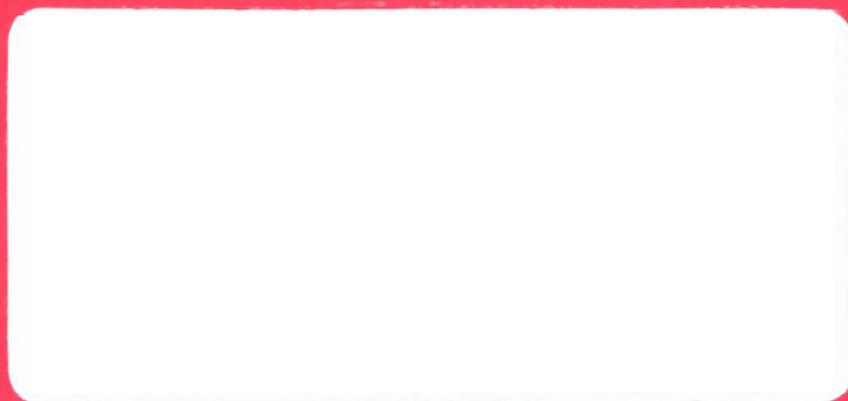




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**IMPLEMENTING THE UNITED NATIONS  
CONVENTION ON THE RIGHTS OF THE CHILD:  
RESOURCE MOBILIZATION  
AND THE OBLIGATIONS OF THE STATES PARTIES**

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## CONTENTS

EXECUTIVE SUMMARY .....	v
I. INTRODUCTION .....	1
An Historic Opportunity for Action -- or Inaction? .....	1
Obstacles to Implementation .....	2
Human Rights and Human Development .....	4
II. THE CONCEPT OF "AVAILABLE RESOURCES" AND THEIR MOBILIZATION IN THE CONTEXT OF THE CRC .....	5
A Broad Definition of "Resources" .....	5
Many Levels of Society .....	8
Who Controls the Available Resources .....	11
III. OBLIGATIONS OF SOCIETY CREATED BY THE CRC .....	14
A Broad Definition of "Obligations" .....	14
Obligations: To Respect, Protect and Fulfil .....	18
IV. PLANNING, IMPLEMENTATION AND MONITORING OF CHILD RIGHTS BY OBJECTIVES	21
Explicit Goals and Specific Target Dates .....	21
The Summit for Children and National Plans of Action .....	23
International Cooperation .....	24
V. THE "RESOURCE-RELATED" PROVISIONS OF THE CONVENTION .....	25
VI. CONCLUSIONS .....	32

## TABLES

1. "Available Resources" for Implementing Child Rights .....	10
2. Framework for Analysis of Governmental Obligations for Implementing Child Rights .....	20
APPENDIX: Goals for Children in the 1990s .....	37
NOTES .....	40



## EXECUTIVE SUMMARY

The United Nations Convention on the Rights of the Child (CRC), adopted in 1989, undoubtedly represents the most significant commitment to children's rights ever made. Yet, the enthusiasm with which this landmark human rights instrument has been received by the international community should not overshadow the strong concern on the part of child rights activists and others involved with the Convention regarding the many obstacles which could hinder its effective implementation. This paper examines two of these potential obstacles: the crucial issue of "available resources", as included in Article 4, and the closely related issue of the "obligations of States".

The paper provides a conceptual framework for a research project underway at the UNICEF International Child Development Centre on the resource implications of implementing the CRC. This initiative seeks to deal with the concern that the reference in Article 4 to "the maximum extent of their available resources" may provide an 'excuse' for less than satisfactory progress by States Parties in meeting their obligations under the Convention. From a human rights law perspective, it is significant that the UN Committee on Economic, Social and Cultural rights has established the principle that a State Party cannot "attribute its failure to meet at least its minimum core obligations to a lack of available resources", without demonstrating "that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations".

The starting point for a constructive interpretation of the reference to "available resources" in Article 4 must be a broad definition of resources. It is vital that such an interpretation move beyond a restrictive concept which focuses only on the financial resources of governments to a more far-reaching interpretation explicitly recognizing the availability and potentially increasing significance of resources -- economic, human and organizational -- at all levels of society, from the family to the international level. However, recognition of the existence of "available resources" at the family level should not be used to overburden low-income families, often female-headed, with increased responsibilities for child survival, protection and development, beyond what can be realistically expected in terms of their contributions.

Discussion of "available resources" for implementing the CRC inevitably leads to the complex question of obligations of States in relation to such an instrument. A broader definition of the concept of obligations under the CRC is needed, which includes not only governments but also families, households, communities, the private sector and other participants in civil society. A more encompassing definition of obligations not only recognizes the essential role of the family and community in providing for children's well-being, it also places increased importance on public/private sector partnerships in achieving children's rights and implies the necessity of developing equitable and cost-effective strategies for mobilizing the additional resources needed to achieve the rights included in the CRC.

Of special importance is the link between the processes of implementing and monitoring the CRC and the goals approved at the 1990 World Summit for Children as well as the National Programmes of Action (NPA) adopted by many countries following the Summit. One of the advantages of the Summit and NPA commitments to children, from the perspective of the CRC, is that they can be used to provide concrete and verifiable indicators of whether a State Party is meeting the "minimum core obligations" central to the achievement of the survival and development rights of children. States Parties, the UN Committee on the Rights of the Child and other concerned organizations will find that specifying target dates and resource requirements in addition to the actual goals to be achieved will result in much more effective implementation and monitoring of the Convention on the Rights of the Child.



## I. INTRODUCTION

### **An Historic Opportunity for Action -- or Inaction?**

The potential importance of the new Convention on the Rights of the Child (CRC) for UNICEF and its partners, within and outside the United Nations family, would be difficult to overstate. The UN Centre for Human Rights has recognized this widely ratified covenant as "the most comprehensive statement of children's rights ever made". A document for UNICEF's 1991 Executive Board asserted that the Convention, in addition to its comprehensive approach to children's rights, may also be "the most innovative human rights instrument to be drafted by the international community"<sup>1</sup>.

As of the time of writing, 151 countries have either signed the CRC or have become States Parties to it by ratification or accession. No other international human rights covenant has been ratified so quickly by so many States. A number of countries are well advanced in the task of examining the implications of the Convention in terms of their own legal norms and, sometimes, actual practices<sup>2</sup>. At least one law review article has appeared which analyses why one major country, the United States, may remain among a small number of countries to neither sign nor ratify the Convention<sup>3</sup>.

Comments on the CRC not only from child rights activists but also from world political leaders have been almost embarrassingly enthusiastic. The Convention has been described as nothing short of "the cornerstone of a new moral ethos for children", possibly a "milestone in the history of mankind", and an instrument stressing that "respect for and protection of children's rights is the starting point for the full development of the individual's potential in an atmosphere of freedom, dignity and justice"<sup>4</sup>.

Somewhat more cautionary notes have also been struck. The Preface to another publication of the UNICEF International Child Development Centre in Florence notes that the Convention represents:

"not only an historic opportunity for practical action but also an extraordinary challenge not to allow this set of international commitments to go the way of far too many noble declarations and solemn covenants in the global arena of human rights."<sup>5</sup>

Even as committed a promotor of the significance of the Convention on the Rights of the Child as the former Norwegian Ombudsman for Children, Målfrid Grude Flekkøy, has

written that "laws, national and international, are, after all, words on paper. They may codify attitudes, but the real results depend upon how they are implemented, what is done to follow up and to reach the ideals." In some countries, she notes, "there is either a distrust of the efficacy of legislation as a useful instrument or a tradition of disregarding the fine principles stated in law"<sup>6</sup>.

Similarly, an early assessment of the first session of the new UN Committee on the Rights of the Child, entitled "Two steps forward...one step backward?", expresses reservations about the initial reporting guidelines adopted by the Committee<sup>7</sup>.

The Chairman of the UN Committee on Economic, Social and Cultural Rights, Philip Alston, has recently published an unusually frank assessment of the limited results of much of the UN's work in human rights in a challenging article entitled: "Revitalising United Nations Work on Human Rights and Development". Among his conclusions is the sobering statement that:

"...the United Nations Commission on Human Rights has expended an enormous amount of time and energy on matters of marginal importance, while the core concerns that provided the impetus for the emergence of the concept of the right to development in the first place have remained largely unaddressed. By contrast, and somewhat paradoxically, international organizations outside the human rights framework have made major progress towards acceptance of much of the right to development's agenda, although not its terminology"<sup>8</sup>.

### **Obstacles to Implementation**

This paper examines two of the many obstacles which could stand in the way of effective implementation of the CRC. Primary attention is devoted to the critical issue of "available resources", as included in Article 4:

"With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

In terms of the history and politics of the Convention process, the reference in Article 4 to the "maximum extent" of "available resources" was included, as in other United Nations instruments<sup>9</sup>, especially to allay the fears of official representatives that governments would be held responsible for achieving standards of children's well-being which are 'unrealistic'

in terms of resource availability and specific time limits, especially in lower-income countries. Several other articles of the Convention emphasize the resource constraint point, notably the references to "the highest **attainable** standard of health" (Article 24(1), emphasis added) and to "the right of the child to education, and with a view **to achieving this right progressively**" (Article 28(1), emphasis added). The history of the inclusion of these qualifying phrases, as well as a 'common-sense' interpretation of their meaning, has raised fears that they could become convenient excuses for justifying implementation performance falling well short of what might be reasonably expected in terms of **accelerating** progress towards meeting children's basic needs, as well as in promoting and protecting their rights as set forth in the Convention.

