the knowledge of children's rights to others, and to improve our abilities to explain and express ourselves.

After a short break, the second part of the conference started. These were seminars in which the children in the audience were also invited to participate. We were divided into two groups. At the beginning everyone was a little nervous, and we didn't know how to answer the questions that were asked. But after a while we became much more relaxed and eager to tell them what we thought about our life as children at the aid agency and about life in a host

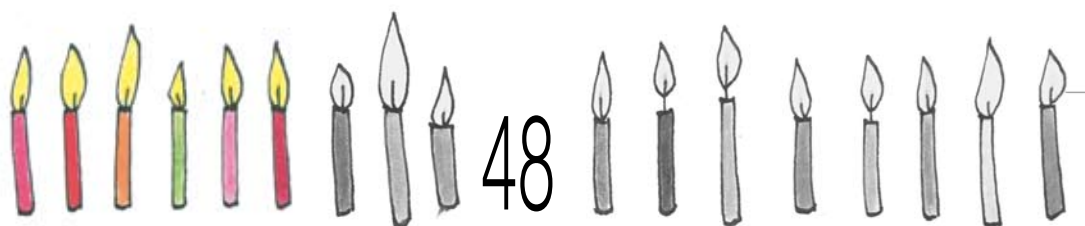


family. An uncle asked us what we expected from society. «What we need is understanding, care and love. We are considered to be a disadvantaged group by society. Sometimes, people think that we are different from normal children and that we are unusual or even abnormal. But homelessness is not a lifestyle we chose out of our free will. We were forced into it because we could no longer stand our situation at home and it was very painful for us. However, we don't want people to look down on us or judge us badly.» During our discussion, the aunties and uncles paid a lot of attention to our lives as children at the agencies and in host families. They also asked us whether there was discrimination against us in the neighbourhood. I was very touched when I heard that question because I felt that they really cared about our journey through life.

I remember how, before I was helped, I was someone without affection. I didn't trust anyone and did not feel enthusiastic about anything. I could not understand what love, friendship or respect was. At that time I thought that respect was something invisible. I wasn't able to respect others or to help them either.

At the beginning of the process of being helped by the aid agency, I wasn't able to trust anyone. I refused to give them my address or information on my domestic situation. When they asked repeatedly, I gave them a fake address. Although at the beginning a lot of their time and efforts were wasted, the uncles and aunties tried very hard to help me. In the end, they took the decision to send me to host family number two.

I arrived at my «new home.» There I learned about respecting others, with the help and encouragement of my mum and dad, and learned what love and friendship are. I now know that all experiences are worthwhile, and that sometimes success can only be achieved after difficulty and failures. My self-esteem became stronger and I learned to love others. I also learned that a humble person is someone

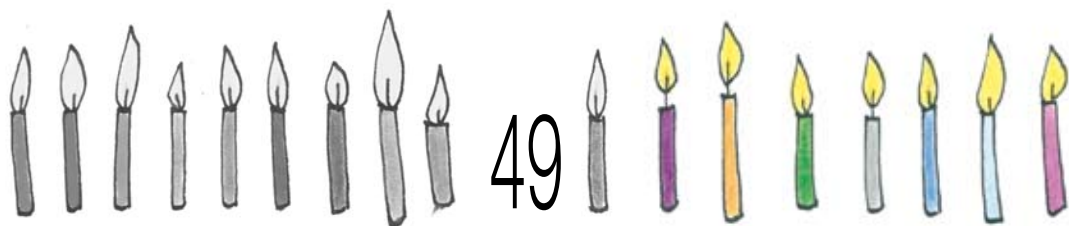


not someone who is weak, but someone who is strong, because he understands that humility is a virtue, which can improve one's life. I am very grateful to the host parents for their selfless love towards us, and for teaching us how to give love to others. I am glad that in this world there are people who are encouraging others, caring for them and giving them strength. Thinking about this sometime moves me to tears.

Each and every word of mum and dad shows that they care about us, sharing our joy and pain. They do everything they can to help me escape the shadows and troubles of the old times, to raise me in happiness, so that I can enjoy a rich and joyful life. Every time I face difficulties and failure, mum and dad tell me: «My child, it doesn't matter, a failure is only the beginning of the road to improvement.» Although this sentence is nothing extraordinary, it gives me an inner strength which helps me not to be afraid of failing again. Dad often says that it is important to give up on things that are of no use to us, so that they don't disturb our mood.

In this host family, I have also learned to think differently, and to see things from other people's perspectives. In the past, I did not know about this, so I would deny any responsibility if there was a problem. I was only complaining and blaming others, without thinking of my own responsibility of helping to seek a solution. But now I have changed. Whatever happens, I take the responsibility to see where the problem lies, and ask myself what to do to find a better solution.

Dad says that we have to start from the small things in life. He says so and does so. He explains reality through life's details, such as: it is possible to tell what virtues a person has depending on how the person makes his bed or whether his living room is clean or not. It is also possible to know how much enthusiasm a person has from his attitude to everyday life. At the beginning, I wasn't very good at expressing myself verbally.

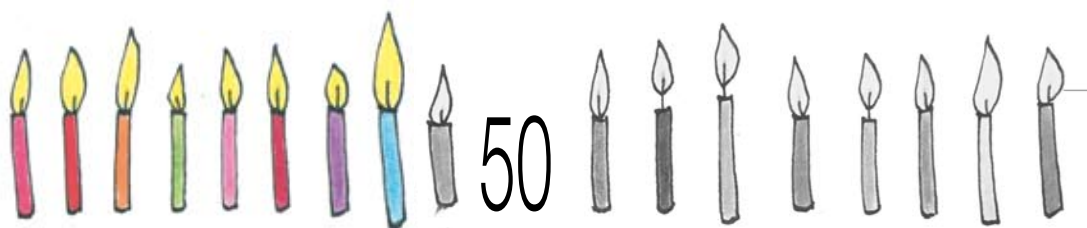


I didn't talk a lot and found it was difficult to draw conclusions. Even if I could draw conclusions, I could not really get to the important points. Mum told me that I should practise expressing myself and train my eloquence. Now, not only I can draw conclusions, but also speak in a logical and fluent way. Although I don't look particularly scholarly or smart, my words often surprise others and I get a lot of compliments and praise. I can always speak confidently with good logic and coherence. That's one of the big improvements since I arrived at the host family.

At the Centre of Child Protection and at the host family, I have learned to care about others and enjoy my own rights. I have learned to communicate and to understand others.

«Homelessness» and «Aid», these two words are always in contrast. It is actually through my own experience of these two words that I have learned about the word «aid» and its importance. Clearly, I feel very glad to receive aid from these generous people, but their help is only temporary. Eventually, I will have to go back to my family and participate in the real world.

Despite the fact that I have received a good education and care, all of that is only temporary. Although I don't really want to go back to my family because I find so much love and care here. I am trying my best to prepare for such a possibility. Maybe I will not get such a good education when I go back to my own family. It is also possible that getting back will hurt me again, or that my family will be even more annoyed towards me for escaping, and that my rights as a child will be violated after my return. That is all possible... But after all, that is my home and the people living there remain my family. They are not my enemies; it is always possible that they will give me some support. Therefore, despite the fact that I don't feel like going back, and don't even like talking about it, I will try my best.



The Participation of Children - an experience

National Movement of Organized Children and Adolescents of Peru

Participation is a right that we all have, without distinction of any kind. Its full exercise ensures and concretizes compliance with all the other rights, as stated in the Convention on the Rights of Children.

In Latin America we say that: «There are no protagonists without participation, but participation alone does not create protagonists.»

Thus, to participate just for its own sake is not a protagonist participation, as protagonist participation is that where, from our condition as a child or adolescent, we develop and strengthen our abilities to act, to know, question and change our social, economic and political environment. This means, participation during which we grow into a person who is entitled to rights that promote our growth and personal and social development and those of others, with responsibility though action. It is through actions that we become social actors.

In present societies, some adults in particular are not convinced about the degree of participation that we, the children and adolescents may achieve, since there are still spaces where we do not have an adequate opening to make our real participation effective. We, the children and adolescents, are convinced that our participation makes us stronger



when it is accompanied by a fundamental element: Organization. Organization allows us to achieve representation and social strength to become social actors under the law.

The experience of the dissemination of the recommendations of the Peruvian Committee on the Rights of Children regarding the application of the Convention, initiated by the Peruvian Children and Adolescent Organizations (NNA, from the initials in Spanish) is a clear demonstration of the degree of organization and development that can be achieved when the goal is crystal clear: the promotion of a space where we can exercise our right to participation through the expression of our opinion, at both the civil society and the local authorities levels. This would enable NNA to identify children's right and to enforce them, particularly through raising awareness activities and trainings on the importance of the Convention on the Right of the Child. A broader participation would also enable NNA to assume its own responsibilities and commitments, as much as to strive towards a better implementation of the policies on the Peruvian early childhood.

This process of dissemination is the result of a joint effort among different organizations such as: corresponding and communicating children, working children, school township leaders, NNA's in conflict with the law, native childhood, and also of adult organizations interested in the participation of all NNAs. This initiative has its origin in the space opened by the Committee on the Rights of Children to our opinions and suggestions during the 41st Committee session. The dissemination of the recommendations, an initiative of MNNATSOP: Movimiento Nacional de Niños, Niñas y Adolescentes Organizados del Perú, (National Movement of Organized Children and Adolescents of Peru) was effected through 21 events and/or public audiences at the national level,



in different localities in Peru. Each locality considered with their own children and adolescents the ways they saw the situation and the problems affecting their communities, and particularly their children.. During the events, there were debates with the authorities, and commitments were proposing solutions. As a result, 1'200 Peruvian NNAs are more knowledgeable about their rights.

We also contributed to a larger space, a National Public Event in the country's Congress, bringing together children and adolescents from different cultures and ways of thinking. .We tabled a legislation proposal calling for compliance with the recommendations. We also had the chance to debate and have our opinions heard by State Officers and representatives., NNA organizations completed a series of meetings with Government functionaries such as Ministries and Public Institutions. We also enjoyed the presence of Rosa María Ortiz, a member of the Committee on the Rights of Children. The event lasted for one week, and demanded logistical, exposition, and thematic organization, which was provided by us, the NNAS.

A very important cycle has concluded, and we begin another, based on the follow-up to the Recommendations and Commitments assumed by the authorities. This facilitates and inspires our work: what better evidence of our ability to contribute and to exercise our rights: 1'200 sensitized, informed NNAs: children being contributing to this work.

We now feel, thanks to our actions, that we have contributed to the strengthening of our participation, finding a space that by law belongs to us, and which must not be denied or censored by any adult organization. We believe, after this clear example of our participation, not only the process of dissemination of the Recommendations of the CRC, but also our participation





Our Participation Matters!

Children's Forum Network «CFN-Sierra Leone»

Participation can mean many different things in different circumstances and contexts. In its most basic sense, child participation can be defined as children partaking in and influencing processes, decisions and activities. In the Convention on the Right of the Child, participation is a legal right for every child. The fact that it is a right; it is an alienable entitlement, not a matter of goodwill or charity. At the same time, it is important to note that child participation is the right of every child, not an obligation.

Article 12 of the Convention states that every child has the right to express his or her views freely in all matters affecting him or her and these views should be given due weight in accordance with the age and maturity of the child. Child participation in Sierra Leone was not a popular concept until now. Children were called on to sit and watch while decisions were being made on their behalf. There was never an atmosphere encouraging children to participate in society or express their views on issues affecting them. This analogue concept is slowly becoming a thing of the past. The launch of the Children's Forum Network (CFN) on June 16, 2001 is one major contributing factor to the recognition of children's participation in Sierra Leone.

CFN is a child-to-child advocacy organization supervised by the Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) and is geared towards advocating for every child in Sierra Leone. CFN has branches in every region in Sierra Leone



and in many districts. Members have been given the opportunity by UNICEF and other child protection agencies to participate in both national and international events. Our participation pushing forward the issues of children has been fruitful. We have been able to bring issues affecting us to the attention of those in authority and also raise awareness among our fellow children. Awareness has been raised and many perceptions have changed. For instance, children now participate in the development of country programmes of child protection agencies as most of these agencies now realize they need to work not just for but also with children.

