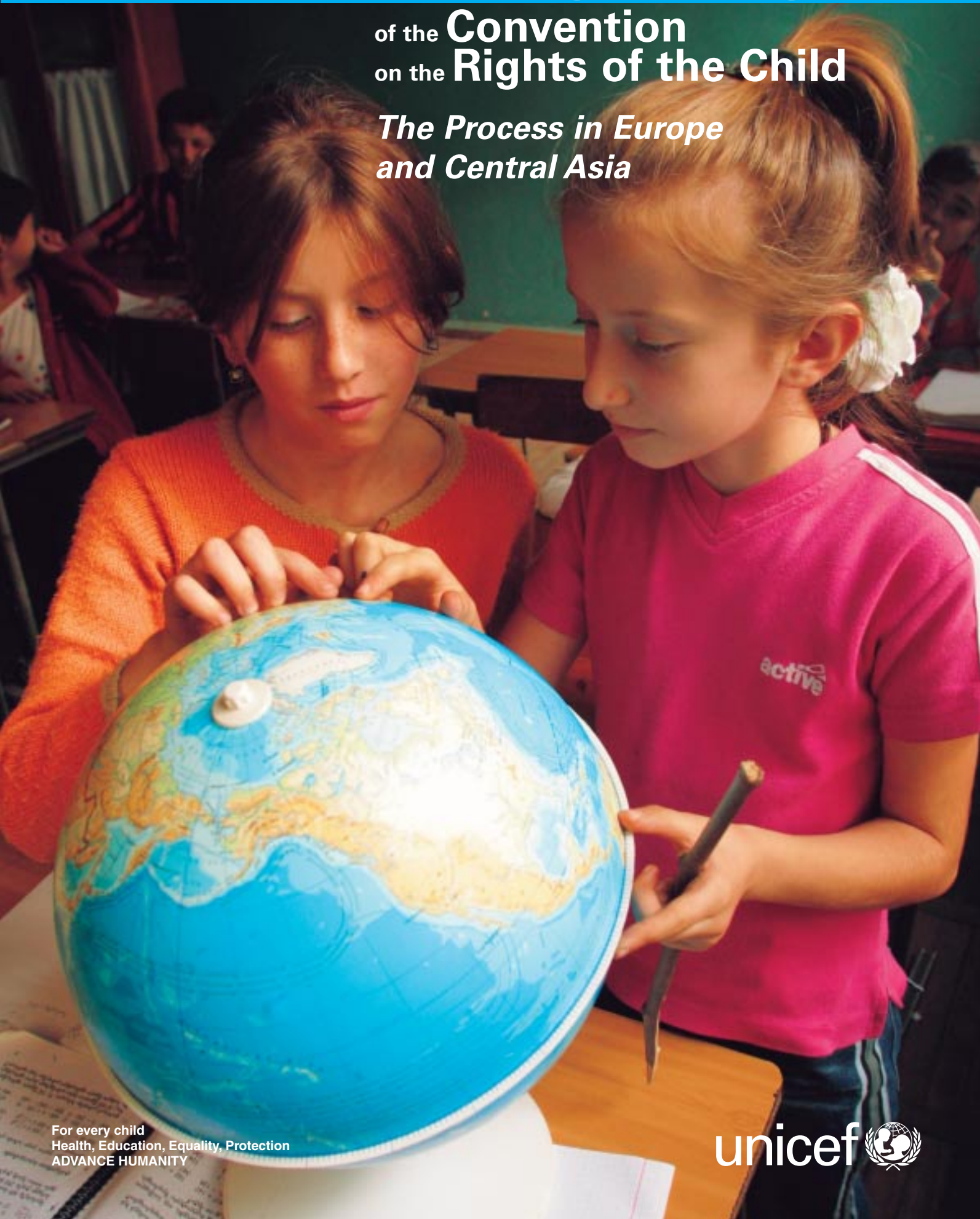


THE GENERAL MEASURES

of the **Convention**
on the **Rights of the Child**

*The Process in Europe
and Central Asia*



THE GENERAL MEASURES
of the **Convention**
on the **Rights of the Child**

The Process in Europe and Central Asia

Acknowledgements

This study, and the drawing of the world's attention to the plight and rights of children, has been developed thanks to the generous support of the Government of Sweden. The study is the result of a strong collaboration between the IRC and Government of Sweden officials which merits mention not least for the richness that it has added to the research process, and for the widening of IRC's partnerships with policy makers, academics and field workers.

Though still a work in progress the study has benefited from a rich exchange of ideas with a host of partners, including governmental departments in countries in which UNICEF supported country programmes are operational. The IRC is grateful for the participation and support of officials from a range of ministries in interviews, in responding to questionnaires, and in expert consultations.

Participation in the study from the Chairperson of the Committee on the Rights of the Child, Jaap Doek, the Vice Chair Moushira Khattab, and several other Committee members has been invaluable. From study design, to methodology to the content of the findings, there has been input from the Committee perspective. This has helped to ground the study and the analysis, promising a 'life' for the findings in the workings and deliberations of the Committee.

The study is the result of a wide cooperation among researchers, development practitioners, members of the policy community and a wide range of international experts and non-governmental contributors. Though too numerable to mention, their contributions have added a unique dimension. In most cases, the organizations and individuals consulted have been 'front liners' who are working with children, grappling with some of the enormous challenges to implementing the CRC. Save the Children deserves special mention in this respect, and the IRC study has incorporated the very important lessons that the Save Alliance has culled over the past few years.

Development of this study has benefited throughout from the perspectives of a wide range of experts and special thanks are given to Shirin Aumeeruddy-Cziffra, Bill Bell, Akila Belembaogo, Mario Biggeri, Karuna Bishnoil, Luigi Citarella, Candido Cunha, Emilio García Méndez, Kate Holverson, Kimberly Gamble Payne, Carin Jahn, Birgitta Jansson, Alireza Javaheri, Gareth Jones, Elena Koupriyanova, Gerison Lansdown, Beatrice Le Fraper, Charlotte McClain-Nhlapo, Zaved Hasan Mahmood, Elena Manfrina, An Michels, Micheal Montgomery, Elisabeth Müller, Dipak Naker, Peter Newell, Veena Rao, Olga Remenets, Barbara Reynolds, Jyoti Sanghera, Marit Sanner, Marilia Sardenberg, Joachim Theis, Trond Waage, Nevena Vuckovic-Sahovic, Rob Jenkins, Polona Selič and Professor Burns H. Weston.

Within UNICEF particular recognition needs to be given to field based colleagues and to National Committees who have taken an interest in the study. Despite daily programme demands offices were timely in their completion of questionnaires, and shared relevant documentation without hesitation. The study has benefited from consultation with many colleagues, and insights have been incorporated. The partnership and contribution of the Global Policy Section in New York has been instrumental and great care has been taken since the early days of the study to ensure complementarity between this study and the headquarters initiative on legislative reform. For this particular publication the IRC is grateful for the collaboration with UNICEF CEE/CIS, and UNICEF GRO. Not least the IRC study has gained from the full participation of headquarters colleagues and experts in consultations held in Florence.

Overall guidance and supervision at the IRC were provided by Marta Santos Pais, Director, and the study was developed under the responsibility of Susan Bissell, Senior Project Officer. Dan O'Donnell has been the lead researcher on the study, with Vanessa Hasbun, Peggy Herrmann and Clarice Da Silva e Paula providing invaluable research assistance. Salvador Herencia and Glyn Hopkins are thanked for moving this document through the production process, and Sandra Fanfani and Claire Akehurst for their unstinting administrative support.

Layout & phototypesetting: Bernard & Co, Siena, Italy

Front cover picture: UNICEF/HQ04-0996 / Giacomo Pirozzi

ISBN-10: 88-89129-42-5

ISBN-13: 978-88-89129-42-5

© 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. This study was developed with the support of the Government of Sweden.

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 2033 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

Introduction	vii
Chapter One	
Law Reform	1
Chapter Two	
National Independent Institutions for the Protection of Children’s Rights	17
Chapter Three	
National Coordinating Mechanisms	27
Chapter Four	
Monitoring Implementation of the Convention on the Rights of the Child	33

INTRODUCTION

Since its inception, the Committee on the Rights of the Child (the Committee), the body of experts established under the Convention on the Rights of the Child (CRC) to monitor progress made by States Parties in the realization of children's rights, has acknowledged the instrumental importance of "General Measures of Implementation." They are cross-cutting measures, whose impact is not limited to any specific right. They extend to all rights set forth in the CRC. They are, in a sense, the foundation on which efforts to safeguard children's rights can be built, the framework that ensures that actions taken to protect specific rights form part of a broad, coherent effort to ensure that all children enjoy their human rights without discrimination of any kind, develop their personality, talents and abilities to their fullest potential, and benefit from a standard of living that is fully compatible with their human dignity.

Under Article 4 of the CRC, States Parties are obliged to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." To further develop these cross-cutting dimensions, and guided by its experience of over a decade review of States Parties reports on the implementation of the CRC, the Committee adopted, in 2003, an important statement – its General Comment No.5 on General Measures of Implementation.

That same year, the Innocenti Research Centre began a study of the general measures of implementation of the CRC. The study reviews 62 countries, representing all regions of the world, that have submitted two reports to the Committee on the CRC implementation. This analytical review is based primarily on the reports of States Parties to the Committee and other documents generated as part of the reporting process established under the CRC

and it is supplemented in some cases by information received from UNICEF field offices and partners, and by expert discussions and consultations.

The overall objective of the study includes the promotion of the universal recognition of children's rights, through the documentation of actions undertaken in the context of CRC implementation. The study assesses how the CRC implementation process has been set in motion. Accordingly, the study analyzes and reflects on both the positive and challenging dimensions of States' experiences. It also addresses aspects of the CRC that can be advanced within the framework of UNICEF's agenda as articulated in the UNICEF Medium Term Strategic Plan (MTSP) in support of the Millennium Agenda.

Important links exist between the Declaration and Plan of Action of the General Assembly Special Session on Children (SSC) and the study. The SSC called for the development of laws, policies and action plans for the promotion and protection of the rights of children. The study reviews efforts made by States who were party to the Special Session, and draws attention to many cases from which lessons may be learned. It is hoped that governments, the Committee, UNICEF and other UN agencies, and a range of other actors in the child rights arena will benefit from the study, using it as a reference and a source of material for advocacy, policy and programming purposes.

Among the countries under review in the present publication are more than two dozen from the wide European region, including Austria, Belarus, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden, the Former Republic of Macedonia, Ukraine and the

United Kingdom. Their experience in the CRC implementation has been given strong consideration in the development of the present publication, which addresses four general measures of implementation: Law Reform, National Coordinating Mechanisms, National Independent Institutions for children's rights and Monitoring of progress in the CRC implementation. It is important to note that, as a result of the time lag inherent in the reporting process, information concerning some countries may not reflect the most recent developments.

Finally, it is important to note that the study is a documentation of trends observed in the CRC reporting process. Accordingly, the actions of States can at least in part be attributed to the CRC itself, and to States' commitment to implement it. Total attribution is not possible, however, given that many countries have deeply embedded traditions that recognize human and children's rights. Noteworthy, also, are the historic actions of civil society organizations dedicated to advancing the rights of children. Where these preceded the CRC, they are now in partnership with governments, other organizations and children themselves, in one of the most powerful and important developments in human rights history: imple-

mentation of the Convention on the Rights of the Child.

We, the Governments participating in the special session, commit ourselves to implementing the Plan of Action through consideration of such measures as:

- a) Putting in place, as appropriate effective national legislation, policies and action plans and allocating resources to fulfil and protect the rights and to secure the well-being of children;*
- b) Establishing or strengthening national bodies such as, inter alia, independent ombudspersons for children, where appropriate, or other institutions for the promotion and protection of the rights of the child;*
- c) Developing national monitoring and evaluation systems to assess the impact of our actions on children;*
- d) Enhancing widespread awareness and understanding of the rights of the child*

*"A World Fit for Children",
General Assembly Resolution A/RES/S-27/2,
October 2002, para.31*

1

LAW REFORM

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. ...

