

UNICEF
Innocenti Research Centre



GENERAL COMMENTS

of the **Committee**
on the **Rights of the Child**

Including CD with Concluding Observations

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

unicef 

GENERAL COMMENTS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

Including CD with Concluding Observations

Layout: Bernard & Co, Siena, Italy
Front cover picture: UNICEF/HQ04-0996 / Giacomo Pirozzi
ISBN-10: 88-89129-51-4
ISBN-13: 978-88-89129-51-7
© 2006 United Nations Children's Fund (UNICEF)

The UNICEF Innocenti Research Centre

The UNICEF Innocenti Research Centre in Florence, Italy, was established in 1988 to strengthen the research capability of the United Nations Children's Fund (UNICEF) and to support its advocacy for children worldwide. The Centre (formally known as the International Child Development Centre) helps to identify and research current and future areas of UNICEF's work. Its prime objectives are to improve international understanding of issues relating to children's rights and to help facilitate the full implementation of the United Nations Convention on the Rights of the Child in both industrialized and developing countries.

The Centre's publications are contributions to a global debate on child rights issues and include a wide range of opinions. For that reason, the Centre may produce publications that do not necessarily reflect UNICEF policies or approaches on some topics. The views expressed are those of the authors and are published by the Centre in order to stimulate further dialogue on child rights.

The Centre collaborates with its host institution in Florence, the Istituto degli Innocenti, in selected areas of work. Core funding for the Centre is provided by the Government of Italy, while financial support for specific projects is also provided by other governments, international institutions and private sources, including UNICEF National Committees.

The opinions expressed are those of the authors and editors and do not necessarily reflect the policies or views of UNICEF.

All correspondence should be addressed to:

UNICEF Innocenti Research Centre
Piazza SS. Annunziata, 12
50122 Florence, Italy
Tel: (+39) 055 20 330
Fax: (+39) 055 20 33 220
Email general: florence@unicef.org
Email publication orders: florenceorders@unicef.org
Website: www.unicef.org/irc and www.unicef-irc.org
(Electronic versions of this publication can be downloaded from the Innocenti website)

INDEX

Prefacevii

General Comments prepared by the Committee on the Rights of the Child

- General Comment No. 1: **The Aims of Education** CRC/GC/2001/1, April 2001 1
- General Comment No. 2: **The Role of Independent National Human Rights Institutions in the promotion and protection of the rights of the child** CRC/GC/2002/2, November 2002 7
- General Comment No. 3: **HIV/AIDS and the rights of the child** CRC/GC/2003/3, March 2003 13
- General Comment No. 4: **Adolescent Health and Development in the context of the Convention on the Rights of the Child** CRC/GC/2003/4, July 2003 23
- General Comment No. 5: **General Measures of Implementation of the Convention on the Rights of the Child** CRC/GC/2003/5, November 2003 31
- General Comment No. 6: **Treatment of Unaccompanied and Separated Children outside their country of origin** CRC/GC/2005/6, September 2005 45
- General Comment No. 7: **Implementing child rights in Early Childhood** CRC/C/GC/7, November 2005 ... 61
- General Comment No. 8: **The right of the Child to protection from corporal punishment and other cruel or degrading forms of punishment** CRC/C/GC/8, August 2006 75

PREFACE

The Convention on the Rights of the Child (CRC) is the most ratified international treaty ever and represents a worldwide recognition of children as full-fledged citizens and as subjects of rights. It also establishes States parties accountability to respect and ensure the fulfillment of children's rights.

Since its adoption in November 1989, the CRC has been ratified by states across regions and today it is in force in all but two. The CRC has been complemented in 2000 by two Optional Protocols, an "Optional Protocol on the Involvement of Children in Armed Conflict" and an "Optional Protocol on the Sale of Children, Prostitution and Child Pornography"; each of them ratified by more than 100 countries. The CRC is the first binding international human rights instrument incorporating in the same text social, cultural, economic, civil and political rights. To monitor progress achieved in the realization of children's rights, the CRC has established an international expert body, the Committee on the Rights of the Child (the Committee), which also provides awareness and understanding of the principles and provisions of this treaty.

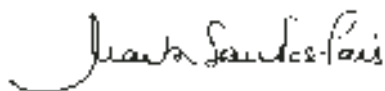
The interpretation by the Committee of the CRC provisions and principles is framed by the Committee's monitoring experience and captured in **General Comments**. Since 2001, the Committee has issued eight General Comments which cover various topics including early childhood and HIV/AIDS, adolescent health, unaccompanied and separated children, the aims of education and national independent human rights institutions. The fifth General Comment is dedicated to the general measures for the implementation of the Convention and provides guidance on how to put the CRC into operation in the national system.

In its monitoring role, the Committee reviews State Parties reports on the implementation of the CRC. The process of revision is based on a constructive dialogue with national delegations and provides an opportunity to better understand the reality in the country concerned and to advise on future priority action. To capture this process, including major achievements, prevailing challenges and recommendations made to the national delegations, the Committee issues **Concluding Observations**.

The UNICEF Innocenti Research Centre serves as an international knowledge source for the effective implementation of the CRC. Committed to this process, the Centre is conducting a global study on the general measures of implementation of the Convention. The study covers 62 countries, representing all regions, and documents the efforts made by States Parties to translate the provisions and principles of the CRC into reality. The main sources of information used in the study have been the State party reports and the Concluding Observations published by the Committee.

The present publication contains the eight **General Comments** issued by the Committee by September 2006, and the CD Rom accompanying this text includes all the **Concluding Observations** adopted by the Committee between 1993 and 2006 in relation to States Parties reports presented by all countries in the world. The CD-Rom also includes the status of ratification of the CRC and its two Optional Protocols, as well as the text of the reservations and/or declarations entered by States Parties at the moment of signature and ratification of those legal instruments.

We are confident that this compilation will be a useful tool to advance the implementation of the CRC, and will support governments, policy makers, child-rights activists, professional working with and for children and all those committed to the realization of children's rights. A happy childhood framed by the safeguard of children's rights is a strong foundation for today's child's harmonious development and for tomorrow's strong societies.



Marta Santos Pais
Director
UNICEF Innocenti Research Centre



Jacob Egbert Doek
Chairperson
Committee on the Rights of the Child

GENERAL COMMENT No. 1

THE AIMS OF EDUCATION

(CRC/GC/2001/1)

Article 29 (1) (2001)

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

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

"(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

"(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

"(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

"(e) The development of respect for the natural environment."

The significance of article 29 (1)

1. Article 29, paragraph 1, of the Convention on the Rights of the Child is of far-reaching importance. The aims of education that it sets out, which have been agreed to by all States parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five subparagraphs of article 29 (1) are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).
2. Article 29 (1) not only adds to the right to education recognized in article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.¹ The education to which every child has a right is one

designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

3. The child's right to education is not only a matter of access (art. 28) but also of content. An education with its contents firmly rooted in the values of article 29 (1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between, inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material.² And yet, in the national and international programmes and policies on education that really count the elements embodied in article 29 (1) seem all too often to be either largely missing or present only as a cosmetic afterthought.
4. Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

THE FUNCTIONS OF ARTICLE 29 (1)

5. Article 29 (1) is much more than an inventory or listing of different objectives which education should seek to achieve. Within the overall context of the Convention it serves to highlight, inter alia, the following dimensions.
6. First, it emphasizes the indispensable interconnected nature of the Convention's provisions. It draws upon, reinforces, integrates and complements a variety of other provisions and cannot be properly understood in isolation from them. In addition to the general principles of the Convention - non-discrimination (art. 2), the best interest of the child (art. 3), the right to life, survival and development (art. 6), and the right to express views and have them taken into account (art. 12) - many other provisions may be mentioned, such as but not limited to the rights and responsibilities of parents (arts. 5 and 18), freedom of expression (art. 13), freedom of thought (art. 14), the right to information (art. 17), the rights of children with disabilities (art. 23), the right to education for health (art. 24), the right to education (art. 28), and the linguistic and cultural rights of children belonging to minority groups (art. 30).
7. Children's rights are not detached or isolated values devoid of context, but exist within a broader ethical framework which is partly described in article 29 (1) and in the preamble to the Convention. Many of the criticisms that have been made of the Convention are specifically answered by this provision. Thus, for example, this article underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children's rights, far from being externally imposed, are embedded within the values of local communities.
8. Second, the article attaches importance to the process by which the right to education is to be promoted. Thus, efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence

in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.

9. Third, while article 28 focuses upon the obligations of State parties in relation to the establishment of educational systems and in ensuring access thereto, article 29 (1) underlines the individual and subjective right to a specific quality of education. Consistent with the Convention's emphasis on the importance of acting in the best interests of the child, this article emphasizes the message of child-centred education: that the key goal of education is the development of the individual child's personality, talents and abilities, in recognition of the fact that every child has unique characteristics, interests, abilities, and learning needs.³ Thus, the curriculum must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs and take full account of the child's evolving capacities; teaching methods should be tailored to the different needs of different children. Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.
10. Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities is also pervasive in many formal educational systems and in a great many informal educational settings, including in the home.⁴ Children with HIV/AIDS are also heavily discriminated against in both settings.⁵ All such discriminatory practices are in direct contradiction with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.
11. The Committee also wishes to highlight the links between article 29 (1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena. Emphasis must also be placed upon the importance of teaching about racism as it has been practised historically, and particularly as it manifests or has manifested itself within particular communities. Racist behaviour is not something engaged in only by "others". It is therefore important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.
12. Fourth, article 29 (1) insists upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society. It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents. Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities.

13. Fifth, it emphasizes the need for education to be designed and provided in such a way that it promotes and reinforces the range of specific ethical values enshrined in the Convention, including education for peace, tolerance, and respect for the natural environment, in an integrated and holistic manner. This may require a multidisciplinary approach. The promotion and reinforcement of the values of article 29 (1) are not only necessary because of problems elsewhere, but must also focus on problems within the child's own community. Education in this regard should take place within the family, but schools and communities must also play an important role. For example, for the development of respect for the natural environment, education must link issues of environment and sustainable development with socio-economic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.
14. Sixth, it reflects the vital role of appropriate educational opportunities in the promotion of all other human rights and the understanding of their indivisibility. A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognized in this article.

HUMAN RIGHTS EDUCATION

15. Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights, held in Vienna in 1993, and promoted by international agencies. Nevertheless, the rights of the child have not always been given the prominence they require in the context of such activities. Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values in the daily life and experiences of children.⁶
16. The values embodied in article 29 (1) are relevant to children living in zones of peace but they are even more important for those living in situations of conflict or emergency. As the Dakar Framework for Action notes, it is important in the context of education systems affected by conflict, natural calamities and instability that educational programmes be conducted in ways that promote mutual understanding, peace and tolerance, and that help to prevent violence and conflict.⁷ Education about international humanitarian law also constitutes an important, but all too often neglected, dimension of efforts to give effect to article 29 (1).

IMPLEMENTATION, MONITORING AND REVIEW

17. The aims and values reflected in this article are stated in quite general terms and their implications are potentially very wide ranging. This seems to have led many States parties to assume that it is unnecessary, or even inappropriate, to ensure that the relevant principles are reflected in legislation or in administrative directives. This assumption is unwarranted. In the absence of any specific formal endorsement in national law or policy, it seems unlikely that the relevant principles are or will be used to genuinely inform educational policies. The Committee therefore calls upon all States parties to take the necessary steps to formally incorporate these principles into their education policies and legislation at all levels.
18. The effective promotion of article 29 (1) requires the fundamental reworking of curricula to include the various aims of education and the systematic revision of textbooks and other teaching materials and technologies, as well as school policies. Approaches which do no more than seek to superimpose the aims and values of the article on the existing system without encouraging any deeper changes are clearly inadequate. The relevant values cannot be effectively integrated into, and thus be rendered consistent with, a broader curriculum unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are thus essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1).
19. In addition, the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1). The term "human rights education" is too often used in a way which greatly oversim-

plifies its connotations. What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.

20. In general terms, the various initiatives that States parties are required to take pursuant to their Convention obligations will be insufficiently grounded in the absence of widespread dissemination of the text of the Convention itself, in accordance with the provisions of article 42. This will also facilitate the role of children as promoters and defenders of children's rights in their daily lives. In order to facilitate broader dissemination, States parties should report on the measures they have taken to achieve this objective and the Office of the High Commissioner for Human Rights should develop a comprehensive database of the language versions of the Convention that have been produced.
21. The media, broadly defined, also have a central role to play, both in promoting the values and aims reflected in article 29 (1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives. Governments are obligated by the Convention, pursuant to article 17 (a), to take all appropriate steps to "encourage the mass media to disseminate information and material of social and cultural benefit to the child".⁸
22. The Committee calls upon States parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time in relation to article 29 (1). Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs. The Committee notes the importance of surveys that may provide an opportunity to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.
23. The Committee calls upon States parties to develop a comprehensive national plan of action to promote and monitor realization of the objectives listed in article 29 (1). If such a plan is drawn up in the larger context of a national action plan for children, a national human rights action plan, or a national human rights education strategy, the Government must ensure that it nonetheless addresses all of the issues dealt with in article 29 (1) and does so from a child-rights perspective. The Committee urges that the United Nations and other international bodies concerned with educational policy and human rights education seek better coordination so as to enhance the effectiveness of the implementation of article 29 (1).
24. The design and implementation of programmes to promote the values reflected in this article should become part of the standard response by Governments to almost all situations in which patterns of human rights violations have occurred. Thus, for example, where major incidents of racism, racial discrimination, xenophobia and related intolerance occur which involve those under 18, it can reasonably be presumed that the Government has not done all that it should to promote the values reflected in the Convention generally, and in article 29 (1) in particular. Appropriate additional measures under article 29 (1) should therefore be adopted which include research on and adoption of whatever educational techniques might have a positive impact in achieving the rights recognized in the Convention.
25. States parties should also consider establishing a review procedure which responds to complaints that existing policies or practices are not consistent with article 29 (1). Such review procedures need not necessarily entail the creation of new legal, administrative, or educational bodies. They might also be entrusted to national human rights institutions or to existing administrative bodies. The Committee requests each State party when reporting on this article to identify the genuine possibilities that exist at the national or local level to obtain a review of existing approaches which are claimed to be incompatible with the Convention. Information should be provided as to how such reviews can be initiated and how many such review procedures have been undertaken within the reporting period.
26. In order to better focus the process of examining States parties' reports dealing with article 29 (1), and in accordance with the requirement in article 44 that reports shall indicate factors and difficulties, the Committee requests each State party to provide a detailed indication in its periodic reports of what it considers to be the most important priorities within its jurisdiction which call for a more concerted effort to promote the values reflected in this provision and to outline the programme of activities which it proposes to take over the succeeding five years in order to address the problems identified.
27. The Committee calls upon United Nations bodies and agencies and other competent bodies whose role is underscored in article 45 of the Convention to contribute more actively and systematically to the Committee's work in relation to article 29 (1).
28. Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will

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

Notes

1. In this regard, the Committee takes note of General Comment No. 13 (1999) of the Committee on Economic, Social and Cultural Rights on the right to education, which deals, inter alia, with the aims of education under article 13 (1) of the International Covenant on Economic, Social and Cultural Rights. The Committee also draws attention to the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention, (CRC/C/58), paras. 112-116.
2. United Nations Educational, Scientific and Cultural Organization, *Learning: The Treasure Within*, Report of the International Commission on Education for the 21st Century, 1996, pp. 16-18.
3. United Nations Educational, Scientific and Cultural Organization, *The Salamanca Statement and Framework for Action on Special Needs Education*, 1994, p. viii.
4. See General Comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights on persons with disabilities.
5. See the recommendations adopted by the Committee on the Rights of the Child after its day of general discussion in 1998 on children living in a world with HIV/AIDS (A/55/41, para. 1536).
6. See General Assembly resolution 49/184 of 23 December 1994 proclaiming the United Nations Decade for Human Rights Education.
7. Education for All: Meeting our Collective Commitments, adopted at the World Education Forum, Dakar, 26-28 April 2000.
8. The Committee recalls the recommendations in this respect which emerged from its day of general discussion in 1996 on the child and the media (see A/53/41 para. 1396).