Rather than allowing the "available resources" provision and related clauses of the Convention to become a justification for poor performance, UNICEF, other agencies and NGOs concerned with child rights implementation and monitoring should turn these clauses into opportunities for promoting and assisting governments and non-governmental partners to undertake the 'step-by-step' financial and human-resource planning required to ensure that the **progressive achievement** of children's rights represents real progress in meeting the challenging goals of the Convention.

The development of a useful and positive interpretation of the "available resources" reference in Article 4 requires analysis, hopefully in a practical fashion, of a second issue: the nature of the obligations of States Parties in terms of the Article 4 requirement that they "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention". This issue of the "obligations of States" is viewed here as a potential obstacle because of: (a) the vagueness of this concept both in international law and in development theory and practice; and (b) the tendency to limit recognition of these obligations to the formal agencies of the State, especially at the national level, at the expense of a broader and more decentralized concept of the public sector which more explicitly recognizes the potential of governmental and non-governmental cooperation, including -- or especially -- at the community level, in achieving social objectives.

## Human Rights and Human Development

The author should quickly point out that he is not a lawyer and approaches this subject of the CRC from the 'development' side of the debate. He is grateful for the comments and encouragement of several lawyers during the drafting process but does not seek to make a significant contribution to the literature of human rights law as such. There is underway, however, an important movement seeking to narrow the gaps in understanding between those who have been concerned in recent decades with the advancement of human rights and those concerned with development. One especially significant expression of this trend, within the UN family, is the work of the United Nations Development Programme (UNDP) in its annual *Human Development Report*<sup>10</sup>.

In spite of this and a few other initial efforts, very little has been done to try to bridge the enormous gulf foolishly separating the achievement of 'human rights' (or 'human freedom', as some prefer) from the fulfilment of development, especially 'human development', objectives. "[T]he reality is", as Alston notes,

"that until the end of the 1980s international development agencies and policy-makers were only very rarely prepared to address themselves directly to human rights questions. While the importance of such questions was sometimes grudgingly acknowledged, that recognition almost invariably was accompanied by the assumption that human rights matters were appropriately dealt with by other bodies or agencies. As one report has noted, '[g]overnments have sought to confine humanitarian concerns to the periphery of international relations...'"<sup>11</sup>.

On the human rights side of this 'gulf', it is noteworthy that the 'mainstream' independent human rights organizations, based largely in Europe and the United States, have tended to avoid the sort of activism and practical work in the area of social and economic rights ('development' concerns) which have characterized their involvement in the protection of civil and political rights. In some cases, of course, notably the position of the United States Government, there is a strong denial "that there is any such thing as an economic, a social or a cultural human right"<sup>12</sup>.

It is hoped that this paper, linked to efforts underway at the UNICEF International Child Development Centre both concerning the implementation of the CRC and work in the area of Economic Policies and Mobilization of Resources for Children, will represent a

contribution to the bridging of these gaps between 'human rights' and 'human development' policy concepts, leading towards practical tools for coordinated action on both fronts.

## II. THE CONCEPT OF "AVAILABLE RESOURCES" AND THEIR MOBILIZATION IN THE CONTEXT OF THE CRC

### A Broad Definition of "Resources"

How is the concept of "available resources" to be interpreted? Is there any likelihood of finding significant common ground in this regard between the human rights and the development communities?

As applied in human rights work, there appears to be little conceptual work and, at times, an unduly limited set of assumptions about the nature of a society's "resources". Among parts of the development community, moreover, there is sometimes a tendency to identify resources only with economic -- and then typically with financial -- resources. In general, however, development theory and practice, especially that concerned with human and people-oriented development, comes closer than the human rights community to having a set of definitions needed to ensure practical and constructive interpretations of the various references, direct and indirect, to "resources" in the CRC.

In the drafting history of the CRC, and to a lesser extent in the forthcoming *UN Commentary on the Convention on the Rights of the Child*<sup>13</sup>, an impression is created that the inevitable references in such legal documents to "States Parties" and their "available resources" will tend to concentrate attention on **national-level public-sector funding** required for the implementation of the CRC. It is relevant, however, that the *Commentary*<sup>14</sup> does cite an important reference in the Plan of Action of the September 1990 World Summit for Children: "Action at the community and national level is, of course, of critical importance in meeting the goals and aspirations for children and development" (the remainder of the citation drawing attention to the need for "substantial international co-operation").

The *Commentary* also cites an important issue reviewed by the UN Committee on Economic, Social and Cultural Rights regarding the "minimum core obligations" of States, an issue to which we will return. In a *General Comment*, the Committee concluded that:

"In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to **use all resources that are at its disposition** in an effort to satisfy, as a matter of priority, those minimum obligations" (emphasis added)<sup>15</sup>.

The phrase "at its disposition" is interesting but too vague to serve as a guide to an interpretation of "available resources" which can maximize opportunities to facilitate rather than inhibit the moves towards full and effective implementation of the CRC. We will leave to the lawyers the question of how much flexibility and justiciable potential there may be in the interpretation of phrases of this sort. From a 'human development' perspective, however, it is clear that a broader and clearer interpretation is needed regarding: (a) the various types of resources available in a society for the survival, protection, development and participation of children; (b) the different levels of society, including the 'civil society', and the various levels of government at which these resources are available; and (c) the key political issues of who controls these resources and makes the decisions regarding their allocation or reallocation.

There have been many formulations by economists, planners and others of the various concepts and types of resources which have particular relevance for human development, including for children's well-being. Building on earlier work, especially by Mosley and Chen<sup>16</sup>, Cornia and others in UNICEF developed a comprehensive framework<sup>17</sup> illustrating the most important causal linkages among the various social, economic and biological factors influencing child survival and development. Three sets of resources were used in that framework: (a) real resources in cash or kind at the household level, especially subsistence production and money incomes; (b) government expenditures on health, education, child care, water and sanitation, etc.; and (c) family and community characteristics, notably the time, health and skills of the parents, especially of the mother. This framework was developed importantly in an attempt to indicate the channels through which economic decline adversely affects child welfare and to attain a clearer understanding of the actions necessary to prevent such declines. Although it has been difficult, especially given data limitations in developing countries, to fit empirical information into this framework, it is a useful model to gain a better understanding of the complex relationships involved, over time, in addressing issues of children's welfare, especially in the areas of health, nutrition and education.

In an effort to develop a somewhat less complex framework, which might be especially useful in the process of encouraging better communication between the human rights and development communities, we have drawn on another formulation being applied in UNICEF<sup>18</sup>. Building largely on that presentation, it appears useful for our purposes here to classify "resources" as follows:

- (a) **Human Resources:** physical and mental health, knowledge, creativity, self-confidence, time availability, and skills (interpreted broadly to include everything from child-rearing skills to leadership, managerial and political skills);
- (b) **Economic Resources:** income (in kind or cash -- of individuals or enterprises), assets, natural resources (especially land and water), credit, government revenues and expenditures;
- (c) **Organizational Resources:** family and household structure, extended family or clan relationships, community structure and organizations, cooperatives, political movements, trade unions, religious organizations, the media, governmental organizations, other public or private sector institutions and managerial arrangements, technologies (to the extent not 'embodied' in human or economic resources).

Having suggested this classification, the customary qualification should quickly be added concerning the rather arbitrary nature of all such rough divisions. There is considerable overlap and interaction among and within these three very general categories. Economic resources such as family income or tax revenues can be allocated to purchase or improve human or organizational resources. Organizational resources, such as a well-functioning network of community volunteers, can greatly enhance or multiply the productivity of other human resources, such as trained midwives or other health-care workers. Improved organization, management and control can substantially increase the cost-effectiveness of economic resources through the reduction of waste, inefficiencies and corruption. There is, moreover, nearly always some degree of substitutability among these different types of resources.

It may be useful, as well, to mention the economist's distinction between stocks and flows of resources. The former (assets, infrastructures, capacities, etc.) establish the range of opportunities for change over time. Flows (such as wages, labour inputs, budget allocations and organizational decisions) are what most decision-makers are most immediately concerned with in the short run. The references in the CRC to the progressive achievement of children's rights, as well as the need to ensure sustainable achievements, should serve as a reminder

of the need to be concerned with strengthening 'stocks', i.e., investments in capacity-building and in the creation of infrastructures, as well as with mobilizing 'flows'.

Most analyses of resource utilization for development concentrate on economic (especially financial) resources and, to a lesser extent, human resources. Often neglected, in part since they are difficult to quantify, are a society's 'organizational resources', even though most development practitioners have a general impression that the failures of policies and programmes can often be attributed to organizational, managerial, political and cultural factors. Only rarely does the development literature include the structure and organization of the family as a significant factor relating to resource availability. The family, in its multiple forms in different cultures, is the most hidden of all resource bases. This situation must be changed in any serious analysis of resource availability and mobilization for fulfilling children's rights.