With our quarterly publication, «Pikin News» meaning Children's News, we have been able to strengthen our level of participation, advocacy and involvement on issues pertaining to our very survival as children. «Pikin News» is an initiative of members of Children's Forum Network (CFN) being sponsored by UNICEF and the MSWGCA. Our publications consist of articles written by children from every region and from many districts on real life situations faced by children reflecting on the problems and challenges that affect our very survival as children. Articles have hinged on issues of teenage pregnancy, street and children with disabilities, child labour and child trafficking. It is quite interesting to note that we have been working towards promoting our rights and welfare while calling on the Government and child protection agencies to protect them.

Telling our own stories in our own language, using our own vocabulary in a free and democratic way is a step in the right direction for the children of Sierra Leone. No one is able to tell our stories and share our experiences as we can. In our quest to participate and express our views on issues affecting us, we may not use the right words or speak the correct English but we succeed in passing on a message. Our message that calls for



stronger and compelling policies to promote and protect our rights, a message that says our participation matters for national development.

We have been able to make good use of the media in bringing out our points. There are quite a number of radio programmes being produced by children. The «Voice of Children», «Kiddies Radio», and «Golden Kids» are popular radio programmes with children serving as reporters, and even producers. These programmes have been used by our fellow children to articulate pertinent issues; issues that are thought provoking and also call for action.

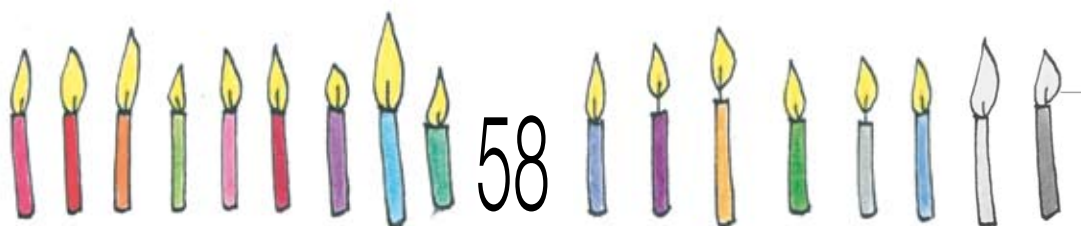
The «Voice of Children» radio project is being hosted by UN radio in Sierra Leone. Its establishment was based on the principle tenets enshrined in the Convention on the Rights of the Child and the World Fit for Children (WFFC) outcome document of the UN Special Session for Children, (i.e. the active participation of children in decision-making at all levels from planning, implementing, monitoring and evaluating all matters affecting the rights of the child).

The «Voice of Children» radio project provides a «meeting point» for children to share their experiences. It serves as a channel for them to recapture their self esteem, to express themselves, to play, to laugh, to learn and to fellowship with their peers. It is a project for all children; the privileged, the destitute, street children, orphans, disabled children, teenage mothers, former combatants, rural and urban children. The project has succeeded in providing a daily point of reference for children, where they can hear their favourite music; listen to their favourite comedy programme, talk shows, sports commentary, news and current affairs, doctor's and social worker's advice. The «Voice of Children» radio project also provides a useful means to ensure the active participation of children in the development discourse.



Our participation is not only limited locally. Members have been given the opportunity by the Government of Sierra Leone and UNICEF to participate in international conferences and workshops on behalf of their fellow children. Our situations have been brought to light in international sessions such as the Child Experts Meeting held in Abuja, Nigeria, the fifth World Summit on Media and Children and the One Minute Junior (jr.), Workshop held in Johannesburg, South Africa, the pre-sessional meeting on Sierra Leone's Country Report on the implementation of the CRC held in Geneva, the C8 Summit held in Wismar, Germany and the Peer Counselling Training on HIV/AIDS held in South Africa. Our participation in these conferences and workshops is a clear indication of progress in ensuring our participation at all levels of society.

We in CFN believe that the possible way forward is when children can take the lead in presenting their own stories from their own perspective. The future can be bright only when children are assured of a future. The world requires children's participation. Our participation matters!



Convention of the Rights of the Child

Sophia Aronne, Italy

The years before 1989 were dedicated mostly to the rights of adults. They were serious problems like segregation that needed to be dealt with. However, these things often overshadowed the problems that a growing child was facing. More children every year were lying on the streets hopelessly begging for their lives to be turned around. They would find kind faces looking down at them but to no avail, the next year they were still there but with more competition on the dangerous streets. Children were being brushed aside so the «bigger problems» could be dealt with. That was a mistake everybody made. Children should always be the biggest issue: they cannot be brushed aside like the dirt on our floor, because children are the future.

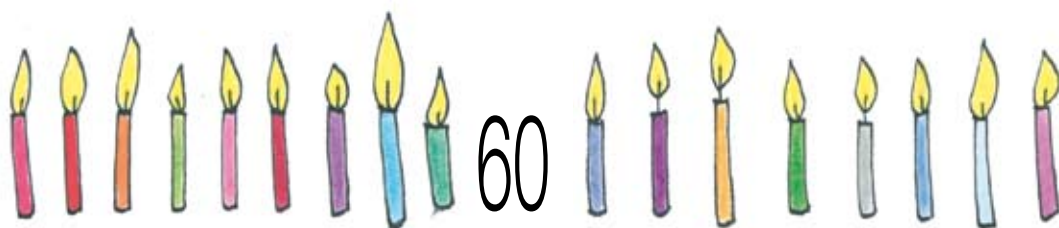
The problem was finally addressed by Member States of the United Nations when they made the Convention of the Rights of a child. They acknowledged that children are what will shape our world; they knew that children needed to be off the streets and in school. The children that have been saved by the Convention are the adults who are now making the newest technology in computers and finding the cure for AIDS. Without the Convention brilliant minds would have gone to waste because there was no good, affordable school that really could give their brain a good workout.

In the Convention, it states that we children have the right to participate and speak and have our opinions heard. The Convention makes clear that this is very important; however,



is the right really being fully exercised? As a teenager myself, I can say that it is not. In my eighth grade, the US presidential elections were taking place. Most of the students in my grade were supporting one of the candidates. Every forty-five minutes we were permitted to leave class and the teachers put a bulletin on the board of who was winning. We were so actively engaged with this election that my entire double period French class was spent having a debate on who should win. If the Convention wants our opinions to be heard why were we not allowed to vote? We were held back by our age and the fact that no one seems to think that our minds are mature enough to make a decision. But the Convention was supposed to have dealt with the doubt in people's minds.

It would seem that the convention had only superficially dealt with the problem at hand. Although, children now have the basic human rights, we do not have the same respect that adults have. We are not helped in stores, someone always seems to think that we are stealing and the list goes on. The Convention on the Rights of a Child's intentions were valiant but has it achieved its aims? Or are we just treated the same way, but put into a different context? Only children know, and it is up to the United Nations to listen to them.



Gender Based Discrimination: Has the Challenge been met?

Moushira Khattab

Member of the Committee on the Rights of the Child, Secretary general of the National Council for Childhood and Motherhood Egypt.

The Convention on the Rights of the Child (CRC) is the most comprehensive international instrument for the definition and enforcement of human rights of children. It gives the principle of non-discrimination a dynamic interpretation. Though it contains no reference to the term gender, it caters for gender issues more than any other international human rights instrument except the Convention on the Elimination of All forms of Discrimination against Women. Article 2 paragraph 1, stipulates that «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, color, sex, ...etc.» Furthermore, the CRC is the only international human rights instrument that consistently uses both masculine and feminine pronouns throughout and makes it explicit that the rights contained therein apply equally to female and male children.

«Non-discrimination» has been identified by the Committee on the Rights of the Child (Committee) as a general principle of fundamental importance for the full implementation of the provisions of the Convention. The first paragraph of article 2, along with article 3(2) and article 4, set out the fundamental obligations of State parties in relation to the rights outlined



in CRC - to «respect and ensure» all the rights in CRC to all children in their jurisdiction without discrimination of any kind. The Committee has emphasized the importance of collecting disaggregated data in order to monitor the extent of discrimination; and consequently guide policies targeting the elimination of such discrimination. The language of article 2 itself and its interpretation by the Committee emphasize that the obligation of State 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, awareness-raising, education and information campaigns, as well as the evaluation of measures taken to reduce disparities.

Paragraph 2 of article 2 dealing with the obligation «to respect» requires State parties to refrain from any actions which would violate any of the rights of the child under CRC. The obligation «to ensure» goes well beyond that of «to respect», since it implies an affirmative obligation on the part of the State party to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights».

The Committee has constantly stressed the need for an «active» approach to implementation and in particular to non-discrimination against certain groups of children, most notably girl children. In addition, the committee continuously pushes for the integration of article 2 into the implementation of all other articles, thus ensuring that all the rights mentioned are available to all children without discrimination of any kind.

The CRC has been instrumental in incorporating gender concerns in its dialogue with States parties. The Committee recognizes that mere legislation against discrimination is not enough. Proactive measures are often necessary to ensure that all children have a genuine chance to enjoy their rights.

Furthermore, the lists of issues and the oral questions raised during consideration of State parties reports increasingly reflect a gender perspective including:

- A. Legal and de facto equality of girls and measures taken to ensure equal rights to girls;
- B. Discriminatory and stereotypical attitudes, prejudices and practices towards girls;
- C. Marriage age, especially early marriage age of girls and forced marriage;
- D. Violence against girls, including harmful traditional practices such as female genital mutilation (article 24(3)), sexual abuse, incest, trafficking, sexual exploitation, girl domestic workers, bride price, female prenatal sex selection, rape and impunity for rape when followed by marriage;
- E. Child prostitution and child pornography;
- F. The health of girls including family planning education, abortion rates, clandestine abortions, high mortality rates for girls, lack of access to health care and reproductive health care;
- G. Teenage pregnancy rates;
- H. Education and literacy rates of girls, student retention and drop-out rates;
- I. Inheritance rights of girls;
- J. Girl child laborers (article 32);
- K. The situation of girls in single parent, female-headed households;
- L. Maternal health care, including prenatal services, breastfeeding, paid maternity leave.

The Reporting Guidelines of the Committee contain an umbrella clause requesting State parties to provide information disaggregated by sex on the situation of particular groups of children and in relation to a number of articles. Its guidelines for periodic reports also request information on measures taken to eliminate discrimination against the girl child. The guidelines do not, however, contain a general request for data disaggregated by sex in relation to all provisions of the Convention, or systematically ask for such information in conjunction with all articles. In addition, the reports do not identify situations where girl children may be subject to particular forms of rights violations.

The Committee devoted its Day of General Discussion at its eighth session (1995) to «The Girl Child». It held general discussions on harmful traditional practices (article 24(3)), in particular female genital mutilation, and on traditional attitudes and stereotypes and the special situation of the girl child, child victims of sexual abuse and exploitation and refugee children. The adoption by the General Assembly of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict in 2000; consolidated the protection of the rights of most vulnerable girls.