GENERAL COMMENT No. 2

THE ROLE OF INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS

(CRC/GC/2002/2)

The role of independent national human rights institutions in the promotion and protection of the rights of the child

1. Article 4 of the Convention on the Rights of the Child obliges States parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.” Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights. In this regard, the Committee has welcomed the establishment of NHRIs and children’s ombudspersons/children’s commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.
2. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them. Where such institutions have already been established, the Committee calls upon States to review their status and effectiveness for promoting and protecting children’s rights, as enshrined in the Convention on the Rights of the Child and other relevant international instruments.
3. The World Conference on Human Rights, held in 1993, in the Vienna Declaration and Programme of Action reaffirmed “... the important and constructive role played by national institutions for the promotion and protection of human rights”; and encouraged “... the establishment and strengthening of national institutions.” The General Assembly and the Commission on Human Rights have repeatedly called for the establishment of national human rights institutions, underlining the important role NHRIs play in promoting and protecting human rights and enhancing public awareness of those rights. In its general guidelines for periodic reports, the Committee requires that States parties furnish information on “any independent body established to promote and protect the rights of the child ...”; hence, it consistently addresses this issue during its dialogue with States parties.
4. NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The “Paris Principles”) adopted by the General Assembly in 1993² transmitted by the Commission on Human Rights in 1992.³ These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.

5. While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children's human rights are given special attention. These include the facts that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organizations that may protect their rights is generally limited.
6. Specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights have been established in a growing number of States parties. Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights.
7. It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is "mainstreamed" and that all human rights institutions existing in a country work closely together to this end.

MANDATE AND POWERS

8. NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols. If the NHRI was established before the existence of the Convention, or without expressly incorporating it, necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution's mandate with the principles and provisions of the Convention.
9. NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.

ESTABLISHMENT PROCESS

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

RESOURCES

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

PLURALISTIC REPRESENTATION

12. NHRIs should ensure that their composition includes pluralistic representation of the various elements

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

PROVIDING REMEDIES FOR BREACHES OF CHILDREN'S RIGHTS

13. NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.
14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.

ACCESSIBILITY AND PARTICIPATION

15. NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.
16. NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.
17. NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established.
18. NHRIs must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention.

RECOMMENDED ACTIVITIES

19. The following is an indicative, but not exhaustive, list of the types of activities which NHRIs should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. They should:
 - (a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;
 - (b) Conduct inquiries on matters relating to children's rights;
 - (c) Prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;
 - (d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;
 - (e) Promote harmonization of national legislation, regulations and practices with the Convention on the

Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;

- (f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;
- (g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize children's rights;
- (h) Encourage ratification of or accession to any relevant international human rights instruments;
- (i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;
- (j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;
- (k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organizations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;
- (l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;
- (m) In accordance with article 42 of the Convention which obligates State parties to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike", sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;
- (n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;
- (o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);
- (p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;
- (q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;
- (r) Provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or *intervenor*;
- (s) In accordance with article 3 of the Convention which obliges States parties to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision", undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;
- (t) Undertake such other activities as are incidental to the above.

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

- 20. NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies.
- 21. The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee.
- 22. NHRIs should also cooperate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict.

23. The United Nations has a long-standing programme of assistance for the establishment and strengthening of national human rights institutions. This programme, which is based in the Office of the High Commissioner for Human Rights (OHCHR), provides technical assistance and facilitates regional and global cooperation and exchanges among national human rights institutions. States parties should avail themselves of this assistance where necessary. The United Nations Children's Fund (UNICEF) also offers expertise and technical cooperation in this area.
24. As articulated in article 45 of the Convention, the Committee may also transmit, as it considers appropriate, to any specialized United Nations agency, OHCHR and any other competent body any reports from States parties that contain a request or indicate a need for technical advice or assistance in the establishment of NHRIs.

NHRIS AND STATES PARTIES

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

NHRIS AND NGOS

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

REGIONAL AND INTERNATIONAL COOPERATION

27. Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries.
28. In this respect, NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions on children's rights issues.
29. Children's human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues (including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc.). International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions.

Notes

- | | |
|--|--|
| <p>1. General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention (CRC/C/58), para. 18.</p> <p>2. Principles relating to the status of national institutions</p> | <p>for the promotion and protection of human rights (The "Paris Principles"), General Assembly resolution 48/134 of 20 December 1993, annex.</p> <p>3. Commission on Human Rights resolution 1992/54 of 3 March 1992, annex.</p> |
|--|--|

GENERAL COMMENT No. 3

HIV/AIDS AND

THE RIGHTS OF THE CHILD

(CRC/GC/2003/3)

INTRODUCTION¹

1. The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. The epidemic impacts on the daily life of younger children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances. HIV/AIDS is not a problem of some countries but of the entire world. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.
2. Initially children were considered to be only marginally affected by the epidemic. However, the international community has discovered that, unfortunately, children are at the heart of the problem. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the most recent trends are alarming: in most parts of the world the majority of new infections are among young people between the ages of 15 and 24, sometimes younger. Women, including young girls, are also increasingly becoming infected. In most regions of the world, the vast majority of infected women do not know that they are infected and may unknowingly infect their children. Consequently, many States have recently registered an increase in their infant and child mortality rates. Adolescents are also vulnerable to HIV/AIDS because their first sexual experience may take place in an environment in which they have no access to proper information and guidance. Children who use drugs are at high risk.
3. Yet, all children can be rendered vulnerable by the particular circumstances of their lives, especially (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained by its consequences; and (c) children who are most prone to be infected or affected.

THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. The objectives of the present General Comment are:
 - (a) To identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS;
 - (b) To promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the Convention on the Rights of the Child (hereafter “the Convention”);
 - (c) To identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic;

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

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

5. The issue of children and HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. In this regard, the right to health (article 24 of the Convention) is, however, central. But HIV/AIDS impacts so heavily on the lives of all children that it affects all their rights - civil, political, economic, social and cultural. The rights embodied in the general principles of the Convention - the right to non-discrimination (art. 2), the right of the child to have his/her interest as a primary consideration (art. 3), the right to life, survival and development (art. 6) and the right to have his/her views respected (art. 12) - should therefore be the guiding themes in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.
6. Adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The most relevant rights in this regard, in addition to those enumerated in paragraph 5 above, are the following: the right to access information and material aimed at the promotion of their social, spiritual and moral well-being and physical and mental health (art. 17); the right to preventive health care, sex education and family planning education and services (art. 24 (f)); the right to an appropriate standard of living (art. 27); the right to privacy (art. 16); the right not to be separated from parents (art. 9); the right to be protected from violence (art. 19); the right to special protection and assistance by the State (art. 20); the rights of children with disabilities (art. 23); the right to health (art. 24); the right to social security, including social insurance (art. 26); the right to education and leisure (arts. 28 and 31); the right to be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs (arts. 32, 33, 34 and 36); the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment (arts. 35 and 37); and the right to physical and psychological recovery and social reintegration (art. 39). Children are confronted with serious challenges to the above-mentioned rights as a result of the epidemic. The Convention, and in particular the four general principles with their comprehensive approach, provide a powerful framework for efforts to reduce the negative impact of the pandemic on the lives of children. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

A. The right to non-discrimination (art. 2)

7. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination, children are denied access to information, education (see the Committee's General Comment No. 1 on the aims of education), health or social care services or community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized.
8. Of particular concern is gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.
9. All the above-mentioned discriminatory practices are violations of children's rights under the Convention. Article 2 of the Convention obliges States parties to ensure all the rights set forth in the Convention without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The Committee interprets "other status" under article 2 of the Convention to include HIV/AIDS status of the child or his/her parent(s). Laws, policies, strategies and practices should address all forms of discrimination that contribute to increasing the impact of the epi-

demic. Strategies should also promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS.

B. Best interests of the child (art. 3)

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

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

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

D. The right to express views and have them taken into account (art. 12)

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

E. Obstacles

13. Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial. Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes.

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

PREVENTION, CARE, TREATMENT AND SUPPORT

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

A. Information on HIV prevention and awareness-raising

16. Consistent with the obligations of States parties in relation to the rights to health and information (arts. 24, 13 and 17), children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child-targeted media) as well as informal channels (e.g. those targeting street children, institutionalized children or children living in difficult circumstances). States parties are reminded that children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.
17. Dialogue with community, family and peer counsellors, and the provision of “life skills” education within schools, including skills in communicating on sexuality and healthy living, have been found to be useful approaches to delivering HIV prevention messages to both girls and boys, but different approaches may be necessary to reach different groups of children. States parties must make efforts to address gender differences as they may impact on the access children have to prevention messages, and ensure that children are reached with appropriate prevention messages even if they face constraints due to language, religion, disability or other factors of discrimination. Particular attention must be paid to raising awareness among hard-to-reach populations. In this respect, the role of the mass media and/or oral tradition in ensuring that children have access to information and material, as recognized in article 17 of the Convention, is crucial both to providing appropriate information and to reducing stigmatization and discrimination. States parties should support the regular monitoring and evaluation of HIV/AIDS awareness campaigns to ascertain their effectiveness in providing information, reducing ignorance, stigmatization and discrimination, as well as addressing fear and misperceptions concerning HIV and its transmission among children, including adolescents.

B. The role of education

18. Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS (see also the Committee’s General Comment No. 1 on the aims of education). Furthermore, education can and should empower children to protect themselves from the risk of HIV infection. In this regard, the Committee wishes to remind States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school and the number of teachers and other school employees lost to AIDS is limiting and threatening to destroy the ability of children to access education. States parties must make adequate provision to ensure that children affected by HIV/AIDS can stay in school and ensure the qualified replacement of sick teachers so that children’s regular attendance at schools is not affected, and that the right to education (art. 28) of all children living within these communities is fully protected.
19. States parties must make every effort to ensure that schools are safe places for children, which offer them security and do not contribute to their vulnerability to HIV infection. In accordance with article 34 of the Convention, States parties are under obligation to take all appropriate measures to prevent, inter alia, the inducement or coercion of a child to engage in any unlawful sexual activity.

C. Child and adolescent sensitive health services

20. The Committee is concerned that health services are generally still insufficiently responsive to the needs of children under 18 years of age, in particular adolescents. As the Committee has noted on numerous occasions, children are more likely to use services that are friendly and supportive, provide a wide range

of services and information, are geared to their needs, give them the opportunity to participate in decisions affecting their health, are accessible, affordable, confidential and non-judgemental, do not require parental consent and are not discriminatory. In the context of HIV/AIDS and taking into account the evolving capacities of the child, States parties are encouraged to ensure that health services employ trained personnel who fully respect the rights of children to privacy (art. 16) and non-discrimination in offering them access to HIV-related information, voluntary counselling and testing, knowledge of their HIV status, confidential sexual and reproductive health services, and free or low-cost contraceptive, methods and services, as well as HIV-related care and treatment if and when needed, including for the prevention and treatment of health problems related to HIV/AIDS, e.g. tuberculosis and opportunistic infections.

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

D. HIV counselling and testing

22. The accessibility of voluntary, confidential HIV counselling and testing services, with due attention to the evolving capacities of the child, is fundamental to the rights and health of children. Such services are critical to children's ability to reduce the risk of contracting or transmitting HIV, to access HIV-specific care, treatment and support, and to better plan for their futures. Consistent with their obligation under article 24 of the Convention to ensure that no child is deprived of his or her right of access to necessary health services, States parties should ensure access to voluntary, confidential HIV counselling and testing for all children.
23. The Committee wishes to stress that, as the duty of States parties is first and foremost to ensure that the rights of the child are protected, States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, consistent with the child's right to receive information under articles 13 and 17 of the Convention, States parties must ensure that, prior to any HIV testing, whether by health-care providers in relation to children who are accessing health services for another medical condition or otherwise, the risks and benefits of such testing are sufficiently conveyed so that an informed decision can be made.
24. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

E. Mother-to-child transmission

25. Mother-to-child transmission (MTCT) is responsible for the majority of HIV infections in infants and young children. Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States parties are requested to ensure implementation of the strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children. These include: (a) the primary prevention of HIV infection among parents-to-be; (b) the prevention of unintended pregnancies in HIV-infected women, (c) the prevention of HIV transmission from HIV-infected women to their infants; and (d) the provision of care, treatment and support to HIV-infected women, their infants and families.
26. To prevent MTCT of HIV, States parties must take steps, including the provision of essential drugs, e.g. anti-retroviral drugs, appropriate antenatal, delivery and post-partum care, and making HIV voluntary counselling and testing services available to pregnant women and their partners. The Committee recognizes that anti-retroviral drugs administered to a woman during pregnancy and/or labour and, in some regimens, to her infant, have been shown to significantly reduce the risk of transmission from mother to child. However, in addition, States parties should provide support for mothers and children, including counselling on infant feeding options. States parties are reminded that counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options, and guidance on selecting the option most likely to be suitable for their situation. Follow-up support is also required in order for women to be able to implement their selected option as safely as possible.

27. Even in populations with high HIV prevalence, the majority of infants are born to women who are not HIV-infected. For the infants of HIV-negative women and women who do not know their HIV status, the Committee wishes to emphasize, consistent with articles 6 and 24 of the Convention, that breastfeeding remains the best feeding choice. For the infants of HIV-positive mothers, available evidence indicates that breastfeeding can add to the risk of HIV transmission by 10-20 per cent, but that lack of breastfeeding can expose children to an increased risk of malnutrition or infectious diseases other than HIV. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.

F. Treatment and care

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

G. Involvement of children in research

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

VULNERABILITY AND CHILDREN NEEDING SPECIAL PROTECTION

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

A. Children affected and orphaned by HIV/AIDS

31. Special attention must be given to children orphaned by AIDS and to children from affected families, including child-headed households, as these impact on vulnerability to HIV infection. For children from families affected by HIV/AIDS, the stigmatization and social isolation they experience may be accentuated by the neglect or violation of their rights, in particular discrimination resulting in a decrease or loss of access to education, health and social services. The Committee wishes to underline the necessity of providing legal, economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well as to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate. In this respect, States parties are reminded that these measures are critical to the realization of the rights of children and to giving them the skills and support necessary to reduce their vulnerability and risk of becoming infected.
32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.
33. The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatization and discrimination. In this respect, States parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. Consistent with their obligations under article 27 of the Convention, States parties must also support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.
34. Orphans are best protected and cared for when efforts are made to enable siblings to remain together, and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore the best way to care for orphans when there are no other feasible alternatives. Assistance must be provided so that, to the maximum extent possible, children can remain within existing family structures. This option may not be available due to the impact HIV/AIDS has on the extended family. In that case, States parties should provide, as far as possible, for family-type alternative care (e.g. foster care). States parties are encouraged to provide support, financial and otherwise, when necessary, to child-headed households. States parties must ensure that their strategies recognize that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to assist communities in determining how best to provide support to the orphans living there.
35. Although institutionalized care may have detrimental effects on child development, States parties may, nonetheless, determine that it has an interim role to play in caring for children orphaned by HIV/AIDS when family-based care within their own communities is not a possibility. It is the opinion of the Committee that any form of institutionalized care for children should only serve as a measure of last resort, and that measures must be fully in place to protect the rights of the child and guard against all forms of abuse and exploitation. In keeping with the right of children to special protection and assistance when within these environments, and consistent with articles 3, 20 and 25 of the Convention, strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States parties are reminded that limits must be placed on the length of time children spend in these institutions, and programmes must be developed to support any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities.

B. Victims of sexual and economic exploitation

36. Girls and boys who are deprived of the means of survival and development, particularly children orphaned by AIDS, may be subjected to sexual and economic exploitation in a variety of ways, including the exchange of sexual services or hazardous work for money to survive, support their sick or dying parents and younger siblings, or to pay for school fees. Children who are infected or directly affected by HIV/AIDS may find themselves at a double disadvantage - experiencing discrimination on the basis of both their

social and economic marginalization and their, or their parents', HIV status. Consistent with the right of children under articles 32, 34, 35 and 36 of the Convention, and in order to reduce children's vulnerability to HIV/AIDS, States parties are under obligation to protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to prostitution networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development. States parties must take bold action to protect children from sexual and economic exploitation, trafficking and sale and, consistent with the rights under article 39, create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non-governmental entities engaged in these issues.