Given UNICEF's concern for mobilizing political leadership (or 'political will') behind major goals for children, we considered including separately and developing further the notion of 'political resources' (a concept which will nonetheless be addressed later in this series). At this stage, however, it seems preferable to consider such political factors as one important element either of human or organizational resources. The human-resource dimension includes the creativity, commitment and certain skills, such as communications and leadership capabilities, essential for 'good politics'. The concept of 'organizational resources' also relates directly to the capacity of households, communities or political entities to stimulate 'social mobilization' or generate increased political commitment to children. Regardless of the semantics of classification, the politics or political economy of children's rights must be a key part of the analysis of the implementation of the Convention, including its resource implications.

### **Many Levels of Society**

Crucial to any treatment of "available resources" or resource mobilization issues is the clear recognition that resources are "available" at all points of society, public and private, from the individual or household levels to the national and international levels. As emphasized earlier, for purposes of developing strategies for work on child rights, the neglect of resources at the individual/household/family level is especially unfortunate. That is the level at which, by far, most of the relevant resources exist, including time and energy for

child care, and where most of the critical decisions about resource allocation are taken -- in favour of or against the interests of children. Even in areas such as health and education, where governmental contributions are especially important, private spending often exceeds that of the public sector<sup>19</sup>. And research on this subject generally does not attempt to quantify the human and organizational resources deployed by the household or family in favour of children. The time and organizational skills of the mother, grandmother or older sister used in child-rearing and child care simply do not 'count' in most studies of costs and benefits of child development. There is also generally little recognition of the additional burdens on women -- as opposed to men -- implied by many attempts to 'mobilize' additional resources at the household level for more effective child care.

It is also a mistake to assume, often implicitly, that the 'State' has little or no influence on resource-allocation decisions at the household or community level. Positive incentives can be of various sorts, including but not limited to financial incentives. Appropriate sanctions can be powerful deterrents against violations of rights -- such as the employment of children in hazardous occupations. Governments at different levels, including at the most local level they reach, have many options for encouraging the realization of children's rights, not only through the 'mobilization' of resources but also through resource 'recognition and respect', as described in a later section of this paper. There are indeed many ways to increase the protection of children's rights and to facilitate opportunities for children which make only modest new demands on hard-pressed governmental budgets. On the other hand, however, excessive demands by governments on already overburdened family and community resource bases, at the lowest income levels, can discourage or inhibit the desired responses in terms of children's well-being and result in serious social inequities.

Table 1 presents a framework for further analysis of the various types of resources existing in any society, with a summary of the various levels at which they are available and where decisions are made about their allocation (though levels of availability and levels of decision-making are not always the same). The boxes or 'cells' in this table have been filled in largely by way of illustration for the purposes of this paper on the rights of the child, rather than as a complete list of all conceivable resources in a society. (It is worth recalling that there is considerable interaction among the resources listed in these various boxes.) The important point to stress here is that any approach to the CRC or other child rights instrument or strategy which restricts attention to just one or two of these 'cells' is unlikely to prove useful for public policy or other purposes. As noted earlier, there may be a natural

Table 1  
 "AVAILABLE RESOURCES" FOR IMPLEMENTING CHILD RIGHTS

Level of Society	Type of Resources		
	<u>Human</u>	<u>Economic</u>	<u>Organizational</u>
Household	Health, knowledge, skills, time, etc. of family members, especially for childrearing	Family income, assets, access to credit	Family structure, access to extended family, kinship or clan support
Community / District	Management/leadership / political skills, community self-reliance and solidarity, civic pride	Community financing strategies, communal lands and other assets, community credit and insurance arrangements	Community-based child care or other child services arrangements; water/sanitation cooperative arrangements; traditional forms of social security or conflict resolution; family courts
Metropolitan / Provincial / State	Management/leadership / political skills; solidarity based on cultural and political factors at this level	State or municipal-level financing strategies, including significant taxing / user charge authority as well as assets and access to credit in some systems	Municipal / provincial / state-based arrangements, especially relevant for education, health, housing and juvenile justice in some systems; judicial arrangements
National	Management/leadership / political skills; national statesmanship and sense of citizenship	Principal public revenue-generating capability in most systems, including taxation and national or international credits; substantial natural resources and other assets	National planning, policy-making and public-sector coordinating capability; state enterprise arrangements; ultimate legislative and judicial authority in most cases
International	Management/leadership / political skills, especially in human development and human rights organizations; international statesmanship; growing sense of global solidarity (on some issues)	Development cooperation (credit, grants, technical assistance) in fields of human development and human rights (other international economic relationships have strong influence on national-level resource availability)	International arrangements for child-related services, including actions to protect children from wars, commercial exploitation and other transnational abuses; monitoring of nations' human rights and human development performance

tendency to concentrate the implementation debate, including about Article 4, largely on the matter of the economic (especially financial) resources available at the national level; or for international agencies to concern themselves only with financial resources at that level available for transfer to the national level. In some areas closely associated with key substantive articles of the CRC, such as health, nutrition and education (and similar provisions in national constitutions and legislation), such an approach may weaken the effort -- particularly as a child rights initiative -- from the start, especially in many of the lowest income countries.

### **Who Controls the Available Resources?**

Those seriously concerned with mobilizing resources for achieving children's rights, especially at the national and sub-national levels, will need to study and understand in some detail the patterns of control and use of resources in their societies: the political economy of child rights. To do so, one does not need to agree or disagree with the central tenet of prevailing neo-liberal orthodoxy: that open and competitive markets are the best means societies have for the efficient organization and distribution of goods and services. It is important to keep constantly in mind, however, that people and groups of people, not markets, make decisions about how public and private resources are allocated. And the decision-making power of individuals and groups is very far from being distributed in a manner which assures 'open competition', let alone equity. Markets, when they function well, provide a set of necessary 'rules of the game', but the game is generally played on a very irregular surface, and the rules are often applied with considerable advantage to those who have power and wealth.

Even stronger criticism may be in order regarding most attempts to replace markets with central planning and heavy governmental intervention in most areas of the economy. Since the dominant political and economic thinking in the world today, however, tends strongly towards the 'market-friendly' side, analysts and advocates of children's rights are well advised to direct much of their attention to issues of resource control and use in market-oriented economies. It is also vital, however, to recognize that millions of people in many developed countries, living in absolute poverty, are largely untouched by the relatively modern markets which assume primary concern in much of the 'development' thinking and action.

Fortunately, a critical reassessment of the roles of the State and the market and ways in which they can be more complementary -- and more favourable for human development and human rights -- is well underway. Even as 'market-friendly' a development organization as the World Bank calls for a "large and irreplaceable" role for government, going well beyond the need simply to "let domestic and international competition flourish"<sup>20</sup>:

"At the same time, governments need to do more in those areas where markets alone cannot be relied upon. Above all, this means investing in education, health, nutrition, family planning, and poverty alleviation; building social, physical, administrative, regulatory, and legal infrastructure of better quality; mobilizing the resources to finance public expenditures; and providing a stable macroeconomic foundation, without which little can be achieved"<sup>21</sup>.

The UNDP is more blunt when it comes to reviewing global markets:

"If global markets were truly open, they would allow capital, labour and goods to flow freely round the world -- and help equalize economic opportunities for all. But global markets are neither free nor efficient. At a time when national markets are opening, global markets remain greatly restricted. The developing countries, with some notable exceptions, are finding it difficult to exploit fully the potential of these markets. This reflects the weakness in their policies and the restrictions on global markets"<sup>22</sup>.

The UNDP report adds that markets are means not ends and "they are of little value if they do not serve human development"<sup>23</sup>.

Moving from the global level to the other end of the spectrum we are concerned with, we find that households and families, in addition to being affected by market or governmental 'imperfections' at all other levels, are also subject to considerable internal inequities which influence how their resources are controlled and used. Of particular concern to UNICEF is the fact that in many cultures the low status and weak decision-making role of women and female children is a formidable barrier to the full realization of both women's and children's rights<sup>24</sup>. Women are largely responsible for child-rearing in most societies (a cultural trait which will undoubtedly have to change, though probably very slowly in most developing countries). But their control of the resources available in families and communities rarely corresponds to the weight of this responsibility. In low-income, female-headed households, furthermore, women may have more control over household resources, but this resource base may be so weak that it barely suffices to ensure family survival.

A useful example of this issue of household-level decision-making is provided in the case of child nutrition, as summarized in a recent UNICEF publication:

"The World Bank and other organizations have argued that increasing income to the poor is the most efficient long-term strategy for reducing malnutrition. More recent studies ... indicate that food purchases of the poor may increase less than previously thought with increases in income. One reason ... is that control of income affects how it is spent.... [Women] may have responsibility for child-rearing without control over the resources to perform the responsibility. Control of resources **may** be greater if the woman earns the income, although this is not always the case.... A few studies have shown that women who earn an income have more household decision-making power than those who do not work.... A number of correlational studies have shown that income in the control of women is more likely to be allocated for the immediate benefit of children, such as the purchase of food, than is income earned by men...."<sup>25</sup>.

This is not the place to attempt a more thorough analysis of the locus of decision-making in resource allocations, the many inequities in the control of societal resources, and the multiple imperfections in the workings of markets or governments. Much of that work, in any event, needs to be carried out at the level of countries and communities. Our main point here is simply to draw attention to the enormous range of options -- public **and** private choices -- societies have as they confront the very real limitations that "available resources" pose for the achievement of the objectives of the CRC and other goals for children in the years ahead.