Achievements:

Although many gaps still exist, much progress has been made since the adoption of the CRC in 1989. Today, with nearly universal ratification of the CRC; many State parties have withdrawn their reservations; many have adopted national laws increasing inclusion of gender-specific data and statistics relating to education, health and other sectors. In addition, many media campaigns have been initiated by State parties to combat inequalities, stereotypes and social apathy in school books and the media. The subject of children's rights is integrated into school curricula; families are becoming increasingly aware of the role that they should play in securing the inherent dignity of girls as human beings, and in ensuring that girls enjoy equal opportunities to participate actively in national life. Girls now have increasing access to health services and health professionals are devoting particular attention to the specific health needs of girls. Campaigns to eliminate traditional practices detrimental to the health and development of girls are stronger than ever. The multidisciplinary approach adopted by CRC, along with interdependence and indivisibility of rights, has accelerated such a positive change. The obligation of State parties to disseminate the Convention and their reports to the Committee along with the Concluding Observations the have been a force for change. Awatef's life has been affected by the Convention. She grew up in Menia, Upper Egypt hearing her father question the value

of education to girls. He kept her at home to groom her for her future natural role as a house-wife. One day a lady knocked at their door and informed her father of a newly operating girl's friendly school in the neighborhood. The woman assured her father that the school, built through aid and donation from the local community carried benefits even for him personally. His literate daughter would read the road signs; and medical prescriptions saving him from taking the wrong or expired medicines; and she would also read all official papers before he signs them. As the school was free-of-charge the father agreed. The life of Awatef has been transformed. The quality of education supported her facing pressures to stay home either to look after her siblings, moonlighting or accepting a good suitor. The school day was about listening to her, helping her solve her problems and preparing her for her role as an equal partner in society. She learned about her rights. Awatef, who had never dreamed of having her name appear in any official records let alone that of the Ministry of Education, is now a law school senior. Her entire community is proud of her. They joined other communities to build 770 schools in less than three years. Awatef is one of many millions of girls who have benefited.

Challenges:

With the Convention turning 18 years of age and reaching maturity, progress achieved in areas such as education and health cannot be claimed for areas such as child participation and special protection. In many parts of the world many girls are still subjected to various forms of violence. They are still stigmatized by societal inferior status. They rarely have the opportunity to express their views and concerns, let alone have them taken into account. Many girls are deprived of their inheritance rights, dragged into early or forced marriages, female genital mutilation, trafficking, exploited in the sex trade or in the labour market.

On June 13, along with many of her friends, Bodour, a 12 year old girl in the village of Maghagha in Upper Egypt had just passed her 7th grade exams with high honors. She had big plans

for celebration. Her mother, following the custom of her village, took Bodour to the doctor to circumcise her. A simple procedure that used to be done by midwives or paramedics and did not even warrant a doctor's intervention turned into the worst nightmare for Bodour. She lost her life while under anesthetic.

Hend was raped and became a mother at the age of 11. Like Bodour's death, the incident sent shock waves through her very poor conservative village. Both incidents made first page headlines in all newspapers. Rape is unheard of, and a female must remain a virgin to be eligible for marriage. Atypically, her poor parents decided to stand by her and declare the shame. Hend who finished her fifth grade with distinction, cannot go back to her school. Her dreams for the future and her reputation are ruined for good.

The CRC means a lot for girls like Bodour and Hend victims of violence entitled to a set of rights starting by the right to privacy and to be heard. Hend is entitled to continue her education and to be protected from stigma. Her daughter has the right to be registered at birth assuring her all rights without any discrimination. This comes in total contrast to the cultural norms that govern the lives of the victims. According to such norms, Bodour was «unlucky» and her fate was destiny. Hend bears the blame as she is considered as having induced her rapist. Subsequent testing proved that the newborn's DNA did not match that of the accused rapist, leaving her unregistered, and stigmatized for the rest of her life; without any rights. Many girls across the globe experience similar violence and discrimination. In some countries it is a daily routine and does not make it to headlines.

The UN Study on Violence against Children is a vital tool to address elimination of discrimination and violence against the girl. It offers a gender analysis in the settings where girls should be protected, namely their homes, schools, and immediate communities. The implementation of its recommendations will strengthen the implementation of the rights of many children including girls.

In conclusion: CRC has ushered in a new era for girls but there are no quick fixes to address gender based discrimination. The death of Bodour prompted the long delayed criminalization of FGM. The plight of Hend moved the nation to lobby for the rights of victims of rape. She was allowed to go back to school and leading lawyers are defending her case. Sustainable solutions; nevertheless; require long-term commitment. Governments must fully implement the General measures of implementation identified by the Committee. The CRC should be an integral element of national development strategies including legislation, an active partnership with civil society is critical as is comprehensive mainstreaming of gender, plans of action, the realization of a comprehensive sex disaggregated data system. Awareness-raising including eliminating traditional biases and allocating adequate resources is also important.

Realization of the right to be heard is instrumental to the achievement of the rights of children. It recognizes the potential of children to enrich processes of decision-making and realization of their rights. Girls should be consulted in all matters affecting their lives. The Committee on CRC and CEDAW must enhance their collaboration.



The 18th Anniversary of the Adoption of the Convention on the Rights of the Child

Norberto Liwski

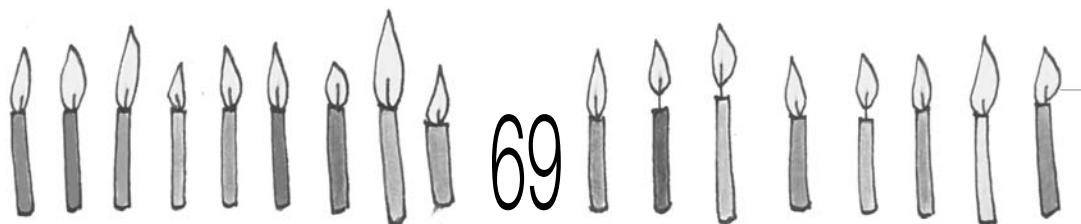
President of Defence for Children International Argentine, former Member of the Committee on the Rights of the Child

At the time that the United Nations General Assembly approved the text of the Convention on the Rights of the Child in 1989 and the process of its ratification and entry into force had begun, it was impossible to foresee the types of challenges that States, societies and institutions would face in its implementation.

Recognizing the child as an active subject of rights and participant in his family and social and institutional reality - and consequently, because of his or her nature as a person in process of evolution, entitled to holistic protection of his/her rights - one can say that 18 years ago with the Convention a new social contract with children and adolescents was born, marking the beginning of an historic cycle of legally binding commitments and the dynamic construction of a new culture of child rights.

The Member States of the United Nations reacted favourably to these new ideas so that in a few years the Convention became the most ratified treaty by member states.

The Convention on the Rights of the Child elaborates a holistic vision of the child; through its 54 articles it recognizes economic, social, cultural, civil and political rights. However, its holistic nature does not exclude consideration of specific thematic areas,



whose content and development is assured through the universality and indivisibility of human rights. One can analyze the right to health through this perspective, relying on specific articles but without surrendering the holistic nature of these rights. This chapter focuses on the Committee on the Rights of the Child's experience, particularly in Latin American and the Caribbean.

To effectively analyze the relationship between children's rights and health, developed during the first eighteen years of the Convention and the Committee, several issues that arise with great frequency in the Committee's observations regarding the right to health will be highlighted. Studies conducted by other agencies in the international system, particularly UNICEF and CEPAL, as well as in the Inter-American system, by the Pan American Office for Health (PAHO) and the Inter-American Children's Institute, provide valuable contributions to the analysis of the Committee's work. In this way we take into account the work conducted by technical teams at Inter-American Children's Institute in 2006 on the Observations and Recommendations of the Committee on the Rights of the Child.

Significant contributions have been made by the Committee on the Rights of the Child through its general comments, particularly in general comment No. 3 of March 2003 «HIV/AIDS and the Rights of the Child» and general comment No.4, «Health and Development of Adolescents in the Context of the Convention on the Rights of the Child.»

Eighteen years of experience in Latin America reveals that in many cases, health care reforms did not adequately comply with the principles established in the Convention.

The approach of the health sector reform in Latin America is well described in an article published in the Pan American Magazine of Public Health in 2000:

«The 1980s saw the initiation of health sector reforms in almost every Latin American nation. These reforms tended to favour

the participation of the private sector in public financing and the provision of services, complemented by a reduction in the public services offered by the state. As a result of this shift, many States created third-party private insurance groups and networks of private health care providers for the poorest individuals. This process developed thanks to the conviction that it was necessary to strengthen the regulatory capacity of states in order to guarantee the universal provision of a package of services to all the population. Other similarities between these health care sector reforms include the decentralization of public services, separation of financing and public services, introduction of private-public partnerships, and a drive for social participation.

An analysis of recent legislative developments by Homedes and Ugalde in 2002 in health care shows that Governments have reprioritized the role of the State as both lender and regulator, through the decentralization of services, the promotion of the private sector and control of rising costs. These changes reveal a gradual integration of sub-sectors of the health care system (public, private and those pertaining to social security), and the union of public and private services at the national, intermediate and local or municipal level.»

Among the measures set forth in article 24 of the Convention the development of primary health care systems is highlighted. Primary health care systems are part of a larger strategy to strengthen national health care systems and equity in sanitary services through promotion, prevention and protection. PAHO-WHO describes primary health care as:

«Essential sanitary assistance based on practical methods and scientifically-established, socially-acceptable technologies that are placed at the reach of all individuals and families in a community ... It represents the first level of contact between individuals, families and the community with the national health care system, and has the goal of ensuring that medical attention is received where individuals live and work, thus constituting the first step in a continuous process of health care.»

The Committee proposes four fundamental factors for developing the right to health of children: access to health services, creation of conditions that further health, protection of children's rights within the health care and social system and protection against actions harmful to children's health. However, the right to health is also an inclusive right, it not only includes appropriate medical assistance, but also other factors which affect it, including the provision of healthy food, access to education and information related to health, and protection against violence, exploitation, mistreatment, torture, among others. The realization of this right is thus closely related to other rights.

In addition to ratifying the Convention and implementing its requirements States have agreed on specific goals with defined deadlines in order to secure development. The Millennium Development Goals (MDGs) and the outcome of the 24th special session of the United Nations General Assembly on a world fit for children «A World Fit for Children» propose the basic elements to be considered in creating strategies for the development and protection of children and adolescents.

Three of the eight MDGs are directly related to health: reducing infant mortality (Goal 4), improving maternal health (Goal 5) and combating HIV/AIDS, malaria and other diseases (Goal 6). The remaining MDGs have important indirect effects on these goals. Especially important are the Goals related to decreasing hunger, decreasing the number of individuals without access to potable water and sanitation services, and those related to access to essential medicines in countries most at risk.

«A World Fit for Children», outlines goals that specifically aim to improve the situation of children and adolescents in the world. Its declarations partly build on the results from the commitments affirmed in the 1990 World Summit for Children, which in time were affirmed by the MDGs. Goals related to a child's right to health fall into two main categories: the promotion of a healthy life (reduction of infant and maternal mortality, reduction of

malnutrition, reduction of number of homes without access to sanitary services, improved access to reproductive health services, development and execution of national policies and programs aimed at adolescent health, etc.) and second, the fight against HIV/AIDS (reduction of HIV among youth, reduction of infections through breastfeeding, improvement of prevention and health care services).

Maternal health, infant mortality, adolescent health and HIV/AIDS are issues which impact on the exercise of a child's right to health.

The right to health of children begins with maternal health. If a mother is strong and healthy during her pregnancy the likelihood that her child will be born with nutritional or health complications is reduced; potential difficulties associated with pregnancy and childbirth may also be avoided. For thousands of women in the region, pregnancy and childbirth are accompanied by health problems that, for the most part, could be avoided through timely access to quality health services and appropriate nutrition.

In Latin America and the Caribbean, approximately one out of every 10 children is born underweight. Underweight newborns are at a higher risk of mortality during their first few years of life including as a result of a weakened immune system. Infants who weigh 2.000 to 2.499 grams at birth face a risk which is four times greater than those who weigh 2.500 to 2.999 grams at birth, and ten times greater than that of infants weighing between 3.000 and 3.499 grams.

Statistics related to maternal health show the significant disparities between developed countries and developing countries. In sub-Saharan Africa, the life-long risk of death due to causes related to maternal health is one in 16, compared to one in 160 in Latin America and one in 4000 in Western Europe. Disparities within the Americas are also significant: in Canada,

the risk of a mother dying due to pregnancy over the course of her reproductive life is one in 8,700, in Uruguay one in 1,300, Argentina one in 410, Panama one in 210, Peru one in 73, Bolivia one in 47 and in Haiti one in 29.

Four advances may jointly ensure decreases in maternal mortality: a reduction in adolescent pregnancy, adequate nutrition during pregnancy, prenatal monitoring by specialized personnel, and health care systems which focus on childbirth.