C. Victims of violence and abuse

37. Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected, and may also be subjected to violence as a result of their being infected or affected by HIV/AIDS. Violence, including rape and other forms of sexual abuse, can occur in the family or foster setting or may be perpetrated by those with specific responsibilities towards children, including teachers and employees of institutions working with children, such as prisons and institutions concerned with mental health and other disabilities. In keeping with the rights of the child set forth in article 19 of the Convention, States parties have the obligation to protect children from all forms of violence and abuse, whether at home, in school or other institutions, or in the community.
38. Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.

D. Substance abuse

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

RECOMMENDATIONS

40. The Committee hereby reaffirms the recommendations, which emerged at the day of general discussion on children living in a world with HIV/AIDS (CRC/C/80), and calls upon States parties:
- (a) To adopt and implement national and local HIV/AIDS-related policies, including effective plans of action, strategies, and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention, including by taking into account the recommendations made in the previous paragraphs of the present General Comment and those adopted at the United Nations General Assembly special session on children (2002);
 - (b) To allocate financial, technical and human resources, to the maximum extent possible, to supporting national and community-based action (art. 4), and, where appropriate, within the context of international cooperation (see paragraph 41 below).

- (c) To review existing laws or enact new legislation with a view to implementing fully article 2 of the Convention, and in particular to expressly prohibiting discrimination based on real or perceived HIV/AIDS status so as to guarantee equal access for of all children to all relevant services, with particular attention to the child's right to privacy and confidentiality and to other recommendations made by the Committee in the previous paragraphs relevant to legislation;
- (d) To include HIV/AIDS plans of action, strategies, policies and programmes in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure, which responds specifically to complaints of neglect or violation of the rights of the child in relation to HIV/AIDS, whether this entails the creation of a new legislative or administrative body or is entrusted to an existing national institution;
- (e) To reassess their HIV-related data collection and evaluation to ensure that they adequately cover children as defined under the Convention, are disaggregated by age and gender ideally in five-year age groups, and include, as far as possible, children belonging to vulnerable groups and those in need of special protection;
- (f) To include, in their reporting process under article 44 of the Convention, information on national HIV/AIDS policies and programmes and, to the extent possible, budgeting and resource allocations at the national, regional and local levels, as well as within these breakdowns the proportions allocated to prevention, care, research and impact reduction. Specific attention must be given to the extent to which these programmes and policies explicitly recognize children (in the light of their evolving capacities) and their rights, and the extent to which HIV-related rights of children are dealt with in laws, policies and practices, with specific attention to discrimination against children on the basis of their HIV status, as well as because they are orphans or the children of parents living with HIV/AIDS. The Committee requests States parties to provide a detailed indication in their reports of what they consider to be the most important priorities within their jurisdiction in relation to children and HIV/AIDS, and to outline the programme of activities they intend to pursue over the coming five years in order to address the problems identified. This would allow activities to be progressively assessed over time.

41. In order to promote international cooperation, the Committee calls upon UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and other relevant international bodies, organizations and agencies to contribute systematically, at the national level, to do efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to work with the Committee to improve the rights of the child in the context of HIV/AIDS. Further, the Committee urges States providing development cooperation to ensure that HIV/AIDS strategies are so designed as to take fully into account the rights of the child.

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

Note

1. At its seventeenth session (1998), the Committee on the Rights of the Child held a day of general discussion on the theme of HIV/AIDS and children's rights, in which it recommended that a number of actions be taken, including facilitating the engagement of States parties on HIV/AIDS issues in relation to the rights of the child. Human rights in relation to HIV/AIDS has also been discussed at the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies in 1997 and has been taken up by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Similarly, HIV/AIDS has been discussed annually by the Commission on Human Rights for over a decade. UNAIDS and the United Nations Children's Fund (UNICEF) have emphasized the rights of the child in relation to

HIV/AIDS in all aspects of their work, and the World AIDS Campaign for 1997 focused on "Children Living in a World with AIDS" and for 1998 on "Force for Change: World AIDS Campaign with Young People". UNAIDS and the Office of the United Nations High Commissioner for Human Rights have also produced *The International Guidelines on HIV/AIDS and Human Rights* (1998) and its *Revised Guideline 6* (2002) to promote and protect human rights in the context of HIV/AIDS. At the international political level, HIV/AIDS-related rights have been recognized in the *Declaration of Commitment on HIV/AIDS*, adopted at the United Nations General Assembly special session, *A World Fit for Children*, adopted at the United Nations General Assembly special session on children, and in other international and regional documents.

GENERAL COMMENT No.4

ADOLESCENT HEALTH AND DEVELOPMENT

(CRC/GC/2003/4)

Adolescent health and development in the context of the Convention on the Rights of the Child

Introduction

1. The Convention on the Rights of the Child defines a child as “every human being below the age of 18 years unless, under the law applicable, majority is attained earlier” (art. 1). Consequently, adolescents up to 18 years old are holders of all the rights enshrined in the Convention; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights (art. 5).
2. Adolescence is a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills. While adolescents are in general a healthy population group, adolescence also poses new challenges to health and development owing to their relative vulnerability and pressure from society, including peers, to adopt risky health behaviour. These challenges include developing an individual identity and dealing with one’s sexuality. The dynamic transition period to adulthood is also generally a period of positive changes, prompted by the significant capacity of adolescents to learn rapidly, to experience new and diverse situations, to develop and use critical thinking, to familiarize themselves with freedom, to be creative and to socialize.
3. The Committee on the Rights of the Child notes with concern that in implementing their obligations under the Convention, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development. This has motivated the Committee to adopt the present general comment in order to raise awareness and provide States parties with guidance and support in their efforts to guarantee the respect for, protection and fulfilment of the rights of adolescents, including through the formulation of specific strategies and policies.
4. The Committee understands the concepts of “health and development” more broadly than being strictly limited to the provisions defined in articles 6 (right to life, survival and development) and 24 (right to health) of the Convention. One of the aims of this general comment is precisely to identify the main human rights that need to be promoted and protected in order to ensure that adolescents do enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large. This general comment should be read in conjunction with the Convention and its two Optional Protocols on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, as well as other relevant international human rights norms and standards.¹

FUNDAMENTAL PRINCIPLES AND OTHER OBLIGATIONS OF STATES PARTIES

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

A. The right to non-discrimination

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

B. Appropriate guidance in the exercise of rights

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

C. Respect for the views of the child

8. The right to express views freely and have them duly taken into account (art. 12) is also fundamental in realizing adolescents' right to health and development. States parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents' participating equally including in decision-making processes.

D. Legal and judicial measures and processes

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

E. Civil rights and freedoms

10. The Convention defines the civil rights and freedoms of children and adolescents in its articles 13 to 17. These are fundamental in guaranteeing the right to health and development of adolescents. Article 17 states that the child has the right to "access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health." The right of adolescents to access appropriate information

is crucial if States parties are to promote cost-effective measures, including through laws, policies and programmes, with regard to numerous health-related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from harmful traditional practices, including early marriages and female genital mutilation, and the abuse of alcohol, tobacco and other harmful substances.

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

F. Protection from all forms of abuse, neglect, violence and exploitation²

12. States parties must take effective measures to ensure that adolescents are protected from all forms of violence, abuse, neglect and exploitation (arts. 19, 32-36 and 38), paying increased attention to the specific forms of abuse, neglect, violence and exploitation that affects this age group. In particular, they should adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable to abuse and neglect. States parties should also ensure that adolescents affected by poverty who are socially marginalized are not criminalized. In this regard, financial and human resources need to be allocated to promote research that would inform the adoption of effective local and national laws, policies and programmes. Policies and strategies should be reviewed regularly and revised accordingly. In taking these measures, States parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports.

G. Data collection

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

CREATING A SAFE AND SUPPORTIVE ENVIRONMENT

14. The health and development of adolescents are strongly determined by the environments in which they live. Creating a safe and supportive environment entails addressing attitudes and actions of both the immediate environment of the adolescent - family, peers, schools and services - as well as the wider environment created by, inter alia, community and religious leaders, the media, national and local policies and legislation. The promotion and enforcement of the provisions and principles of the Convention, especially articles 2-6, 12-17, 24, 28, 29 and 31, are key to guaranteeing adolescents' right to health and development. States parties should take measures to raise awareness and stimulate and/or regulate action through the formulation of policy or the adoption of legislation and the implementation of programmes specifically for adolescents.
15. The Committee stresses the importance of the family environment, including the members of the extended family and community or other persons legally responsible for the child or adolescent (arts. 5 and 18). While most adolescents grow up in well-functioning family environments, for some the family does not constitute a safe and supportive milieu.
16. The Committee calls upon States parties to develop and implement, in a manner consistent with adolescents' evolving capacities, legislation, policies and programmes to promote the health and development of adolescents by (a) providing parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of material assistance and support with regard to nutri-

tion, clothing and housing (art. 27 (3)); (b) providing adequate information and parental support to facilitate the development of a relationship of trust and confidence in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles can be openly discussed and acceptable solutions found that respect the adolescent's rights (art. 27 (3)); (c) providing adolescent mothers and fathers with support and guidance for both their own and their children's well-being (art. 24 (f), 27 (2-3)); (d) giving, while respecting the values and norms of ethnic and other minorities, special attention, guidance and support to adolescents and parents (or legal guardians), whose traditions and norms may differ from those in the society where they live; and (e) ensuring that interventions in the family to protect the adolescent and, when necessary, separate her/him from the family, e.g. in case of abuse or neglect, are in accordance with applicable laws and procedures. Such laws and procedures should be reviewed to ensure that they conform to the principles of the Convention.

17. The school plays an important role in the life of many adolescents, as the venue for learning, development and socialization. Article 29 (1) states that education must be directed to "the development of the child's personality, talents and mental and physical abilities to their fullest potential". In addition, general comment No. 1 on the Aims of Education states that "Education must also be aimed at ensuring that ... no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include ... the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle [and] good social relationships ...". Considering the importance of appropriate education for the current and future health and development of adolescents, as well as for their children, the Committee urges States parties, in line with articles 28 and 29 of the Convention to (a) ensure that quality primary education is compulsory and available, accessible and free to all and that secondary and higher education are available and accessible to all adolescents; (b) provide well-functioning school and recreational facilities which do not pose health risks to students, including water and sanitation and safe journeys to school; (c) take the necessary actions to prevent and prohibit all forms of violence and abuse, including sexual abuse, corporal punishment and other inhuman, degrading or humiliating treatment or punishment in school, by school personnel as well as among students; and (d) initiate and support measures, attitudes and activities that promote healthy behaviour by including relevant topics in school curricula.
18. During adolescence, an increasing number of young people are leaving school to start working to help support their families or for wages in the formal or informal sector. Participation in work activities in accordance with international standards, as long as it does not jeopardize the enjoyment of any of the other rights of adolescents, including health and education, may be beneficial for the development of the adolescent. The Committee urges States parties to take all necessary measures to abolish all forms of child labour, starting with the worst forms, to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Conventions Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms.
19. The Committee also stresses that in accordance with article 23 (3) of the Convention, the special rights of adolescents with disabilities should be taken into account and assistance provided to ensure that the disabled child/adolescent has effective access to and receives good quality education. States should recognize the principle of equal primary, secondary and tertiary educational opportunities for disabled children/adolescents, where possible in regular schools.
20. The Committee is concerned that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS. Both the legal minimum age and actual age of marriage, particularly for girls, are still very low in several States parties. There are also non-health-related concerns: children who marry, especially girls, are often obliged to leave the education system and are marginalized from social activities. Further, in some States parties married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys. The Committee on the Elimination of Discrimination against Women has made a similar recommendation (general comment No. 21 of 1994).
21. In most countries accidental injuries or injuries due to violence are a leading cause of death or permanent disability among adolescents. In that respect, the Committee is concerned about the injuries and death resulting from road traffic accidents, which affect adolescents disproportionately. States parties should adopt and enforce legislation and programmes to improve road safety, including driving education for and examination of adolescents and the adoption or strengthening of legislation known to be

highly effective such as the obligations to have a valid driver's licence, wear seat belts and crash helmets, and the designation of pedestrian areas.

22. The Committee is also very concerned about the high rate of suicide among this age group. Mental disorders and psychosocial illness are relatively common among adolescents. In many countries symptoms such as depression, eating disorders and self-destructive behaviours, sometimes leading to self-inflicted injuries and suicide, are increasing. They may be related to, inter alia, violence, ill-treatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school. States parties should provide these adolescents with all the necessary services.
23. Violence results from a complex interplay of individual, family, community and societal factors. Vulnerable adolescents such as those who are homeless or who are living in institutions, who belong to gangs or who have been recruited as child soldiers are especially exposed to both institutional and interpersonal violence. Under article 19 of the Convention, States parties must take all appropriate measures³ to prevent and eliminate: (a) institutional violence against adolescents, including through legislation and administrative measures in relation to public and private institutions for adolescents (schools, institutions for disabled adolescents, juvenile reformatories, etc.), and training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police; and (b) interpersonal violence among adolescents, including by supporting adequate parenting and opportunities for social and educational development in early childhood, fostering non-violent cultural norms and values (as foreseen in article 29 of the Convention), strictly controlling firearms and restricting access to alcohol and drugs.
24. In light of articles 3, 6, 12, 19 and 24 (3) of the Convention, States parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. Further, States parties should facilitate the establishment of multidisciplinary information and advice centres regarding the harmful aspects of some traditional practices, including early marriage and female genital mutilation.
25. The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents⁴.

INFORMATION, SKILLS DEVELOPMENT, COUNSELLING, AND HEALTH SERVICES

26. Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity.
27. In order to act adequately on the information, adolescents need to develop the skills necessary, including self-care skills, such as how to plan and prepare nutritionally balanced meals and proper personal hygiene habits, and skills for dealing with particular social situations such as interpersonal communication, decision-making, and coping with stress and conflict. States parties should stimulate and support opportunities to build such skills through, inter alia, formal and informal education and training programmes, youth organizations and the media.
28. In light of articles 3, 17 and 24 of the Convention, States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent. It is essential to find proper means and methods of providing information that is adequate and sensitive to the particularities and specific rights of adolescent girls and boys. To this end, States parties are encouraged to ensure that adolescents are actively involved in the design and dissemination of information through a variety of channels beyond the school, including youth organizations, religious, community and other groups and the media.

29. Under article 24 of the Convention, States parties are urged to provide adequate treatment and rehabilitation for adolescents with mental disorders, to make the community aware of the early signs and symptoms and the seriousness of these conditions, and to protect adolescents from undue pressures, including psychosocial stress. States parties are also urged to combat discrimination and stigma surrounding mental disorders, in line with their obligations under article 2. Every adolescent with a mental disorder has the right to be treated and cared for, as far as possible, in the community in which he or she lives. Where hospitalization or placement in a psychiatric institution is necessary, this decision should be made in accordance with the principle of the best interests of the child. In the event of hospitalization or institutionalization, the patient should be given the maximum possible opportunity to enjoy all his or her rights as recognized under the Convention, including the rights to education and to have access to recreational activities.⁵ Where appropriate, adolescents should be separated from adults. States parties must ensure that adolescents have access to a personal representative other than a family member to represent their interests, when necessary and appropriate.⁶ In accordance with article 25 of the Convention, States parties should undertake periodic review of the placement of adolescents in hospitals or psychiatric institutions.
30. Adolescents, both girls and boys, are at risk of being infected with and affected by STDs, including HIV/AIDS⁷. States should ensure that appropriate goods, services and information for the prevention and treatment of STDs, including HIV/AIDS, are available and accessible. To this end, States parties are urged (a) to develop effective prevention programmes, including measures aimed at changing cultural views about adolescents' need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality; (b) to adopt legislation to combat practices that either increase adolescents' risk of infection or contribute to the marginalization of adolescents who are already infected with STDs, including HIV; and (c) to take measures to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms, and care.
31. Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling; (b) to foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers; and (c) to develop policies that will allow adolescent mothers to continue their education.
32. Before parents give their consent, adolescents need to have a chance to express their views freely and their views should be given due weight, in accordance with article 12 of the Convention. However, if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself, while informing the parents if that is in the "best interest of the child" (art. 3).
33. With regard to privacy and confidentiality, and the related issue of informed consent to treatment, States parties should (a) enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacity of the child; and (b) provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment and to give their informed consent to treatment.