Fortunately for the child rights community, there is an important opportunity at hand for linking forces, nationally and internationally, with those concerned with 'human development' -- or people-oriented development -- who are further advanced in analysing the complex issues relating to the control, allocation and utilization of resources for achieving individuals' and societies' objectives. Some of the work is highly technical, often economic and statistical. Social and political studies are also important, including on who controls resources at all levels, starting with families and households.

A good example of the type of political study needed is Myron Weiner's book on *The Child and the State in India*<sup>26</sup>. It examines the political forces, as well as values and belief systems inhibiting universal primary education and the prohibition of child labour in India. These issues are reviewed more briefly, and from an historical perspective, in several other developing and industrialized countries. This type of analysis is well worth encouraging in many areas relating to children's rights as a way to suggest practical strategies both for

dealing with issues of adverse patterns of resource control and allocation as well as an unduly limited concept of the obligations of the State and society in relation to children's rights.

It is to this issue of "obligations" that we now turn.

### III. OBLIGATIONS OF SOCIETY CREATED BY THE CRC

#### A Broad Definition of "Obligations"

Any discussion of resources available for implementing the CRC (or other international or national instruments concerning children's rights) raises the complex issue of the obligations of the State in relation to such an instrument. For many lawyers, as noted in the *Commentary*<sup>27</sup>, this subject generally requires drawing attention to the distinction between 'obligations of result' and 'obligations of conduct'. In the CRC, Art. 2 (1) creates an obligation of result (i.e., to "ensure the rights set forth ... without discrimination") while Art. 4 prescribes an obligation of conduct (i.e., to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention").

Even lawyers sympathetic to the concept of "economic, social and cultural rights" (not to mention others who refuse to recognize these as 'human rights') find considerable difficulty with these and other distinctions which have been developed in an attempt to define a State's obligations in these areas. In an article on the "right to food", for example, a past President of Amnesty International Canada has written that the "...scope and nature of state duties are not clearly set out in the international instruments which establish the right to food"<sup>28</sup>, and he adds that the "fluidity of these obligations has caused great difficulty in measuring state compliance"<sup>29</sup>. A former Special Rapporteur of the UN Economic and Social Council has noted the difficulties attached to "the vagueness flowing from economic and social rights", including the "unsatisfactory guidance given to States on how to report on the realization of these ... rights. States have not and cannot be given precise guidance unless their obligations are clarified"<sup>30</sup>.

Seen more from a 'human development' than a legal perspective, what appears to be needed is a definition of the obligations created by instruments such as the CRC which

explicitly recognizes duties (as, above, with regard to "available resources") at all levels of society -- from the individual or family/household level to the national and international. Limiting obligations to those of national governments will not prove useful for the fulfilment of children's rights. Again, we must leave to the law reviews and the courts debates regarding the nature of legal obligations created by national constitutions, legislation or international covenants for individuals, parents, 'communities' and other groups such as indigenous peoples or ethnic minorities. A clause in the new Brazilian Constitution is interesting, not to say ambitious, in stating that "it is the **duty of the family, society and the State** to guarantee the child and the adolescent, with absolute priority, the rights to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, family and social life, and to protect them from all forms of negligence, discrimination, exploitation, cruelty and oppression"<sup>31</sup>, (Art. 227, emphasis added).

With regard to the CRC, there are two key provisions which clearly recognize the fact that families and parents (and in some cases the 'community'), as well as States, have duties regarding children. The first such reference is in one of the key 'umbrella' articles of the CRC, Art. 5, which provides that:

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

Article 18 adds that:

"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." (emphasis added)

Regardless, however, of the results of legal interpretations -- at the international and national levels -- of these and other references to "obligations", "responsibilities" and "duties", from the perspective of development planning and practice it is abundantly clear that "obligations" must be broadly defined to include families, households, communities, the private sector and other participants in the 'civil society', as well as all levels of government.

In some countries, it is becoming increasingly common to specify certain obligations of non-governmental and private/commercial organizations, working in partnership with the State in key areas concerning human development (for example, the role of subsidized private education in countries such as Chile or the United Kingdom, public/private vocational training in Germany, or private health insurance and other health plans in many countries, including Mexico, the Republic of Korea and Thailand). Some of these new partnerships have ancient roots, including for example in medieval Europe. To some extent, this broader definition of obligations simply provides appropriate recognition of the vital role (as well as the limitations) of the family and community in ensuring children's well-being. A greater recognition is also implied of the importance of public/private sector partnerships for social development. But clearly this broadened concept of the obligations of 'States' is essential to the task of developing both equitable and cost-effective strategies for mobilizing the additional resources (human, economic and organizational) which will be needed to achieve the rights included in the CRC.

Another paper in this series will address the difficult subject of 'equity and efficiency' and other issues which inevitably arise when the concept of "obligations" is extended beyond those of the State, and especially to include the family and community level, as well as the private sector. Some of these issues are also being examined in another sub-series of **Innocenti Occasional Papers** on "Fiscal Policy and the Poor". In this paper concerning resources and obligations relating to CRC implementation, suffice it say, however, that the matter of resource mobilization to achieve child rights raises many complex issues of how the costs and benefits of such mobilization are distributed within a society. These issues are of considerable importance in the context of the CRC for many reasons, including the key 'non-discrimination' principle in Art. 2 and the principle of progressive achievement of universal coverage for child 'development' rights such as health and education.

There may be a tendency to assume that the more orthodox notions of a State's obligations, largely relating to the policies and responsibilities of national level governmental agencies, tend to lead to the most equitable, if not always the most efficient, provision of the social benefits, services or entitlements corresponding to the rights of the child in question. This may be particularly the case if the central government has a strong redistributive mandate. But that assumption needs to be examined very carefully on a country-by-country basis and sometimes also at sub-national levels, especially in federal States. Such an analysis must look not only at the distribution of the benefits but also at the distribution of the costs

of providing the benefits (through taxation, fees, borrowing, public-sector pricing policies, cost-sharing arrangements, etc.). Especially when public services rely heavily on borrowing, or simply printing money, the distributional and other consequences of the resulting inflation must be considered.

It may be useful to cite one example from the CRC where the definition and more precise specification of the nature of the States Parties' obligations may raise very difficult questions in low-income countries, especially if those obligations are interpreted too narrowly and mainly as obligations of national governments. Article 28 has been of interest to UNICEF and other organizations concerned with human development largely because of its key reference to making primary education "compulsory and available free to all" (1.a). Also of potential importance for UNICEF-supported programmes in basic education is the reference in Art. 28 (1) to achieving the right to education "on the basis of equal opportunity" (which may be especially important, for example, for the girl child and children of ethnic minorities). Other clauses in Article 28, however, refer also to the State's obligation to make "higher education accessible to all on the basis of capacity by every appropriate means" (1.c) and cites "the introduction of free education and offering financial assistance in case of need" (1.b) as a way of encouraging universal coverage of secondary education. Especially in countries where there is currently very limited access to higher education and traditional secondary education, and particularly in countries with a highly regressive tax system (and these two situations often go hand-in-hand in individual countries), efforts to direct attention to the national government's obligations under the CRC with respect to higher and secondary education could well be at the expense of that country's achievement of its obligations to provide compulsory and free primary education. It could also result in the dubious outcome of low-income but tax-paying workers subsidizing the costs of university education for the children of the élites.

Difficult questions of this sort regarding priorities and appropriate resource-allocation strategies will inevitably face those who are seeking to implement the CRC. The point stressed here is that it will be less difficult to face these challenges if a broader and more analytical approach is taken in assessing both resource availability and the nature of States' obligations than is customary, certainly in most of the human rights literature as well as in much of the literature regarding development. This is not to say that those charged with monitoring the implementation of the CRC, including the members of the Committee on the Rights of the Child, will have the time or the expertise to delve deeply into all the

complexities of these sorts of analyses concerning the economic and social policies of the States Parties. But these considerations do lend weight to the importance of increased communication and collaboration between the human rights and child rights communities on the one hand, and the human development planners and practitioners on the other.

### **Obligations: To Respect, Protect and Fulfil**

Returning now to issues related more to the legal interpretation of States' obligations, it may be useful to look at one of the formulations which, building on other studies<sup>32</sup>, was set out by the Special Rapporteur to guide the work of the UN Committee on Economic, Social and Cultural Rights. A recent version of this threefold division of obligations was described and applied in the case of food security and the right to food<sup>33</sup>. The obligations the State is required to undertake are: (a) to respect, (b) to protect and (c) to fulfil. More specifically:

(a) "... States must **respect** the freedom of individuals to take necessary actions and use the necessary resources, either alone or in association with others, to facilitate the fulfilment of their needs. It is in regard to associative action that collective or group rights become important: resources belonging to a collective group, such as indigenous populations, must be respected if such groups are to satisfy their needs by the use of their resources";

(b) "... States also must **protect** individual freedom of action and use of resources as against other more assertive or aggressive subjects" (including protection against fraud, unethical behavior in trade and contractual relations and the marketing or dumping of hazardous products);

(c) "... States have an obligation to **fulfill** the expectations of all to enjoy" certain rights.