When discussing infant mortality in Latin America, it is critical to recall that the right to health is enshrined in article 6 of the Convention, which proclaims an inherent right to life and calls on states to ensure to the maximum extent possible the survival and development of the child (see also article 12 of the International Covenant on Economic, Social and Cultural Rights). Thus, to comply with the article, the first measure States parties must undertake is the reduction of infant (one year of age or below) and child mortality (five years of age or below).

Over the last few decades, Latin America and the Caribbean have witnessed significant reductions in child mortality for children under the age of five. The region has surpassed others by maintaining an annual reduction of four percent during the 1990s and the first few years of the new millennium. As a result, infant mortality has dropped from 42.9 deaths per thousand births to 25.6 deaths per thousand births in 2004. Nevertheless, as a whole, the region lags far behind the low levels of infant mortality achieved in the developed countries, whose rate is less than 1 percent.

Despite these advances in the general population, there remain significant discrepancies in child and infant mortality within countries and the most vulnerable groups remain at greater risk., CEPAL in 2005 suggested that income and membership in an ethnic group are two of the variables which most

contribute to existing inequities. Other variables, such as the mother's level of education or the family's place of residence are also relevant.

Indigenous groups have infant mortality rates that are greater than those of the general population. Indigenous populations living in rural areas also experience high infant mortality. This is the case in countries such as Bolivia, Guatemala, Mexico and Panama.

The persistence of elevated rates of infant mortality among certain sectors of the population is related to a scarcity of resources and poor quality of life. Access to and distribution of information on services and health care to the whole population are critical in reducing these risks.

Two challenges remain in the quest to reduce child and infant mortality in the region. First, maintaining the decreased levels of child mortality achieved in recent years, and second, reducing the difference in child mortality between social groups through the implementation of programmes that target excluded social groups.

In Latin America and the Caribbean, more than half of infant deaths are directly or indirectly caused by hunger and malnutrition. Although the absence of proper nutrition alone is responsible only for a small percentage of deaths of children under the age of five, it is still a supporting factor in infant deaths.

Important progress has been made against infant malnutrition in the region over the last few years, with this being greater than progress achieved in any other region in the world. As a result, the number of underweight children met the standard seven percent. Chile made the greatest progress, such that only 1 percent of its children are underweight. On the other hand, the worst cases of malnutrition in the world are in Guatemala (23 percent), Haiti (17 percent), Honduras (17 percent), Guyana (14 percent), Suriname (13 percent) and Ecuador (12 percent).

However chronic malnutrition has been reduced much more slowly in the region than elsewhere in world, from 19 percent to 16 percent. Although any progress is welcome, the level of chronic malnutrition remains significant and a significant concern. Chronic malnutrition is an indicator of the accumulated consequences of malnutrition during the years most critical for child development, and, malnutrition has irreversible effects.

The nutritional situation of children in the region is closely correlated with poverty and social inequality. The likelihood that a child suffers from malnutrition is significantly higher if he or she is from a rural area and from the most economically deprived homes. Above all, hunger and malnutrition in the region is caused by the unwillingness of certain sectors to ensure the necessary financial resources to ensure access to food through the market. This is a consequence of unequal wealth distribution and consumption.

Lack of access to potable water and sanitary services in homes is suffered by some sectors of the population. Among those affected are children, most of who live in homes which lack critical necessities. Data collected by UNICEF indicate that 16 percent of all children in Latin America and the Caribbean lack access to any type of latrine near their home, and seven percent have access only to surface waters for drinking or live in homes where the nearest potable water source is more than fifteen minutes away.

Individuals typically begin their sexual and reproductive lives during adolescence. The sexual and reproductive health of adolescents is heavily affected by risky behaviour, which may lead to unplanned pregnancies, often unwanted by one or both partners, and the transmission of sexual transmitted diseases.

Fertility rates for women aged 15 to 19 in the region have not decreased, in contrast to fertility rates of the general population during the same time. In fact, in some cases, the fertility rates of the younger population have increased.

Equal access to quality health care and family planning services can reduce poverty and ensure the provision of equitable and efficient social services. This enables men and women to exercise their right to make free and informed decisions regarding the number and spacing of their children. Moreover, equal access to such services can assist women to protect their health, avoid premature and unwanted pregnancies and attend to the needs of their children with their partners.

The HIV/AIDS pandemic is a growing concern in the region, having devastating effects on the population as a whole and especially on children and adolescents.

The number of people living with HIV in Latin America is estimated at 1.8 million, with Argentina, Brazil and Colombia to the greatest number of individuals infected with the virus. However, the highest prevalence of the virus is found in Honduras, Guatemala and the Dominican Republic. According to UNAIDS-WHO, in these countries, HIV has not only infected those groups traditionally most at risk, but has also reached large sectors of the general population. On the other hand, Bolivia and Nicaragua have the lowest HIV/AIDS infection rates in Latin America, 0.1 percent and 0.2 percent respectively.

With an estimated 300,000 persons infected with HIV, the Caribbean is the second most affected region in the world after sub-Saharan Africa. This has resulted in an estimated 24,000 deaths in 2005. The Caribbean Community subregion has approximately 240,000 individuals living with HIV and the number of deaths caused by the AIDS in 2004 was more than 20,000.

Latin America and the Caribbean have witnessed the «feminization of the epidemic» with an increase of HIV among women. Towards the end of 1999, women made up 20 percent of adults living with HIV in Latin America, and 35 percent in the Caribbean; by 2003 these percentages had increased to 35 percent

in Latin America and 48.8 percent in the Caribbean. UNAIDS-WTO suggests that this is due to unsafe sexual relations and the position women and female children occupy in our societies, given the serious economic, legal, cultural and social disadvantages they face. These disadvantages increase their vulnerability to infection and other effects of the epidemic. The «feminization of the epidemic» is also strongly correlated with the sexual activity of adolescent women. In Trinidad and Tobago for example, the rates of infection among teenage women 15 to 18 years of age is six times higher than that of men the same age.

HIV/AIDS affects 740'000 youth, or about 0.6 percent of men and 0.4 percent of women between 15 to 24 years of age, which constitutes approximately one-third of the population living with HIV/AIDS in the region. Youth who practise risky sexual behaviours and consume psychoactive substances are particularly vulnerable. Their lack of access to information and preventative services also contributes to this higher infection rate. Adolescents who become sexually active at a young age often lack the skills, information and services necessary to ensure adequate protection, and may have unplanned or coerced sex, or be subject to abuse and sexual exploitation.

In 1990, the region had more than 54'000 AIDS orphans; by 2005 this number had reached 750'000. Many of these children live under the protection of their grandparents or siblings, but are often in dangerous situations, in homes or on the street, where they are at a higher risk of malnutrition, violence, exploitation or abuse. However, orphans are only one dimension of the impact of HIV/AIDS on children. Other children become vulnerable because their parents are ill, or because they are victims of discrimination caused by having HIV-infected relatives or being HIV-positive themselves. It is estimated that approximately 47,000 children live with HIV/AIDS in Latin America and the Caribbean.

Conclusions

According to the Pan American Health Organization and the WHO, regional progress achieved in the health care sector is primarily due impact of high-priority activities in primary health care in education and the advancement of health, nutrition and food, clean water supply and sanitation, maternal and infant care and family planning, immunization, prevention and control of disease, treatment of illness and common traumas, and access to essential medicines.

Nevertheless, the impact of primary health care systems in these countries has not been sufficient to repair existing gaps in health within society:

« ... aspects directly associated with the execution of primary health care plans ... reflect important geographic, gender and socioeconomic inequities when they are disaggregated by level, and above all, by income gap».

The region continues to struggle to ensure that advances in the area of health are shared by all groups in society. Advances reflected in national statistics mask great disparities that exist within each country and do not explain the continued presence of excluded and at-risk groups without access to the benefits of health care assistance. These disparities have proven difficult to overcome given the limitations of health care systems in Latin America and the Caribbean.

From the point of view of the Convention, the most important issue is that a significant percentage of children and adolescents are deprived of adequate medical attention and protection. National health care systems, Governments, civil society and international organizations must concentrate their efforts on the care and surveillance of the least-protected groups so that children may claim right to health to the greatest degree possible. Not only will this guarantee conditions encouraging the development and survival of children and adolescents, but it will also cement the fundamental bases for human development and progress in our societies.



The Obligation to **Protect** Children from Violence

Paulo Sérgio Pinheiro

Independent Expert for the United Nations Study on Violence against Children

«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».

Article 19 of the Convention on the Rights of the Child could not be clearer: States parties must ensure the protection of children, while in the care of individuals or institutions, from all forms of violence while in the care of individuals or institutions. No violence can be excused. The Convention reinforces what was already made clear by the various international human rights treaties that have developed from the Universal Declaration of Human Rights. Beyond establishing the need for full respect for the physical and personal integrity, article 19 recognizes the particular vulnerability of children to violence and the consequent need for strengthened measures for their protection.

The Committee on the Rights of the Child has consistently identified violence against children as a central concern. In 2000 and 2001, the Committee devoted two days of general discussion to the problems of State violence against children and to violence



in the family and in the school. Through different debates, it was always clear that despite the wide recognition of the obligation to protect children from violence, children of all ages continued to be vulnerable to violence in all regions of the world.

Inspired by the ground-breaking experience of the United Nations Secretary-General's Study on the impact of armed conflict on children, the Committee recommended that the Secretary-General be requested to conduct an in-depth international study on violence against children. This request was endorsed by both the General Assembly and the Commission of Human Rights, and in 2003 I had the honour of being appointed as the Independent Expert to lead the United Nations Secretary-General's Study on Violence against Children - the first global study on all forms of violence affecting children.

Developing the Study

The scope of the Study was determined by the Convention - it dealt with all forms of violence affecting all children up to the age of eighteen years, with the exception of violence in situations of conflict since a UN mandate on children in armed conflict was already in operation. The definition of violence used was that in article 19 of the Convention, and also draws on the definition in the World Report on Violence and Health (2002): the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity.

The preparation of such a Study, with global scope and covering so many issues, evolved through a truly participatory process. With the enthusiastic support of Governments, UN entities, and NGOs, the Study managed to engage a large network of individuals and organizations in a number of activities that included regional, sub-regional and national consultations, expert thematic meetings and field visits. In March 2004, a detailed questionnaire was sent to Governments asking them to report on their approaches to

violence against children. One hundred and thirty-six countries responded to the request providing a unique picture on the current approaches this issue. To ensure a thorough understanding of the issue, the Study also made a comprehensive effort to combine in its analysis the knowledge of professionals with different expertise and from various sectors, from lawyers to public health experts, from social workers to educators.

Another important element in this challenging process was the participation of children and young people. Particular efforts were made with the support of non-governmental organizations to ensure that children and young people exercised their right to be heard and had their views respected throughout a process which would address issues so relevant to their lives.

This challenging and participatory process was designed to gather existing knowledge and experience in the field of violence against children - to gather the reflections of all regions of the world on the many facets of the problem, and bring to light many promising and proven practices to confront this problem within a truly global framework. The process sought to capitalize on its potential to make the key message of the Study a reality: No violence against children is justifiable - All violence is preventable.

The Study findings and recommendations

The Study confirmed that although being one of the most clearly condemned forms of violence, violence against children is invisible and prevalent. Violence against children remains unregistered and unpunished, being sometimes even condoned by society under the guise of discipline or tradition. The inadequacy of justice and security systems, and the pretexts of privacy or of an incontestable adult authority over children are used by perpetrators as shields. They keep violence against children insulated through walls of silence.

The Study indicates that violence against children takes a variety of forms and is influenced by a wide range of factors, from the personal characteristics of the victim and perpetrator

to their social, cultural, and physical environments. Economic development, social status, age, sex and gender are among the many factors associated with the risk of violence. Although the consequences of violence vary according to its nature and severity, the short- and long-term repercussions are very often grave and damaging.

The Study makes 12 overarching recommendations to strengthen the protection of children from violence. These focus on Government responsibility to ensure that a very wide range of sectors relevant to the various forms and settings in which it occurs act to prevent and respond to this issue. They also encourage actions with other partners. Many of the recommendations have been heard before, but never before have the various sectors and issues relevant to violence been brought together in a unifying framework for action.