VULNERABILITY AND RISK

34. In ensuring respect for the right of adolescents to health and development, both individual behaviours and environmental factors which increase their vulnerability and risk should be taken into consideration. Environmental factors, such as armed conflict or social exclusion, increase the vulnerability of adolescents to abuse, other forms of violence and exploitation, thereby severely limiting adolescents' abilities to make individual, healthy behaviour choices. For example, the decision to engage in unsafe sex increases adolescents' risk of ill-health.
35. In accordance with article 23 of the Convention, adolescents with mental and/or physical disabilities have an equal right to the highest attainable standard of physical and mental health. States parties have an obligation to provide adolescents with disabilities with the means necessary to realize their rights.⁸ States parties should (a) ensure that health facilities, goods and services are available and accessible to all adolescents with disabilities and that these facilities and services promote their self-reliance and

their active participation in the community; (b) ensure that the necessary equipment and personal support are available to enable them to move around, participate and communicate; (c) pay specific attention to the special needs relating to the sexuality of adolescents with disabilities; and (d) remove barriers that hinder adolescents with disabilities in realizing their rights.

36. States parties have to provide special protection to homeless adolescents, including those working in the informal sector. Homeless adolescents are particularly vulnerable to violence, abuse and sexual exploitation from others, self-destructive behaviour, substance abuse and mental disorders. In this regard, States parties are required to (a) develop policies and enact and enforce legislation that protect such adolescents from violence, e.g. by law enforcement officials; and (b) develop strategies for the provision of appropriate education and access to health care, and of opportunities for the development of livelihood skills.
37. Adolescents who are sexually exploited, including in prostitution and pornography, are exposed to significant health risks, including STDs, HIV/AIDS, unwanted pregnancies, unsafe abortions, violence and psychological distress. They have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity (art. 39). It is the obligation of States parties to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States parties to eliminate intercountry trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders.
38. Additionally, adolescents experiencing poverty, armed conflicts, all forms of injustice, family breakdown, political, social and economic instability and all types of migration may be particularly vulnerable. These situations might seriously hamper their health and development. By investing heavily in preventive policies and measures States parties can drastically reduce levels of vulnerability and risk factors; they will also provide cost-effective ways for society to help adolescents develop harmoniously in a free society.

NATURE OF STATES' OBLIGATIONS

39. In exercising their obligations in relation to the health and development of adolescents, States parties shall always take fully into account the four general principles of the Convention. It is the view of the Committee that States parties must take all appropriate legislative, administrative and other measures for the realization and monitoring of the rights of adolescents to health and development as recognized in the Convention. To this end, States parties must notably fulfil the following obligations:
- (a) To create a safe and supportive environment for adolescents, including within their family, in schools, in all types of institutions in which they may live, within their workplace and/or in the society at large;
 - (b) To ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices;
 - (c) To ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to all adolescents;
 - (d) To ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;
 - (e) To protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights, notably by abolishing all forms of child labour and by regulating the working environment and conditions in accordance with international standards;
 - (f) To protect adolescents from all forms of intentional and unintentional injuries, including those resulting from violence and road traffic accidents;
 - (g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;
 - (h) To ensure that adolescents belonging to especially vulnerable groups are fully taken into account in the fulfilment of all aforementioned obligations;
 - (i) To implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

40. The Committee draws the attention of States parties to the general comment No. 14 on the right to the highest attainable standard of health of the Committee on Economic, Social and Cultural Rights which states that, "States parties should provide a safe and supportive environment for adolescents that ensures the opportunity to participate in decisions affecting their health, to build life skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services."
41. In accordance with articles 24, 39 and other related provisions of the Convention, States parties should provide health services that are sensitive to the particular needs and human rights of all adolescents, paying attention to the following characteristics:
- (a) *Availability*. Primary health care should include services sensitive to the needs of adolescents, with special attention given to sexual and reproductive health and mental health;
 - (b) *Accessibility*. Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all adolescents, without discrimination. Confidentiality should be guaranteed, when necessary;
 - (c) *Acceptability*. While fully respecting the provisions and principles of the Convention, all health facilities, goods and services should respect cultural values, be gender sensitive, be respectful of medical ethics and be acceptable to both adolescents and the communities in which they live;
 - (d) *Quality*. Health services and goods should be scientifically and medically appropriate, which requires personnel trained to care for adolescents, adequate facilities and scientifically accepted methods.
42. States parties should, where feasible, adopt a multisectoral approach to the promotion and protection of adolescent health and development by facilitating effective and sustainable linkages and partnerships among all relevant actors. At the national level, such an approach calls for close and systematic collaboration and coordination within Government, so as to ensure the necessary involvement of all relevant government entities. Public health and other services utilized by adolescents should also be encouraged and assisted in seeking collaboration with, inter alia, private and/or traditional practitioners, professional associations, pharmacies and organizations that provide services to vulnerable groups of adolescents.
43. A multisectoral approach to the promotion and protection of adolescent health and development will not be effective without international cooperation. Therefore, States parties should, when appropriate, seek such cooperation with United Nations specialized agencies, programmes and bodies, international NGOs and bilateral aid agencies, international professional associations and other non-State actors.

Notes

- 1 These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Elimination of All Forms of Discrimination Against Women.
- 2 See also the reports of the Committee's days of general discussion on "Violence against children" held in 2000 and 2001 and the Recommendations adopted in this regard (see CRC/C/100, chap. V and CRC/C/111, chap. V).
- 3 Ibid.
- 4 As proposed in the Framework Convention on Tobacco Control (2003) of the World Health Organization.
- 5 For further guidance on this subject, refer to the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, (General Assembly resolution 46/119 of 17 December 1991, annex).
- 6 Ibid., in particular principles 2, 3 and 7.
- 7 For further guidance on this issue, see general comment No. 3 (2003) on HIV/AIDS and the rights of children.
- 8 United Nations Standard Rules on Equal Opportunities for Persons with Disabilities.

GENERAL COMMENT No. 5

GENERAL MEASURES OF IMPLEMENTATION

(CRC/GC/2003/5)

General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

FOREWORD

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

Article 4

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

INTRODUCTION

1. When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.¹ Article 4 requires States parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality of the human rights of children - needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.²
2. In its periodic examination of States parties' reports under the Convention, the Committee pays partic-

ular attention to what it has termed “general measures of implementation”. In its concluding observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State party to describe action taken in response to these recommendations in its subsequent periodic report. The Committee’s reporting guidelines arrange the Convention’s articles in clusters,³ the first being on “general measures of implementation” and groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see, paragraph 66 below) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see paragraph 71 below).

3. In addition to these provisions, other general implementation obligations are set out in article 2: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind ...”
4. Also under article 3, paragraph 2, “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”
5. In international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the present general comment and which are referred to below.⁴
6. Article 4, while reflecting States parties’ overall implementation obligation, suggests a distinction between civil and political rights and economic, social and cultural rights in its second sentence: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.” There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee’s reporting guidelines group articles 7, 8, 13-17 and 37 (a) under the heading “Civil rights and freedoms”, but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted in paragraph 25 below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.
7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).
8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...”⁵ Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.
9. The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children’s rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children’s budgets and “state of children’s rights” reports, NGO coalitions on children’s rights, children’s ombudspersons and children’s rights commissioners and so on.

10. While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child's place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.
11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.
12. The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

Article 2: the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.⁶

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

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

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

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

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

REVIEW OF RESERVATIONS

13. In its reporting guidelines on general measures of implementation, the Committee starts by inviting the State party to indicate whether it considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.⁷ States parties to the Convention are entitled to make reservations at the time of their ratification of or accession to it (art. 51). The Committee's aim of ensuring full and unqualified respect for the human rights of children can be achieved only if States withdraw their reservations. It consistently recommends during its examination of reports that reservations be reviewed and withdrawn. Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next periodic report. The Committee draws the attention of States parties to the encouragement given by the World Conference on Human Rights to the review and withdrawal of reservations.⁸
14. Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State." The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is "incompatible with the object and purpose of the treaty" (art. 19).
15. Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." The Committee is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".
16. The Committee notes that, in some cases, States parties have lodged formal objections to such wide-ranging reservations made by other States parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States parties.

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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

LEGISLATIVE MEASURES

18. The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others.
19. States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of "self-execution" applies and others where it is claimed that the Convention "has constitutional status" or has been incorporated into domestic law.
20. The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before

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

21. Some States have suggested to the Committee that the inclusion in their Constitution of guarantees of rights for “everyone” is adequate to ensure respect for these rights for children. The test must be whether the applicable rights are truly realized for children and can be directly invoked before the courts. The Committee welcomes the inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the Convention, which helps to underline the key message of the Convention - that children alongside adults are holders of human rights. But this inclusion does not automatically ensure respect for the rights of children. In order to promote the full implementation of these rights, including, where appropriate, the exercise of rights by children themselves, additional legislative and other measures may be necessary.
22. The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children’s rights statutes, which can highlight and emphasize the Convention’s principles. But the Committee emphasizes that it is crucial in addition that all relevant “sectoral” laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.
23. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41. The Committee emphasizes that the other international human rights instruments apply to all persons below the age of 18 years.

JUSTICIABILITY OF RIGHTS

24. For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.
25. As noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective.

ADMINISTRATIVE AND OTHER MEASURES

26. The Committee cannot prescribe in detail the measures which each or every State party will find appropriate to ensure effective implementation of the Convention. But from its first decade’s experience of examining States parties’ reports and from its ongoing dialogue with Governments and with the United Nations and United Nations-related agencies, NGOs and other competent bodies, it has distilled here some key advice for States.
27. The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children’s rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children’s lives and children’s enjoyment of their rights. Few, if any, government departments have no effect on children’s lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.

A. Developing a comprehensive national strategy rooted in the Convention

28. If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.
29. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (para. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.
30. Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. As noted above (para. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination.
31. To give the strategy authority, it will need to be endorsed at the highest level of government. Also, it needs to be linked to national development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes.
32. The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children. The comprehensive national strategy may be elaborated in sectoral national plans of action - for example for education and health - setting out specific goals, targeted implementation measures and allocation of financial and human resources. The strategy will inevitably set priorities, but it must not neglect or dilute in any way the detailed obligations which States parties have accepted under the Convention. The strategy needs to be adequately resourced, in human and financial terms.
33. Developing a national strategy is not a one-off task. Once drafted the strategy will need to be widely disseminated throughout Government and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public.
34. The "national plans of action" which States were encouraged to develop following the first World Summit for Children, held in 1990, were related to the particular commitments set by nations attending the Summit.⁹ In 1993, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, called on States to integrate the Convention on the Rights of the Child into their national human rights action plans.¹⁰
35. The outcome document of the United Nations General Assembly special session on children, in 2002, also commits States "to develop or strengthen as a matter of urgency if possible by the end of 2003 national and, where appropriate, regional action plans with a set of specific time-bound and measurable goals and targets based on this plan of action ..."¹¹ The Committee welcomes the commitments made by States to achieve the goals and targets set at the special session on children and identified in the outcome document, *A World Fit for Children*. But the Committee emphasizes that making particular commitments at global meetings does not in any way reduce States parties' legal obligations under the Convention. Similarly, preparing specific plans of action in response to the special session does not reduce the need for a comprehensive implementation strategy for the Convention. States should integrate their response to the 2002 special session and to other relevant global conferences into their overall implementation strategy for the Convention as a whole.
36. The outcome document also encourages States parties to "consider including in their reports to the Committee on the Rights of the Child information on measures taken and results achieved in the implementation of the present Plan of Action"¹² The Committee endorses this proposal; it is committed to monitoring progress towards meeting the commitments made at the special session and will provide further guidance in its revised guidelines for periodic reporting under the Convention.

B. Coordination of implementation of children's rights

37. In examining States parties' reports the Committee has almost invariably found it necessary to encour-

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

38. The Committee believes that, as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties. There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention and in particular of the four articles identified as providing general principles (see paragraph 12 above).
39. Many States parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children - can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention.

C. Decentralization, federalization and delegation

40. The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.
41. The Committee reiterates that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.

D. Privatization

42. The process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 day of general discussion to the theme "The private sector as service provider and its role in implementing child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit. Following that day of general discussion, the Committee adopted detailed recommendations to which it draws the attention of States parties.¹³
43. The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.
44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the

full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

E. Monitoring implementation - the need for child impact assessment and evaluation

45. Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.
46. Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see paragraph 65 below).
47. The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.

F. Data collection and analysis and development of indicators

48. Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.
49. The Committee commends States parties which have introduced annual publication of comprehensive reports on the state of children's rights throughout their jurisdiction. Publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation. Translations, including child-friendly versions, are essential for engaging children and minority groups in the process.
50. The Committee emphasizes that, in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on.

G. Making children visible in budgets

51. In its reporting guidelines and in the consideration of States parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets.¹⁴ No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both

directly and indirectly. Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish annual “children’s budgets”. The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

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

H. Training and capacity-building

53. The Committee emphasizes States’ obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children. These include, for example, community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others. Training needs to be systematic and ongoing - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must, of course, be promoted among children themselves, through the school curriculum and in other ways (see also paragraph 69 below and the Committee’s General Comment No. 1 (2001) on the aims of education).
54. The Committee’s guidelines for periodic reports mention many aspects of training, including specialist training, which are essential if all children are to enjoy their rights. The Convention highlights the importance of the family in its preamble and in many articles. It is particularly important that the promotion of children’s rights should be integrated into preparation for parenthood and parenting education.
55. There should be periodic evaluation of the effectiveness of training, reviewing not only knowledge of the Convention and its provisions but also the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights.

I. Cooperation with civil society

56. Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations. The Committee concurs, for example, with general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: “While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, inter-governmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities.”
57. Article 12 of the Convention, as already emphasized (see paragraph 12 above), requires due weight to be given to children’s views in all matters affecting them, which plainly includes implementation of “their” Convention.
58. The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital.
59. The Committee welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children’s human rights and urges Governments to give them non-directive support and to develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention, coming within the definition of “competent bod-

ies” under article 45 (a), has in many cases given a real impetus to the process of implementation as well as reporting. The NGO Group for the Convention on the Rights of the Child has a very welcome, strong and supportive impact on the reporting process and other aspects of the Committee’s work. The Committee underlines in its reporting guidelines that the process of preparing a report “should encourage and facilitate popular participation and public scrutiny of government policies.”¹⁵ The media can be valuable partners in the process of implementation (see also paragraph 70).

J. International cooperation

60. Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation.¹⁶ The Charter of the United Nations (Arts. 55 and 56) identifies the overall purposes of international economic and social cooperation, and members pledge themselves under the Charter “to take joint and separate action in cooperation with the Organization” to achieve these purposes. In the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty.
61. The Committee advises States parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product. This goal was reiterated along with other targets in the Monterrey Consensus, arising from the 2002 International Conference on Financing for Development.¹⁷ The Committee encourages States parties that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee expects States parties to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children’s rights.
62. The Committee endorses the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee notes that international meetings held to review progress have concluded that many States are going to have difficulty meeting fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased. The Committee takes note of and encourages efforts being made to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP). As the central, country-led strategy for achieving the millennium development goals, PRSPs must include a strong focus on children’s rights. The Committee urges Governments, donors and civil society to ensure that children are a prominent priority in the development of PRSPs and sectorwide approaches to development (SWAp). Both PRSPs and SWAps should reflect children’s rights principles, with a holistic, child-centred approach recognizing children as holders of rights and the incorporation of development goals and objectives which are relevant to children.
63. The Committee encourages States to provide and to use, as appropriate, technical assistance in the process of implementing the Convention. The United Nations Children’s Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and other United Nations and United Nations-related agencies can provide technical assistance with many aspects of implementation. States parties are encouraged to identify their interest in technical assistance in their reports under the Convention.
64. In their promotion of international cooperation and technical assistance, all United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children’s rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.

K. Independent human rights institutions

65. In its general comment No. 2 (2002) entitled “The role of independent national human rights institutions in the protection and promotion of the rights of the child”, the Committee notes that it “considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights”. Independent human rights institutions are complementary to effective government structures for children; the essential element is independence: “The role of national human rights institutions is to monitor independently the State’s compliance and progress towards implementation and to do all it can to ensure full

respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities."¹⁸ General comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children.