This last obligation is described as taking two forms: to **provide opportunities** for those who lack them; or to **directly provide** for the fulfilment of the right (e.g., by providing food to disadvantaged or marginalized groups or during disasters; or by providing the resources necessary to acquire the food).

In an imaginative application of this set of definitions to problems of food security and nutrition, the authors develop: (a) a framework for relating factors conditioning the improvement of nutrition (food security, adequate care and adequate prevention and control of diseases) at all levels of society from the individual to the global; and (b) a "food security

matrix" which relates the three levels of State obligations (respect, protect and fulfil) to a number of key guiding principles for achieving food security (such as the sustainability of food supplies, nutritional adequacy and cultural acceptability). They note, furthermore:

"This matrix could serve as a tool in national and local analysis of, and planning for, food security. It would help operationalize the right to food in given contexts, as a guide for the direction of State policies and thereby also clarify constraints on State action to help realize the right to food. Collecting, organizing, and analyzing information according to the logic suggested might enable policymakers and technical personnel to better comprehend the complexity of a system of State obligations **taken together**, and help them become aware of how and where specific obligations, defined with regard to **content and degree of State involvement**, might fit into their unique situations. Such exercises, where necessary and desired, can be supported and assisted by international agencies, universities and NGOs"<sup>34</sup>.

A variation on this type of framework which would appear to be especially useful for our present purposes is presented in Table 2. (As in Table 1, the entries in the boxes are intended to be illustrative rather than all-inclusive.) There we have shown four rather than three main categories of States' obligations. The purpose is to emphasize the importance of the distinction, regarding the State's obligation to **fulfil**, between: (a) enhancing opportunities of individuals or groups within a society; and (b) the direct provision by the State of benefits or services. In many societies, there appears to be a growing conviction, crossing some traditional ideological debates, regarding the importance of opportunity-enhancing or empowerment strategies, especially to assist disadvantaged, vulnerable or marginalized groups. In terms also of the objective of achieving greater recognition through the CRC of the importance of children's rights to participation, it appears useful to have a separate category for actions of the State which enhance opportunities, as opposed to providing services directly.

From the vantage point of the challenge of mobilizing available resources for the implementation of the CRC, it should be useful to analyse jointly the frameworks presented in Tables 1 and 2. To be used as planning tools, of course, these frameworks would need to be developed with a time dimension, projecting especially economic and demographic trends, and linking the analysis to specific and more operationalized goals than most of those included in the CRC, as well as to target dates for achieving the goals (points taken up in the next section). Whatever tools are used, however, organizations concerned with child rights and the CRC need to move forward towards a more operational approach to determining

Table 2  
 FRAMEWORK FOR ANALYSIS OF GOVERNMENTAL OBLIGATIONS FOR IMPLEMENTING CHILD RIGHTS

Level of Governmental Authority	Nature of the Obligation			
	<u>Respect</u>	<u>Protect</u>	<u>Facilitate</u>	<u>Fulfill</u>
Community/District	Respect participation and other rights and relevant individual or community initiatives	Protect individual and community initiatives, assets, etc. from illegal or anti-social use; protect rights as appropriate and feasible at community level, especially of vulnerable groups including working or minority children	Organize/empower community-based opportunity-enhancing initiatives, especially for information, education and training; facilitate credit and cooperative initiatives, particularly for women	Provide access to communal lands, other assets or services, especially to vulnerable members of the community, e.g. females heading households, street children, disabled children, etc.
Metropolitan/Provincial/State (similar obligations at these levels, with significant revenue-generating and managerial capacity in decentralized systems)				
National	Generally the ultimate legislative, executive and judicial responsibility to respect individual and group rights, respecting children as a primary consideration	Protect all citizens (without discrimination) from human rights abuse or other forms of illegal action, with the "best interest of the child" as a primary consideration	Plan/organize/implementation policies, laws, regulations, etc. to increase and equalize opportunities, including educational, cultural and other opportunities for children; encourage empowerment at sub-national levels	Plan/organize and provide and/or finance benefits or services, generally not easily or traditionally provided at other levels of government
International	Respect national initiatives; independent monitoring of respect for rights at country level	Protect children from wars, commercial exploitation and other transnational abuses	Facilitate international exchange of information, expertise and experiences	Development cooperation; assistance for child victims of natural disasters, wars, transnational abuses; support national level monitoring of human development/human rights situations

States' obligations and for the mobilization of resources under conditions of severe resource constraints, such as those prevailing in many developing countries. "Social planning for achieving children's rights" might be one way to describe what is needed. "Public policy and children's rights" -- or well-being -- may be more appealing. Regardless of the language one prefers, however, one key to success will be: planning and management by objectives.

#### IV. PLANNING, IMPLEMENTATION AND MONITORING OF CHILD RIGHTS BY OBJECTIVES

##### Explicit Goals and Specific Target Dates

When lawyers refer to "obligations of result", they often seem to the development planner or public policy practitioner to be several steps removed from the question of actual impact on human beings. To "respect and ensure" the rights in the CRC "without discrimination of any kind" certainly suggests an important **result**. But in a world plagued by discrimination of every conceivable kind, often malicious even when directed at children, how do we convert such a broad principle into more specific goals and indicators to help plan, achieve and measure progress within specific time periods?

As we approach the more substantive articles of the CRC, it becomes clearer as to what needs to be done to ensure effective implementation and monitoring **not so much of the process as the actual outcomes for children** resulting, at least to some extent, from measures taken by States Parties. Article 28 (1.e), for example, requires States to "take measures to encourage regular attendance at schools and the reduction of drop-out rates". Reporting on progress in complying with this provision should not only refer to policies adopted or steps taken to reduce drop-out rates, but should also specify what rate of reduction is seen as adequate compliance, within a given time period, and what rate has actually been achieved. Article 24 (2.d) refers to the right to "appropriate pre-natal and post-natal health care for mothers". How is "appropriate" to be defined and applied? One suitable way would be to monitor over time the reduction in low birth weights (2.5 kg. or less), with the goal of achieving within a specified time period the rates of the world's or the relevant region's best performers in this regard.

In some areas, such as the prevention of child abuse and promoting children's participation rights, goals will be more difficult to quantify and progress more difficult to measure. But difficult does not mean impossible. More qualitative but still verifiable indicators can be and have been developed in many countries to assist in protecting children from abuse and providing social services or enhancing opportunities for children in need. A recent paper on disadvantaged children in India<sup>35</sup>, for example, includes or refers to a considerable amount of information on street and working children which can serve as baseline data and be useful in the development of indicators to assess progress during the coming years in facing this formidable challenge of achieving child rights in India.

In a recent introduction by Richard Jolly and Rolph van der Hoeven to a series of reviews on "Adjustment with a Human Face - Record and Relevance", they draw attention to an increasingly important process, marked by the World Summit for Children, "of managing human development by objectives through a system of formulation of explicit goals to be reached by specific dates"<sup>36</sup>. UNDP's *1991 Human Development Report*<sup>37</sup> calls for national and global "compacts" for human development. The national compacts would be based on a four-point agenda: (a) developing a "human development profile"; (b) identifying and costing human development targets; (c) restructuring budgets to maximize expenditures on human development and strengthening the case for additional resources, nationally and internationally; and (d) formulating a viable political strategy to develop a national consensus on the need for reform.

The development of improved data and better indicators of human development (including child and gender-related indicators) greatly facilitates this approach. Specific target-setting, furthermore, especially if linked to international monitoring and prospects for international cooperation, can encourage the development of national capacities to collect and analyse data related to key goals. Most importantly, however, as UNDP emphasizes:

"Improved data on where human development stands today would make it possible to define more clearly the long-term (say, ten-year) goals for the high priority items -- including education, health, nutrition, housing, water, sanitation and other basic social services -- as well as significant economic targets, such as those for productive jobs.

"For each goal a realistic target should then be established and costed, with a list of alternative means of implementation. Investment and budget priorities could next be reviewed to incorporate these targets into policies at every level. And GDP growth targets could be worked out so that the human development goals are accommodated in the overall national strategy."<sup>38</sup>

### **The Summit for Children and National Programmes of Action**

Jolly and van der Hoeven draw attention to several critical factors that have inhibited this "manage by objectives" approach to development in the past: most of the goals of the UN development decades, for example, were "of a general character, often vaguely formulated with little consultation and with hardly any action program for the international bodies or national-level decision-making bodies"<sup>39</sup>. In contrast, the goals approved at the 1990 World Summit for Children (see Appendix) were formulated through unusually broad consultations in various fora attended by virtually all Governments, the relevant United Nations agencies and a large number of NGOs. These were not the results of numbers-crunching by faceless technicians sitting behind desks in large bureaucracies.

Perhaps even more importantly, the Summit is being followed up by extensive further consultations and planning at the national level. National Programmes of Action (NPAs) are being developed which are attuned to the specific situations, needs and opportunities of each country, as will be described in a later paper in this series. In some cases, subnational or municipal Programmes of Action are being formulated. Some of the NPAs are much more specific than either the Summit goals or the CRC in key areas of "protection" rights which are of critical importance to children in especially difficult circumstances, such as street and working children. Participatory approaches to planning are naturally more feasible in some countries than others. NGOs, professional associations, community organizations and the private sector have played an active role in developing NPAs in several countries. In general, substantial improvements are evident in comparison with earlier efforts at global or national 'goal setting'.