As it is clearly stated in international jurisprudence, the Study urges the establishment of an explicit foundation and framework of law and policy in which all forms of violence against children in all settings, including all harmful traditional practices, all sexual violence and all corporal punishment are prohibited. Laws certainly do not guarantee immediate change, but without an adequate legal framework change is unlikely to happen.

As States have the duty to prevent and respond to violence, the Study appeals to them to strengthen national commitment and action through continued and coordinated strategies. Effective policies must integrate different Government sectors, must be systematic and based on human-rights principles. Long-term and sustainable effects are only attainable with adequate integration of these policies into national planning processes and budgets.

The Study also emphasizes investment in prevention as the most effective use of resources to reduce violence against children. While there is a wealth of information on the risk factors associated with preventing violence, very little is done to address

them. Violence is so frequently addressed through reactive and repressive measures to the detriment of long term policies addressing root causes.

Where violence occurs, early detection mechanisms must be in place and victims provided with necessary assistance. Child victims must receive sensitive, integrated, and high-quality legal, health and social services, focused on recovery, rehabilitation and reintegration. Accessible and child-friendly protection systems and services are essential. Successful experiences of simple, accessible, and well-publicized avenues for children or their representatives to report violence, wherever it occurs need to be replicated more widely.

The Study process has also demonstrated that, we must recognize and respect children as partners. If we really want to build child-sensitive policies, we must create and support mechanisms and structures to ensure the full participation of children in all aspects of prevention and response in accordance with their best interests.

We must also improve our overall understanding of this hidden problem and how to prevent and most effectively respond to it. This is only possible through systematic data collection and research. Without comparable and reliable data, the impact of the measures taken can not be interpreted or assessed. Without universal birth registration or credible data on mortality causes it is impossible to promote solid policies to address violence. Strengthened capacity to monitor and analyze situation where violence occurs can and should be used to inform and improve programmes.

The way forward

One year after the Study was released there are indications that the global awareness of the plight of child victims of violence has been heightened. International, regional and national organizations acknowledge the prevalence of the problem and reaffirm commitments to eliminate it. A central challenge is to

convert the different recommendations proposed by the Study into practical strategies which are relevant to the diverse realities that exist around the world.

Before this Study, international efforts had already put attention to issues such as the involvement of children in armed conflict, trafficking or the sexual exploitation of children on the agenda. By broadening the focus to violence generally the Study has highlighted issues all too frequently absent from international discussions on child rights. This includes the situation of children in their own homes, in schools or in care and justice systems purportedly responsible for their well-being. The Study also made clear that action is needed in rich and poor nations alike.

Success or failure in the elimination of violence against children will depend on whether coherent and sustained approach to this problem can be developed in all contexts around the world. Perhaps the main contribution of this UN Study was to create a multi-disciplinary framework and approach, combining the expertise of all relevant actors to prevent and respond to violence. Both at international and national levels it is essential to ensure continued high level attention and coordination while addressing the diversity of issues presented by the UN Study on Violence against Children .

After the conclusion of the Study, after years of accumulated recommendations by the Committee on the Rights of the Child, and numerous additional international efforts, it is not possible to ignore the need to urgently and seriously invest in the protection of children from violence. It is not possible to continue to ignore the fact that violence is condoned in many places in contradiction to basic human rights principles. The available mechanisms and strategies are not adequately implemented to change the patterns that allow so much violence to happen. There can be no excuses for inaction. The international community may not fail to address so serious a problem. The world's children are watching and can wait no longer.

Child Rights and the Challenge of Education

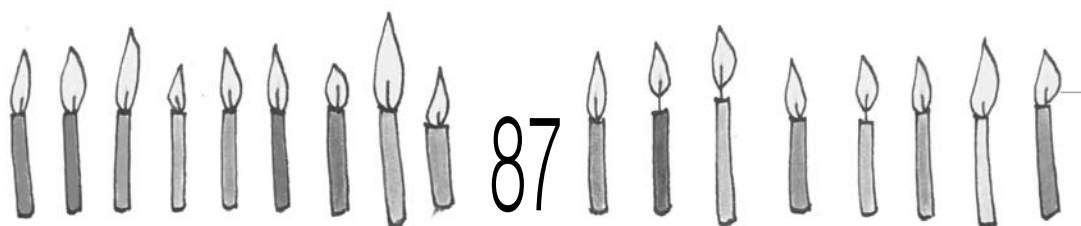
Agnes Akosua Aidoo

Member of the Committee on the Rights of the Child

Introduction

The right of every child to education is a fundamental human right. This is confirmed by the Universal Declaration of Human Rights (article 26) and the International Covenant on Economic, Social and Cultural Rights (articles 13 and 14) and elaborated by the Convention on the Rights of the Child (CRC) in articles 28 and 29. Education empowers the child to develop to her or his full human potential and is essential for the exercise of all other human rights - civil, political, economic, social and cultural. Education is also a public good. It enables all people to develop the qualities, attitudes, abilities and skills to become good citizens and productive members of society. Education has the potential to empower socially and economically marginalized children and adults to participate fully in their communities and the global society.

World leaders at the United Nations Millennium Summit in September 2000 acknowledged education as a necessary goal for development and focused two out of the eight Millennium Development Goals (MDGs) on it. UNICEF has observed that while all the MDGs are critical to development: «It is education that will provide the next generation with the tools to fight poverty and conquer disease and it is parity in education that will ensure a future in which girls and boys are equally safe, healthy,



protected and empowered. This is not a charitable enterprise, but a moral imperative» (UNICEF Statistics, Basic Education, 2006). A denial of education to children not only violates their right, but also undermines the sustainability of all other development.

The Convention on the Rights of the Child obliges States parties to recognize and ensure children's right to education in the specific terms of educational systems and access (article 28). States parties also agree to the specific aims of education that focus on quality (article 29 (1)). The Committee on the Rights of the Child issued its first general comment on the CRC on the aims of education based on article 29, thus underscoring the importance of education as a critical factor in monitoring the fulfillment of children's rights. General Comment No. 1 emphasizes the qualitative aspects and values inherent in providing children with education.

«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» (Committee on the Rights of the Child, General Comment No. 1 (2001): The Aims of Education , article 29 (1) CRC, CRC/GC/2001/1).

The global response

Universal education has proven difficult to achieve. UNESCO Global Monitoring Reports on Education For All (EFA), The Millennium Development Goals Report 2007 - the mid-point progress report - as well as reports of States parties to the Committee on the Rights of the Child indicate that thousands of successful policies and projects on education have been implemented by countries around the globe.

There has been marked progress in many indicators especially since the 1990s. Early childhood development (ECD), the first goal of the Dakar Framework for Action on EFA, has shown significant progress. However, in most developing countries, ECD



is in private hands and its costs exclude many children from poor households. Public attention and investments have rather focused on achieving universal primary education as a foundation for children to achieve further personal development and enjoy their human rights.

Access to primary education is considered the first step in providing citizens with the tools to develop as individuals and productive members of society. There has been progress in primary education and to some extent secondary education for children. The second Millennium Development Goal of getting all the world's children into school before 2015 is within reach. The Education For All - Fast Track Initiative (FTI), the global partnership established in 2002, and supported by over 30 major bilateral and multilateral donors and organizations including the World Bank, UNICEF, UNESCO and the European Commission, has contributed significantly to financing expanded access to basic education and improvements in education systems in sub-Saharan Africa, Asia and Latin America. The United Nations Girls' Education Initiative (UNGEI), another global partnership, has also galvanized political will to create opportunities for girls in several developing countries who did not have the chance to enjoy educational benefits.

Nevertheless, decades after the many commitments and reaffirmations by countries to ensure a quality education for every child, some 72 million children of primary school age around the world were not in school in 2005 and 57% of them were girls. The 2007 MDG Report notes that «As high as this number seems, surveys show that it underestimates the actual number of children who, though enrolled, are not attending school» (United Nations, The Millennium Development Goals Report 2007). Moreover, the current data do not capture the many children who do not attend school regularly and or who unfortunately are caught in conflict or post-conflict situations worldwide. In addition, actual learning outcomes often do not meet established

quality standards. Thus an unacceptably high number of children are still denied their fundamental right to quality education in contravention of the CRC.

Despite the accepted general principle of non-discrimination of the CRC (article 2) and its call on States parties to take appropriate measures to ensure that children achieve their right to education «on the basis of equal opportunity» (article 28 (1)), disparities abound. For instance, children from poorer households or living in rural areas are most likely to drop out of school, or not attend at all. Nearly 30% of children of primary school age in rural areas in developing countries are out of school, compared with 18% of their peers living in cities» (United Nations, The Millennium Development Goals Report 2007). Indigenous children and children from minority communities are discriminated against in education in several regions, including Eastern and Central Europe, North and South America. This is a matter with which the Committee on the Rights of the Child is seized and on which it makes firm recommendations in its Concluding Observations to States parties.

The CRC and other human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women insist that girls have equal rights with boys to human rights. Moreover, research in different parts of the world has shown that the traditional view of the girl child as one born mainly to perform subservient and reproductive roles not requiring investments is short-sighted. This view not only denies the girl child her basic human right but is also detrimental to overall human, social and economic development. Girls', and womens', education has been shown to contribute critically to better child care, control of the HIV epidemic, reduction of poverty and overall socioeconomic development.

Gender disparity in education at all levels is pronounced in most parts of the world. Girls are still excluded from the benefits of education more often than boys, particularly in Africa and

Western and Southern Asia. Sex discrimination and economic choices, particularly of poor families, are major causes of girls' exclusion from education. Furthermore, many girls who enter school at a later age drop out of school due to early pregnancies. In many countries such girls are not enabled to return to school or have access to any complementary learning opportunities. But thanks in part to the galvanizing effect of the MDGs, several countries have made good advances in gender parity in primary and secondary education even before the 2005 target date.

The challenge of education in Africa

African countries regularly reaffirm education as a basic right of their children and emphasize its crucial importance to the continent's socioeconomic development and fight against poverty. The right to education is an integral part of the African Charter on Human and Peoples' Rights (1981), African Charter on the Rights and Welfare of the Child (ACRWC, 1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003). The ACRWC enjoins States parties to «take all appropriate measures with a view to achieving the full realization of this right and shall in particular: provide free and compulsory education» (article 11 (3)).

Africa has seen significant progress overall towards universal primary education since 1990. Sub-Saharan Africa made the most progress in increasing access to education which many people would not have expected. Total enrollment ratio in primary education increased from 54% in 1991 to 70% in 2005. The number of children enrolled in primary schools rose from 80 million in 1999 to 101 million in 2004 (UNESCO, EFA Global Monitoring Report 2007: Regional Overview - Sub-Saharan Africa). The increases in enrollment have been particularly impressive in countries that have taken positive steps to abolish school fees such as Benin, Burundi, Ghana, Kenya, Lesotho, Mozambique, Tanzania and Uganda. Several countries including Algeria, Botswana, Cape Verde, Egypt, Mauritius, Namibia, Rwanda, Seychelles, South Africa and Tunisia have already reached

or have the potential to reach the goal of universal primary education, the second Millennium Development Goal, well ahead of the 2015 target date (UNECA, Millennium Development Goals in Africa: A challenge for Change, 2007).

Despite increasing enrollments, sub-Saharan Africa is still a region that faces serious challenges in ensuring the right of education for all its children. It has the lowest rates of school attendance in the world: only 60% of boys and 57% of girls were in school in 2005 (UNICEF, The State of the World's Children 2007). Educational achievement has also proved challenging for many countries. The reasons include poverty, lack of educational infrastructure and facilities, and poor teacher-quality.

Another factor having a negative impact on achievement is the actual «time on task» and the extent to which teachers in public schools are able to complete the syllabus for each grade. This partly explains why performance in private schools is markedly better than in public schools, even though the latter may have a higher percentage of trained teachers. Issues in the school environment such as corporal punishment, sexual harassment of girls by teachers and poor sanitary facilities, especially for adolescent girls who have reached menarche, all contribute to poor school attendance and poor performance. The consequence of such factors is that only 55% of the children on the continent were able to complete a full course of primary education in 2000 (UNICEF, The State of the World's Children 2007). The survival rate to the last grade in primary education in 2004 in some countries was lower than 40% of the cohort of children who had access (UNESCO, Fact Sheet - Sub-Saharan Africa, 2007).