Article 42: Making the Convention known to adults and children

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

66. Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.
67. The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies - governmental and independent - involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee commends the collection of official and unofficial translations of the Convention made by OHCHR. There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages - a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.
68. Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee's general comment No. 1 (2001) entitled "The aims of education" (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to "... the development of respect for human rights and fundamental freedoms ...". The general comment underlines: "Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children."¹⁹
69. Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children (see paragraph 53 above). The Committee reminds States parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention, in which it recalled that "dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities."²⁰
- "The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect."²¹
70. The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.²²

Article 44 (6): Making reports under the Convention widely available

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

71. If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.
72. The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.
73. The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's concluding observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The summary records of the examination of government representatives by the Committee aid understanding of the process and of the Committee's requirements and should also be made available and discussed.

Notes

- 1 The Committee reminds States parties that, for the purposes of the Convention, a child is defined as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier" (art. 1).
- 2 In 1999, the Committee on the Rights of the Child held a two-day workshop to commemorate the tenth anniversary of adoption of the Convention on the Rights of the Child by the United Nations General Assembly. The workshop focused on general measures of implementation following which the Committee adopted detailed conclusions and recommendations (see CRC/C/90, para. 291).
- 3 General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a) of the Convention, CRC/C/5, 15 October 1991; General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996.
- 4 Human Rights Committee, general comment No. 3 (thirteenth session, 1981), *Article 2: Implementation at the national level*; Committee on Economic, Social and Cultural Rights, general comment No. 3 (fifth session, 1990), *The nature of States parties' obligations (article 2, paragraph 1, of the Covenant)*; also general comment No. 9 (nineteenth session, 1998), *The domestic application of the Covenant*, elaborating further on certain elements in general comment No. 3. A compendium of the treaty bodies' general comments and recommendations is published regularly by the Office of the High Commissioner for Human Rights (HRI/GEN/1/Rev.6).
- 5 General comment No. 3, HRI/GEN/1/Rev.6, para. 11, p. 16.
- 6 Human Rights Committee, general comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 et seq.
- 7 General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 11.
- 8 World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.
- 9 World Summit for Children, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001, United Nations, New York, 30 September 1990.
- 10 World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.
- 11 *A World Fit for Children*, outcome document of the United Nations General Assembly special session on children, 2002, para. 59.
- 12 *Ibid.*, para. 61 (a).
- 13 Committee on the Rights of the Child, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights", paras. 630-653.
- 14 General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 20.
- 15 *Ibid.*, para. 3.
- 16 The following articles of the Convention relate to international cooperation explicitly: articles 7 (2); 11 (2); 17 (b); 21 (e); 22 (2); 23 (4); 24 (4); 27 (4); 28 (3); 34 and 35.
- 17 Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/Conf.198/11).
- 18 HRI/GEN/1/Rev. 6, para. 25, p. 295.
- 19 *Ibid.*, para. 15, p. 286.
- 20 See CRC/C/90, para. 291 (k).
- 21 *Ibid.*, para. 291 (l).
- 22 The Committee held a day of general discussion on the theme "The child and the media" in 1996, adopting detailed recommendations (see CRC/C/57, paras. 242 et seq.).

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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

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

GENERAL COMMENT No. 6 UNACCOMPANIED AND SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN

(CRC/GC/2005/6)

TREATMENT OF UNACCOMPANIED AND SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN

OBJECTIVES OF THE GENERAL COMMENT

1. The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (the “Convention”), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.
2. The issuing of this general comment is motivated by the Committee’s observation of an increasing number of children in such situations. There are varied and numerous reasons for a child being unaccompanied or separated, including: persecution of the child or the parents; international conflict and civil war; trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities.
3. The issuing of the general comment is further motivated by the Committee’s identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of, inter alia, sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender-based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.
4. Concerns such as these have led the Committee to frequently raise issues related to unaccompanied and separated children in its concluding observations. This general comment will compile and consoli-

date standards developed, inter alia, through the Committee's monitoring efforts and shall thereby provide clear guidance to States on the obligations deriving from the Convention with regard to this particular vulnerable group of children. In applying these standards, States parties must be cognizant of their evolutionary character and therefore recognize that their obligations may develop beyond the standards articulated herein. These standards shall in no way impair further-reaching rights and benefits offered to unaccompanied and separated children under regional human rights instruments or national systems, international and regional refugee law or international humanitarian law.

STRUCTURE AND SCOPE OF THE GENERAL COMMENT

5. This general comment applies to unaccompanied and separated children who find themselves outside their country of nationality (consistent with article 7) or, if stateless, outside their country of habitual residence. The general comment applies to all such children irrespective of their residence status and reasons for being abroad, and whether they are unaccompanied or separated. However, it does not apply to children who have not crossed an international border, even though the Committee acknowledges the many similar challenges related to internally displaced unaccompanied and separated children, recognizes that much of the guidance offered below is also valuable in relation to such children, and strongly encourages States to adopt relevant aspects of this general comment in relation to the protection, care and treatment of unaccompanied and separated children who are displaced within their own country.
6. While the mandate of the Committee is confined to its supervisory function in relation to the Convention, its interpretation efforts must be conducted in the context of the entirety of applicable international human rights norms and, therefore, the general comment adopts a holistic approach to the question of the proper treatment of unaccompanied and separated children. This acknowledges that all human rights, including those contained in the Convention, are indivisible and interdependent. The importance of other international human rights instruments to the protection of the child is also recognized in the preamble to the Convention.

DEFINITIONS

7. "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.
8. "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
9. A "child as defined in article 1 of the Convention," means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier." This means that any instruments governing children in the territory of the State cannot define a child in any way that deviates from the norms determining the age of majority in that State.
10. If not otherwise specified, the guidelines below apply equally to both unaccompanied and separated children.
11. "Country of origin" is the country of nationality or, in the case of a stateless child, the country of habitual residence.

APPLICABLE PRINCIPLES

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

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

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

14. As reaffirmed in its general comment No. 5 (2003) (paras. 18-23), States parties to the Convention have to ensure that the provisions and principles of the treaty are fully reflected and given legal effect in relevant domestic legislation. In case of any conflict in legislation, predominance should always be given to the Convention, in light of article 27 of the Vienna Convention on the Law of Treaties.
15. In order to ensure a conducive legal environment and in light of article 41 (b) of the Convention, States parties are also encouraged to ratify other international instruments that address issues relating to unaccompanied and separated children, including the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees ("the 1951 Refugee Convention") and the Protocol relating to the Status of Refugees, the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons, the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the four Geneva Conventions of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1997. The Committee also encourages States parties to the Convention and others concerned to take into account the Office of the United Nations High Commissioner for Refugees (UNHCR)'s Guidelines on Protection and Care (1994) and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children.¹
16. In view of the absolute nature of obligations deriving from the Convention and their *lex specialis* character, article 2, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights would not apply with regard to unaccompanied and separated children. In application of article 4 of the Convention, the particular vulnerability of unaccompanied and separated children, explicitly recognized in article 20 of the Convention, must be taken into account and will result in making the assignment of available resources to such children a priority. States are expected to accept and facilitate assistance offered within their respective mandates by the United Nations Children's Fund (UNICEF), UNHCR and other agencies (article 22 (2) of the Convention) in order to meet the needs of unaccompanied and separated children.
17. The Committee believes that reservations made by States parties to the Convention should not in any way limit the rights of unaccompanied and separated children. As is systematically done with States parties during the reporting process, the Committee recommends that, in the light of the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights in Vienna,² reservations limiting the rights of unaccompanied and separated children be reviewed with the objective of withdrawal.

(b) Non-discrimination (art. 2)

18. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to

public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

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

19. Article 3 (1) states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.
20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.
21. Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.
22. Respect for best interests also requires that, where competent authorities have placed an unaccompanied or separated child “for the purposes of care, protection or treatment of his or her physical or mental health”, the State recognizes the right of that child to a “periodic review” of their treatment and “all other circumstances relevant to his or her placement” (article 25 of the Convention).

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

23. The obligation of the State party under article 6 includes protection from violence and exploitation, to the maximum extent possible, which would jeopardize a child’s right to life, survival and development. Separated and unaccompanied children are vulnerable to various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Accordingly, article 6 necessitates vigilance by States parties in this regard, particularly when organized crime may be involved. While the issue of trafficking of children is beyond the scope of this general comment, the Committee notes that there is often a link between trafficking and the situation of separated and unaccompanied children.
24. The Committee is of the view that practical measures should be taken at all levels to protect children from the risks mentioned above. Such measures could include: priority procedures for child victims of trafficking, the prompt appointment of guardians, the provision of information to children about the risks they may encounter, and establishment of measures to provide follow-up to children particularly at risk. These measures should be regularly evaluated to ensure their effectiveness.

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

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

ing of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.

(f) Respect for the principle of non-refoulement

26. In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of CAT.
27. Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.
28. As underage recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.

(g) Confidentiality

29. States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (art. 16). This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.
30. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the "best interests" of the child.

RESPONSE TO GENERAL AND SPECIFIC PROTECTION NEEDS

(a) Initial assessment and measures

31. The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process, in particular, entails the following:
 - (i) Prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities (art. 8). Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such;
 - (ii) Prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner, in a language the child understands, by professionally qualified persons to collect biodata and social history to ascertain the identity of the child, including, wherever possible, identity of both parents, other siblings, as well as the citizenship of the child, the siblings and the parents;

(iii) In continuation of the registration process, the recording of further information in order to meet the specific needs of the child. This information should include:

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

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

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

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

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

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

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

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

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

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

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

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

39. Unaccompanied or separated children are children temporarily or permanently deprived of their family environment and, as such, are beneficiaries of States' obligations under article 20 of the Convention and shall be entitled to special protection and assistance provided by the relevant State.
40. Mechanisms established under national law in order to ensure alternative care for such children in accordance with article 22 of the Convention, shall also cover unaccompanied or separated children outside their country of origin. A wide range of options for care and accommodation arrangements exist and are explicitly acknowledged in article 20 (3) as follows: "... inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children". When selecting from these options, the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account. In particular, due regard ought to be taken of the desirability of continuity in a child's upbringing and to the ethnic, religious, cultural and linguistic background as assessed in the identification, registration and documentation process. Such care and accommodation arrangements should comply with the following parameters:
- Children should not, as a general rule, be deprived of liberty;
 - In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child;
 - In accordance with the principle of family unity, siblings should be kept together;
 - A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel;
 - Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities;
 - States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households;
 - In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. This interim care provides for their security and physical and emotional care in a setting that encourages their general development;
 - Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.

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

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.
42. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return.
43. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to meet the educational needs of unaccompanied and separated children.

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

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27 (2) of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
45. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22 (2)) in order to secure an adequate standard of living for unaccompanied and separated children.

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

46. When implementing the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health under article 24 of the Convention, States are obligated to ensure that unaccompanied and separated children have the same access to health care as children who are ... nationals
47. In ensuring their access, States must assess and address the particular plight and vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. Moreover, girls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.
48. The obligation under article 39 of the Convention sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. In order to facilitate such recovery and reintegration, culturally appropriate and gender-sensitive mental health care should be developed and qualified psychosocial counselling provided.
49. States shall, in particular where government capacity is limited, accept and facilitate assistance offered by UNICEF, the World Health Organization (WHO), United Nations Joint Programme on HIV/AIDS (UNAIDS), UNHCR and other agencies (art. 22 (2)) within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations in order to meet the health and health-care needs of unaccompanied and separated children.

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

50. Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.
51. Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence.
52. Trafficking of such a child, or "re-trafficking" in cases where a child was already a victim of trafficking, is one of many dangers faced by unaccompanied or separated children. Trafficking in children is a threat to the fulfilment of their right to life, survival and development (art. 6). In accordance with article 35 of the Convention, States parties should take appropriate measures to prevent such trafficking. Necessary measures include identifying unaccompanied and separated children; regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement be established with respect to labour regulations and border crossing.

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

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

Prevention of recruitment

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

Care arrangements

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

Former child soldiers

56. Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

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

Non-refoulement

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

Child-specific forms and manifestations of persecution³

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

Rehabilitation and recovery

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

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

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.
62. In addition to national requirements, international obligations constitute part of the law governing detention. With regard to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from article 31 (1) of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by an unaccompanied or separated child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.
63. In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37 (a) and (c) of the Convention and other international obligations. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be "care" and not "detention". Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the Convention. In order to effectively secure the rights provided by article 37 (d) of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

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

(a) General

64. The obligation stemming from article 22 of the Convention to take "appropriate measures" to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status receives appropriate protection entails, inter alia, the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the Convention and in other international human rights, refugee protection or humanitarian instruments to which the State is a party. States facing resource constraints in staging such capacity-building efforts are strongly encouraged to seek international assistance, including that provided by UNHCR.
65. Taking into account the complementary nature of the obligations under article 22 and those deriving from international refugee law, as well as the desirability of consolidated standards, States should apply international standards relating to refugees as they progressively evolve when implementing article 22 of the Convention.

(b) Access to asylum procedures, regardless of age

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

international protection, such a child should be referred to the asylum procedure and/or, where relevant, to mechanisms providing complementary protection under international and domestic law.

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

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

68. Appropriate measures required under article 22 (1) of the Convention must take into account the particular vulnerabilities of unaccompanied and separated children and the national legal framework and conditions. Such measures should be guided by the considerations set out below.
69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests (see section V (b), "Appointment of a guardian or adviser or legal representative"). The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.
70. Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.
71. Minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. Where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made. Wherever the child is unable to communicate directly with the qualified official in a common language, the assistance of a qualified interpreter should be sought. Moreover, the child should be given the "benefit of the doubt," should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision.
72. The interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the history, culture and background of the child. The assessment process should comprise a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. The guardian and the legal representative should be present during all interviews.
73. In cases of large-scale refugee movements where individual refugee status determination is not possible, States may grant refugee status to all members of a group. In such circumstances, all unaccompanied or separated children are entitled to be granted the same status as other members of the particular group.

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

74. When assessing refugee claims of unaccompanied or separated children, States shall take into account the development of, and formative relationship between, international human rights and refugee law, including positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention. In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures.
75. Staff involved in status-determination procedures of children, in particular those who are unaccompanied or separated, should receive training on adopting an application of international and national refugee law that is child, cultural, and gender-sensitive. To properly assess asylum claims of children, information on the situation of children, including those belonging to minorities or marginalized groups, should be included in government efforts to collect country-of-origin information.

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

76. Unaccompanied or separated children recognized as refugees and granted asylum do not only enjoy

rights under the 1951 Refugee Convention, but are also entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

(f) Children to benefit from complementary forms of protection

77. In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs. The application of such complementary forms of protection does not obviate States' obligations to address the particular protection needs of the unaccompanied and separated child. Therefore, children granted complementary forms of protection are entitled, to the fullest extent, to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.
78. In line with the generally applicable principles and, in particular, those relating to the responsibilities of States with regard to unaccompanied or separated children finding themselves in their territory, children who are neither granted refugee status nor benefiting from complementary forms of protection, will still enjoy protection under all norms of the Convention as long as they remain de facto within the States' territories and/or subject to its jurisdiction.

FAMILY REUNIFICATION, RETURN AND OTHER FORMS OF DURABLE SOLUTIONS

(a) General

79. The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification.
80. Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought.

(b) Family reunification

81. In order to pay full respect to the obligation of States under article 9 of the Convention to ensure that a child shall not be separated from his or her parents against their will, all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views (art. 12) (see also section IV (e), "Right of the child to express his or her views freely"). While the considerations explicitly listed in article 9, paragraph 1, sentence 2, namely, cases involving abuse or neglect of the child by the parents, may prohibit reunification at any location, other best-interests considerations can provide an obstacle to reunification at specific locations only.
82. Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations (including those deriving from article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and articles 6 and 7 of the International Covenant on Civil and Political Rights). Accordingly, the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation.

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

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

(c) Return to the country of origin

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

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

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

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

87. In all cases return measures must be conducted in a safe, child-appropriate and gender-sensitive manner.

88. Countries of origin are also reminded in this context of their obligations pursuant to article 10 of the Convention and, in particular, to respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country".