An immediate challenge is to link, especially at the national but also the international levels, the processes of implementing and monitoring the CRC and the National Programmes of Action for children -- or even subnational Programmes, where feasible and appropriate. In many respects, there is considerable complementarity between these two endeavours. The CRC has, for example, the advantage of being a permanent and legally binding document for the States Parties. Reporting on CRC implementation -- a public process -- is also mandatory. The follow-up to the Summit and many National Programmes of Action are fortunate to have much more specific and time-bound objectives, especially in the areas such as health, nutrition, water and sanitation, and basic education, which will be of especially high priority for many low-income developing countries. In fact, there is a strong argument

to consider the Summit-related goals for children for the current decade, supplemented by the NPA goals at the national level, as a concrete starting point for the determination of the "minimum core obligations" of the States Parties to the CRC, as described earlier (page 5).

### **International Cooperation**

The principles of planning, managing and monitoring by objectives also need to be applied to the matter of "international co-operation" which figures prominently in Article 4 and elsewhere in the CRC. UNICEF, UNDP and others have been emphasizing recently how little international aid actually goes to meeting minimum human needs and advancing human development. The proportion of the industrialized world's "co-operation" which is directed at these objectives represents a mere 10-15 per cent of the total (less than 10 per cent by some calculations). Only about 1 per cent of aid goes to primary health care and considerably less than 1 per cent is for primary education<sup>40</sup>.

Once again, UNDP has provided useful guidelines for analysing international development cooperation. Four key ratios are formulated<sup>41</sup> and then applied to current patterns of aid<sup>42</sup>:

- **The aid expenditure ratio** -- the percentage of a donor's GNP going to development aid
- **The aid social allocation ratio** -- the percentage of each donor's aid that goes to the social sectors
- **The aid social priority ratio** -- the percentage of social sector aid committed to human priority areas
- **The aid human expenditure ratio** -- the product of the three foregoing ratios, and thus the percentage of a donor's GNP going to human priority areas in recipient countries. For aid donors as a whole, this is a tiny figure -- 0.026% of their combined GNP.

One of the objectives of the international community concerned with the implementation of the CRC should be to join forces with others -- NGOs, governmental and intergovernmental initiatives -- seeking to establish and attain precise targets for international cooperation in areas of particular relevance for achieving the more 'resource demanding' goals for children, especially in the lowest-income and developing countries heavily affected by natural and man-made disasters and adverse economic conditions.

## V. THE 'RESOURCE-RELATED' PROVISIONS OF THE CONVENTION

It may be useful to return more specifically at this point to the Convention on the Rights of the Child and examine briefly those provisions which bear directly on policy issues concerning resource requirements. A rough listing of the most relevant provisions is sufficient for our present purposes. The references which follow are not necessarily in order of likely importance, but are taken largely in the sequence in which they appear in the Convention.

As mentioned earlier, **Article 4's** reference to "the maximum extent of [States Parties'] available resources" will attract much of the attention for those concerned with the resource implications of the CRC. But a potentially powerful and perhaps more positive provision is found in the first clause of **Article 2**, dealing with non-discrimination:

"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."

In some legal systems, juridical or administrative proceedings have successfully challenged laws or public policies which have given rise to a highly inequitable distribution of public funds and other resources by building a case on non-discrimination provisions in national constitutions or legislation at various levels of government. These proceedings can be particularly important when discrimination based on race, ethnic or social origin compounds disadvantages faced by vulnerable groups due to poverty. Although much of the 'judicial activism' of this sort comes from industrialized nations, there are some useful precedents from the low-income countries, especially India<sup>43</sup>.

Clearly, however, not all national situations or legal systems will be conducive to an application of Article 2 to cases of discrimination, in public finance or other aspects of public policy, against minority or low-income children and families. Wherever possible, nevertheless, useful precedents could be set by seeking this sort of interpretation and application of Article 2 to reinforce whatever is legally feasible at the national (or subnational) level. Countries which have broadened the concept of *locus standi*, legal standing to address a court, to include professional groups and other NGOs have sometimes opened the door to 'social action litigation' in favour of underrepresented groups in society, including women and children. Again, a number of examples from developing countries have been cited<sup>44</sup>.

**Article 3**, of course, is an especially important provision of the Convention, dealing with "the best interests of the child". Whether intended or not, the third paragraph of this article brings us back, albeit somewhat indirectly, to the matter of resource constraints and affordability:

"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**" (emphasis added).

This paragraph serves as a useful reminder that issues of local standard-setting, "suitability" and "competence" will inevitably be conditioned by serious constraints of available resources, including organizational resources such as management and information systems. There are many other references in the Convention, not all of which we will cite, to "appropriate" or "effective" measures or guidelines, to the principle of "accordance with national law," or to "feasible measures" (as in **Article 38**). All of these terms have significant resource implications which need to be analysed, hopefully with a constructive approach aimed at overcoming resource-related constraints.

We come back now to **Article 4**, the 'centrepiece' for those concerned with the resource implications of the CRC, including the difficult questions of resource mobilization, feasibility and sustainability. Accordingly, it is worth citing the entire article:

"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."

For reasons relating to rather ambiguous distinctions in human rights law, as well as the CRC's legislative history, the "available resources" qualification is applied only to the achievement of "economic, social and cultural rights" (as distinct, the assumption goes, from "civil and political rights"). These unfortunate distinctions (not otherwise raised by the CRC) should not lead us to believe that significant resources (human and organizational, as well as economic) will not be required for the achievement of children's "protection" and

"participation" rights, which correspond -- though very loosely -- with the "civil and political rights" category.

In fact, in terms of the priorities usually reflected in national or other governmental budgets and staffing priorities in developing countries for child-related programmes (heavily committed for education and health), one can expect considerable difficulty in mobilizing the substantial resources for effective **protection** against abuses such as exploitative and dangerous child labour practices, racially motivated violence or child prostitution, not to mention from unwanted teenage pregnancies or drug abuse.

As far as **participation rights** are concerned, an often-neglected point needs to be underscored, namely, that for children to be able to benefit significantly from these rights of democratic citizenship<sup>45</sup>, families and societies must be willing to invest the resources necessary: (a) to prepare children to exercise these rights effectively (including awareness of their rights, as well as functional literacy); and (b) to assist children to assume the civic responsibilities which go hand in hand with exercising their new 'freedoms'. Accomplishing these enabling or empowering objectives requires the commitment of time, money, organizational skills and other resources. In the absence of such a commitment, efforts to stimulate children's participation can easily become "exploitative or frivolous" rather than reach the higher rungs of what has been described as the "ladder of participation" of children<sup>46</sup>.

The key provision in Article 4 relates to the obligation of States ratifying the Convention to undertake measures required "to the maximum extent of their available resources". An important question facing those concerned with the effective implementation of the Convention is: who determines whether that requirement is being met? The UN *Commentary* on the Convention answers that question in a formal way: "Resource allocation decisions remain the responsibility of the States Parties themselves"<sup>47</sup>. As though realizing the potential problems created by that reply, the *Commentary* quickly adds: "However, the overall decisions taken by those States are not completely immune from scrutiny by the international body charged with supervising States Parties compliance with their treaty obligations"<sup>48</sup>. There is then a reference to a process-oriented approach taken by the UN Committee on Economic, Social and Cultural Rights in connection with the corresponding Covenant suggesting, rather mildly, that States "might be requested to show that adequate consideration has been given to the possible resources available to satisfy each of the Covenant's requirements, even if the effort was ultimately unsuccessful"<sup>49</sup>.

After the reference to the "minimum core obligations" of the States Parties, referred to earlier in this paper, the *Commentary* adds a point which could become of increasing importance to the UN Committee on the Rights of the Child and other concerned organizations, including NGOs: there is an important obligation (deriving again from the analogies with the Covenant on Economic, Social and Cultural Rights) to monitor the realization, "or more especially the non-realization" of these rights. Furthermore, the obligations "to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints"<sup>50</sup>.

In sum, all States Parties have an obligation, regardless of resource constraints: (a) to ensure at least some minimal essential level of each right; (b) to plan strategies and programmes for the eventual fulfilment of all their obligations under the Convention; and (c) to monitor both the fulfilment and the non-fulfilment of these obligations over time.

In light of the current economic crisis facing many developing countries, especially severe in Africa, it is noteworthy that the *Commentary* on the CRC underscores the importance of another conclusion of the Committee on Economic, Social and Cultural Rights: "... that even in times of severe resources constraints whether caused by a process of adjustment, of economic recession, or by other factors, the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes. In support of this approach, the Committee takes note of the analysis prepared by UNICEF entitled *Adjustment with a Human Face: Protecting the Vulnerable and Promoting Growth*, the analysis by the UNDP in its *Human Development Report 1990*, and the analysis by the World Bank in the *World Development Report 1990*"<sup>51</sup>.

**Article 18** is very important for our purposes, together with **Article 27**, since these two provisions raise, at least implicitly, the complex issues of: (a) the financial responsibilities of parents "for the upbringing and development of the child" (Article 18, para. 1); and (b) the financial responsibilities of the States Parties to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" (Article 18, para. 2). Paragraph 3 of Article 18 includes a significant provision, of considerable potential importance for work in early childhood development:

"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**" (emphasis added).