Children from poor and or rural households and whose mothers had no education are especially likely to face exclusion from school. UNESCO estimates that sub-Saharan Africa has nearly half of the world's children who are out of school. In 2004, 38 million African children were out of school: more than two-thirds had never been to school and over 80% lived in rural areas where educational

facilities are generally poor. Fifty-three per cent of the out-of-school children are girls (UNESCO, EFA Global Monitoring Report 2007: Regional Overview - Sub-Saharan Africa).

Many of the out-of-school children may never go to school unless additional efforts, resources and incentives are provided by the sub-Saharan African countries, all of which but one (Somalia) are States parties to the CRC. Children who fail to realize their rights to education unfortunately frequently enter into child labour, poverty and life on the streets where most of their other rights are violated. There is an urgent need to enact or implement laws on child labour to protect children, as well as provide second chance education programmes for the excluded children to catch up. Since the formal school systems may not be able to absorb all out-of-school children, there is need for more innovative approaches. However, these often demand a higher cost per unit investment and require African Governments and their development partners to expand their social investments for greater equity.

Given the role of women in many traditional African societies, one of the most daunting challenges has been to guarantee equal access to education for the girl child, and young and adult women. Therefore, it is noteworthy that gender parity at the primary school level has either been achieved, or is likely to be achieved, in countries such as Botswana, Lesotho, Mauritius, Namibia, Rwanda and Swaziland. The same achievement at the secondary school level is recorded or expected of seven countries: Algeria, Botswana, Lesotho, Libya, Namibia, Tunisia and Rwanda.. Countries in the Central and West Africa sub-regions, however, must intensify their efforts on gender equality if the girl child is to enjoy the same rights to quality education as the boy child (UNECA, Millennium Development Goals in Africa: A Challenge for Change, 2007).

A very significant challenge for Africa is to combine increased access to primary and secondary education with improved learning outcomes and relevance of the curriculum. Only then will the

continent be able to reap the potential impact of education on overall national development and the elimination of all forms of inequality and discrimination among present and future generations of children.

Conclusion

Education is an inalienable human right. It also empowers individuals to exercise other rights and provides them with the skills and capacities to enhance their human dignity and self-confidence. Education is also widely recognized to be crucial to achieving all the other development goals. But it is clear that ratifying conventions like the CRC and ACRWC and adopting global commitments like the EFA and MDGs is one thing: concrete measures by countries to implement their provisions is another matter.

Progress has been made in the last decade in ensuring that the world's children will enjoy their right to education. Nevertheless, there is an unacceptably high number of children still excluded from realizing that right. Girls are particularly disadvantaged due to gender bias and discrimination. As the region that trails behind others in the world, sub-Saharan Africa has achieved dramatic progress in school enrollment in the last few years. However, there is a large gap in the right to education and the universal enjoyment of the right to education by Africa's children with many affected by severe gender and socioeconomic disparities and inequalities. The region needs to make a stronger push over the next few years to enroll all children in school and to fulfill their right to quality education. In this effort the support and cooperation of the international community will be required in the spirit and obligations of the CRC (articles 4, 28 and 45) and the MDGs.

Children's Rights and Juvenile Justice

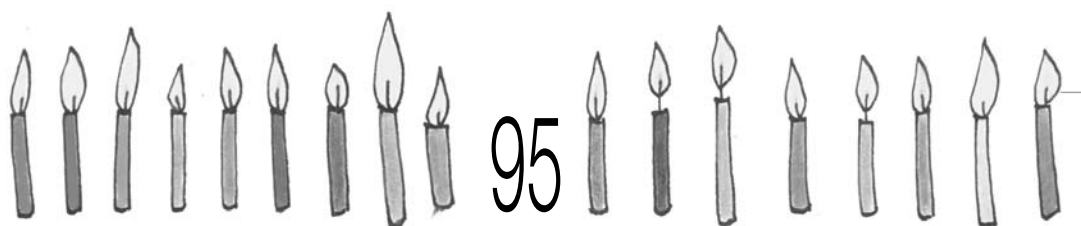
Jean Zermatten

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1. Introduction

My first encounter, as a judge, with children's rights (a phrase which at that time did not have the same meaning it has today) predates by few years the appearance of the United Nations Convention on the Rights of the Child (hereafter CRC), and was tinged with exoticism, being also my first (virtual) contact with China, through the Beijing Rules on the administration of Juvenile Justice (1985). These rules provide a range of minimum rules that States should follow when setting up a system of specialized justice for minors or redrafting their legislation. The world tour of standards for children later turned towards Riyadh, in 1990, where the Riyadh Principles, that address the prevention of youth offending were adopted. The Havana Rules, which focus on the respect due to minors deprived of their liberty, were then adopted in Havana, Cuba.

At its birth, the Convention devoted two important articles to the issue of youth in conflict with the law (articles 37 and 40); In addition article 39, even though it does not deal exclusively with the issue also touches on this topic. The tour is not over, although it is confined more and more to the tradition-bound Europe, since Vienna gave birth to the Guidelines for Juvenile Justice (ECOSOC, 1997). These Guidelines restate the main principles and recommendations of former texts, and add the issues of child witnesses and victims, and the central question of specialized



training. To enjoy the Vienna splendour and waltz a little longer, another party gathered to approve the Guidelines on Justice Matters involving Child Victims and Witnesses of Crime (ECOSOC, 1995).

The latest Act was performed on the shores of Lake Geneva, where the Committee on the Rights of the Child (the Committee) issued its tenth General Comment «Children's Rights in Juvenile Justice» on February 2, 2007.

I keep asking myself the question: why have there been so many efforts in this restricted field of delinquency? Many problems are much more important: health, food, education, child labour...

In my view, the reason is (at least) two-fold: first, in dealing with youth crime, the State makes direct use of its right to punish (public force), very often by using deprivation of liberty. Second, because States have to strike a balance between public security and child protection, between punishment and care.

I think States face a dilemma in deciding between these approaches, and no unequivocal or universal answer will solve this dilemma, since it requires a qualified approach, which must balance the interests of citizens and the child's interests. There are, in each camp, advocates and detractors. This has not only provided food for thought, but led national and international legislators to consider safeguards, recommendations, guidelines, minimum rules, commentaries, general observations and the Convention...

2. The work of the Committee

The Committee's main activity is to monitor the progress achieved by States parties in the implementation of the CRC, the remaining obstacles, and the problems experienced by children in the full enjoyment of their rights. This occurs through the examination of periodic reports due from the 193 State Parties to the CRC. In this careful examination, the Committee pays particular attention to the question of juvenile justice. Many

States are at fault in this respect, especially because of excessive use of incarceration in response to minor infractions or due to the difficulties of passing from childhood to adolescence. Delinquency is not likely to endanger the security of the State, and yet the severity of the response is often like using artillery to control flocks of birds!

Very interesting research could be carried out on the Committee's activities in this field, and the recommendations addressed to States Parties. What comes out clearly, even without scientific analysis, is that no State escapes unchallenged during the examination by the Committee of the State's juvenile justice system, and that all of them have to question, or at least improve, their system.

The Committee has addressed this issue thoroughly in its recommendations on the administration of juvenile justice (1995), as well as in its 2007 General Comment n°10, entitled «Children's Rights in Juvenile Justice».

3. The four fundamental questions to be solved

In my view, when a State decides to legislate in the field of Juvenile Justice, it faces four questions:

1. what should the age range be for specific criminal intervention for minors
2. which is the preferred «model»? Welfare, punishment, or restoration?
3. what kind of care will be offered?
4. what guarantees are offered to minors in conflict with the law?

General Comment 10 provides a wide range of responses to all of these questions in ways that respect children's rights.

As to age limits, the General Comment asks: what are the inferior and superior limits of intervention? Provisions on the age issue vary greatly from one State to another, especially in terms of the lower threshold (the age of criminal responsibility), and no

international standard has been set. The Beijing Rules (rule 4) require that the age limit be set not too low, in reference to the child's intellectual, emotional and mental maturity. During preparation of the General Comment, after animated debate, based on the results of many studies and common practice, the Committee voiced the opinion that States parties should not set a minimum age of criminal responsibility below 12 years. States Parties are recommended to consider the age of 12 years as the absolute minimum, and to plan to increase it to a higher age level of 14 or even 16 as soon as possible.

Conversely, countries with higher minimum ages (13, 14 or 15 years) should not lower them; the Committee's position is clear: States in this situation are requested not to set the limit lower. The Committee on the other hand considers that the upper limit for juvenile justice should coincide with the definition of a child and be set at 18 years. This is the practice in many countries, but not all of them. For States allowing adults law to be applied to some minors generally, or in relation to concerning some infractions committed by minors aged 16 or 17, the Committee recommends that this should cease, and calls for the implementation of juvenile justice fully and entirely and without discrimination.

As for the second question, on the model to be applied, the Committee reflects on «punishing or healing»; the sanction vs care debate. Historically, States have tended towards the welfare model throughout the first part of the XXth century, favouring a justice system that viewed the child perpetrator as a victim (of poverty, family, circumstances). Consequently, the child had to be looked after, rather than punished: this gave rise to the educational response. Later on, in the 60s and 70s, a more retributive model (justice model) became prevalent, which considered that the perpetrator should foremost pay for his/her offence, and public security take priority over individual interests; a vision that resulted in many children and adolescents being behind bars.

In the eighties, on observing that neither the first nor the second model was leading to solutions or that nothing works, the restorative justice movement was born. Obvious realities remerged and were scrutinised: the necessity for the child to become aware of his/her deed, to make amendments, and to restore social cohesion.

A careful reading of the texts mentioned above makes it quite clear that children's rights are not close to the justice model, particularly when it comes to incarceration matters. Indeed, the most serious violations of children's rights occur in this field, which is probably the issue with the highest improvement potential regarding the lot of children in conflict with the law. There are four issues here: lawfulness, the use of administrative detention, the conditions of enforcement of the deprivation before or after the trial, and finally, systematic or, at least exaggerated recourse to deprivation of liberty as the only, or the priority, response to youth crime. The model, being based on this kind of response, is quite clearly out of favour with the Committee. Although no text states this, it is conceivable that the new solutions provided by restorative justice hint at a preference for care, jointly with awareness and restoration of the link between perpetrator and society.

As for the third question, the Committee asks what devices should be set up in order to address adequately the challenge of offences committed by youths. The vast majority of these offences are petty, although some are serious, or, exceptionally, very serious. International standards and the Committee's general comment recommend a very wide range of solutions made up both of care and punishment measures, if possible, educational; deprivation of liberty should be a measure of last resort, and in any case be as brief as possible. On the other hand, intervention without judicial proceedings should be favoured: this is justified especially for petty offences creating no collective danger. Intervention without judicial proceedings should however not be limited to these situations, for it avoids the stigma of the criminal system, and leads to satisfying results.

As for the fourth question, concerning the guarantees given to youths in conflict with the law, concrete answers are to be found in article 40 CRC and in the Beijing Rules. They also figure, although in a slightly different way, in article 14 of the Covenant on Civil and Political Rights and in the General Comment N°13 of the Human Rights Committee. General Comment N°.10 gives a rather complete list. Let me quote a few rules that I consider fundamental: the principle of non-retroactivity, the presumption of innocence, the right to be heard, the right to participate effectively in the proceedings, the right to legal assistance, the right to appeal, the right to an interpreter, and full respect for privacy.

4. Conclusion

Many States, at least in the Western world, question their own attitudes towards new expressions of crudeness, explosions of violence, and behaviour change among youths. They tend to turn to law-and-order response and reactions. «Jail for all» for the citizen's comfort!