[Law] review needs to consider the Convention not only article by article but also holistically, recognising the inter-dependence and indivisibility of human rights.

– Committee on the Rights of the Child, General Comment No.5, para.1 and 18

As noted in the introduction, the overall study of the general measures of implementation of the CRC covers 62 countries. Based on the availability of information, the legislation of 53 of these countries was reviewed in considerable depth, with primary attention given to legislation adopted or amended since 1990 in order to bring national laws into conformity with the provisions and principles contained in the CRC.

The objective of the research on law reform was to obtain an overview of the scope and content of new legislation enacted since the CRC came into effect. Given the sources and methodology used, relatively little reliable information has been found concerning either the processes of law reform or the actual impact of the new legislation. Further investigation of these vitally important issues would require different research methods, and is greatly needed.

The status of the Convention in national law

The CRC forms part of the domestic law in all the countries of Central and Eastern Europe covered by this study, and in all of them, it prevails over domestic legislation.¹ The incorporation of international norms into national law, combined with the trend towards greater independence and activism on the part of the judiciary, has led to the adoption of important decisions regarding the rights of the child. In 1998, for example, the Constitutional Court of Belarus found that provisions of the Marriage and Family Code concerning extrajudicial adoption of children without parental consent were incompatible with the Constitution and the CRC. Likewise, the Constitutional Court of the Czech Republic overturned part of the Family Code on the grounds that it was incompatible with the Charter of Fundamental Rights and Freedoms and the CRC. The Supreme Court of Romania has adopted judicial decisions concerning adoption based on the principle of the best interests of the child, recognized by the CRC. In 1995, the Supreme Court of the Russian Federation adopted guidelines for courts on application of the standards of international law in the examination of specific cases, which has increased the number of court decisions based in part on the CRC.

For some countries, incorporating the CRC directly into the national law enabled administrative authorities to take decisions based on the CRC even before the legislation was amended to fill gaps concerning the rights of the child. The Ministry of Interior of Slovenia, for example, recognized the right to nationality of stateless children who did not meet the

requirements of the legislation in force at the time, because obtaining Slovenian nationality was considered to be in their 'best interest'.²

The status of the CRC varies considerably in the national law of the countries of Western Europe that follow the Civil Law system. In Italy, the CRC forms part of the domestic law and prevails over conflicting legislation. It has been applied by the Supreme Court and by the Constitutional Court of Italy on several occasions, including on the protection of the child from corporal punishment. In France, the Conseil d'Etat and Cour de Cassation have agreed that the self-implementing provisions of the CRC can be applied directly by the courts.³ The CRC also forms part of the domestic legal order in Belgium, Cyprus, Finland, Norway, Portugal and Spain, but not that of Austria, Germany, Iceland, the Netherlands or Sweden. In Sweden, treaties do not form part of national law unless they have been incorporated into it by an act of Parliament, which has not been done with the CRC. It is general principle of Swedish law, however, that legislation is to be interpreted in the light of international obligations. In Austria and Germany, ratified treaties normally form part of national law. However, in both of these countries, declarations or reservations were made at time of ratification, to the effect that the CRC is not self-executing and cannot be directly applied.

Treaties do not form part of the national law of the United Kingdom unless they are incorporated into it by an act of Parliament. They can, however, be referred to by the courts to resolve ambiguities in national law. Customary international law is considered by many jurists as part of the common law, and hence enforceable by the courts to the extent that it is not contrary to legislation.⁴ The CRC, therefore, would in principle be enforceable if a court were to decide that a given provision codifies customary international law, to the extent that it is not contrary to legislation. British courts have on occasion taken the CRC into account in interpreting statutory law and administrative policy. In a decision of the House of Lords concerning juvenile offenders sentenced to indeterminate sentences, Lord Browne-Wilkinson stated that "The Convention (on the Rights of the Child) has not been incorporated into English law. But it is legitimate ... to assume that Parliament has not maintained on the statute book a power capable of being exercised in a manner inconsistent with the treaty obligations of this country."

Constitutional recognition of the rights of children

Many countries in Central and Eastern Europe became independent States since the adoption of the CRC in 1989. Others also underwent substantial political transformation during this period. Some of these new constitutions contain brief references to the rights of children, often in an article dedicated primarily to the family.⁵ An article of the 1994 Constitution of Belarus, for instance, recognizes the right of the child and family to protection and adds

that "No child shall be subjected to cruel treatment or humiliation or used for work that may be harmful to its physical, mental, or moral development."⁷ In the Czech Republic, the 1991 Charter of Fundamental Rights and Freedoms recognizes the right of children and adolescents to 'special protection' and the right of children to be raised by their parents, and it prohibits discrimination on the basis of birth.

The Constitutions of Poland, Romania, Slovenia and Ukraine contain articles dedicated exclusively to the rights of children. The 1996 Constitution of Ukraine prohibits all violence and exploitation of children, as well as discrimination on the basis of birth.⁸ It also recognizes the responsibility of the State to protect "the family, childhood, motherhood and fatherhood" and to care for orphans and children deprived of parental care.⁹ Article 45 of the 1995 Constitution of Romania provides that "Children and the young shall enjoy special protection and assistance in the pursuit of their rights." It also recognizes the duty of the State to provide social protection, including "state allowances for children and benefits for the care of sick or disabled children;" and to ensure conditions that allow "the free participation of young people in the political, social, economic, cultural and sporting life of the country." The employment of children under the age of 15 and the "exploitation of minors, their employment in activities that might be harmful to their health, or morals, or endanger their life and normal development [are] prohibited."

Article 56 of the 1991 Constitution of Slovenia provides that "Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity." The constitution also recognizes children's right to "special protection from economic, social, physical, mental or other exploitation and abuse" and the right of children who have no parents or who are without proper parental care to "the special protection of the state." Article 72 of the Polish Constitution of 1997 recognizes the right of the child to be heard.¹⁰ It also recognizes the duty of the State to ensure protection of the rights of the child, and the corresponding right of every person "to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense."¹¹

These examples illustrate the extraordinary impact that the CRC has had in the legal order of the countries of this part of the world. In contrast, only two of the Western European countries reviewed in this study have amended their constitutions to add new provisions on the rights of children: Article 22 of the Belgian Constitution, adopted in 2000, recognizes that "each child has the right to respect for his/her moral, physical, psychological and sexual integrity"¹². Article 76(3) of the Constitution of Iceland, adopted in 1995 as part of a new Bill of Rights, recognizes a general programmatic obligation of the State to protect the welfare of children.

Overview of the law reform process

The Committee has encouraged States to adopt codes or comprehensive laws on children.¹³ 'Comprehensive law' is used here to describe laws that incorporate many or most of the rights and principles covered by the CRC in national law, and that also provide further indications as to the content of these rights, procedures for protecting them and the corresponding obligations of different actors (e.g. the State, local government, parents, etc.). Laws of this kind are relatively common in some parts of the world, although less so in Europe. In 2002 the Czech Republic adopted the Social and Legal Protection of the Children Act, which recognized many of the rights and principles contained in the CRC and defines the corresponding responsibilities of public authorities and agencies. In 1996 Spain adopted a law that incorporates the CRC into the domestic legal order, elaborates on the content of several civil rights of children, establishes principles regarding the standing and rights of children in administrative proceedings and introduced extensive changes in child protection proceedings and the law concerning adoption and similar matters.¹⁴ The Law on the Protection and Promotion of the Rights of the Child adopted by Romania in 2004 is a particularly comprehensive piece of legislation on the rights of the child. It contains a list of the civil rights and liberties of children, and sections on the family and alternative care, education, leisure and cultural activities, refugee children and children affected by armed conflict, child abuse, and the responsibilities of national agencies and local governments.

Incorporation of child rights by the Romanian Law on the Protection and Promotion of the Rights of the Child, 2004

The public authorities, the authorized private institutions, as well as the natural and legal persons responsible for child protection are compelled to observe, promote and guarantee the rights of the child as stipulated by the Constitution and the law, in accordance with the provisions of the UN Convention on the Rights of the Child, ratified through Law No. 188/1990, republished, and with the other international regulations in this field, to which Romania is a state party. Art.1(2)

Countries that have not adopted comprehensive laws have enacted a number of new laws or have amended existing legislation to bring the legislative framework into compatibility with the CRC. In some countries, many of the new legal texts adopted during the first years after ratification of the CRC were not laws but executive decrees. In Romania, for example, a large number of decrees, including some denominated emergency decrees, were adopted during the 1990s. The comprehensive law adopted in 2004, to a large extent, consolidates the rules and procedures contained in decrees adopted during the late 1990's that proved workable and effective. Reliance on decrees

may be due to a number of factors, including the time required for reforming the structure of the State and for new legislative bodies to become operative, and the need for an urgent response to the social and economic challenges that characterized the process of transition throughout the region.

The increasing use of legislation rather than decrees reflects a maturing of the political processes, in particular the consolidation of the freely elected legislatures as independent branches of the State and more transparent and participative processes of law-making. The adoption of legislation has another advantage. Although decrees are law in the sense that they are legally binding, they are used mainly to set standards for the functioning of public agencies and institutions. Legislation, however, has broader legal effects, often including the recognition of the rights and duties of individuals and families vis-a-vis each other and the State. Moreover, since the judiciary has a larger role in the enforcement of legislation than executive decrees, the use of legislation on children's rights promotes a wider sharing of responsibility for protection of the rights of the child within all branches of the State.

New legislation concerning children has also been adopted in the Western European countries studied. The following are some examples of new laws having broad implications. In France, a law adopted in 1993 established specialized Family Courts and amended numerous provisions of the Civil Code in order to incorporate principles set forth in the CRC.¹⁵ In Italy, Law No.285 of 1997 established a fund for supporting regional projects designed to protect the rights and improve the living conditions of children, especially vulnerable children.¹⁶ The law also created a National Centre for Documentation and Analysis on Children and Adolescents to monitor implementation and provide technical support to regional and local governments. Another law adopted the same year established a special Parliamentary Commission on Children, as well as a National Observatory on Children.¹⁷

In Sweden, the established practice is to review the compatibility of legislation with international agreements before ratification and make any amendments needed to bring the legislation into conformity with the provision of the treaty.¹⁸ Initially it was considered that no changes in legislation were required.¹⁹ Gradually, however, there was growing recognition of the need to amend legislation in different areas in order to better protect children's rights and reflect the principles contained in the CRC. In some cases, law reform has been designed to respond to concerns expressed by the Committee, or to implement other international instruments concerning the rights of children ratified by Sweden since 1990.

The Children Act 1989, applicable in England and Wales, has been described as a comprehensive law because it brings together public and private law concerning children. However, its scope is largely limited to matters concerning the family and alternative care. The United Kingdom had participated actively in the drafting of the CRC, and the Act was designed to take

into account the rights and principles contained in the then draft of the CRC. In Scotland, the Children Act was adopted in 1995, after an extensive process of consultation with concerned professional groups, NGOs and the public, including children. The Children Order (Northern Ireland) was adopted the same year. Processes of sectoral law reform have been ongoing, especially in England and Wales.