(d) Local integration

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

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

host country may need to pay special attention to the extra measures required to address the child's vulnerable status, including, for example, through extra language training.

(e) Intercountry adoption (art. 21)

91. States must have full respect for the preconditions provided under article 21 of the Convention as well as other relevant international instruments, including in particular the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and its 1994 Recommendation Concerning the Application to Refugee and other Internationally Displaced Children when considering the adoption of unaccompanied and separated children. States should, in particular, observe the following:
- Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means, inter alia, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption. The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn;
 - Unaccompanied or separated children must not be adopted in haste at the height of an emergency;
 - Any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary law;
 - The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption, where such consent is required. Such consent must have been given freely and not induced by payment or compensation of any kind;
 - Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture;
 - Adoption should not be considered:
 - Where there is reasonable hope of successful tracing and family reunification is in the child's best interests;
 - If it is contrary to the expressed wishes of the child or the parents;
 - Unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members has been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time;
 - Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future.

(f) Resettlement in a third country

92. Resettlement to a third country may offer a durable solution for an accompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly called for if such is the only means to effectively and sustainably protect a child against refoulement or against persecution or other serious human rights violations in the country of stay. Resettlement is also in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.
93. The best-interests assessment determination, prior to a decision to resettle, needs also to take into account other factors such as: the envisaged duration of legal or other obstacles to a child's return to his or her home country; the child's right to preserve his or her identity, including nationality and name (art. 8); the child's age, sex, emotional state, educational and family background; continuity/discontinuity of care in the host country; the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20); the right of the child to preserve his or her family relations (art. 8) and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country. Unaccompanied or separated children should never be resettled to a third country if this would undermine or seriously hamper future reunion with their family.
94. States are encouraged to provide resettlement opportunities in order to meet all the resettlement needs related to unaccompanied and separated children.

TRAINING, DATA AND STATISTICS

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

95. Particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.
96. Such training should be specifically tailored to the needs and rights of the groups concerned. Nevertheless, certain key elements should be included in all training programmes, including:
- Principles and provisions of the Convention;
 - Knowledge of the country of origin of separated and unaccompanied children;
 - Appropriate interview techniques;
 - Child development and psychology;
 - Cultural sensitivity and intercultural communication.
97. Initial training programmes should also be followed up regularly, including through on-the-job learning and professional networks.

(b) Data and statistics on separated and unaccompanied children

98. It is the experience of the Committee that data and statistics collected with regard to unaccompanied and separated children tends to be limited to the number of arrivals and/or number of requests for asylum. This data is insufficient for a detailed analysis of the implementation of the rights of such children. Furthermore, data and statistics are often collected by a variety of different ministries or agencies, which can impede further analysis and presents potential concerns with regard to confidentiality and a child's right to privacy.
99. Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.
100. Data collected within such a system should ideally include but not be limited to: basic biographical data on each child (including age, sex, country of origin and nationality, ethnic group); total number of unaccompanied and separated children attempting to enter the country and the number that have been refused entry; number of requests for asylum; number of legal representatives and guardians assigned to such children; legal and immigration status (i.e. asylum-seeker, refugee, temporary resident permit); living arrangements (i.e. in institutions, with families or living independently); enrolment in school or vocational training; family reunifications; and, numbers returned to their country of origin. In addition, States parties should consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as for instance, disappearances of unaccompanied and separated children and the impact of trafficking.

Notes

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

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

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

GENERAL COMMENT No. 7

IMPLEMENTING CHILD

RIGHTS IN EARLY

CHILDHOOD

(CRC/C/GC/2005)

INTRODUCTION

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

OBJECTIVES OF THE GENERAL COMMENT

2. The objectives of the general comment are:
 - (a) To strengthen understanding of the human rights of all young children and to draw States parties' attention to their obligations towards young children;
 - (b) To comment on the specific features of early childhood that impact on the realization of rights;
 - (c) To encourage recognition of young children as social actors from the beginning of life, with particular interests, capacities and vulnerabilities, and of requirements for protection, guidance and support in the exercise of their rights;
 - (d) To draw attention to diversities within early childhood that need to be taken into account when implementing the Convention, including diversities in young children's circumstances, in the quality of their experiences and in the influences shaping their development;
 - (e) To point to variations in cultural expectations and treatment of children, including local customs and practices that should be respected, except where they contravene the rights of the child;
 - (f) To emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being;
 - (g) To contribute to the realization of rights for all young children through formulation and promotion of comprehensive policies, laws, programmes, practices, professional training and research specifically focused on rights in early childhood.

HUMAN RIGHTS AND YOUNG CHILDREN

- 3. Young children are rights holders.** The Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (art. 1). Consequently, young children are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights.
- 4. Definition of early childhood.** Definitions of early childhood vary in different countries and regions, according to local traditions and the organization of primary school systems. In some countries, the transition from preschool to school occurs soon after 4 years old. In other countries, this transition takes place at around 7 years old. In its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school. Accordingly, the Committee proposes as an appropriate working definition of early childhood the period from birth to the age of 8 years; States parties should review their obligations towards young children in the context of this definition.
- 5. A positive agenda for early childhood.** The Committee encourages States parties to construct a positive agenda for rights in early childhood. A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. For the exercise of their rights, young children have particular requirements for physical nurturance, emotional care and sensitive guidance, as well as for time and space for social play, exploration and learning. These requirements can best be planned for within a framework of laws, policies and programmes for early childhood, including a plan for implementation and independent monitoring, for example through the appointment of a children’s rights commissioner, and through assessments of the impact of laws and policies on children (see general comment No. 2 (2002) on the role of independent human rights institutions, para. 19).
- 6. Features of early childhood.** Early childhood is a critical period for realizing children’s rights. During this period:

 - (a) Young children experience the most rapid period of growth and change during the human lifespan, in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities, and rapid shifts in their interests and abilities;
 - (b) Young children form strong emotional attachments to their parents or other caregivers, from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing capacities;
 - (c) Young children establish their own important relationships with children of the same age, as well as with younger and older children. Through these relationships they learn to negotiate and coordinate shared activities, resolve conflicts, keep agreements and accept responsibility for others;
 - (d) Young children actively make sense of the physical, social and cultural dimensions of the world they inhabit, learning progressively from their activities and their interactions with others, children as well as adults;
 - (e) Young children’s earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity, and developing competencies;
 - (f) Young children’s experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems;
 - (g) Young children’s experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community.
- 7. Respecting the distinctive interests, experiences and challenges facing every young child is the starting point for realizing their rights during this crucial phase of their lives.**
- 8. Research into early childhood.** The Committee notes the growing body of theory and research which confirms that young children are best understood as social actors whose survival, well-being and development are dependent on and built around close relationships. These relationships are normally with a small number of key people, most often parents, members of the extended family and peers, as well as

caregivers and other early childhood professionals. At the same time, research into the social and cultural dimensions of early childhood draws attention to the diverse ways in which early development is understood and enacted, including varying expectations of the young child and arrangements for his or her care and education. A feature of modern societies is that increasing numbers of young children are growing up in multicultural communities and in contexts marked by rapid social change, where beliefs and expectations about young children are also changing, including through greater recognition of their rights. States parties are encouraged to draw on beliefs and knowledge about early childhood in ways that are appropriate to local circumstances and changing practices, and respect traditional values, provided these are not discriminatory, (article 2 of the Convention) nor prejudicial to children's health and well-being (art. 24.3), nor against their best interests (art. 3). Finally, research has highlighted the particular risks to young children from malnutrition, disease, poverty, neglect, social exclusion and a range of other adversities. It shows that proper prevention and intervention strategies during early childhood have the potential to impact positively on young children's current well-being and future prospects. Implementing child rights in early childhood is thus an effective way to help prevent personal, social and educational difficulties during middle childhood and adolescence (see general comment No. 4 (2003) on adolescent health and development).

GENERAL PRINCIPLES AND RIGHTS IN EARLY CHILDHOOD

9. The Committee has identified articles 2, 3, 6 and 12 of the Convention as general principles (see general comment No. 5 (2003) on the general measures of implementation of the Convention). Each principle has implications for rights in early childhood.
10. **Right to life, survival and development.** Article 6 refers to the child's inherent right to life and States parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. States parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. Malnutrition and preventable diseases continue to be major obstacles to realizing rights in early childhood. Ensuring survival and physical health are priorities, but States parties are reminded that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention (see section VI below). The Committee reminds States parties (and others concerned) that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18). From an early age, children should themselves be included in activities promoting good nutrition and a healthy and disease-preventing lifestyle.
11. **Right to non-discrimination.** Article 2 ensures rights to every child, without discrimination of any kind. The Committee urges States parties to identify the implications of this principle for realizing rights in early childhood:
 - (a) Article 2 means that young children in general must not be discriminated against on any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. Young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights;
 - (b) Article 2 also means that particular groups of young children must not be discriminated against. Discrimination may take the form of reduced levels of nutrition; inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive. For example:
 - (i) Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of selective abortion, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy. They may be expected to undertake excessive family responsibilities and deprived of opportunities to participate in early childhood and primary education;
 - (ii) Discrimination against children with disabilities reduces survival prospects and quality of life. These children are entitled to the care, nutrition, nurturance and encouragement offered other children. They may also require additional, special assistance in order to ensure their integration and the realization of their rights;

- (iii) Discrimination against children infected with or affected by HIV/AIDS deprives them of the help and support they most require. Discrimination may be found within public policies, in the provision of and access to services, as well as in everyday practices that violate these children's rights (see also paragraph 27);
 - (iv) Discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society. It affects parents' capacities to fulfil their responsibilities towards their children. It affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults;
 - (v) Young children who suffer multiple discrimination (e.g. related to ethnic origin, social and cultural status, gender and/or disabilities) are especially at risk.
- 12.** Young children may also suffer the consequences of discrimination against their parents, for example if children have been born out of wedlock or in other circumstances that deviate from traditional values, or if their parents are refugees or asylum-seekers. States parties have a responsibility to monitor and combat discrimination in whatever forms it takes and wherever it occurs - within families, communities, schools or other institutions. Potential discrimination in access to quality services for young children is a particular concern, especially where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations. As a first step, the Committee encourages States parties to monitor the availability of and access to quality services that contribute to young children's survival and development, including through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances. As a second step, actions may be required that guarantee that all children have an equal opportunity to benefit from available services. More generally, States parties should raise awareness about discrimination against young children in general, and against vulnerable groups in particular.
- 13.** Best interests of the child. Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:
- (a) *Best interests of individual children.* All decision-making concerning a child's care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences;
 - (b) *Best interests of young children as a group or constituency.* All law and policy development, administrative and judicial decision-making and service provision that affect children must take account of the best interests principle. This includes actions directly affecting children (e.g. related to health services, care systems, or schools), as well as actions that indirectly impact on young children (e.g. related to the environment, housing or transport).
- 14. Respect for the views and feelings of the young child.** Article 12 states that the child has a right to express his or her views freely in all matters affecting the child, and to have them taken into account. This right reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12.1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language. In this regard:

- (a) The Committee encourages States parties to take all appropriate measures to ensure that the concept of the child as rights holder with freedom to express views and the right to be consulted in matters that affect him or her is implemented from the earliest stage in ways appropriate to the child's capacities, best interests, and rights to protection from harmful experiences;
- (b) The right to express views and feelings should be anchored in the child's daily life at home (including, when applicable, the extended family) and in his or her community; within the full range of early childhood health, care and education facilities, as well as in legal proceedings; and in the development of policies and services, including through research and consultations;
- (c) States parties should take all appropriate measures to promote the active involvement of parents, professionals and responsible authorities in the creation of opportunities for young children to progressively exercise their rights within their everyday activities in all relevant settings, including by providing training in the necessary skills. To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child's interests, levels of understanding and preferred ways of communicating.

PARENTAL RESPONSIBILITIES AND ASSISTANCE FROM STATES PARTIES

- 15. A crucial role for parents and other primary caregivers.** Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on States parties to provide assistance, including quality childcare services (especially article 18). The preamble to the Convention refers to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.
- 16. Parents/primary caregivers and children's best interests.** The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in "the exercise by the child of the rights in the ... Convention". This applies equally to younger as to older children. Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights.
- 17. Evolving capacities as an enabling principle.** Article 5 draws on the concept of "evolving capacities" to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children's evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer "direction and guidance" in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).¹
- 18. Respecting parental roles.** Article 18 of the Convention reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best

interests as their basic concern (arts. 18.1 and 27.2). States parties should respect the primacy of parents, mothers and fathers. This includes the obligation not to separate children from their parents, unless it is in the child's best interests (art. 9). Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers. They are also less able to comprehend the circumstances of any separation. Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent, involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations), or where they are provided with low-quality institutional care. The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where young children's well-being may be at risk. States parties' overall goals should include reducing the number of young children abandoned or orphaned, as well as minimizing the numbers requiring institutional or other forms of long-term care, except where this is judged to be in a young child's best interests (see also section VI below).

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

20. Assistance to parents. States parties are required to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities (arts. 18.2 and 18.3), including assisting parents in providing living conditions necessary for the child's development (art. 27.2) and ensuring that children receive necessary protection and care (art. 3.2). The Committee is concerned that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young, single parents. Early childhood is the period of most extensive (and intensive) parental responsibilities related to all aspects of children's well-being covered by the Convention: their survival, health, physical safety and emotional security, standards of living and care, opportunities for play and learning, and freedom of expression. Accordingly, realizing children's rights is in large measure dependent on the well-being and resources available to those with responsibility for their care. Recognizing these interdependencies is a sound starting point for planning assistance and services to parents, legal guardians and other caregivers. For example:

- (a) An integrated approach would include interventions that impact indirectly on parents' ability to promote the best interests of children (e.g. taxation and benefits, adequate housing, working hours) as well as those that have more immediate consequences (e.g. perinatal health services for mother and baby, parent education, home visitors);
- (b) Providing adequate assistance should take account of the new roles and skills required of parents, as well as the ways that demands and pressures shift during early childhood - for example, as children become more mobile, more verbally communicative, more socially competent, and as they begin to participate in programmes of care and education;

- (c) Assistance to parents will include provision of parenting education, parent counselling and other quality services for mothers, fathers, siblings, grandparents and others who from time to time may be responsible for promoting the child's best interests;
- (d) Assistance also includes offering support to parents and other family members in ways that encourage positive and sensitive relationships with young children and enhance understanding of children's rights and best interests.

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

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

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

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

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

25. Birth registration. Comprehensive services for early childhood begin at birth. The Committee notes that provision for registration of all children at birth is still a major challenge for many countries and regions.

This can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare. As a first step in ensuring the rights to survival, development and access to quality services for all children (art. 6), the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate. The Committee notes that children who are sick or disabled are less likely to be registered in some regions and emphasizes that all children should be registered at birth, without discrimination of any kind (art. 2). The Committee also reminds States parties of the importance of facilitating late registration of birth, and ensuring that children who have not been registered have equal access to health care, protection, education and other social services.

26. Standard of living and social security. Young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development (art. 27). The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation. Growing up in relative poverty undermines children's well-being, social inclusion and self-esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life. States parties are urged to implement systematic strategies to reduce poverty in early childhood as well as combat its negative effects on children's well-being. All possible means should be employed, including "material assistance and support programmes" for children and families (art. 27.3), in order to assure to young children a basic standard of living consistent with rights. Implementing children's right to benefit from social security, including social insurance, is an important element of any strategy (art. 26).

27. Health-care provision. States parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:

- (a) States parties have a responsibility to ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment. Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential. The same applies to obesity and unhealthy lifestyles;
- (b) States parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation.² Priority should also be given to the provision of appropriate prenatal and post-natal health care for mothers and infants in order to foster healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver) (art. 24.2). Young children are themselves able to contribute to ensuring their personal health and encouraging healthy lifestyles among their peers, for example through participation in appropriate, child-centred health education programmes;
- (c) The Committee wishes to draw States parties' attention to the particular challenges of HIV/AIDS for early childhood. All necessary steps should be taken to: (i) prevent infection of parents and young children, especially by intervening in chains of transmission, especially between father and mother and from mother to baby; (ii) provide accurate diagnoses, effective treatment and other forms of support for both parents and young children who are infected by the virus (including antiretroviral therapies); and (iii) ensure adequate alternative care for children who have lost parents or other primary caregivers due to HIV/AIDS, including healthy and infected orphans. (See also general comment No. 3 (2003) on HIV/AIDS and the rights of the child.)