Our present interest in this article relates both to the explicit recognition of the special child-care needs of working parents and also to the issue of eligibility for State-supported services in this area. It may appear that this clause is of relevance largely to higher-income countries. The experience, however, of a number of developing countries -- both middle-income, such as Colombia, and low-income, including China and India -- suggests considerable potential for a gradual extension of "eligibility" for early child-care and integrated child development programmes to increasing portions of those countries' low-income, working families, including situations where the burden of work on women is especially severe<sup>52</sup>.

Moving outside the Convention sequence for a moment, there are three relevant resource-related aspects in **Article 27** concerned with "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development" (para. 1):

- (a) the reference to the parents' primary responsibility for their children's development, "within their abilities and financial capacities" (para. 2), which explicitly recognizes a resource-limitation constraint at the family as well as at the governmental level;
- (b) a reminder of the States' financial limitations and the need to establish eligibility requirements for programmes to assist parents:

"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" (para. 3, emphasis added).

- (c) a warning to parents (presumably aimed at non-custodial separated parents) that States "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" (para. 4).

A key public policy issue posed by this 'standard of living' article relates to the question of when parents' financial and other conditions are sufficiently perilous to require governmental assistance to ensure an adequate standard of living for their children. In addition to facing the inherent subjectivity of the matter of defining "adequate", this article also implies the need for further interpretation of the reference to the States' "national conditions" and what can realistically be expected "within their means".

**Article 23**, concerning disabled children, repeats the "available resources" and "the eligible child" qualifications for State assistance (para. 2), but then introduces the concept of the right to free services: "assistance....shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child...." (para. 3). It may be of considerable legal as well as economic significance that the principle of providing free services appears only here and in two other articles of the Convention: the most significant being the two provisions of **Article 28** concerning education -- see paras. 1(a) and 1(b) ; and then in connection with the child's entitlement to the "free assistance of an interpreter", if needed, in cases involving alleged infringements of the penal law -- see **Article 40**, para. 2(b)(vi).

We will include here only a passing reference to **Article 26** on social security, including social insurance, since one can assume that most countries for which this provision is particularly relevant will generally have national laws which set higher and more detailed standards than proved possible in an international Convention of this nature. In any event, this article includes a clear reference to the requirement of a full realization of this right "in accordance with national law" (para. 1). This article, therefore, appears to add little power to this area of public policy, however important it may be in an exhortatory sense. It is, nevertheless, relevant to cite the language in paragraph 2 which provides that benefits be granted "taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child...." (para. 2). In the expanding number of countries<sup>53</sup> with social security legislation of direct relevance to children in need, this provision might be useful in helping to encourage the collection and monitoring of statistical and other information on the situation of children in poverty, or living in other especially difficult circumstances, particularly in otherwise affluent societies. It might also be used to encourage 'middle-income' developing countries to consider a variety of social insurance schemes in place in industrialized countries -- highly relevant especially for protecting maternal and child health and nutrition -- which combine features of efficiency, cost-effectiveness and equity.

Of particular relevance to UNICEF's programmes of cooperation in developing countries are **Article 24** (health and health services) and **Article 28** (education). Presumably because of the considerable weight of these two areas in government budgets in developing countries, it is not surprising that these are also the principal 'sectoral' articles<sup>54</sup> which specifically commit the States Parties "to promote and encourage international co-operation"

to achieve the realization of these rights, adding that "particular account shall be taken of the needs of developing countries"<sup>55</sup>.

The reference in Article 24 (para. 1) to "the right of the child to the enjoyment of the **highest attainable standard** of health" (emphasis added) provides both another potential 'excuse' for poor performance but also an especially important opportunity to link the issue of "attainability" (or feasibility) to the specific child-health goals for the decade of the 1990s adopted at the World Summit for Children together with additional and/or more detailed goals included in the post-Summit National Programmes of Action. With reference to the particular issues of resources, affordability and feasibility we are concerned with in this paper, it is also important to highlight the principles of primary health care, para. 2(b), the priority assigned to preventive health care, para. 2(f), and to the highly cost-effective child-health measures to which specific reference is made in Article 24, including pre-natal and post-natal care, breast-feeding, hygiene, clean drinking water, environmental sanitation and access to basic knowledge of child health and nutrition. These are all measures essential to the achievement of the Summit goals for children. UNICEF and its allies, national and international, will be engaged in concerted efforts, at least in virtually all developing countries, to ensure the collection of baseline data and the monitoring of national performance on these health-related goals for children during the 1990s. Special efforts will be needed to ensure that the results of this work also become an integral part of the situation analyses and monitoring needed for the effective implementation of the Convention. Since analytical work on primary health care cost analysis and financing is relatively advanced (including the availability of training manuals), this is an area which could be used to help pave the way for similar initiatives needed in other important fields covered by the Convention, including child development and basic education, as well as priority concerns in terms of "protection" and "participation" rights.

We conclude this section on the Convention's main clauses relating to resource issues by moving to those provisions covering education (**Article 28** and **Article 29**). These are also of special importance to UNICEF and its allies both with regard to work in child rights and the Summit follow-up process. **Article 28** is particularly relevant in terms of "affordability" and resource planning in several respects:

(a) the explicit reference in paragraph 1 to the child's right to education with "a view to achieving this right progressively and on the basis of equal opportunity"; we need to note once again: (i) the importance of setting intermediate targets and of appropriately sequenced

financial and other resource planning to ensure the achievement of key goals in education; and (ii) the potentially powerful concept of "equal opportunity" as support for greater equity in the allocation of public resources for education. This second point reinforces the non-discrimination principle of Article 2 and invites careful assessment of the patterns of resource allocation in the field of education.

(b) the very significant requirement in paragraph 1(a) to make "primary education **compulsory, available and free to all**" (emphasis added); this is surely one key provision UNICEF and its partners should seek to implement, as a high priority;

(c) a somewhat less demanding standard at the secondary level but a nevertheless challenging requirement to make different forms of secondary education "available and **accessible to every child**" and to "take appropriate measures such as the **introduction of free education and offering financial assistance in case of need** (para. 1(b), emphasis added);

(d) the legal language at the level of higher education changes further, as might be expected, to make higher education "accessible to all **on the basis of capacity** by every appropriate means" (para. 1(c), emphasis added);

(e) the reference to "the reduction of drop-out rates" in paragraph 1(e) is also an important provision in terms of increasing both the equity and the cost-effectiveness of educational systems.

It is perhaps also relevant to note one provision in **Article 29** (para. 2) which clearly legitimizes the establishment of private educational institutions. It can be anticipated that a major issue in educational reform and educational finance in many countries in the coming years will be the appropriate balance between public and private education and the many questions of equity, quality and efficiency which need to be the subject of careful analysis in this complex area. Special attention will be needed to monitor the impact on school enrolment and performance resulting from increasing tendencies in some countries to impose school fees, even for primary education.

## VI. CONCLUSIONS

The points which follow, in highly summarized form, are the preliminary results of the first phase of research underway at the UNICEF International Child Development Centre on the resource implications of implementing the UN Convention on the Rights of the Child, as well as the National Programmes of Action adopted following the 1990 World Summit for

Children. After completion of a number of thematic studies plus five country cases, a more thorough set of conclusions and policy recommendations will be formulated as part of a final publication, expected to be available late 1993.

A number of conclusions arising from this preliminary analysis, nevertheless, may be of immediate use for child rights advocates and concerned policy makers:

- (a) the starting point for a constructive interpretation of the reference to "available resources" in Article 4 of the Convention must be a broad definition of resources -- economic, human and organizational -- which explicitly recognizes their availability at all levels of society, from the family to the international level (Table 1);
- (b) there are far more "available resources", even in 'resource-poor' societies, relevant for realizing children's rights than is often thought -- significantly because of the enormous importance of the time, knowledge, organizational and other skills of families and communities for the healthy development and protection of children;
- (c) who controls resources and how they are distributed in society is a key question which needs to be addressed by child rights analysts and advocates -- the politics as well as the economics of children's rights is a critical area of inquiry and action;
- (d) lack of control of resources by women, when combined with very limited resource availability, is likely to be especially detrimental for children's rights;
- (e) both governmental and non-governmental programmes to benefit children can be much less costly, in terms of economic resources, if there is greater recognition of the State's and the civil society's ability and obligation to **respect** and **protect** relevant individual and group rights, as well as societies' many initiatives to benefit children, particularly at the community level;
- (f) at all levels of society, governmental and private, the mobilization of **human resources** and **organizational resources**, including political and leadership skills and creativity, may be an especially effective strategy for achieving children's rights, often with a more modest investment of economic resources than typically associated with the direct provision of services for children;
- (g) for reasons of equity, non-discrimination, and sometimes sheer child survival, care must be taken not to shift more of the burdens of resource mobilization to those in society least able to contribute more than they already do;

- (h) an approach of the sort described in this paper strengthens participation (potentially including the enhanced participation of children), which should be viewed as a desirable end in itself, from a human rights and a human development perspective.

It has also been argued that the rather nebulous concept of the obligations of States Parties to the CRC can be sharpened considerably in several ways. A framework is presented (Table 2) which specifies, from the community to the international level, varying types of governmental obligations with regard to children's rights:

- (a) to **respect**, for example, the participation rights of children;
- (b) to **protect**, particularly vulnerable groups such as minority, street or working children;
- (c) to **facilitate**, for example, equal and effective access to educational and vocational training opportunities; and
- (d) to **fulfil**, the basic or "minimum core" needs of children, for example, those who are victims of armed conflicts and natural disasters.