Incorporating general principles of the CRC into national law

The “best interests” principle

Progress has been made in incorporating the “best interests” principle into the new Civil and Family Codes and other laws concerning the family that have been adopted since 1990 by many countries in Central and Eastern Europe²⁰. However, legislation incorporating the best interests principle as a general principle applicable to all matters affecting children, individually or collectively, remains rare in the region. Indeed, as in other regions, the broader implications of the principle may have not yet been adequately understood. One exception is the Romanian Law on the Protection and Promotion of the Rights of the Child, which recognizes this principle in very similar terms to Article 3 of the CRC.²¹

Western European countries reviewed for this study have not adopted legislation recognizing the full scope and relevance of the best interests principle. However, new legislation has been enacted to strengthen the principle and extend it to new areas and issues in a number of cases. For instance, Italian legislation concerning immigration, adopted in 1998, provides that the best interests of the child should be given priority in all decisions regarding family reunification of foreigners.²² In addition, the Constitutional Court of Italy has held that the best interests principle is implicit in provisions of the Constitution concerning human rights and the protection of children.²³ The Swedish Social Services Act was amended in 1998 to recognize that the best interests of the child must be given “full consideration when adopting any measures affecting the child’s life or status.”²⁴ In the United Kingdom, the Children Act 1989 provides that the best interests of the child are to be the paramount consideration in decisions about the upbringing of children taken by the courts, children’s services and local authorities.²⁵

The right to protection from all forms of discrimination

In Central and Eastern Europe, discrimination on the basis of birth generally has been prohibited since before 1990. Many of the Constitutions adopted since then prohibit discrimination on most of the grounds mentioned in the CRC, and in some cases other grounds as well.²⁶ The Constitution of Georgia, for example, prohibits discrimination on grounds of place of residence, and the Russian Constitution prohibits discrimination on grounds of organizational membership.²⁷ Similarly, the Belarusian Law on the

Rights of the Child prohibits discrimination on most of the grounds listed in article 2 of the CRC, except that of opinion. The child’s right to freedom of thought and opinion is recognized, however.²⁸ Likewise, the Romanian law on the rights of the child prohibits discrimination on any of the grounds mentioned by the CRC, except that of religion.²⁹

Italy has adopted new legislation against discrimination. A law against racism and xenophobia was enacted in 1993, and a law creating civil remedies for victims of discrimination was enacted in 1998.³⁰ In France, the different treatment of legitimate children and children born out of wedlock in matters relating to succession was abolished in 2001.³¹ For the United Kingdom, the Human Rights Act of 1998, which incorporated the European Convention for the Protection of Human Rights and Fundamental Freedoms into national law, strengthens the protection of children against discrimination.³² The situation in Sweden is similar: only some forms of discrimination are prohibited expressly by the Constitution, but the European Convention on Human Rights was incorporated into national law in 1995.³³

The right to be heard and to have one’s views taken into account, including in the context of administrative and judicial proceedings

The legislation of many countries of Central and Eastern Europe has long recognized, in addition to the age of majority at which full legal capacity is required, a lower age at which children acquire limited legal capacity for certain purposes. Older legislation also often established an age at which courts were obliged to hear the child’s point of view in legal proceedings affecting him or her, in particular in matters governed by the family law. Typically, this was 10 years of age.

Since 1990, there has been a trend to further develop this approach. The Family Code adopted by the Russian Federation in 1995 and the Civil Code adopted by Georgia in 1997 require the consent of children over the age of 10 in matters affecting their legal personality, such as adoption or change of name.³⁴ Some new legislation recognizes the right of children to be heard in legal or administrative matters without specifying a concrete age, or gives the competent authorities discretion to determine when the child is mature enough to be heard. The Romanian Law on the Protection and Promotion of the Rights of the Child, for instance, provides that children aged 10 and over must be heard in legal and administrative proceedings, and gives courts discretion to hear younger children; any decision denying the request of a child to be heard must be justified by a written statement of the reasons invoked.

Another important development is the proliferation of legislation recognizing the right of children to initiate legal or administrative proceedings. In Slovenia, the Marriage and Family Act was amended to recognize the right of children aged 15 or older to initiate proceedings under the Act and to appear as parties in them.³⁵ The new Family Code of the Russian Federation allows children aged 14 and over to bring legal action when they believe their rights have been

infringed by a parent or caretaker and to obtain legal aid for the protection of their rights; younger children have the right to bring such matters to the attention of child welfare authorities. In a similar vein, the Czech Law on the Social and Legal Protection of Children recognizes the right of children to speak with social workers in private and to seek help from the competent authorities directly, without the knowledge of their parents or caretakers.

Laws that expressly state the right of children to be heard within the family are less common. The Czech Law on the Social and Legal Protection of Children recognizes the right of any child old enough to form an opinion to have their views taken into account by their parents or other caretakers, including the right to be informed of the consequences of decisions that the parents might take regarding the child. A 2004 Romanian law mandates a dialogue between parents and children: parents and other caretakers "must provide information, explanations and advice according to the children's age and understanding, as well as to allow them to express their own point of view, ideas and opinions."³⁶

Law reform in France has strengthened children's right to be heard in proceedings concerning the family.³⁷ In 2002, the legislation recognized the right of the child to be heard in proceedings that may result in placement for purpose of protection. In Italian law the right of children to be heard in certain types of proceedings has long been recognized, and the consent of older adolescents is required for certain purposes.³⁸ However, the Government of Italy recognizes that legislation concerning this right is rife with inconsistencies and that new legislation is needed to incorporate this right more fully and consistently into national law.³⁹ In Sweden, a number of changes intending to broaden the right to be heard have been made during the last decade, especially in family matters. The 1996 legislation on care and protection proceedings was amended to recognize the right of children under the age of 15 to independent legal representation in cases where the interests of the child may differ from those of his or her parents or guardian.⁴⁰ In 1998, the Social Services Act was amended to provide that the child's attitude shall be ascertained with regard to any measure affecting the child, and taken into account having due regard to age and maturity of the child.

In the UK, the principle that the voice of the child must be heard is recognized throughout the Children Act 1989. Authorities are obliged to adopt a plan for every child in residential care, and to take the child's views into account in preparing and modifying the plan. They also are obliged to consider the child's views in administrative hearings concerning child abuse. These rules apply to all children who are able to form and express their wishes and feelings. The Children (Scotland) Act expressly recognized the duty of parents to listen to the views of children before taking decisions that will affect them. Legislation on legal representation also was adopted: the Age of Legal Capacity (Scotland) Act 1991 provides that children under the age of 16 years have legal capacity to instruct a solicitor in connection with any civil matter, provided that he or she has a general understanding

of what is involved; children over the age of 12 years are presumed to have such an understanding. The law also confirms the right of children to apply for legal aid. In Northern Ireland, both the Children Order and the Family Homes and Domestic Violence Order 1998 recognize the right of children themselves to seek legal remedies, if they are old enough to understand the nature of the proceeding.

Civil rights

Little progress has been made in recognizing the civil rights of children in the countries reviewed for this study, except in those that have adopted comprehensive laws or children's rights bills. The Law on the Rights of Children adopted by Belarus recognizes a broad range of rights including the right to life, to inviolability of the child's personality, the right to privacy, honour and dignity, freedom of religion, freedom of association and freedom of information and expression.⁴¹ The Law on the Protection and Promotion of the Rights of the Child adopted by Romania in 2004 also contains provisions on a wide range of children's rights, including freedom of thought, conscience and religion, freedom of expression and association, the right to privacy, to an adequate standard of living, to social security and to rest and leisure.

Some countries in Central and Eastern Europe have broadened the right to participation in children's organizations, and the right of such organizations to contribute to the formation of public policy. In Russia, for example, the law on associations was amended in 1995 to lower to eight years the age at which children can join children's organizations. The Children's and Youth Associations (State Support) Act adopted by Georgia in 1999 recognizes the right of children's organizations to submit reports on the status of child rights to government agencies, to participate in the formulation of programmes concerning children and to submit suggestions to those entitled to initiate legislation or propose amendments to laws or regulations.

Some countries also have amended legislation concerning the right to nationality, mainly to eliminate discriminatory provisions. In Sweden, for example, the Citizenship Act was amended in 2001 to recognize the citizenship of children born to Swedish fathers not married to the mother of the child, if the child is born in Sweden.⁴² French legislation has been amended since 1989 to facilitate the acquisition of nationality by children adopted by French citizens and children born in France to foreign parents. A number of laws also have been adopted or amended in order to strengthen the child's right to identity, recognized by Articles 7 and 8 of the CRC.⁴³

The right to health care

Recognition of economic, social and cultural rights was a key element of the legal system developed in Central and Eastern Europe during the 20th century, and the influence of this tradition is evident in the legislation on children adopted since 1990. The right

to health is part of the constitutional order in most countries of the region.⁴⁴ This right figures in a wide variety of legislation, ranging from laws on health to laws on education, and from laws on children to laws on the environment. The Polish Education Law of 1991 recognizes the right of children under the age of 18 enrolled in schools to receive a broad range of free medical benefits from public health-care institutions, including medical exams, treatment, medication and rehabilitation services; and the Education Act, adopted by Georgia in 1997, requires schools to provide certain health services to students.

Some countries, such as Poland, have adopted special legislation concerning the entitlements of persons with disability based on Article 23 of the CRC and other international standards concerning the social integration of persons with disabilities. Legislation promoting breast feeding also has been adopted by some countries in the region during the period under review.⁴⁵ Modest steps have been made in some countries of the region toward recognizing the right of adolescents to receive medical services without parental consent. Under Russian legislation adopted in 1993, children aged 15 and over can consult a doctor without parental consent. Polish legislation adopted in 1996 establishes age of 16 as the minimum age to independent access to medical tests or other health services. In Slovenia, the minimum age for independent access to medical consultation is 15 years of age.

Important new legislation concerning the right to health also has been adopted in Western Europe, especially in France, Italy and Sweden. In France, the law of 27 July 1999 on universal health coverage guarantees access to health care through a national health insurance system. Maternal and child health care is covered by the Act of 18 December 1989, which requires women to have medical examinations during pregnancy and after giving birth. The number of these examinations, which are given free of charge in specialized public health centres, has increased since the entry into force of the CRC.⁴⁶ In Italy, an important new law on the rights of persons with disabilities was adopted in 1992⁴⁷ which contains a number of provisions regarding the prevention and early detection of birth defects. The new law on immigration recognizes the right of foreigners, including illegal immigrants, to health services. In Sweden, the Medical and Health Services Act was amended in 1997 to recognize the principle that access to and the provision of care shall be guided by the "equal value of all human beings and for the dignity of the individual."⁴⁸ The minimum age for purchase of tobacco products was raised to 18 years the same year, and in 1992 legislation was adopted requiring all toys sold commercially to meet health and safety standards.⁴⁹ In the UK, the Education Act 1993, requires secondary schools in England and Wales to offer sex education, education about HIV and AIDS and other sexually transmitted infections/diseases, to all pupils.⁵⁰

The range of issues covered by this legislation illustrates the relevance of law reform for a right whose realization is sometimes viewed as dependent entirely on resources, programmes and education.

The right to education

The right to education is another right traditionally accorded great importance in the legal systems of Central and Eastern Europe. Most countries of the region recognize the right to education in terms more generous than the minimum standards contained in the Convention. The Constitution of Poland, for example, provides that education is compulsory until the age of 18. In the Russian Federation, the Constitution and Education Act guarantees free secondary education and basic vocational training, as well as nine years of free and compulsory basic general education. The Education Act also provides that at least 10 per cent of national income should be set aside annually for educational needs.

Transformations that have marked this region since 1989 have obliged most countries to adopt new basic laws on education. Although the main reasons for adopting such laws often may have been to regulate the establishment of private schools, to respond to the expectations of national minorities and redefine the role and responsibilities of local authorities, these legislative changes also respond to new concerns regarding the rights of children. Among them, there are values underlying the educational process and the right of children with disabilities to participate in society as fully as possible. The new Russian Education Act, for example, abolishes competitive exams for admission to certain levels of education and recognizes the right of students to respect for their human dignity and to express freely personal views and opinions. The Czech Republic adopted legislation establishing community education boards in 1995, and legislation recognizing the right of deaf children to free education in sign language in 1998.