28. Early childhood education. The Convention recognizes the right of the child to education, and primary education should be made compulsory and available free to all (art. 28). The Committee recognizes with appreciation that some States parties are planning to make one year of preschool education available and free of cost for all children. The Committee interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development (art. 6.2). Linking education to development is elaborated in article 29.1: "States parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential". General comment No. 1 on the aims of education explains that the goal is to "empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence" and that this must be achieved in ways that are child-centred, child-friendly and reflect the rights and inherent dignity of the child (para. 2). States parties are reminded that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (art. 2).

- 29. Parental and public responsibilities for early childhood education.** The principle that parents (and other primary caregivers) are children's first educators is well established and endorsed within the Convention's emphasis on respect for the responsibilities of parents (sect. IV above). They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding (art. 5). The Committee invites States parties to make this principle a starting point for planning early education, in two respects:
- (a) In providing appropriate assistance to parents in the performance of their child-rearing responsibilities (art. 18.2), States parties should take all appropriate measures to enhance parents' understanding of their role in their children's early education, encourage child-rearing practices which are child-centred, encourage respect for the child's dignity and provide opportunities for developing understanding, self-esteem and self-confidence;
 - (b) In planning for early childhood, States parties should at all times aim to provide programmes that complement the parents' role and are developed as far as possible in partnership with parents, including through active cooperation between parents, professionals and others in developing "the child's personality, talents and mental and physical abilities to their fullest potential" (art. 29.1 (a)).
- 30.** The Committee calls on States parties to ensure that all young children receive education in the broadest sense (as outlined in paragraph 28 above), which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions. Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between "care" and "education" services have not always been in children's best interests, the concept of "Educare" is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood.
- 31. Community-based programmes.** The Committee recommends that States parties support early childhood development programmes, including home- and community-based preschool programmes, in which the empowerment and education of parents (and other caregivers) are main features. States parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school. They are encouraged to construct high-quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather than by imposing a standardized approach to early childhood care and education. The Committee also recommends that States parties pay greater attention to, and actively support, a rights-based approach to early childhood programmes, including initiatives surrounding transition to primary school that ensure continuity and progression, in order to build children's confidence, communication skills and enthusiasm for learning through their active involvement in, among others, planning activities.
- 32. The private sector as service provider.** With reference to its recommendations adopted during its 2002 day of general discussion on "The private sector as service provider and its role in implementing child rights" (see CRC/C/121, paras. 630-653), the Committee recommends that States parties support the activities of the non-governmental sector as a channel for programme implementation. It further calls on all non-State service providers ("for profit" as well as "non-profit" providers) to respect the principles and provisions of the Convention and, in this regard, reminds States parties of their primary obligation to ensure its implementation. Early childhood professionals - in both the State and non-State sectors - should be provided with thorough preparation, ongoing training and adequate remuneration. In this context, States parties are responsible for service provision for early childhood development. The role of civil society should be complementary to - not a substitute for - the role of the State. Where non-State services play a major role, the Committee reminds States parties that they have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served.
- 33. Human rights education in early childhood.** In light of article 29 and the Committee's general comment No. 1 (2001), the Committee also recommends that States parties include human rights education within early childhood education. Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare centres, in early education programmes and other community settings with which young children can identify.

34. Right to rest, leisure and play. The Committee notes that insufficient attention has been given by States parties and others to the implementation of the provisions of article 31 of the Convention, which guarantees “the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”. Play is one of the most distinctive features of early childhood. Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is often hindered by a shortage of opportunities for young children to meet, play and interact in child-centred, secure, supportive, stimulating and stress-free environments. Children’s right-to-play space is especially at risk in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. Children’s right to play can also be frustrated by excessive domestic chores (especially affecting girls) or by competitive schooling. Accordingly, the Committee appeals to States parties, non-governmental organizations and private actors to identify and remove potential obstacles to the enjoyment of these rights by the youngest children, including as part of poverty reduction strategies. Planning for towns, and leisure and play facilities should take account of children’s right to express their views (art. 12), through appropriate consultations. In all these respects, States parties are encouraged to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play.

35. Modern communications technologies and early childhood. Article 17 recognizes the potential for both traditional print-based media and modern information technology-based mass media to contribute positively to the realization of children’s rights. Early childhood is a specialist market for publishers and media producers, who should be encouraged to disseminate material that is appropriate to the capacities and interests of young children, socially and educationally beneficial to their well-being, and which reflects the national and regional diversities of children’s circumstances, culture and language. Particular attention should be given to the need of minority groups for access to media that promote their recognition and social inclusion. Article 17 (e) also refers to the role of States parties in ensuring that children are protected from inappropriate and potentially harmful material. Rapid increases in the variety and accessibility of modern technologies, including Internet-based media, are a particular cause for concern. Young children are especially at risk if they are exposed to inappropriate or offensive material. States parties are urged to regulate media production and delivery in ways that protect young children, as well as support parents/caregivers to fulfil their child-rearing responsibilities in this regard (art. 18).

YOUNG CHILDREN IN NEED OF SPECIAL PROTECTION

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

- (a) *Abuse and neglect (art. 19).* Young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered;

- (b) *Children without families (art. 20 and 21)*. Children's rights to development are at serious risk when they are orphaned, abandoned or deprived of family care or when they suffer long-term disruptions to relationships or separations (e.g. due to natural disasters or other emergencies, epidemics such as HIV/AIDS, parental imprisonment, armed conflicts, wars and forced migration). These adversities will impact on children differently depending on their personal resilience, their age and their circumstances, as well as the availability of wider sources of support and alternative care. Research suggests that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family-based or family-like care is more likely to produce positive outcomes for young children. States parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families. Where adoption is envisaged "the best interests of the child shall be the paramount consideration" (art. 21), not just "a primary consideration" (art. 3), systematically bear in mind and respecting all relevant rights of the child and obligations of States parties set out elsewhere in the Convention and recalled in the present general comment;
- (c) *Refugees (art. 22)*. Young children who are refugees are most likely to be disoriented, having lost much that is familiar in their everyday surroundings and relationships. They and their parents are entitled to equal access to health care, education and other services. Children who are unaccompanied or separated from their families are especially at risk. The Committee offers detailed guidance on the care and protection of these children in general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;
- (d) *Children with disabilities (art. 23)*. Early childhood is the period during which disabilities are usually identified and the impact on children's well-being and development recognized. Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance. (See also the recommendations from the Committee's 1997 day of general discussion on "The rights of children with disabilities" contained in document CRC/C/66.);
- (e) *Harmful work (art. 32)*. In some countries and regions, children are socialized to work from an early age, including in activities that are potentially hazardous, exploitative and damaging to their health, education and long-term prospects. For example, young children may be initiated into domestic work or agricultural labour, or assist parents or siblings engaged in hazardous activities. Even very young babies may be vulnerable to economic exploitation, as when they are used or hired out for begging. Exploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern. States parties have particular responsibilities in relation to extreme forms of hazardous child labour identified in the Worst Forms of Child Labour Convention, 1999 (No. 182) of the ILO;
- (f) *Substance abuse (art. 33)*. While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of care, as well as being at risk of early initiation into substance abuse;
- (g) *Sexual abuse and exploitation (art. 34)*. Young children, especially girls, are vulnerable to early sexual abuse and exploitation within and outside families. Young children in difficult circumstances are at particular risk, for example girl children employed as domestic workers. Young children may also be victims of producers of pornography; this is covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2002;
- (h) *Sale, trafficking and abduction of children (art. 35)*. The Committee has frequently expressed concern about evidence of the sale and trafficking of abandoned and separated children for various purposes. As far as the youngest age groups are concerned, these purposes can include adoption, particularly (though not solely) by foreigners. In addition to the Optional Protocol on the sale of children, child prostitution and child pornography, the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption provides a framework and mechanism for preventing abuses in this sphere, and the Committee has therefore always consistently and strongly urged all States parties that recognize and/or permit adoption to ratify or accede to this treaty. Universal birth registration, in addition to international cooperation, can help to combat this violation of rights;

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

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

CAPACITY-BUILDING FOR EARLY CHILDHOOD

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

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

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

41. **Training for rights in early childhood.** Knowledge and expertise about early childhood are not static but change over time. This is due variously to social trends impacting on the lives of young children, their parents and other caregivers, changing policies and priorities for their care and education, innovations in childcare, curricula and pedagogy, as well as the emergence of new research. Implementing child rights in early childhood sets challenges for all those responsible for children, as well as for children themselves as they gain an understanding of their role in their families, schools and communities. States

parties are encouraged to undertake systematic child rights training for children and their parents, as well as for all professionals working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law enforcement officials, civil servants, personnel in institutions and places of detention for children, teachers, health personnel, social workers and local leaders. Furthermore, the Committee urges States parties to conduct awareness-raising campaigns for the public at large.

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

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

Notes

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

2 See *Global Strategy for Infant and Young Child Feeding*, World Health Organization, 2003.

GENERAL COMMENT No. 8

THE RIGHT OF THE CHILD TO PROTECTION FROM CORPORAL PUNISHMENT AND OTHER CRUEL OR DEGRADING FORMS OF PUNISHMENT

(ARTICLES 19, 28(2) AND 37, *INTER ALIA*) CRC/C/GC/8

I. OBJECTIVES

1. Following its two days of general discussion on violence against children, held in 2000 and 2001, the Committee on the Rights of the Child resolved to issue a series of general comments concerning eliminating violence against children, of which this is the first. The Committee aims to guide States parties in understanding the provisions of the Convention concerning the protection of children against all forms of violence. This general comment focuses on corporal punishment and other cruel or degrading forms of punishment, which are currently very widely accepted and practised forms of violence against children.
2. The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law. The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.
3. Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies.

II. BACKGROUND

4. The Committee has, from its earliest sessions, paid special attention to asserting children's right to protection from all forms of violence. In its examination of States parties' reports, and most recently in the context of the United Nations Secretary-General's study on violence against children, it has noted with great concern the widespread legality and persisting social approval of corporal punishment and other cruel or degrading punishment of children.¹ Already in 1993, the Committee noted in the report of its fourth session that it "recognized the importance of the question of corporal punishment in improving the system of promotion and protection of the rights of the child and decided to continue to devote attention to it in the process of examining States parties' reports".²
5. Since it began examining States parties' reports the Committee has recommended prohibition of all

corporal punishment, in the family and other settings, to more than 130 States in all continents.³ The Committee is encouraged that a growing number of States are taking appropriate legislative and other measures to assert children's right to respect for their human dignity and physical integrity and to equal protection under the law. The Committee understands that by 2006, more than 100 States had prohibited corporal punishment in their schools and penal systems for children. A growing number have completed prohibition in the home and family and all forms of alternative care.⁴

6. In September 2000, the Committee held the first of two days of general discussion on violence against children. It focused on "State violence against children" and afterwards adopted detailed recommendations, including for the prohibition of all corporal punishment and the launching of public information campaigns "to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead 'zero-tolerance' of violence".⁵
7. In April 2001, the Committee adopted its first general comment on "The aims of education" and reiterated that corporal punishment is incompatible with the Convention: "... Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12, paragraph 1, and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28, paragraph 2, and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline ...".⁶
8. In recommendations adopted following the second day of general discussion, on "Violence against children within the family and in schools", held in September 2001, the Committee called upon States to "enact or repeal, as a matter of urgency, their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention ...".⁷
9. Another outcome of the Committee's 2000 and 2001 days of general discussion was a recommendation that the United Nations Secretary-General should be requested, through the General Assembly, to carry out an in-depth international study on violence against children. The United Nations General Assembly took this forward in 2001.⁸ Within the context of the United Nations study, carried out between 2003 and 2006, the need to prohibit all currently legalized violence against children has been highlighted, as has children's own deep concern at the almost universal high prevalence of corporal punishment in the family and also its persisting legality in many States in schools and other institutions, and in penal systems for children in conflict with the law.

III. DEFINITIONS

10. "Child" is defined as in the Convention as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".⁹
11. The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.
12. Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the community.
13. In rejecting any justification of violence and humiliation as forms of punishment for children, the Committee is not in any sense rejecting the positive concept of discipline. The healthy development of children depends on parents and other adults for necessary guidance and direction, in line with children's evolving capacities, to assist their growth towards responsible life in society.
14. The Committee recognizes that parenting and caring for children, especially babies and young children,

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

15. The Committee recognizes that there are exceptional circumstances in which teachers and others, e.g. those working with children in institutions and with children in conflict with the law, may be confronted by dangerous behaviour which justifies the use of reasonable restraint to control it. Here too there is a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimize the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control.

IV. HUMAN RIGHTS STANDARDS AND CORPORAL PUNISHMENT OF CHILDREN

16. Before the adoption of the Convention on the Rights of the Child, the International Bill of Human Rights - the Universal Declaration and the two International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights - upheld "everyone's" right to respect for his/her human dignity and physical integrity and to equal protection under the law. In asserting States' obligation to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment, the Committee notes that the Convention on the Rights of the Child builds on this foundation. The dignity of each and every individual is the fundamental guiding principle of international human rights law.
17. The preamble to the Convention on the Rights of the Child affirms, in accordance with the principles in the Charter of the United Nations, repeated in the preamble to the Universal Declaration, that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". The preamble to the Convention also recalls that, in the Universal Declaration, the United Nations "has proclaimed that childhood is entitled to special care and assistance".
18. Article 37 of the Convention requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by article 19, which requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". There is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.
19. In addition, article 28, paragraph 2, of the Convention refers to school discipline and requires States parties to "take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention".
20. Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The travaux préparatoires for the Convention do not record any discussion of corporal punishment during the drafting sessions. But the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. In the 17 years since the Convention was adopted, the prevalence of corporal punishment of children in their homes, schools and other institutions has become more visible, through the reporting process under the Convention and through research and advocacy by, among others, national human rights institutions and non-governmental organizations (NGOs).
21. Once visible, it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.
22. The Committee emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties. It notes that other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture have reflected the same view in their concluding observations on States parties' reports under the relevant instruments, recommending prohibi-

tion and other measures against corporal punishment in schools, penal systems and, in some cases, the family. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 13 (1999) on "The right to education" stated: "In the Committee's view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with school discipline, including public humiliation."¹⁰

23. Corporal punishment has also been condemned by regional human rights mechanisms. The European Court of Human Rights, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and most recently in the home.¹¹ The European Committee of Social Rights, monitoring compliance of member States of the Council of Europe with the European Social Charter and Revised Social Charter, has found that compliance with the Charters requires prohibition in legislation against any form of violence against children, whether at school, in other institutions, in their home or elsewhere.¹²
24. An Advisory Opinion of the Inter-American Court of Human Rights, on the Legal Status and Human Rights of the Child (2002) holds that the States parties to the American Convention on Human Rights "are under the obligation ... to adopt all positive measures required to ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities". The Court quotes provisions of the Convention on the Rights of the Child, conclusions of the Committee on the Rights of the Child and also judgements of the European Court of Human Rights relating to States' obligations to protect children from violence, including within the family. The Court concludes that "the State has the duty to adopt positive measures to fully ensure effective exercise of the rights of the child".¹³
25. The African Commission on Human and Peoples' Rights monitors implementation of the African Charter on Human and Peoples' Rights. In a 2003 decision on an individual communication concerning a sentence of "lashes" imposed on students, the Commission found that the punishment violated article 5 of the African Charter, which prohibits cruel, inhuman or degrading punishment. It requested the relevant Government to amend the law, abolishing the penalty of lashes, and to take appropriate measures to ensure compensation of the victims. In its decision, the Commission states: "There is no right for individuals, and particularly the Government of a country to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State-sponsored torture under the Charter and contrary to the very nature of this human rights treaty."¹⁴ The Committee on the Rights of the Child is pleased to note that constitutional and other high-level courts in many countries have issued decisions condemning corporal punishment of children in some or all settings, and in most cases quoting the Convention on the Rights of the Child.¹⁵
26. When the Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of "reasonable" or "moderate" corporal punishment can be justified as in the "best interests" of the child. The Committee has identified, as an important general principle, the Convention's requirement that the best interests of the child should be a primary consideration in all actions concerning children (art. 3, para. 4). The Convention also asserts, in article 18, that the best interests of the child will be parents' basic concern. But interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.
27. The preamble to the Convention upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Convention requires States to respect and support families. There is no conflict whatsoever with States' obligation to ensure that the human dignity and physical integrity of children within the family receive full protection alongside other family members.
28. Article 5 requires States to respect the responsibilities, rights and duties of parents "to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention". Here again, interpretation of "appropriate" direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or degrading forms of discipline.
29. Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (art. 18), but practice of a reli-

gion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practise one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others. In certain States, the Committee has found that children, in some cases from a very young age, in other cases from the time that they are judged to have reached puberty, may be sentenced to punishments of extreme violence, including stoning and amputation, prescribed under certain interpretations of religious law. Such punishments plainly violate the Convention and other international human rights standards, as has been highlighted also by the Human Rights Committee and the Committee against Torture, and must be prohibited.