This age-old reaction of ostracism is dangerous and does not respect international standards on children's rights which rather favour nuanced, rights-based interventions distrustful of the idea of repression and which grant the child in conflict with the law a new position. The child is entitled to express him/herself, and to participate in the search for solutions safeguarding his/her future and which are useful for society as a whole. The price of ostracism is both economical (it is expensive) and social (it excludes), and furthermore it feeds personal revolt.

We should read this General Comment more often and more carefully. It gives the vision of what an ideal justice for minors should be. The Committee has gone further, it has identified the right to dignity as a principle. States are thus reminded that in any delinquent, there is above all a human being, a child. A great gift from the Committee to Miss Convention on her 18th birthday!

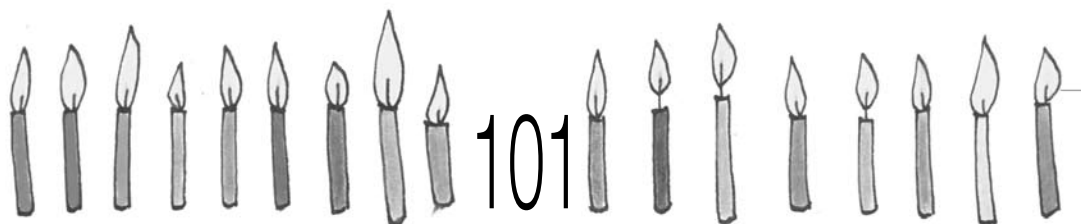
The Challenges of the Implementation of the CRC

Marta Santos Pais

Director of the UNICEF Innocenti Research Centre, former Member of the Committee on the Rights of the Child

2007 is a landmark year for children. This year we celebrate the 18th anniversary of the adoption of the Convention on the Rights of the Child and the fifth anniversary of the entry into force of its two Optional Protocols. As the Convention reaches its 18th birthday the time has come to move beyond tentative steps and symbolic gestures. We have an opportunity to celebrate the many important achievements made and to undertake further action to overcome the challenges that prevail. Translating the ideals and principles of the Convention into tangible action is an urgent priority!

Also this year, the General Assembly will meet to review progress made in the follow-up to the Special Session on Children, held in New York in 2002. At that time, Heads of State and Government pledged to advance the protection of children's rights and implement a time-bound strategy to improve the situation of children, in particular to promote healthy lives, provide quality education, protect children from abuse, exploitation and violence, combat HIV/AIDS and mobilize resources for children. This five year review provides an occasion to reaffirm a shared commitment to children, to advance the Millennium Agenda and to build a World Fit for Children.



2007 will also be marked by strong international attention to two critical child protection concerns - the impact on children of armed conflict and of violence. These two topics will be central to this year's General Assembly, which will discuss the ten year strategic Review of the Machel Study, and will assess the initial phase of follow-up to the recommendations made by the UN Study on Violence against Children.

These initiatives are a strong reflection of the increasing high profile children's rights issues are gaining at the international, regional and national levels. Since the adoption of the Convention, extensive changes have been introduced in national laws and policies; Ombuds offices have been established to voice and serve the best interests of the child; high level governmental mechanisms have been set up to coordinate activities, avoid overlap and promote synergy across sectors and regions; there is today more and better data on children, granting visibility to hidden areas of neglect and giving a face to marginalized children; child rights have been introduced in school curricula on the primary and secondary levels, and courses have been developed for university education and training of professionals working with and for children; new international and regional initiatives have been promoted to enhance the safeguard of children's rights, including in the European region, the recently established European Forum on the Rights of the Child and the adoption of the European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

In spite of the important progress achieved, the lives of millions of children continue to be marked by poverty, marginalization, exclusion and exploitation. More than 10 million children die each year before reaching their fifth birthday - 30,000 child deaths a day. In most cases the death of these children could easily be prevented through low cost interventions, including through immunization against the most frequent diseases.

With the spread of HIV/AIDS, development gains are being reversed, widening disparities and frustrating efforts to reduce poverty and hunger, provide primary education and to reduce child and maternal mortality. Every minute of every day a child below 15 years of age is lost to AIDS. Yet in cruel contrast, less than 5% of HIV positive children in need of pediatric treatment are receiving it. More than 90% of children living with HIV are in Sub-Saharan Africa, a region that is also home for 80% of children orphaned by AIDS; but less than 10% of children affected by the pandemic receive public support or services.

In the years since the Millennium Summit and the Special Session on Children steady progress has been made on the goal to eradicate extreme poverty and hunger and the target to halve the number of people whose income is below a dollar a day seems within reach. At the same time, the gap between rich and poor is not closing, instead inequalities and disparities are becoming more visible, more exposed and intractable. More importantly, children are often by-passed by this overall trend, with irreversible impact on their present and future lives.

Children are also dramatically affected by the changing geo-political reality and its impact on peace and security. Children's development will not succeed unless they can grow in a secure and peaceful environment. It is no coincidence that the poorest countries are more likely to be threatened by instability and armed conflict. Today's wars are increasingly concentrated in the most disadvantaged countries and regions of the world. Fifty years ago one civilian life was lost in wartime for every nine soldiers; today it is nine civilians for one soldier. For a child, this means becoming the target of military action, the victim of displacement and at risk of recruitment as a soldier. The compounding factors of poverty and war expose children to violence, disease, hunger, homelessness, exploitation and abuse.

In spite of this dramatic picture, there is encouraging news in recent efforts to protect children from the impacts of war. In a number of countries peace negotiations have brought and end

to conflict and set out steps to establish stable Governments. The Optional Protocol to the Convention on the Involvement of Children in Armed Conflict is in force in 117 countries and progress in its implementation has been regularly reviewed by the Committee on the Rights of the Child. The Security Council set up a monitoring and reporting mechanism on child rights violations during armed conflict, which is currently being piloted in seven countries. Earlier this year an important number of countries adopted new principles and commitments to prevent the recruitment and use of children in hostilities and ensure their release and reintegration.

As we look back to this process of change, of opportunities and challenges, important questions remain: how seriously are children taken in our societies? How much are they benefiting from the important measures adopted in laws, policies and in practice? Beyond significant progress in sectors of critical relevance for children's rights, including health and education, how far has the holistic approach of the Convention informed its process of implementation?

The general measures of implementation constitute an instrumental reference to address these critical questions. They have been identified by the Committee on the Rights of the Child in its guidelines for reporting and have been given strong attention by the studies carried out by the UNICEF Innocenti Research Centre.

The General Measures of Implementation are cross-cutting measures that contribute to the realization of the rights recognized by the CRC. They are grounded on the commitment made by States Parties to the Convention to adopt all appropriate legislative, administrative and other measures for the realization of the rights of the child. They also constitute a commitment agreed upon by Heads of State and Government at the UN Special Session on Children.

The Innocenti Study on General Measures of Implementation confirms the important changes generated by the Convention and is an important source of reflection for advancing the realization of children's rights.

The Study captures the extensive and substantial legislative reforms introduced by countries in all regions, both through the adoption of a comprehensive law on children and the enactment of legislation in key areas. These areas include domestic and inter-country adoption, protection of children from violence, abuse and exploitation, protection from discrimination, and juvenile justice standards.

The Study acknowledges the incorporation of the CRC into the national legal framework of two thirds of the countries reviewed; the consideration of the principles and provisions of the Convention to interpret and inform the application of national law; and the growing role played by courts in safeguarding children's rights.

At the same time the Study emphasizes two important challenges:

- Firstly, although critical to ensure conformity between the national legal framework and the CRC, legislative measures alone cannot achieve effective implementation. Indeed, law enactment and enforcement needs to be supported by awareness raising on the rights of the child and on effective remedies to ensure their safeguard; the training of professionals working with and for children; a steady investment in programmes and services for children and their families; and monitoring of the impact of legislation on the enjoyment of children's rights.
- Secondly, law reform is a long term process requiring on-going efforts to identify and fill gaps in child rights legislation. The incorporation of the general principles of the CRC, the protection of children from all forms of violence, and the establishment of a system of due process of law for juveniles are some of the most critical areas where greater efforts continue to be required.

The Study indicates that the Convention has triggered important processes of institutional reform, leading to the development of independent national institutions on children's rights and contributing to the establishment of governmental mechanisms to coordinate child-related activities.

- The spread of independent national institutions for the rights of the child has rapidly accelerated. When the CRC was adopted child rights national institutions existed in only three countries (Norway, Costa Rica and New Zealand), but the number has steadily increased. As separate national Ombuds-type institutions for children or as specialized child rights units within overall human rights commissions, with an overall national mandate or with a decentralized structure, independent institutions for children's rights play a decisive role in the implementation process. By voicing children's concerns and best interests, acting as a vehicle of children's voices, monitoring the impact of laws and policies on children, and making public their assessment and recommendations, these institutions are particularly well placed to promote progress in the realization of children's rights.

The Study confirms the critical importance of the legal foundation and the independence of these institutions in securing their authority and legitimacy to act on behalf of children and to avoid any risk of manipulation or weakening of their work. The Study also stresses the need for adequate human and financial resources to secure an effective mandate; and the importance of consulting and working with children, both to be sensitive to their needs and concerns and to be enriched by their perceptions and suggestions for the safeguard of their rights.

Moreover, the Study notes the important process of international and regional cooperation, to promote exchange and cross fertilization of experiences between institutions, including through regional networks (such as ENOC, the European Network of Ombuds for Children), and a global network promoted in the aftermath of the Special Session on Children.

While child rights institutions are important and promising, challenges persist, both to secure the independence and effectiveness of existing institutions and to promote their establishment in the many countries where do not yet exist.

The second important institutional change concerns the establishment of governmental mechanisms to coordinate activities and ensure a holistic and integrated approach to children's policies and programmes. Most countries reviewed by the Study have established national coordinating mechanisms, often as an inter-ministerial commission, or in some cases as a line-ministry, to coordinate activities of departments in central Government, as well as the cooperation between central and sub-national authorities.

The mandates of these mechanisms vary widely. Some are expressly designed to oversee implementation of the CRC, while others have a more limited role; in some cases the aim is exclusively to promote coordination while in others the mandate also includes work in awareness raising, policy development and monitoring of progress; some are established by law with the authority of adopting binding decisions while others are the result of an administrative measure with a limited power of issuing recommendations. To ensure effectiveness and advance the realization of children's rights, further efforts are required. These efforts include promoting multi-disciplinary and cross-sectoral cooperation and coordination between central and sub-national authorities; involving all relevant departments, including planning and finance ministries; engaging civil society organizations, and evaluating the work and impact of existing coordinating bodies.

As the Committee has often highlighted, States Parties are required to promote and safeguard the rights of the child on the basis of a comprehensive national strategy rooted in the Convention, with time-bound goals and targets to promote and monitor progress. The success of this strategy has often been

dependent on whether the process was led by high level political and governance institutions; developed through a consensus building and partnerships-based approach; supported by sub-national goals and strategies; and whether the strategy was mainstreamed into an overall national development framework.

The majority of countries reviewed have adopted a national children's plan or strategy. Most frequently the plan was set up to meet the commitments of the World Summit for Children and, at a later stage, of the Special Session on Children. Less often, countries developed a strategy specifically designed to promote the implementation of the CRC. A number of shortcomings have emerged from the review, for example, insufficient resources for implementation, weak mechanisms for coordinating and monitoring implementation, lack of coordination between various sectoral plans, insufficient public awareness of plans and insufficient participation of civil society in the planning process. Moreover, further research is required to assess the effectiveness and impact of these plans on the improvement of children's living conditions and the enjoyment of their human rights.

Awareness, education and training are an essential part of the implementation of the Convention and constitute an area where visible developments have taken place. Most countries have promoted activities to enhance awareness and understanding of children's rights, and combat practices and perceptions that compromise their safeguard. The CRC has been widely translated into national languages, awareness raising campaigns have been launched and advocacy materials promoted, in many cases with child friendly versions addressed specifically to children. At the same time, these activities have often been ad hoc and fragmented.