Three laws adopted by Slovenia in the year 2000 also illustrate the way education systems are being reoriented to incorporate values and principles derived from the CRC. The Guidance for Children with Special Educational Needs Act, adopted in 2000, is designed to integrate children with special needs into the regular education system; the Vocational and Professional Education and Training Act was amended to offer greater choice to students completing primary education and increase the number of children receiving a secondary education and the Music Schools Act was adopted to provide musically gifted children with an education that permits them to develop their special talents. Many of the countries of the region have adopted legislation recognizing the right of minorities to receive education in their own language.⁵¹

Most of the countries in Western Europe reviewed for the study have made some changes in the legislation concerning education, but these changes have at times been modest. French legislation concerning education was codified in 1989, and subsequent changes have been limited. Legislation making the 'hazing' of students an offence was adopted in 1998. In the UK, a new Education Act adopted in 1993 makes some modest improvements in the rights of students.⁵² Changes in Italian law have been more significant: the number of years of compulsory education was increased from 8 to 10, raising the school-

leaving age to 16.⁵³ A statute recognizing the rights of secondary school students also was adopted, in 1998.⁵⁴ The rights recognized include freedom of expression, thought, conscience and religion, the right to make requests and formulate proposals, and the right to be heard in disciplinary proceedings. The 1998 law on immigration provides that “the school community embraces the linguistic and cultural differences as a valuable and fundamental starting point for debate, based on reciprocal respect, on the exchange between cultures and on tolerance.”⁵⁵

The school as a democratic community: Italy

Presidential Decree of 1998 provides in part:

The school is a community of dialogue, research, and social experience, informed by democratic values and aimed at the growth of the individual in all his or her dimensions. Here each person, with equal dignity and in a diversity of roles, works to guarantee a training in citizenship, the realization of the right to study, the development of each child’s potential and the overcoming of situations of disadvantage in accordance with the principles prescribed by the Constitution and by the Convention on the Rights of the Child, and with the general principles of Italian legislation...

The right of families to support in child-rearing

One of the changes in social values that marked the period of transition in Central and Eastern Europe has been the shift away from reliance on the paternalistic State towards greater recognition of the importance of the family as the essential component of society. Many of the new constitutions reflect this trend in provisions concerning the responsibilities of parents to care, provide for and educate their children. The Charter of Fundamental Rights and Freedoms of the Czech Republic, for example, declares that “Parenthood and the family are under protection of the law...;” “children are entitled to parental upbringing care...” and “Parents who are raising children are entitled to assistance from the State.”⁵⁶ Throughout the region, new legislation has reflected Articles 18 and 27 of the CRC, thus recognizing that parents have primary responsibility for raising children and providing them with living conditions adequate for their development, and the primary duty of the States is to assist parents in meeting this obligation.⁵⁷

Most countries of Central and Eastern Europe traditionally had well-developed social security systems. Privatization and the economic transformation that has taken place have greatly reduced the capacity of governments in the region to maintain, in real terms, the levels of benefits that existed prior to 1990, while unemployment and deteriorating social conditions have multiplied the demand for social services. Despite these challenges, most States in the region have maintained a legal commitment to providing income support to needy families. This is evidenced

in the enactment of a large number of laws regulating benefits for children or families with children, many of which target children with special needs. This particular focus is doubtless due in part to the acceptance of the rights and principles set forth in the CRC. Provisions of the CRC concerning the family as the ideal setting for satisfying the needs of children has struck a responsive chord, encouraging the shift away from reliance on State institutions to social programmes that provide benefits to children through their families. The Child Benefit Act 2001 of Slovenia, for example, entitles the parents of seriously ill or disabled children to receive special benefits until such children reach the age of 18. Another important innovation introduced by Slovenia in 1999 is the Guarantee and Maintenance Fund Act, which recognizes the right of needy single parents, who do not receive court-ordered maintenance payments, to receive substitute payments from a public fund.

Constitutional entrenchment of the right of families to support and assistance

The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

Constitution of Poland, Art.71.1

Most of the Western European countries studied also have adopted important new legislation intended to help families meet their obligation to ensure that children enjoy adequate living conditions. France has adopted several laws strengthening the rights of working parents. An allowance for the employment of childminders was introduced in 1990, and reinforced in 1994 and again in 2001. Legislation to improve the quality of care provided in the homes of private childminders was adopted in 1992, and legislation strengthening the right of working parents to take leave on the birth or illness of a child, or to reduce the number of hours they work, was adopted in 1994.⁵⁸ In Sweden, a process of reviewing the Social Services Act began in 1991. In 1995 legislation was enacted to strengthen the obligation of local authorities to provide childcare to all children under the age of 12 in need of such services, entitlement to family counselling was strengthened in 1996 and minimum standards for material assistance to families in need were reinforced in 1998. In Italy, the 1992 Framework Law for the Assistance, Social Integration and Rights of Persons with Disabilities reinforced assistance to the concerned families with a view to reducing the institutionalization of such children. Legislation providing allowances to families with more than three children was adopted in 1998 and reinforced in 2001; legislation recognizing the right of fathers to leave to care for children was adopted in 2002, and support for nurseries was increased by a law adopted in 2001.⁵⁹ In the United Kingdom, the emphasis has been on the development of plans and programmes that provide services to children and their families, rather than the recognition of entitlements.⁶⁰

The common responsibility of parents

Following CRC ratification, new legislation based on the principle that parents have 'common responsibility' for raising children has been adopted in a few European countries.⁶¹ In France, for example, the Act of 8 January 1993 provides that parental authority should be exercised jointly, in principle, whether the parents of a child are married, separated or divorced, and encourages parents to reach an amicable agreement about the exercise of parental authority. It also provided that the parents of children born out of wedlock should exercise parental authority jointly, if they both acknowledge the child before he or she reaches one year of age and are living together at the time of acknowledgement, or if they subsequently make a statement before a court indicating that they wish to exercise joint authority. The requirement of parental cohabitation was eliminated in 2002.⁶² In the United Kingdom, the Children Act 1989 recognizes the principle of joint parental responsibility for children.⁶³ Both parents automatically have joint responsibility for the raising of children born in wedlock and the procedure whereby the father of a child born out of wedlock can recognize his responsibility has been simplified.⁶⁴ The responsibility of parents for their children is not terminated by placement of a child in care, nor is it assigned to one parent upon divorce or separation. It continues to be shared, and is lost only in adoption. The Children (Scotland) Act is the first law in the UK to define in detail the responsibilities of parents towards their children, including the duty of a parent not living with a child to maintain personal relations and direct contact with the child on a regular basis until the age of 16.

Alternative care and institutionalization

In most of Central and Eastern Europe, the post-war period (1945-1990) was characterized by the development of extensive networks of residential care facilities for children and over-reliance on institutionalization.⁶⁵ Different ministries operated facilities for different types of children – children with disabilities, abandoned, neglected and abused children and orphans, juvenile offenders and children belonging to different age groups. The principle that the State is responsible for ensuring the welfare of the population became distorted so as to encourage abandonment of children – known as 'social orphans' – by parents in difficult economic or social circumstances. Only 4 to 5 percent of institutionalized children were actual orphans, and massive use of institutionalization resulted in poor standards of care.⁶⁶ A major reason so many children were institutionalized was the lack of effective programmes to prevent the abandonment of children by their parents, that is, the lack of alternatives to institutionalization as solutions for the difficulties faced by families in crisis.

The legislation adopted by most countries of the region since 1989 is based on the pertinent rights and

principles set forth in the CRC, including the principle that separation of children from their parents shall be a last resort.⁶⁷ Article 34 of the Romanian law on the rights of the child is one such example: in addition to providing that children shall not be separated from their parents except in "special and limited cases stipulated by the law... and only if this is required by the best interests of the child", it adds that they shall not be separated from their families unless an effort has been made to solve the underlying problem through the provision of counselling, therapy and mediation or other services designed to meet the particular needs of the child and his or her family, transforming the 'last resort' principle into practical guidelines. The Belarusian Law on the Rights of the Child also transforms the last resort principle into practical guidelines. It provides that "The care and guardianship authorities shall take all the necessary measures to place a child, left without parental care, to a new family (for adoption or foster care, guardianship or adoptive family). The state shall give financial support to such families ..."⁶⁸ and children may be placed in an institution only when placement in a family is "impossible".⁶⁹

Similarly, some new legislation recognizes the value of temporary placement and programmes designed to help families recover the ability to provide children with adequate care. The Russian Family Code of 1996 states that, when children are removed from their family because of the behaviour of parents, permanent separation shall not be considered until after a period of six months, during which the parent(s) are provided with assistance in overcoming the problems that led to the removal of the child. The Family Law of the Czech Republic was amended in 1998 to introduce temporary suspension of parental custody. The Romanian law on the rights of the child charges the competent authorities to provide parents whose children have been removed for care and protection with assistance designed to restore their capacity to care for their children, and recognizes the right to legal assistance of parents.⁷⁰

The legislation of some countries in the region also recognizes an option not specifically foreseen by the CRC: the emancipation of adolescents. Slovenia has adopted legislation that recognizes the right of children aged 15 and older to initiate procedures to become independent of their parents. Some new legislation also includes provisions designed to improve conditions of institutional care. The Romanian law on the right of the child, for example, provides that the measures taken with regard to every child deprived of parental protection must be based on an "individualized protection plan."⁷¹ Plans concerning children over 14 years of age require the child's consent.⁷² Czech legislation was amended in 1998 to require semi-annual review of conditions in institutions.

The CRC also has led to changes in alternative care systems in Western Europe. In France, legislation adopted in 1998 provides that when a child is put into care, arrangements must be made to facilitate visits by his or her parents.⁷³ Legislation adopted in 2004 emphasizes that all such decisions must be strictly based on the best interests of the child.⁷⁴ In Sweden,

legislation was amended in 1998 to recognize the right of the concerned parties to be informed of the opening of an investigation on the need for placement. England and Wales may have the most substantive reforms. The Children Act 1989 provides that children may no longer be removed from their homes without a judicial order, except in an emergency. The decision to remove a child from home is a last resort after all efforts to support the family in staying together have been exhausted; both the child and his or her parents have the right to be heard, the parents have a right to legal assistance and the child to be represented by a guardian ad litem. When removal is necessary, placement with a relative is the preferred solution; if this is not possible, the child should be placed near to home and kept together with any siblings. The adoption of this Act and the emphasis on support for the family led to a substantial decrease in the number of children removed from their homes.

Adoption

Procedures concerning adoption and inter-country adoption were poorly regulated in many countries of Central and Eastern Europe prior to 1989. In Poland, for example, the first public agencies having responsibility for adoption were established in 1993; previously, this function was left to private social agencies, law offices and religious organizations. Russian courts were not given jurisdiction over adoption until 1996. In 1998, the Constitutional Court of Belarus ruled that the provisions of the Marriage and Family Code allowing children to be adopted by an extrajudicial procedure without the consent of their parents were inconsistent with the Constitution and the CRC. Most of the more recent legislation now incorporates the principles and safeguards set out in the CRC, including the best interests of the child and the principle that international adoption should be the last resort, that profiteering should be illegal and that the consent of older children should be required.⁷⁵ Several laws recognize the right of children adopted by foreigners to retain their nationality.⁷⁶

The child care system of Romania was in a critical state when the Ceausescu regime collapsed in December 1989. In a country with a population of 22 million, an estimated 100,000 children were confined in orphanages and institutions for the disabled, in very deficient conditions. Children placed in institutions and their living conditions became the focus of international attention, and this led to a surge of inter-country adoption. The economic crisis and weakness of institutional constraints during this period of transition led to widespread corruption in the adoption process. In 1991 the legislation on adoption was amended and a central adoption agency was established to restore order and prevent profiteering from adoption. In 1997 and 1998, a series of emergency ordinances and executive degrees were passed recognizing certain principles derived from the CRC and other international standards, including the principle that institutionalization should be the last resort and the right of families receiving children in placement to financial support. The decrees also devolved respon-

sibility for alternative care to local governments and redefined the responsibility of national authorities in a number of areas, among them monitoring.

In France and Italy, legislation concerning adoption has been amended to strengthen the right of abandoned children to a family. In France, a provision of the Civil Code that precluded the adoption of a child abandoned by adoptive parents was eliminated.⁷⁷ In Italy, the conditions for qualifying as adoptive parents have been made more flexible, and the financial support provided to couples who adopt children for whom it is difficult to find families has been increased (e.g. older children)⁷⁸.