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

1. Legislative measures

30. The wording of article 19 of the Convention builds upon article 4 and makes clear that legislative as well as other measures are required to fulfil States' obligations to protect children from all forms of violence. The Committee has welcomed the fact that, in many States, the Convention or its principles have been incorporated into domestic law. All States have criminal laws to protect citizens from assault. Many have constitutions and/or legislation reflecting international human rights standards and article 37 of the Convention on the Rights of the Child, which uphold "everyone's" right to protection from torture and cruel, inhuman or degrading treatment or punishment. Many also have specific child protection laws that make "ill-treatment" or "abuse" or "cruelty" an offence. But the Committee has learned from its examination of States' reports that such legislative provisions do not generally guarantee the child protection from all corporal punishment and other cruel or degrading forms of punishment, in the family and in other settings.
31. In its examination of reports, the Committee has noted that in many States there are explicit legal provisions in criminal and/or civil (family) codes that provide parents and other carers with a defence or justification for using some degree of violence in "disciplining" children. For example, the defence of "lawful", "reasonable" or "moderate" chastisement or correction has formed part of English common law for centuries, as has a "right of correction" in French law. At one time in many States the same defence was also available to justify the chastisement of wives by their husbands and of slaves, servants and apprentices by their masters. The Committee emphasizes that the Convention requires the removal of any provisions (in statute or common - case law) that allow some degree of violence against children (e.g. "reasonable" or "moderate" chastisement or correction), in their homes/families or in any other setting.
32. In some States, corporal punishment is specifically authorized in schools and other institutions, with regulations setting out how it is to be administered and by whom. And in a minority of States, corporal punishment using canes or whips is still authorized as a sentence of the courts for child offenders. As frequently reiterated by the Committee, the Convention requires the repeal of all such provisions.
33. In some States, the Committee has observed that while there is no explicit defence or justification of corporal punishment in the legislation, nevertheless traditional attitudes to children imply that corporal punishment is permitted. Sometimes these attitudes are reflected in court decisions (in which parents or teachers or other carers have been acquitted of assault or ill-treatment on the grounds that they were exercising a right or freedom to use moderate "correction").
34. In the light of the traditional acceptance of violent and humiliating forms of punishment of children, a growing number of States have recognized that simply repealing authorization of corporal punishment and any existing defences is not enough. In addition, explicit prohibition of corporal punishment and other cruel or degrading forms of punishment, in their civil or criminal legislation, is required in order to make it absolutely clear that it is as unlawful to hit or "smack" or "spank" a child as to do so to an adult, and that the criminal law on assault does apply equally to such violence, regardless of whether it is termed "discipline" or "reasonable correction".
35. Once the criminal law applies fully to assaults on children, the child is protected from corporal punishment wherever he or she is and whoever the perpetrator is. But in the view of the Committee, given the traditional acceptance of corporal punishment, it is essential that the applicable sectoral legislation - e.g. family law, education law, law relating to all forms of alternative care and justice systems, employment law - clearly prohibits its use in the relevant settings. In addition, it is valuable if professional codes of ethics and guidance for teachers, carers and others, and also the rules or charters of institutions, emphasize the illegality of corporal punishment and other cruel or degrading forms of punishment.

36. The Committee is also concerned at reports that corporal punishment and other cruel or degrading punishments are used in situations of child labour, including in the domestic context. The Committee reiterates that the Convention and other applicable human rights instruments protect the child from economic exploitation and from any work that is likely to be hazardous, interferes with the child's education, or is harmful to the child's development, and that they require certain safeguards to ensure the effective enforcement of this protection. The Committee emphasizes that it is essential that the prohibition of corporal punishment and other cruel or degrading forms of punishment must be enforced in any situations in which children are working.
37. Article 39 of the Convention requires States to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of "any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment...". Corporal punishment and other degrading forms of punishment may inflict serious damage to the physical, psychological and social development of children, requiring appropriate health and other care and treatment. This must take place in an environment that fosters the integral health, self-respect and dignity of the child, and be extended as appropriate to the child's family group. There should be an interdisciplinary approach to planning and providing care and treatment, with specialized training of the professionals involved. The child's views should be given due weight concerning all aspects of their treatment and in reviewing it.

2. Implementation of prohibition of corporal punishment and other cruel or degrading forms of punishment

38. The Committee believes that implementation of the prohibition of all corporal punishment requires awareness-raising, guidance and training (see paragraph 45 et seq. below) for all those involved. This must ensure that the law operates in the best interests of the affected children - in particular when parents or other close family members are the perpetrators. The first purpose of law reform to prohibit corporal punishment of children within the family is prevention: to prevent violence against children by changing attitudes and practice, underlining children's right to equal protection and providing an unambiguous foundation for child protection and for the promotion of positive, non-violent and participatory forms of child-rearing.
39. Achieving a clear and unconditional prohibition of all corporal punishment will require varying legal reforms in different States parties. It may require specific provisions in sectoral laws covering education, juvenile justice and all forms of alternative care. But it should be made explicitly clear that the criminal law provisions on assault also cover all corporal punishment, including in the family. This may require an additional provision in the criminal code of the State party. But it is also possible to include a provision in the civil code or family law, prohibiting the use of all forms of violence, including all corporal punishment. Such a provision emphasizes that parents or other caretakers can no longer use any traditional defence that it is their right ("reasonably" or "moderately") to use corporal punishment if they face prosecution under the criminal code. Family law should also positively emphasize that parental responsibility includes providing appropriate direction and guidance to children without any form of violence.
40. The principle of equal protection of children and adults from assault, including within the family, does not mean that all cases of corporal punishment of children by their parents that come to light should lead to prosecution of parents. The *de minimis* principle - that the law does not concern itself with trivial matters - ensures that minor assaults between adults only come to court in very exceptional circumstances; the same will be true of minor assaults on children. States need to develop effective reporting and referral mechanisms. While all reports of violence against children should be appropriately investigated and their protection from significant harm assured, the aim should be to stop parents from using violent or other cruel or degrading punishments through supportive and educational, not punitive, interventions.
41. Children's dependent status and the unique intimacy of family relations demand that decisions to prosecute parents, or to formally intervene in the family in other ways, should be taken with very great care. Prosecuting parents is in most cases unlikely to be in their children's best interests. It is the Committee's view that prosecution and other formal interventions (for example, to remove the child or remove the perpetrator) should only proceed when they are regarded both as necessary to protect the child from significant harm and as being in the best interests of the affected child. The affected child's views should be given due weight, according to his or her age and maturity.
42. Advice and training for all those involved in child protection systems, including the police, prosecuting authorities and the courts, should underline this approach to enforcement of the law. Guidance should also emphasize that article 9 of the Convention requires that any separation of the child from his or her

parents must be deemed necessary in the best interests of the child and be subject to judicial review, in accordance with applicable law and procedures, with all interested parties, including the child, represented. Where separation is deemed to be justified, alternatives to placement of the child outside the family should be considered, including removal of the perpetrator, suspended sentencing, and so on.

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

3. Educational and other measures

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

45. Given the widespread traditional acceptance of corporal punishment, prohibition on its own will not achieve the necessary change in attitudes and practice. Comprehensive awareness-raising of children's right to protection and of the laws that reflect this right is required. Under article 42 of the Convention, States undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

46. In addition, States must ensure that positive, non-violent relationships and education are consistently promoted to parents, carers, teachers and all others who work with children and families. The Committee emphasizes that the Convention requires the elimination not only of corporal punishment but of all other cruel or degrading punishment of children. It is not for the Convention to prescribe in detail how parents should relate to or guide their children. But the Convention does provide a framework of principles to guide relationships both within the family, and between teachers, carers and others and children. Children's developmental needs must be respected. Children learn from what adults do, not only from what adults say. When the adults to whom a child most closely relates use violence and humiliation in their relationship with the child, they are demonstrating disrespect for human rights and teaching a potent and dangerous lesson that these are legitimate ways to seek to resolve conflict or change behaviour.

47. The Convention asserts the status of the child as an individual person and holder of human rights. The child is not a possession of parents, nor of the State, nor simply an object of concern. In this spirit, article 5 requires parents (or, where applicable, members of the extended family or community) to provide the child with appropriate direction and guidance, in a manner consistent with his/her evolving capacities, in the exercise by the child of the rights recognized in the Convention. Article 18, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that "the best interests of the child will be their basic concern." Under article 12, States are required to assure children the right to express their views freely "in all matters affecting the child", with the views of the child being given due weight in accordance with age and maturity. This emphasizes the need for styles of parenting, caring and teaching that respect children's participation rights. In its general comment No. 1 on "The aims of education", the Committee has emphasized the importance of developing education that is "child-centred, child-friendly and empowering".¹⁶

48. The Committee notes that there are now many examples of materials and programmes promoting positive, non-violent forms of parenting and education, addressed to parents, other carers and teachers and developed by Governments, United Nations agencies, NGOs and others.¹⁷ These can be appropriately adapted for use in different States and situations. The media can play a very valuable role in awareness-raising and public education. Challenging traditional dependence on corporal punishment and other cruel or degrading forms of discipline requires sustained action. The promotion of non-violent forms of parenting and education should be built into all the points of contact between the State and parents and children, in health, welfare and educational services, including early childhood institutions, day-care centres and schools. It should also be integrated into the initial and in-service training of teachers and all those working with children in care and justice systems.

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

4. Monitoring and evaluation

50. The Committee, in its general comment No. 5 on “General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)”; emphasizes the need for systematic monitoring by States parties of the realization of children’s rights, through the development of appropriate indicators and the collection of sufficient and reliable data.¹⁸
51. Therefore, State parties should monitor their progress towards eliminating corporal punishment and other cruel or degrading forms of punishment and thus realizing children’s right to protection. Research using interviews with children, their parents and other carers, in conditions of confidentiality and with appropriate ethical safeguards, is essential in order to accurately assess the prevalence of these forms of violence within the family and attitudes to them. The Committee encourages every State to carry out/commission such research, as far as possible with groups representative of the whole population, to provide baseline information and then at regular intervals to measure progress. The results of this research can also provide valuable guidance for the development of universal and targeted awareness-raising campaigns and training for professionals working with or for children.
52. The Committee also underlines in general comment No. 5 the importance of independent monitoring of implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see also the Committee’s general comment No. 2 on “The role of independent national human rights institutions in the protection and promotion of the rights of the child”).¹⁹ These could all play an important role in monitoring the realization of children’s right to protection from all corporal punishment and other cruel or degrading forms of punishment.

VI. REPORTING REQUIREMENTS UNDER THE CONVENTION

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

Notes

- 1 United Nations Secretary-General’s Study on Violence against Children, due to report to United Nations General Assembly, autumn 2006. For details see <http://www.violencestudy.org>
- 2 Committee on the Rights of the Child, Report on the fourth session, 25 October 1993, CRC/C/20, para. 176.
- 3 All the Committee’s concluding observations can be viewed at www.ohchr.org
- 4 The Global Initiative to End All Corporal Punishment of Children provides reports on the legal status of corporal punishment at www.endcorporalpunishment.org
- 5 Committee on the Rights of the Child, day of general discussion on State violence against children, Report on the twenty-fifth session, September/October 2000, CRC/C/100, paras. 666-688.
- 6 Committee on the Rights of the Child, general comment No. 1, The aims of education, 17 April 2001, CRC/GC/2001/1, para. 8.
- 7 Committee on the Rights of the Child, day of general discussion on violence against children within the family and in schools, Report on the twenty-eighth session, September/October 2001, CRC/C/111, paras. 701-745.
- 8 General Assembly resolution 56/138.
- 9 Article 1.
- 10 Committee on Economic, Social and Cultural Rights, general comment No. 13, The right to education (art. 13), 1999, para. 41.
- 11 Corporal punishment was condemned in a series of decisions of the European Commission on Human Rights and judgements of the European Court of Human Rights; see in particular *Tyrer v. UK*, 1978; *Campbell and Cosans v. UK*, 1982; *Costello-Roberts v. UK*, 1993; *A v. UK*, 1998. European Court judgements are available at <http://www.echr.coe.int/echr>
- 12 European Committee of Social Rights, general observations regarding article 7, paragraph 10, and article 17. *Conclusions XV-2*, Vol. 1, General Introduction, p. 26, 2001; the Committee has since issued conclusions, finding a number of Member States not in compliance because of their failure to prohibit all corporal punishment in the family and in other settings. In 2005 it issued decisions on collective complaints made under the charters, finding three States not in compliance because of their failure to prohibit. For details, see http://www.coe.int/T/E/Human_Rights/Esc/; also *Eliminating corporal punishment: a human rights imperative for Europe’s children*, Council of Europe Publishing, 2005.
- 13 Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras. 87 and 91.
- 14 African Commission on Human and Peoples’ Rights, *Curtis Francis Doebbler v. Sudan*, Comm. No. 236/2000 (2003); see para. 42.
- 15 For example, in 2002 the Fiji Court of Appeal declared corporal punishment in schools and the penal system

unconstitutional. The judgement declared: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students" (Fiji Court of Appeal, *Naushad Ali v. State*, 2002). In 1996, Italy's highest Court, the Supreme Court of Cassation in Rome, issued a decision that effectively prohibited all parental use of corporal punishment. The judgement states: "...The use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance which the [Italian] legal system attributes to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which

ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals" (Cambria, Cass, sez. VI, 18 Marzo 1996 [Supreme Court of Cassation, 6th Penal Section, 18 March 1996], *Foro It II* 1996, 407 (Italy)). Also see South African Constitutional Court (2000) *Christian Education South Africa v. Minister of Education*, CCT4/00; 2000 (4) SA757 (CC); 2000 (10) BCLR 1051 (CC), 18 August 2000.

16 See note 11.

17 The Committee commends, as one example, UNESCO's handbook, *Eliminating corporal punishment: the way forward to constructive child discipline*, UNESCO Publishing, Paris, 2005. This provides a set of principles for constructive discipline, rooted in the Convention. It also includes Internet references to materials and programmes available worldwide.

18 Committee on the Rights of the Child, general comment No. 5 (2003), "General measures of implementation for the Convention on the Rights of the Child", para. 2.

19 Committee on the Rights of the Child, general comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", 2002.

Concluding Observations of the Committee on the Rights of the Child

- I. Introduction
- II. Status of Signature and Ratification to the Convention on the Rights of the Child and its Optional Protocols
 - Convention on the Rights of the Child. New York, 20 November 1989
 - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. New York, 25 May 2000
 - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. New York, 25 May 2000.
- III. Reservations and Declarations to the Convention on the Rights of the Child and to its Optional Protocols
 - Reservations and Declarations relating to the Convention on the Rights of the Child
 - Reservations and Declarations made to the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography
 - Reservations and Declarations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- IV. Concluding Observations of the Committee on the Rights of the Child



UNICEF Innocenti Research Centre
Piazza SS. Annunziata 12
50122 Florence, Italy
Tel: (+39) 055 20 330
Fax: (+39) 055 2033 220
Email general: florence@unicef.org
Email publication orders: florenceorders@unicef.org
Website: www.unicef.org/irc and www.unicef-irc.org

ISBN-10: 88-89129-51-4
ISBN-13: 978-88-89129-51-7
December 2006