It is also clear that obligations, like resources, must be defined to include not only the realm of the public sector, but also the private, non-governmental (NGO) and other sectors of the civil society. Whether or not national or international legal norms create binding obligations on these non-governmental sectors, effective implementation of the CRC, as well as the National Programmes of Action, will undoubtedly require extensive public/private sector partnerships, at all levels of society.

More practical applications of the concept of the obligations of the CRC States Parties will also depend on the implementation of a process which might be described as "social planning for achieving children's rights". Planning, management and monitoring child rights work **by objectives** is a key element of this approach. Effective popular and community participation is another critical component. A four-step implementation strategy for this approach might be briefly described as follows:

1. **Situation Analysis.** The essential first step in developing an implementation strategy for work in child rights is, "to ascertain, as precisely as possible, the nature of the existing situation with respect to each right, so as to identify more clearly the problems that need to be addressed and provide a basis for principled policy making<sup>56</sup>. Good baseline data, appropriately disaggregated (including by categories such as gender and ethnicity needed to identify patterns of discrimination) are essential to an effective system of monitoring

compliance with the CRC provisions. Participatory planning approaches, especially important in the area of children's rights, need to involve households and communities in the situation analysis process. Children and youth can be effectively involved as well, helping them to develop their capacities to responsibly exercise their rights to participate as young citizens in society.

2. **Goal and standard setting.** Effective planning for action in the human rights field, as in other areas of public policy, requires the setting of standards and agreement on goals; rights (especially economic, social and other rights requiring achievement "progressively") need to be converted into verifiable goals or objectives, achievable within agreed time frames. Some goals, such as universal primary school enrolment, can be quantified more easily than others, for example, eliminating "discrimination of any kind". But specific and even binding standards have been set by legislatures and courts even in the more difficult areas. Goals and standards are much more likely to be viewed as legitimate, and indeed as 'rights', if a broad and genuine consensus in society is reached regarding these goals. Once again, children should be a part of that emerging consensus.

3. **Plans and Programmes of Action.** Different countries have widely varying approaches to social or development planning, but most systems (including various international systems) have some capability to develop concrete plans or programmes for action to achieve agreed goals. Countries which have developed strong National Programmes of Action following the World Summit for Children, including cost estimates and financial plans, have a good basis for implementing many of the key provisions of the Convention. Attention must be given to a broad array of legislative, administrative, judicial, regulatory and other measures **at all levels of government**, needed to achieve the goals or attain the standards which have been agreed. For many of the objectives linked to the CRC, goals and concrete measures to achieve them need to be developed, whenever possible, at the municipal and other levels of government closest to families and children. Plans can include an active role for the private or non-governmental (NGO) sector. Realistic plans and programmes must recognize clearly that fulfilment of nearly all rights has significant resource implications. Feasible measures for the mobilization of all "available resources" -- economic, human and organizational -- need to be specified, including through international cooperation where required.

4. **Monitoring Compliance and Enforcement.** A mix of official and non-governmental monitoring mechanisms (national and international) are important to help ensure that goals

are being reached and the legal rights and duties of all relevant parties are **recognized, understood and enforced**. Understanding rights needs to reach the level of communities, families and children. Monitoring, which must also reach those levels to be useful, is much more effective when based on widespread popular understanding of the relevant goals and rights. Especially at the international level, a non-adversarial 'constructive dialogue' among the relevant parties, led by the UN Committee on the Rights of the Child, is likely to be the most accepted form of monitoring. At the national and subnational levels, however, strong incentives, including financial incentives, for compliance, as well as significant penalties for non-compliance, will be essential complements to an effective system of monitoring progress in achieving the agreed child rights objectives, as provided in this extraordinary new international commitment: the United Nations Convention on the Rights of the Child.

## **APPENDIX: GOALS FOR CHILDREN IN THE 1990S**

The following goals have been formulated through extensive consultation in various international fora attended by virtually all Governments, the relevant United Nations agencies including the World Health Organization (WHO), UNICEF, the United Nations Population Fund (UNFPA), the United Nations Educational, Scientific and Cultural Organization (UNESCO), The United Nations Development Programme (UNDP) and the International Bank for Reconstruction and Development (IBRD) and a large number of NGOs. These goals are recommended for implementation by all countries where they are applicable, with appropriate adaptation to the specific situation of each country in terms of phasing, standards, priorities and availability of resources, with respect for cultural, religious and social traditions. Additional goals that are particularly relevant to a country's specific situation should be added to its national plan of action.

### **1. Major goals for child survival, development and protection**

- (a) Between 1990 and the year 2000, reduction of infant and under-5 child mortality rate by one third or to 50 and 70 per 1,000 live births respectively, whichever is less;
- (b) Between 1990 and the year 2000, reduction of maternal mortality rate by half;
- (c) Between 1990 and the year 2000, reduction of severe and moderate malnutrition among under-5 children by half;
- (d) Universal access to safe drinking water and to sanitary means of excreta disposal;
- (e) By the year 2000, universal access to basic education and completion of primary education by at least 80 per cent of primary school-age children;
- (f) Reduction of the adult illiteracy rate (the appropriate age group to be determined in each country) to at least half its 1990 level with emphasis on female literacy;
- (g) Improved protection of children in especially difficult circumstances.

### **II. Supporting/sectoral goals**

#### **A. Women's health and education**

- (i) Special attention to the health and nutrition of the female child and to pregnant and lactating women;

- (ii) Access by all couples to information and services to prevent pregnancies that are too early, too closely spaced, too late or too many;
- (iii) Access by all pregnant women to pre-natal care, trained attendants during childbirth and referral facilities for high-risk pregnancies and obstetric emergencies;
- (iv) Universal access to primary education with special emphasis for girls and accelerated literacy programmes for women.

#### B. Nutrition

- (i) Reduction in severe, as well as moderate malnutrition among under-5 children by half of 1990 levels;
- (ii) Reduction of the rate of low birth weight (2.5 kg or less) to less than 10 per cent;
- (iii) Reduction of iron deficiency anaemia in women by one third of the 1990 levels;
- (iv) Virtual elimination of iodine deficiency disorders;
- (v) Virtual elimination of vitamin A deficiency and its consequences, including blindness;
- (vi) Empowerment of all women to breast-feed their children exclusively for four to six months and to continue breast-feeding, with complementary food, well into the second year;
- (vii) Growth promotion and its regular monitoring to be institutionalized in all countries by the end of the 1990s;
- (viii) Dissemination of knowledge and supporting services to increase food production to ensure household food security.

#### C. Child health

- (i) Global eradication of poliomyelitis by the year 2000;
- (ii) Elimination of neonatal tetanus by 1995;
- (iii) Reduction by 95 per cent in measles deaths and reduction by 90 per cent of measles cases compared to pre-immunization levels by 1995, as a major step to the global eradication of measles in the longer run;
- (iv) Maintenance of a high level of immunization coverage (at least 90 per cent of children under one year of age by the year 2000) against diphtheria, pertussis, tetanus, measles, poliomyelitis, tuberculosis and against tetanus for women of child-bearing age;

- (v) Reduction by 50 per cent in deaths due to diarrhoea in children under the age of five years and 25 per cent reduction in the diarrhoea incidence rate;
- (vi) Reduction by one third in deaths due to acute respiratory infections in children under five years.

#### D. Water and sanitation

- (i) Universal access to safe drinking water;
- (ii) Universal access to sanitary means of excreta disposal;
- (iii) Elimination of guinea-worm disease (dracunculiasis) by the year 2000.

#### E. Basic education

- (i) Expansion of early childhood development activities, including appropriate low-cost family and community-based interventions;
- (ii) Universal access to basic education, and achievement of primary education by at least 80 per cent of primary school-age children through formal schooling or non-formal education of comparable learning standard, with emphasis on reducing the current disparities between boys and girls;
- (iii) Reduction of the adult illiteracy rate (the appropriate age group to be determined in each country) to at least half its 1990 level, with emphasis on female literacy;
- (iv) Increased acquisition by individuals and families of the knowledge, skills and values required for better living, made available through all educational channels, including the mass media, other forms of modern and traditional communication and social action, with effectiveness measured in terms of behavioural change.

#### F. Children in difficult circumstances

Provide improved protection of children in especially difficult circumstances and tackle the root causes leading to such situations.

## NOTES

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54. **Article 17(b)** also includes a reference to international cooperation in the production, exchange and dissemination of information and material of social and cultural benefit to children. **Article 23** (para. 4), dealing with disabled children, contains a specific reference to the international exchange of information in this area. Several other articles dealing with particular groups of children in difficult circumstances or at risk due to international movements of people call for, or at least imply, the need for international cooperation. Of particular relevance in terms of resource requirements is **Article 22** concerning refugee children. **Article 4** and **Article 45**, of course, provide blanket references to international cooperation covering the entire Convention so there is no legal justification for limiting such cooperation to any specific areas or articles.
55. **Article 24**, para. 4 and **Article 28**, para. 3.
56. See note 12 *supra*, p. 379.











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