Inter-country adoption

Nearly all the countries of Western Europe and most countries of Central and Eastern Europe have become parties to the 1993 Hague Convention on the Protection of Children and Cooperation in respect of International Adoption.⁷⁹ This Convention is framed by the CRC principles and provisions, including articles 3, 20, 21 and 35. It establishes legally binding standards on inter-country adoption and a system of supervision and cooperation between authorities in countries of origin and of adoption. The Committee considers the Hague Convention an appropriate way to comply with the obligation to establish international agreements to regulate international adoption, which is set forth in Article 21(e) of the CRC,⁸⁰ and regularly calls for its ratification.

Many countries in the region have modified their legislation to bring it into conformity with the CRC and the 1993 Hague Convention. In Italy, regulations on international adoption were rewritten extensively after ratification of the Hague Convention. The new regulations provide that foreign children may not be adopted unless family placement in his or her own country is impossible, and recognize the right of adopted children to receive Italian citizenship immediately. Swedish adoption procedures were amended in 1997 to ensure the compatibility with the Hague Convention and in particular to limit the scope for private adoptions. The Social Services Act also was amended to recognize the special needs that adopted children and adoptive parents may have for social services. France enacted legislation to ensure harmonisation with the CRC and the Hague Convention in 1996.⁸¹ The law establishes a national authority on inter-country adoption, requires adoption agencies working with foreign countries to be accredited and requires prospective parents to obtain authorization before fostering a foreign child. Another law adopted in 2001 made further amendments to national law concerning inter-country adoption, including stricter requirements regarding the consent of the birth parents designed to comply with the Hague Convention.⁸²

Violence, abuse and neglect

Some countries of Central and Eastern Europe have adopted legislation or amended existing legislation

in order to criminalize forms of child abuse not covered by former laws, or to increase the penalties for such crimes. In 1990 Czechoslovakia adopted a law criminalizing treatment that poses a danger to the development of children; the Social and Legal Protection of the Children Act adopted by the Czech Republic in 2002 further strengthens the protection of children against violence, as well as exposure to drugs, alcohol, gambling and pornography. Romanian law on the rights of the child adopted in 2004 prohibits all physical punishment of children.⁸³ Ukraine adopted a Domestic Violence Act in 2001 and in 2004, a new Family Code prohibited all physical punishment and other humiliating treatment.⁸⁴ Legislation designed to safeguard the rights of child victims is less common in this region. The Criminal Procedure Act adopted by Slovenia in 1998 is one of the first laws to address this area. It recognizes the right of child victims to be represented throughout proceedings by someone responsible for ensuring that his or her rights are respected. Victims under the age of 15 may not testify during trial; their testimony is presented in the form of a deposition made prior to trial, and questions by the defence can only be presented through the investigating judge. These provisions are applicable to children who are victims of sexual offences, as well as those who are victims of physical and other forms of abuse.

Most of the Western European countries studied have adopted new legislation on child abuse. Generally, such legislation puts more emphasis on prevention and the protection of victims than on increasing criminal sanctions. In Sweden, the duty to report facts that appear to indicate that a child is in need of protection was extended from professionals to the public in general, and a time limit was established to ensure that such cases are investigated without delay. In England and Wales, the Children Act 1989 made all residential facilities for children subject to regulation.⁸⁵ The Criminal Justice Act 1991 allows the use of pre-recorded video evidence in cases of violence and sexual abuse involving child victims and witnesses, and removed the presumption that children were not competent witnesses, so that the testimony of a child is now as admissible as that of an adult. In Scotland and Northern Ireland, new legislation gave courts the power to adopt 'exclusion orders' that, instead of removing a child at risk from his or her home, require the person who represents a danger to a child to leave the home or cease visiting it.⁸⁶ A new law consolidating the framework for dealing with child abuse and neglect in France was adopted in 1989 and initiatives taken since have been primarily of programmatic nature.⁸⁷

Sexual exploitation

Many countries in Central and Eastern Europe have adopted legislation intended to close gaps in the pre-existing law on sexual offences, or to expand the scope of provisions of the criminal law on sexual offences against young children. The new Criminal Code of Georgia, for example, criminalizes sexual relations with persons under the age of 16, replacing

previous legislation referring to persons under the age of 'puberty'. New penal legislation adopted by Poland in 1997 and Slovenia in 1999 introduced new provisions outlawing the use of children for the production of pornography.

France, Italy, Sweden and the UK have all strengthened criminal law concerning sexual offences against children and increased related sentences. In 1994, France increased the sentences for violent sexual offences against children under the age of 15, and restricted the possibility of early release;⁸⁸ legislation adopted in 2000 criminalizes the prostitution of any child under the age of 18, and expands the scope of offences involving child pornography.⁸⁹ Italian legislation concerning sexual offences against children was thoroughly revised in 1996; the new legislation recognizes some new offences, and avoids the need for explicit testimony by the victim in cases of sexual abuse of children. In Sweden the sentences for rape and sexual abuse of children were increased in 1992; in 1995 legislation was amended to criminalise all intercourse with a person under the age of 15 regardless of the relationship between the victim and the perpetrator, and in 1999 the sentences for child pornography were increased and the requirements concerning knowledge and intent were modified to facilitate prosecution for both the possession and distribution of child pornography. In the United Kingdom, the Crime (Sentences) Act 1997 provides for a mandatory life sentence for a second serious sexual or violent offence, including offences against children, and increased the maximum penalty for indecent conduct towards a child under 14.⁹⁰ The Criminal Justice and Public Order Act 1994 expanded the definition of child pornography to include digital images, including 'pseudo-photographs'. Several laws have been enacted to protect children against sex offenders who have served their sentences. The Offenders Act 1997 obliges persons convicted of sex offences against children to notify the police of their name and address; the Crime and Disorder Act 1998 enables the courts to adopt orders for the supervision of sex offenders and restrictions on their activities, and the Protection of Children Act 1999 requires organizations providing services to children to vet candidates for employment, while prohibiting the employment of convicted offenders in positions involving substantial contact with children.

Many countries in Western Europe have adopted, as part of the struggle against 'sex tourism', legislation giving their courts jurisdiction over offences committed abroad. In France, the Act of 1 February 1994 gives French courts jurisdiction over sexual offences against children committed by nationals or residents while abroad. The Sexual Offences (Conspiracy and Incitement) Act 1996, makes it an offence in Scotland to conspire in or incite the commission of a sexual offence abroad and the Sex Offenders Act 1997 gives courts in England and Wales jurisdiction over sexual offences committed against children outside their territory. In Italy a new law on child prostitution, child pornography and sex tourism adopted in 1998 establishes jurisdiction over crimes committed by Italians abroad and creates a fund that finances programmes for the rehabilitation of victims.⁹¹

Many countries in Western Europe also have enacted legislation to protect the rights of child victims of sexual abuse or exploitation.⁹² In the UK, the Criminal Justice Act 1991 allows the use of pre-recorded video evidence in cases of sexual abuse involving children and legislation enacted in 1992 strengthens the right of victims to confidentiality.⁹³ Legislation adopted by Italy in 1996 allows the testimony of child victims to be taken before trial, in the child's home or a therapeutic setting. In addition, the 1998 law on immigration allows residence permits to be granted to foreign children who have been victims of organized prostitution, in the event of risks to their safety. In France, legislation adopted in 1998 allows video or audio recording of the victim's testimony to be made prior to trial in order to limit the need for repetition of the testimony and further victimisation of the child.⁹⁴ It also allows for the appointment of a guardian to represent children in the event of a conflict of interests with his or her parents, and recognizes the right of the victim to reimbursement of all medical expenses. Legislation adopted in 2000 increases the right of confidentiality of children who are victims of crimes.⁹⁵

Child labour

In its work in this area, the Committee considers Article 32 of the CRC in the light of relevant international standards, including ILO Convention No. 138, which provides that the minimum age for light work that does not interfere with schooling should be 13 years and the minimum age for full time work outside the family that is not dangerous should be 15, provided that the school leaving age is not higher than 15.⁹⁶

Legislation in Central and Eastern Europe concerning the employment of children was largely in compliance with international standards when the CRC entered into force in 1990. Most of the independent countries in the region became parties to International Labour Convention No. 138 long before the CRC came into force.⁹⁷ Most of the newly independent countries in the region and four of the five Central Asian Republics also have become parties.⁹⁸ Law reform concerning child labour has not been extensive in this region, presumably because of widespread prior adherence to Convention No.138. Interestingly, the Russian Federation lowered the minimum age for employment from 16 to 15 in 1995, to bring this age into conformity with the school leaving age.

Many Western European states did not become parties to Convention No.138 until after the adoption of the CRC: France and Sweden became parties in 1990, Cyprus and Denmark in 1997, Portugal and Turkey in 1998, Iceland and Switzerland in 1999 and Austria and the United Kingdom in 2000.⁹⁹ Some of these countries have modified their legislation in order to bring it into compliance with the minimum requirements of Article 32 of the CRC and Convention No. 138. Sweden, for example, adopted legislation establishing the minimum age of 13 years for light employment and the minimum age of 16 years for

full-time employment. The UK amended its legislation concerning the employment of children under school leaving age (16 years) to comply with international standards on the subject.¹⁰⁰

Juvenile justice

With the entry into force of the CRC, State parties were called upon to set in place laws, procedures, authorities and institutions specifically applicable to children and qualified to take into account the child's specific needs and evolving personality. With widespread implications, this is an area where progress has often been slow across regions and where challenges continue to prevail.

In Central and Western Europe, specialized courts for juvenile offenders have not existed and the applicable laws and procedures have generally been contained in the Penal Code and Code of Criminal Procedure; correctional facilities for juveniles are generally separated from those for adults but insufficient investment has been made in the development of programmes and policies designed to meet the special needs of adolescents. Much of the new legislation enacted since 1990 introduces new due process guarantees and in some cases the minimum age of criminal responsibility has been raised. For instance, in Georgia the Criminal Code of 1999 raised the age from 16 to 18 years. At the same time, a more thorough consideration of the CRC provisions and related international standards will create opportunities for an in-depth restructuring of the administration of the juvenile justice system and for the distinct consideration of the special needs and rights of children concerned.¹⁰¹

The system in Slovenia deserves a special reference. Although there are no special courts for juveniles and the prosecution of juveniles is governed by the ordinary penal laws, prevention policies are particularly successful and as a result, the number of persons under the age of 18 convicted of serious crimes is one of the lowest in the world.¹⁰² Statistics indicate that deprivation of liberty as a measure of last resort is a principle applied with regard to pre-trial detention as well as sentencing.¹⁰³ Where prevention is this successful and where ordinary courts do in fact apply internationally recognized principles governing the treatment of juvenile offenders, the creation of a separate system of juvenile justice may not be necessary to ensure compliance with the CRC. But in countries where juvenile delinquency is a large and growing problem, the principles and provisions of the CRC and other international standards provide a strong reference for safeguarding the rights of juvenile offenders and of children involved with the justice system.

One positive trend is widespread recognition in new legislation of the right of children accused of an offence to legal assistance. The Criminal Procedure Act of Slovenia was amended in 1998 to recognize the right of juveniles in pre-trial detention to legal assistance at all times. If the juvenile does not select a lawyer, one must be appointed to represent him. Convicted juveniles serving custodial sentences also

have the right to free legal assistance to defend their rights under legislation adopted in 2000. The Code of Criminal Procedure adopted by Georgia in 1997 also requires the presence of a lawyer during any interrogation of a child suspect, as well as during trial. Under new Russian legislation, a juvenile is entitled to legal assistance as soon as detention is ordered.

Another important development is the increasing recognition and use of alternative (i.e. non-custodial) sentences and 'diversion' (i.e. the resolution of minor cases without adjudication).¹⁰⁴ In Romania, the Penal Code was amended in 1996 to introduce sentences to community service for juveniles. Changes to the provisions of the new Russian Criminal Code concerning probation led to an increase of more than 100 per cent in the percentage of juveniles receiving this sentence. The Criminal Procedure Law of Slovenia was amended in 1998 to introduce a new form of diversion, called settlement. With the agreement of the victim, the accused and the prosecutor, the case of an accused juvenile can be referred to an independent mediator who explores the possibility of reaching a settlement satisfactory to the accused and the victim without proceeding to trial.