Nearly half of the countries reviewed have introduced child rights into the school curricula, in some cases supported by efforts to link with the social reality of students. Some countries have also promoted approaches to encourage the child to think critically and

to play a proactive role in the learning process. The establishment of child rights courses at the university level has been less systematic but progress has also been made in this area, including through the promotion of multi-disciplinary courses on the rights of the child.

In a wide range of countries, training programmes have been developed for professionals working with and for children - including teachers, judges, lawyers and law enforcement officials, social workers, medical doctors and health professionals. Training programmes increasingly address parliamentarians, governmental officials, journalists and military personnel.

Despite these important developments, systematic and on-going efforts continue to be required to promote a culture of children's rights in the society at large.

Progress in the realization of children's rights is closely associated with the State's openness and commitment to monitor change, acknowledge challenges and introduce adjustments in law, policy and practice. There is today more and better data on children and greater recognition of the need to strengthen national data systems. Household surveys are beginning to include a broader range of indicators on emerging areas and surveys of children themselves are being used to enhance understanding on neglected areas.

Yet some challenges persist. Monitoring is still perceived as particularly relevant for international accountability, including for reporting to the Committee on the Rights of the Child, rather than as a national monitoring and policy making tool. In addition, monitoring is often associated with criticism and condemnation of serious violations of children's rights or drastically reduced to a few areas of concern - particularly health and education where data may be more easily available. Moreover, insufficient investment undermines the disaggregation of data to acknowledge disparities, identify hidden levels of vulnerability and to inform targeted interventions addressing the most vulnerable groups of children.

As the implementation of the CRC moves forward, key areas call for an urgent attention - filling data gaps including on child poverty, the incidence of violence against children and other child protection areas; evaluating the impact of policies and budgetary decisions on children, and involving children in the monitoring of their rights.

If we redouble our efforts and ensure that all countries have the capacity to collect, analyse and make public comprehensive, disaggregated data on children a decisive difference could be made in the universal realization of their rights.

Progress in implementing the Convention is meaningfully associated with popular participation and public scrutiny, engaging the active support of civil society organizations in community, national and international initiatives.

The Innocenti Study confirms the wide involvement of civil society in promoting the realization of children's rights. With their skills and resources NGOs have played a decisive role in the global child rights movement. National coalitions have been formed to promote ratification and advance implementation of the Convention. Their voices have been instrumental to the reporting process of the Committee and to the dissemination and follow up of the concluding observations it adopts.

Civil society has played a key role in awareness raising, and information and education campaigns, as well as capacity building initiatives on the rights of the child. They have lobbied for, informed and monitored legal reform processes. They have contributed to national plans for children and sectoral strategies to promote their rights.

There is today an undeniable increase in action by civil society organizations, a shift from welfare to a human rights approach in their activities, and a much greater cooperation with State authorities in the promotion of children's rights.

Moreover, this process has been closely linked with an increasing participation of children, a unique feature of the process of the CRC implementation. Although it is challenging to overcome tokenistic approaches and ensure a genuine engagement, follow-up and evaluation, children's participation processes are gaining attention and promoting a new perception of childhood. In many countries child parliaments have been established generating familiarity with democratic and decision-making processes. In some cases children are entitled to representation on national bodies responsible for children's rights and in a large number of countries municipal councils and local mechanisms have been established to capture their views and suggestions. The views of children have been taken into account in the development of national plans of action as well as in legislative reform processes - with child initiatives ranging from lobbying in favour of law reform, to proposing specific provisions in the legislation or even in the Constitution. Moreover, children play an active role in awareness raising initiatives and in advocacy campaigns and peer education.

In spite of the significant progress made, much remains to be done to effectively guarantee that all children have the right to be heard and to have their views taken into account in matters of concern to them.



«The Rights of the Child - Much More than Charity»

Thomas Hammarberg

Council of Europe Commissioner for Human Rights

Clear progress has been made since the United Nations Convention on the Rights of the Child was adopted in 1989. The initial mobilization for the Convention was a stunning success, no doubt largely due to the goodwill traditionally associated with efforts on behalf of children.

As a result, children's rights are now on the political agenda, both internationally and in a number of countries. Unprecedented attention is being paid to children's rights issues such as child labour, child abuse and children in armed conflict.

Yet, actual implementation of the Convention has been far less effective than we had hoped. Different factors have contributed to the delays and shortcomings in different countries, but the fundamental cause is always the same: the absence of a systematic, comprehensive approach to children's rights as a political priority.

Although children make up a large portion of the population and constitute the future of society (in more than one sense), their concerns are seldom given top priority in politics. Ministers responsible for children's affairs tend to be junior and stand outside the inner circle of power. When political issues are divided into «soft» and «hard», those relating to children are dealt with as «soft-soft». Often these issues are



seen as non-political and sometimes simply trivial. The image of politicians on the campaign trail kissing babies is symbolic of this trivialization.

Gestures are not enough to meet the requirements of the Convention; what is needed is serious political discussion leading to real change. Improvement of the status and conditions of children is of course the very purpose of the Convention. With ratification, a State has committed itself to respect the principles and provisions of the Convention and to transform them into reality for all children. One reason why implementation has been delayed might be that the decision-makers have not fully understood or accepted the obligations stemming from the Convention. They may not always have made the distinction between charity and a rights-based approach.

Children in need (as well as persons with disabilities) have for long been the favourite objects of charity. They have been given support not as a matter of right but because people have felt pity for them. This is one of the attitudes that the Convention challenges.

The Convention sees the child as a subject. He or she has the right to schooling, health care and an adequate standard of living but also to be heard and have his or her views respected. This goes as much for the cute toddler as for the problematic teenager.

The very notion that children have rights is a radical position; totally alien to conservative views that children are given their rights only on their 18th birthday and that their parents have those rights before that date.

The Convention is, of course, family friendly and stresses the paramount importance of parents for the upbringing of children - but it does recognize at the same time that children are individuals with their own needs and opinions and that these should be respected.

In principle, there is no contradiction between the interests of the parents and those of the children - children need a positive family environment. There are, however, extreme situations when authorities have a duty to intervene to protect the life and well-being of a child under threat from the very person(s) who should be his or her security. To construct an artificial conflict in the public discourse between parental rights and children's rights is therefore a reactionary position that could be, and sometimes is, used as a justification for repressing children.

The Convention is clear that parents and other guardians cannot do whatever they like to the children. They are not allowed to beat up or use other methods of physical or psychological violence against children as a means of punishment or to «teach» them a certain behavior. Adults are protected against such ill-treatment; of course children should be as well. Only zero-tolerance is acceptable.

A majority of States have still not legislated against corporal punishment of children. It is as if decision-makers hesitate to give children the full protection against adult violence. Typically, the response to the quest for abolition of corporal punishment is that there is first a need to educate parents and teachers about «alternative means» of upbringing. Negotiation is seen as more difficult than using muscular power.

That leads us to the next challenging consequence of the rights-based approach to the relationship between adults and children: that children have a right to express opinions and to be listened to. That the views of children should be respected is one of the general principles of the Convention and would, if implemented, have far-reaching implications.

This principle requires that the schools be made more democratic, but also that there would be forums for child participation in local, regional and national politics. Very little has happened in this area, in spite of the fact that experiments have had positive

outcomes. When young people are invited to take part in official meetings, the reaction is often that this made the discussion more real, relevant and rich. Some of the children's ombudsmen have organized a system of consultation with children via the internet which has demonstrated the potential for participatory channels which are more than tokenism.

The Convention gives children the right to take part and be heard, in other words to have an influence. This is not a zero sum game; the generations do not stand against one another. Indeed, the adult society needs the guidance from those who belong to the future - and in several respects seem to understand it better.

Opponents to children's rights state that these must be balanced with duties. Of course, children have duties and responsibilities, and so they should. Generally children all over the world are under heavy pressure within the family, in school and from their peers to fulfill certain responsibilities. In most cases, there is no need to increase that burden. Behind the argument on children's duties lurks the notion that children's rights should be conditioned by their having formal duties, imposed by law or otherwise. Such conditionality is not part of any international human rights convention. The argument is, in fact, a frontal attack against the whole concept of children's rights, and should be approached accordingly.

Another objection to children's rights is that implementation is too costly. Clearly, poor countries have a problem here, but even in the more affluent societies, priorities must be determined when budgets are to be adopted. The Convention allows for a gradual, progressive implementation of provisions which require heavy financial and human resources. The Convention also promotes international cooperation for the benefit of children in poor countries. One principle remains fixed, however, and that is that States should give priority to children, allocating the maximum extent of available resources to the fulfillment of their rights.

It is not immediately evident how to balance the resource needs of children with other important demands, such as general social welfare and support to older people or other vulnerable adult groups. This is where the process approach of the Convention becomes particularly useful, especially such aspects as the emphasis on the principle of the best interests of the child and the use of child impact analyses.

Since the Convention was adopted and entered into force very little progress has been made in the combat against child poverty. Indeed, this problem has worsened in large parts of the world, including in a number of more affluent States. Growing inequalities have victimized children even more than other population groups. This is one of the greatest disappointments and an obvious violation of the rights of the child.

An obstacle to child-friendly politics is probably the fact that many powerful politicians have grown children and have forgotten the urgency of certain children's issues. The kind of lives they lead also isolates them from children's everyday reality. Their distance from children can favour stereotyping and prejudices; teenagers in particular are sometimes portrayed in political debates as if they were creatures from another planet.

An additional obstacle is that many parents work long hours and have little time or opportunity to present their views. Moreover, social attitudes often exclude women from the public or political arena; the gender gap in top political positions contributes to depriving children of a strong and knowledgeable voice where it could matter the most.

However, there are counterweights in the political debate - many of them in civil society - and they do use the Convention as an instrument in their lobbying.

What are the strategic priorities in the lobbying to ensure that children's rights are taken seriously?

1. Some countries have developed a national strategy for the rights of the child. Such a strategy could of course incorporate plans to implement the 2002 UN Plan of Action adopted at the General Assembly Special Session and the recommendations of follow-up meeting 2007.
2. The laws could be reviewed in order to correspond properly to the rights of the child. Some countries have introduced the principle of the best interests of the child as a major dimension of the laws on, for instance, family matters and asylum procedures. Other law-making work has been undertaken on adoption, sexual abuse, domestic violence and juvenile justice.
3. The functioning of the political and administrative system affects the implementation. Ministries should of course be coordinated in order to secure that all Government programmes are influenced by a child rights approach. Also, local Governments are obliged to respect international and European standards on human rights. The vertical coordination between national and local authorities is important for the effective implementation. Likewise, Governments ought to relate constructively with NGOs working for, and with, children.
4. Children should be a major consideration in the budget process. Child impact analyses are strategic tools. Relevant statistical and other data ought to be assembled in disaggregated form and compared to indicators in order to facilitate problem detection.
5. Effective monitoring should be part of the national strategy. Many countries now have an ombudsman for children or have decided that the general ombudsman should include the monitoring of child rights in his/her mandate. However we organize monitoring, a priority must be the situation of children at risk or in other difficult circumstances; for instance, those in poor families, children with disabilities, migrant children and those belonging to minority groups.

The struggle for the rights of children have been both helped and undermined by the general goodwill surrounding the work for children. It was relatively easy to obtain agreements on these rights - few politicians wanted to oppose suggestions relating to children. The objections came when the new standards were to be enforced. Many politicians were just not prepared. Lip service no longer worked. The obligations coming with the Convention required attitude change and different priorities.

They will come.



Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,



Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, «the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth»,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries, Have agreed as follows:

PART I

Article 1

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

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

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

Article 5

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

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

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

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

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States

Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

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

Article 16

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

Article 17

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

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

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

Article 19

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

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

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

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental 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. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating

access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

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

Article 34

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

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

Article 35

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

Article 36

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

Article 37

States Parties shall ensure that:

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

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

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

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

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

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

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

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

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a

need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States

Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a twothirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts

**Adopted and opened for signature, ratification and accession
by General Assembly resolution A/RES/54/263 of 25 May 2000
entry into force 12 February 2002**

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,



Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have

signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000

entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,



Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. Sexual exploitation of the child;
- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

1. 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. 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.

3. 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.

4. 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.

5. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor

shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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