The social dislocation that has plagued most of the countries in transition has led to a marked rise in crime. This in turn has created pressures to impose stricter sentences on juveniles convicted of serious crimes and to lower the age at which accused persons can be tried as adults. Slovenia amended the Criminal Code in 1999 to increase the maximum sentence which can be imposed on juvenile offenders from 5 to 10 years. The Penal Code adopted by Poland in 1997 lowers the age at which adolescents who commit serious offences can be tried as adults from 16 to 15, and the new Russian Penal Code increased the number of offences for which 14 and 15-year-olds can be sentenced to correctional facilities.

France and the United Kingdom have made substantial changes in legislation since 1989 concerning juveniles accused of crimes, but the protection of the rights of children accused or convicted of an offence has remained a challenge. In France, legislation was adopted in 1995 and 1996 to facilitate prompt resolution of cases involving juveniles accused of an offence,¹⁰⁵ and in 2000 legislation was adopted enhancing their right to due process.¹⁰⁶ In its Concluding Observations, the Committee has expressed concern that this new legislation allows juveniles to be detained in police custody for up to four days and tends to "favour repressive over educational measures"¹⁰⁷ It also expressed concern that a minimum age for the prosecution of juveniles had not been incorporated into the law.¹⁰⁸

The juvenile justice system of Northern Ireland was substantially reformed by the Criminal Justice (NI) Order 1996 and the Criminal Justice (Children) (NI) Order 1998, bringing it into greater conformity with international standards.¹⁰⁹ In England and Wales, the Criminal Justice Act 1991 raised the minimum age at which a custodial sentence can be imposed from 14 to 15 years, also the upper age limit of the competence of juvenile court from 17 to 18. However,

the Crime and Disorder Act 1998 abolished the presumption that children between the ages of 10 and 14 are incapable of the knowledge or intent required for prosecution, and allows custodial sentences to be imposed on persistent offenders under the age of 15 years. This Act also allows courts to "draw inferences" from the silence of an accused juvenile. In its review, the Committee expressed concern at the fact that "deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37 (b) of the Convention."¹¹⁰

Sweden and Italy have made few changes in their criminal justice systems. In 1995, the Swedish Young Offenders (Special Provisions) Act was amended to establish time limits intended to avoid delays in the adjudication of juveniles. In Italy, legislation designed to strengthen community based programmes for delinquency prevention and for non-custodial rehabilitation of offenders was adopted in 1991.¹¹¹

Child refugees and asylum seekers

Article 22 of the CRC incorporates by reference international law concerning refugees. Towards the end of the drafting process, the Office of the UN High Commissioner for Refugees (UNHCR), which participated actively in the drafting of article 22 of the CRC, adopted guidelines concerning child refugees and asylum seekers.¹¹² These guidelines have encouraged countries to reform relevant laws and procedures concerning children.

Most countries of Central and Eastern Europe have adopted legislation on refugees since 1990. This trend has been encouraged by two factors: openness to cooperation with the international community and acceptance of international human rights standards, and the outbreak in the region of armed conflicts producing refugee flows. Legislation adopted by Romania in 1996 recognizes the right of children aged 14 and over to apply for refugee status independently; applications on behalf of younger children can be made by a legal guardian. These provisions were later incorporated into the 2004 Law on the Protection and Promotion of the Rights of the Child which also provides that children whose applications for refugee status are denied shall be provided with 'special protection' until such time as arrangements can be made to send the child to a country where there are relatives willing to receive the child.¹¹³ Children with refugee status have the same right to education as Romanian children. The Asylum Act adopted by Slovenia in 2000 recognizes the right of child asylum seekers to legal assistance in presenting their claim, provides that the claims of unaccompanied child asylum seekers shall be considered with the highest priority, and that those whose application is denied cannot be returned to their country (or a third country) until suitable arrangements have been made.

During the 1990s many Western European countries experienced large increases in the number of persons seeking asylum, including children. The CRC and the UNHCR guidelines, combined with the increased flow

of asylum seekers, led most countries of the region to adopt new legislation or regulations concerning child asylum seekers and refugees. In Italy, for example, the immigration law adopted in 1998 allows humanitarian visas to be issued to child asylum seekers whose application for refugee status is rejected.¹¹⁴ It also allows temporary visas to be issued to child victims of armed conflict in need of medical treatment, and establishes a Committee for the Protection of Foreign Children that coordinates programmes for unaccompanied foreign children, including asylum seekers. Sweden introduced a number of legislative changes in this area, in response to concerns expressed by the Committee and to ensure compatibility with CRC. In 1993, the rules concerning the detention of child asylum seekers were amended so that children may not be deprived of liberty unless the authorities determine that other forms of supervision are likely to be inadequate.¹¹⁵ In 1997, the Aliens Act was amended to ensure that special regard is given to the best interests of the child. These amendments also clarified that child asylum seekers have the right to be heard and that the information they provide shall be taken into account as far as is justified by the child's age and maturity. Child asylum seekers may only be detained in special facilities, and have a right to legal counsel if detention is being considered. Furthermore, the protection previously limited to children under the age of 16 was extended to all children under the age of 18.

The Committee has encouraged further legislative reform to safeguard the rights of children. For example, in 1993 and 1996 the UK adopted new legislation providing inter alia that applications from unaccompanied child asylum seekers shall be given priority, that interviews should be dispensed unless strictly necessary and that children who obtain refugee status are entitled to request reunification with close family members. The Committee recommended further steps, in particular to ensure that child asylum seekers are not detained except as a last resort, that guardians are appointed for such children, that evaluation of their immigration status be expedited and that their right to basic services such as health and education be guaranteed.¹¹⁶ In France, legislation adopted in 2002 provides for the appointment of an 'ad hoc administrator' for each foreign child who arrives in France unaccompanied by a parent or guardian.¹¹⁷ This person is responsible for representing children in all procedures related to their immigration status, including applications for refugee status, and for helping them obtain access to any services they may need while such proceedings are pending. The Committee welcomed the adoption of this law, but noted with concern the detention of unaccompanied foreign children with adults, the process used to determine the age of young arrivals and the refoulement¹¹⁸ of unaccompanied children before they have access to the assistance provided for in the new legislation.¹¹⁹

Conclusion

One of the most important findings of this study is that the CRC has been incorporated directly into the national law of most of the countries whose legislation was

reviewed. In some, it was incorporated automatically by existing constitutional principles; other countries adopted legislation for this purpose. Many of the new constitutions adopted by countries in Central and Eastern Europe over the last 15 years contain relatively generous provisions concerning the rights of the child. In contrast, only two of the Western European countries covered by this study have amended their constitutions to enhance the rights of the child.

Direct incorporation of the CRC into national law is more widespread in Civil Law countries than in countries whose legal system is based primarily on Common Law. This is not surprising, given the common law doctrine that treaties do not form part of national law unless they are expressly incorporated into it by the legislature. At the same time, while incorporation of the CRC has been widespread in countries of Central and Eastern Europe, it has been less systematic in the Western European countries that follow the Civil Law. In some countries that have incorporated the CRC into the domestic legal order, courts have adopted important decisions based on the CRC¹²⁰.

All of the countries studied have made substantial changes in their legislation to better protect the rights of children. The prevailing trend seems to be the 'sectoral approach' to law reform, that is, gradually examining existing legislation concerning different areas in order to identify and make the changes that are needed to bring them into conformity with the CRC. Other countries have adopted comprehensive laws on children.

Each of these approaches has its merits, and none is sufficient in and of itself. The adoption of codes without an effort to identify and modify conflicting provisions of ordinary legislation can undermine the effectiveness of a new code. On the other hand, focusing on specific sectors such as child protection, the family and juvenile justice tends to leave some of the rights recognized by the CRC out of the law reform process – especially civil rights such as the right of the child to privacy or freedom of thought, association and religion – and to recognize principles such as the obligation to respect the views of the child and the prohibition of discrimination only in specific circumstances or contexts.

The adoption of laws recognizing entitlements without the creation of the corresponding programmes and infrastructure is an empty gesture that may well breed cynicism and lack of respect for law and international commitments. On the other hand, although the creation of new programmes can have a major impact on effective enjoyment of many rights, reliance on programmes without a legal framework has disadvantages. The continued existence of the programme depends on the priorities of the government of the day, and the implementation of the programme may fail to respect the principles and provisions contained in the CRC.

Regulations that provide guidance to public servants on how new laws should be applied are important. Excessive reliance on executive decrees has disadvantages, however. Since they are not adopted by the legislature, decrees lack the degree of legitimacy

and public support that only the adoption of a law by an elected legislature can produce. Experts consulted during the course of this study agree that the *process* of law reform has been the catalyst for profound cultural changes concerning the role of children in the family and in society in virtually every part of the world. In addition, while legislation often creates rights that can be enforced by the courts, decrees generally do not. Excessive reliance on either decrees or on programmes, without law reform, implies reliance on a single branch of the government. A more balanced approach involving law reform, regulations and programmes brings the entire state – the legislature, the executive and the courts – into the effort to ensure the realisation of the rights of children.

Most new legislation concerning children adopted since 1989 increases the protection of the rights of the child. New legislation concerning children that is

contrary to the letter and spirit of the CRC, while rare, exists.¹²¹ The main problems, however, tend to be gaps in law reform and difficulties in implementing new legislation designed to protect the rights and principles contained in the CRC. The former requires a continued effort to review the legislation in force and to amend or replace it, as necessary, to ensure that it adequately protects *all* the rights of *all* children. The latter requires a long-term effort to develop, finance and implement programmes to protect the rights of children, to train or retrain public servants whose activities affect children, to make the public aware of the rights of the children and to change attitudes and values that foster violations of the rights of the child, to develop independent mechanisms for promoting and protecting the rights of children, and to document and monitor the actual situation of children and the impact of laws and programmes designed to protect their fundamental rights.

Notes

- 1 In Georgia, it prevails over ordinary legislation provided that the relevant provision of the Convention is compatible with the Basic Law.
- 2 UN Committee on the Rights of the Child, Second periodic reports of States parties due in 1998: Slovenia. 18/06/2003, CRC/C/70/Add.19, para.93-94 (The law on citizenship was later amended, in 1994, to recognize nationality on grounds other than parentage).
- 3 See e.g. the *Arret Chloé X* of 15 May 2005 (Court of Cassation) and *arret* of 29 July 1994 in the case of the *Prefet de la Seine-Maritime* (Conseil d'Etat).
- 4 Brownlie, I., *Principles of Public International Law*, Oxford University Press, 2003, p.44, citing the opinion of the Privy Council in *Chung Chi Cheung v. the King*, 1939, 1 KB 271, 295 (Lord Atkin).
- 5 *R.v. Secretary of State for the Home Department ex parte Venables and Thompson*, (1997) UKHL 25; (1998) AC 407; (1997) 3 All ER 97; (1997) 3 WLR 23; (1997) 2 FLR 471; (1997) Fam Law 786 (12 June, 1997) at 37. (Lord Hope of Craighead also referred to the CRC at page 79). The CRC has also been cited by the House of Lords in two more recent decisions: *Regina v. Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others*, decision of 24 February 2005, speech of Baroness Hale of Richmond, para.80 (upholding legislation prohibiting corporal punishment in private schools against the argument that it violated freedom of religion) and *Regina v. Durham Constabulary and another (Appellants) ex parte R (FC) (Respondent)*, decision of 17 March 2005, [2005] UKHL 21, speech of Lord Bingham of Cornhill, para.19 (finding that certain aspects of the cautioning scheme for juveniles established by the Crime and Disorder Act 1998 does not violate Art.40 of the CRC) and speech of Baroness Hale of Richmond, para. 26 (stating that the CRC "must be taken into account in the interpretation and application of those rights" protected by the European Convention on Human Rights and Fundamental Freedoms, which has been incorporated into the domestic law of the United Kingdom).
- 6 See e.g. Article 38 of the 1993 Constitution of the Russian Federation and Article 36(3) of the 1995 Constitution of Georgia.
- 7 Constitution of the Republic of Belarus of 1994.
- 8 Article 52(1) and (2), Constitution of Ukraine adopted at the Fifth Session of the Verkhovna Rada of Ukraine on June 28, 1996.
- 9 Article 52(3) and 51(3), respectively, *Idem*.
- 10 Article 72(1), Constitution of the Republic of Poland of April 2, 1997.
- 11 Article 72(3), *Idem*.
- 12 Article 22, Belgian Constitution (amended in 2000).
- 13 UN Committee on the Rights of the Child, General Comment No.5 "General Measures of Implementation of the Convention on the Rights of the Child", CRC/GC/2003/5, November 2003, para.18.
- 14 Ley Orgánica 1/1996 del 15 de enero de protección jurídica del menor.
- 15 Loi No. 93-22 du 8 Janvier 1993 modifiant le code civil relative à l'état civil, à la famille et aux droits de l'enfant et instituant le juge aux affaires familiales, published in the J.O. No.7 of 9 January 1993.
- 16 The law is titled "Provisions on the Promotion of Rights and Opportunities of Children and Adolescents".
- 17 Law 451 of 1997. The Observatory is a monitoring and coordinating mechanism involving the relevant Ministries, regional and local governments and civil society. It also prepares reports on the rights of the child, including the report to the Committee.
- 18 International Human Rights Instruments, Core document forming part of the Reports of States parties: Sweden, "HRI/CORE/1/Add.4/Rev.1" 27/05/2002, para.78.
- 19 See UN Committee on the Rights of the Child, Initial reports of States parties due in 1992: Sweden. 23/09/92, CRC/C/3/Add.1, para.11; and UN Committee on the Rights of the Child, Second Periodic reports of States parties due in 1997: Sweden. 11/02/98, CRC/C/65/Add.3, para.50.
- 20 The Civil Code adopted by Georgia in 1997, for example, obliges parents to give primary consideration to the best interests of their children and recognizes the importance of this principle in the context of custody care and protection proceedings. The Adoption Act adopted the same year also recognizes the primacy of this principle. Another example is a 1995 amendment to the Family and Guardianship Code of Poland that prohibits divorce "if the welfare of a married couple's under-age children would suffer as a result".
- 21 Article 2 (3), for example, declares "In all actions and decisions concerning children, whether undertaken by public authorities and authorized private institutions, as well as courts of law, the best interests of the child shall be a primary consideration."
- 22 Law No. 40 of 6 March 1998, Art.26 (3).
- 23 Decisions 341 of 20 July 1990 and 303 of 24 July 1996, referring to articles 2 and 31 of the Constitution. UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under art 44 of the convention: Italy. 12/07/2002, CRC/C/70/Add.13 para.104.
- 24 UN Committee on the Rights of the Child, Third periodic report of States parties due in 2002: Sweden. 12/07/2004, CRC/C/125/Add.1, para.189.
- 25 The Children (Scotland) Act contains similar provisions, although it also establishes an exception to the principle that the welfare of the child shall be paramount, for cases in which the interests of a child are outweighed by the interest of public safety, and the Children (NI) Order makes the wel-

- fare of the child the paramount consideration in any legal proceeding concerning the upbringing of a child.
- 26 See e.g. Constitution of Romania, Art.4; Constitution of Slovenia, Art.14. The exception is that most of these Constitutions, although they prohibit discrimination on the grounds of race, do not expressly prohibit discrimination on grounds of colour.
 - 27 Art. 14 of the Constitution of Georgia, and Art. 19.2 of the Constitution of the Russian Federation. The Penal Code of Georgia also prohibits discrimination on the grounds of organizational membership.
 - 28 Article 11, Law of the Republic of Belarus on Child's Rights, No.2570-XII of November 19, 1993.
 - 29 Article 7, Law No.272/2004 of 21/06/2004 on the protection and promotion of the rights of the child.
 - 30 Law No.205/1993 and Law 40 of 6 March 1998. *Supra* note 23, para.96 and 97.
 - 31 Act of 3 December 2001. UN Committee on the Rights of the Child, Second periodic reports of States parties due in 1997: France, 09/10/2003, CRC/C/65/Add.26, para.113.
 - 32 Legislation in force in the UK prior to 1989 prohibited discrimination based on four grounds: colour, race, nationality and sex; discrimination on the basis of birth was also prohibited in England and Wales, and the Children (NI) Act 1995 also prohibits discrimination on the basis of birth.
 - 33 The Committee on the Rights of the Child had expressed concern about this in its Concluding observations on the Initial Report of Sweden, CRC/C/15/Add.2, 1993, para.7
 - 34 In Poland, consent of children aged 13 is required for such purposes. The Georgian Civil Code also obliges courts to consider the views of children over the age of 7 in cases affecting them and in 2003 it was amended to provide children 14 years or older with legal standing in court proceedings.
 - 35 The amendments also recognize the right of younger children to be represented by a guardian for purposes of litigation, and the right of children aged 10 to be heard in proceedings concerning their care or upbringing.
 - 36 Article 23(2); see also Art.3 c), *supra* note 28.
 - 37 The Act of 14 May 1998 gives all children capable of discernment the right to be heard by family councils and to request that a family council be convened. Previously, these rights were reserved to children aged 16 years or older. Legislation concerning legal aid was amended in 1993 in order to provide legal aid to children who wish to be heard in proceedings under the Civil Code concerning divorce, custody and similar matters.
 - 38 Second Report of Italy, *supra* note 23, para.113-114.
 - 39 *Ibid*, para.111, 112 and 115.
 - 40 Care of Young Persons (Special Provisions) Act (1990:52). Children over 15 enjoyed this right previously.
 - 41 The Law also recognizes a number of social and economic rights. In addition to those mentioned below, they include the right to leisure, property, the right to adequate living conditions and the right of children under the age of 7 to free use of public transportation.
 - 42 Children born abroad to a Swedish father not married to the child's mother also may obtain citizenship if the father requests it before the child reaches the age of majority.
 - 43 In 1993 the law was amended to protect the right of children who had one deceased parent, and whose remaining parent remarries, to maintain contact with the child's grandparents. New legislation also recognizes the principle that siblings removed from parental care should not be separated from each other, and their right to maintain contact with one another other, should separation be unavoidable. A law on access to the origins of adopted persons and children in care adopted on 22 January 2002 maintains the right of women to give birth anonymously, but establishes a new system for preserving information on the identity of such children and encourages the waiver of confidentiality. Any woman who wishes to give birth anonymously will be invited to leave information on her identity, the child's origins and the circumstances of the birth in a sealed envelope. A national council on access to personal origins receives the information, and is responsible for determining under what circumstances the information, or parts of it, will be released to the children concerned. The Committee on the Rights of the Child has expressed the view that, because it allows the mother to decide what information her child will have access to, this legislation does not adequately protect the child's right to identity. The Family Name Act of 4 March 2002 allows parents to decide whether children will be known by the family name of the father, the mother or both. Another law enacted in 1993 requires the consent of children aged 13 or over for changes in their family name.
 - 44 See e.g. article 33 of the Czech Charter of Fundamental Rights and Freedoms of the Czech Republic, Article 37(1) of the Constitution of Georgia (health insurance), Article 68 of the Polish Constitution, Article 33 of the Constitution of Romania, Article 41 of the Constitution of the Russian Federation and Article 49 of the Constitution of the Ukraine.
 - 45 E.g. the Law on the Protection and Encouragement of the Natural Feedings of Children adopted by Georgia in 1999.
 - 46 The most recent legislation on this subject is Law No.2004-806 of 9 August 2004.
 - 47 Framework Law for the Assistance, Social Integration and Rights of Persons with Disabilities, No.104 of 5 February 1992.
 - 48 *Supra* note 19, Second report of Sweden, para.418.
 - 49 The Toys Safety Act (1992:1327).
 - 50 Parents may remove their children from such courses, however.
 - 51 Article 23 of the Belarusian Law on the Rights of the Child, for example, provides that "Every child shall enjoy the right to get free of charge education, including education in native language..."
 - 52 For example, the right to a hearing before expulsion is recognized, but must be invoked by the student's parents.
 - 53 Law No. 9 of 20 January 1999, "Disposizioni urgenti per l'elavamento dell'obbligo di istruzione".
 - 54 Presidential Decree of 29 May 1998.
 - 55 Law No.40 of 6 March 1998, Art.36 (3) (later integrated into Testo Unico No.286 of 25 July 1998)
 - 56 Art.32 (1), (4) and (5) (The Charter is part of the constitutional order of the Czech Republic.) See also the Constitutions of Belarus, Art.32 (2); Romania, Art.44(1); the Russian Federation, Art.38(1); Slovenia, Art.54 and Ukraine, Art.51.
 - 57 Art.5 of the Romanian law on the rights of the child, for example, states that "The parents' main responsibility is to raise and ensure the proper development of the child".... "the local public administration authorities have the duty to support the parents" in this regard, and "The intervention of the State is complimentary..." Article 30(3) further provides that "The child's parents have the right to receive information and specialized assistance that are necessary for upbringing, caring [for] and raising the child."
 - 58 Act of 25 July 1994.
 - 59 Law No. 448 of 23 December 1998, *Misure di finanza pubblica per la stabilizzazione e lo sviluppo*; Law No.53 of 8 March 2000, *Disposizioni per il sostegno della maternità e della paternità, per il diritto alla cura e alla formazione e per il coordinamento dei tempi della città*; and Law No.448 of 28 December 2001, *Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato*.
 - 60 In England and Wales, no significant changes have been made in the legislation since adoption of the Children Act 1989, which provides that primary responsibility for the upbringing of children rests with parents, and recognizes the responsibility of local authorities in England and Wales to provide assistance to parents who experience difficulties in this task. The Children (Scotland) Act 1995 and Children (NI) Order 1995 place an obligation on local authorities to draw up comprehensive plans for the provision of services to children, but do not recognize entitlements to services.
 - 61 The formulation of this principle in Article 18.1 of the CRC is weaker than that of earlier human rights instruments, which refer to equal rights and responsibilities. See e.g. Art.23.4 of the International Covenant on Civil and Political Rights and Art.16(d) of the Convention on the Elimination of All Forms of Discrimination Against Women.
 - 62 The Parental Authority Act of 4 March 2002.
 - 63 Under the Common Law a father was recognized as the natural guardian of his children.
 - 64 Similarly, the Children (NI) Order introduces the principle of equal responsibility to the law of Northern Ireland and also allows the unwed father to recognize his paternal responsibility by simple agreement, without a court order.
 - 65 See generally *A Decade of Transition*, esp. Ch.5, *Children Deprived of Family Upbringing*, Innocenti Research Centre, Regional Monitoring Report No.8, 2001.
 - 66 Child Institutionalization and Child Protection in Central and Eastern Europe, M. Burke, Innocenti Occasional Papers No.52, 1995.
 - 67 Art.15 of the Belarusian Law on the Rights of the Child, for example, provides that "Every child shall have the right to live in the family, to know both his or her parents, the right to be cared for by his or her parents, to live together with

- them, except when such separation from one or both parents is necessary for the best interests of the child.” Further, in 1996 the Constitution of Belarus was amended to provide that children may not be removed from their parents except by court order, Art 32(4): “Children may be separated from their family against the consent of their parents or persons in loco parentis only according to the verdict of the court of law, if the parents or persons in loco parentis fail in their duty towards their children”.
- 68 Art.29, supra note 28.
- 69 Art.30, Idem.
- 70 Art.37, supra note 29. See also Art.54, which provides that when children have been removed from their family “special priority” shall be given, whenever possible, to the development of a plan for re-integration into the family.
- 71 Art.60 prohibits the placement of children under the age of 2 years in institutions.
- 72 Art.53(1) and (3). If the child refuses consent, a court must determine whether the child’s reservations are justified.
- 73 Framework Act to combat exclusion of 29 July 1998.
- 74 Law of 2 January 2004 amending the Civil Code.
- 75 See e.g. Art.29 of the Belarusian Law on the Rights of the Child; Art.114 of the Family and Guardianship Code of Poland as amended in 1995.
- 76 See e.g. Art.29 of the Belarusian Law on the Rights of the Child.
- 77 Act of 5 July 1996, amending the Civil Code.
- 78 Law No. 149: “Modifiche alla legge 4 Maggio 1983, n.184, recante ‘Disciplina dell’adozione e dell’affidamento dei minori’, nonche al titolo VIII del libro primo del Codice Civile”, of 28 March 2001.
- 79 Western Europe countries that are not parties include Greece, Ireland and Lichtenstein. From Central and Eastern Europe, the countries that are parties to the Hague Convention include Albania, Azerbaijan, Belarus, Bulgaria, the Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, the Republic of Moldova, the Slovak Republic and Slovenia.
- 80 See e.g. the Annex to General Comment No.5 (supra note 13) and the General guidelines for periodic reports: 20/11/96, CRC/C/58, para.85.
- 81 Act of 5 July 1996.
- 82 Act No. 2001-111 of 6 February 2001. For a summary of other provisions of the law, see the Second Report of France (supra note 31), para.237-239.
- 83 Article 28, supra note 29.
- 84 Article 150, Family Code of 1 January 2004.
- 85 Private homes were not regulated previously.
- 86 The Children (Scotland) Act The Family Homes and Domestic Violence (NI) Order 1998.
- 87 Act of 10 July 1989.
- 88 Act No. 94-89 of 1 February 1994.
- 89 Parental Authority Act of 4 March 2002.
- 90 In Scotland similar legislation increased the maximum penalty for sexual offences against girls under the age of 16.
- 91 Law against the Exploitation of Prostitution, Pornography and Sexual Tourism to the Detriment of Minors: New Forms of Slavery, No.269 of 3 August 1998.
- 92 Legislation of this kind appears to be rare in Central and Eastern Europe. The Criminal Procedure Act of 1998 of Slovenia, described above, is one exception.
- 93 See e.g. Sexual Offences (Amendment) Act 1992.
- 94 Act No. 98-468 of 17 June 1998 on the prevention and punishment of sexual offences.
- 95 Act of 15 June 2000 (The Act also protects juvenile offenders, runaway children, abandoned children and child victims of suicide.)
- 96 Convention 138 allows countries whose economies and educational systems “are insufficiently developed” to impose age limits of 12 and 14, respectively, until such time as social conditions improve.
- 97 Belarus (1979) Bulgaria (1980), Poland (1978), Romania (1975) the Ukraine (1979) and the then USSR (1979); Albania became a party in 1990 and Hungary in 1998.
- 98 The exceptions are Estonia, Latvia, FYR Macedonia, Republic of Moldova, the Slovak Republic and Tajikistan.
- 99 Belgium, Finland, Germany, Italy, the Netherlands, Norway and Spain had long been Parties to Convention No.138; at present only Andorra, the Holy See, Lichtenstein and Monaco are not parties.
- 100 The new legislation prohibits the employment of children under the age of 13, restricts the hours of children aged 13 to 16 to ensure that they do not conflict with schooling and prohibits the employment of children under age 16 in industrial work and other work that is likely to be harmful to their health or well-being.
- 101 Such standards include the UN Rules on the Administration of Juvenile Justice or Beijing Rules, adopted in 1985 and mentioned in the Preamble to the Convention, and two instruments intended to complement the Beijing Rules adopted in 1990: the Guiding Principles on the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the UN Rules on the Protection of Juveniles Deprived of Liberty. The Committee routinely recommends that countries take those standards, as well as the CRC, into account in reforming their juvenile justice systems.
- 102 The number of persons under 18 serving custodial sentences at any given time from 1996 to 2000 averaged less than 30 persons. UN Committee on the Rights of the Child, Second periodic reports of States parties due in 1998: Slovenia. 18/06/2003, CRC/C/70/Add.19, para.275.
- 103 In 1999, for example, only 1% of children brought before a court were detained prior to adjudication. Ibid, Table 27.
- 104 The recognition of non-custodial sentences and existence of non-custodial programmes for the rehabilitation of offenders is essential for compliance with the principle that deprivation of liberty shall be the last resort, established by Article 37(b) of the CRC; Art.40.3(b) calls for diversion programmes. They are described in more detail by Rules 11 and 18 of the UN Standard Minimum Rules for the Administration of Juvenile Justice.
- 105 The Act of 8 February 1995 and Act of 1 July 1996.
- 106 The Act of 15 June 2000 recognizes their right to be informed and of the right to remain silent as soon as they are taken into custody, the right to a preliminary hearing before being charged, the right to a decision by an independent judge on the need for detention prior to trial and the right to appeal. It also provides that all interrogations of a juvenile must be recorded.
- 107 UN Committee on the Rights of the Child, Concluding observations: France. 30/06/2004, CRC/C/15/Add.240, para.58.
- 108 Ibid, para.4 and 16.
- 109 The new legislation establishes a presumption that children accused of offences should not be detained prior to trial and obliges a court that requires an accused juvenile to be detained while awaiting trial to state the reason why this measure is necessary. Custodial sentences must be justified by “the seriousness of the offence” and the “protection of the public”; and a court that imposes one must state the reasons it considers these criteria to be met. The maximum sentence is 24 months, of which half will be served in the community under supervision.
- 110 UN Committee on the Rights of the Child, Concluding observations, second periodic reports: United Kingdom of Great Britain and Northern Ireland. 09/10/2002, “CRC/C/15/Add.188”, para.59.
- 111 Law No. 216 of 19 July 1991, “Primi interventi in favore dei minori soggetti a rischio di coinvolgimento in attivita criminose.”
- 112 Executive Committee Conclusion No.47; “Guidelines on Refugee Children”; UNHCR, Geneva, 1988 (A second edition was published in 1994).
- 113 Art.72, 73 and 75.
- 114 In effect, this law provides that foreign children cannot be expelled unless expulsion is necessary to protect national security or public order, or to maintain the unity of the family.
- 115 The reforms also recognized the principle that family members shall not be separated in the event detention is considered necessary.
- 116 Supra note 110, para.49-50.
- 117 The Parental Authority Act (Supra note 31, para.377-378).
- 118 “Refolement” means the (expulsion or) return of a child entering the country to a country where his or her life, integrity or liberty will be in danger. (See “Convention on the Status of Refugees (1951)” Art.33).
- 119 Supra note 107, para.50.
- 120 The Belgian Constitution was amended in 2000 by the insertion of Art.22bis which provides that “each child has the right to respect for his/her moral, physical, psychological and sexual integrity...” The Bill of Rights added to the Constitution of Iceland in 1995 includes a programmatic provision on the rights of children.
- 121 Juvenile justice is one area where laws tending to restrict the rights of the child have been adopted, perhaps due to the tendency to blame adolescents for real or perceived increases in crime.

2

NATIONAL INDEPENDENT INSTITUTIONS FOR THE PROTECTION OF CHILDREN'S RIGHTS

The Committee on the Rights of the Child considers the establishment of independent national institutions for the promotion of the rights of the child "to fall within the commitment made by State 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."

– Committee on the Rights of the Child,
General Comment No.5, para.65

The spread of statutory independent institutions for children's rights – principally children's ombudspersons and commissioners for children – has accelerated rapidly over the last 15 years and represents an important development in the process of implementation of the CRC.

The importance of having national independent legal institutions to protect human rights has been highlighted for more than a decade. In 1993, the World Conference on Human Rights 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".¹ That same year, following a series of workshops and seminars throughout the UN system, the General Assembly endorsed a set of "Principles Relating to the Status of National Institutions" known as the Paris Principles, which emphasized the need for such bodies to be independent.² Many countries have established differ-

ent types of institutions of this kind. Two models, in particular, have gained a particular relevance: human rights commissions and ombudsman institutions.³

The almost universal ratification of the CRC and its role to promote children's rights has led to a growing recognition of the importance of national institutions whose goals are to ensure the effective implementation of the CRC. Both special child rights institutions and focal points within national human rights institutions have been developed to meet this need.

In 2002, the United Nations General Assembly Special Session on Children (SSC) adopted a Plan of Action that calls on all States to consider "... establishing or strengthening national bodies such as, *inter alia*, independent ombudspersons for children, where appropriate, or other institutions for the promotion and protection of the rights of the child".⁴ Later that same year, the Committee issued a General Comment asserting that "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" and that the establishment of such institutions "fall[s] within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realisation of children's rights".⁵

While national independent institutions are needed for the overall protection of human rights, additional justifications exist for ensuring that children's rights are given distinct attention. "These include," the Committee adds, "the fact 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

In 1981, Norway became the first country in the world to establish by legislation an Ombudsman for Children, charged with "promoting the interests of children vis-à-vis public and private authorities and to follow up the development of conditions under which children grow up"⁷ Since then, Institutions dealing with the rights of children have been established in 26 European countries. They have a variety of names – Children's Ombudsman, Children's Rights Commissioner, *Defenseur des Enfants*, *Defensor del Menor*, *Defensor de los Derechos de la Niñez*. Many of these institutions have become highly visible and popular, and have contributed substantially to actions promoting the rights of the child; some have also pioneered innovative ways of incorporating children and young people into their work.

This is no longer a fragile and tentative movement. This is an innovative approach to promote children's rights that has been pursued for only a little more than 20 years, and the role, structures and working methods of these institutions continue to evolve. Drawing lessons from their experience and evaluating their action will help improve the ability of these institutions to make a difference in the lives of children. At the time of the SSC, members from the Global Network of Independent Institutions for Children's Rights committed to work towards the wide development of these institutions in Europe and beyond, and to double their overall number by the end of the decade. A rigorous evaluation of these institutions – including by children and young people – can only promote their expansion, by strengthening existing institutions and informing the development of new ones.

Child rights institutions in Europe

The spread of children's rights institutions has been most rapid in Europe, where 35 independent national institutions with a separate statutory mandate for children now exist at the national and sub-national levels.

In a few European countries general ombudspersons or national human rights institutions have established separate units specialized in child rights.⁸ In 2003, the Latvian National Human Rights Office established a Section for the Protection of the Rights of the Child, and the Office of the People's Advocate of Albania established a Sub-section for Children's Rights. In Bosnia and Herzegovina, a project on child rights in the office of the general Ombudsman was transformed into a Child Rights Division in 1999.⁹ In other countries, such as Portugal, general ombudspersons or national human rights bodies have a focal point for child rights. Another model was

established in Greece in 2003, where a department for children's rights was set up in the Office of the general Ombudsman, but based on a separate legislation. The Committee encourages States Parties to establish either independent bodies dedicated exclusively to the rights of children, or specialized units within independent national institutions that have a broader human rights mandate.¹⁰

Some countries in Europe have focused on the establishment of child rights institutions at the regional and/or municipal level. In the Russian Federation¹¹, for example, child rights commissioners have been established in 15 *oblasts* or administrative districts. The idea of creating a child rights commissioner at the federal level was studied, but not pursued because it was believed that decentralization of this function would make the commissioners more accessible to children, and enable them to respond more effectively to violations of their rights.¹² Both approaches, at the federal and district levels, may however play a complementary role and help promote coordination between these various institutions. This model is being implemented in Austria.

Ombudspersons for Children at regional level: The Italian experience

Four regions in Italy have established independent institutions specialized on the rights of the child, and one of them did it even before the CRC. The offices can be found in the following regions:

- a) Veneto: The Office for the Protection and Public Safeguard of Children of Veneto was established in 1988 by Regional Law No.42.*
- b) Friuli-Venezia Giulia: The Public Commissioner's Office for Children of Friuli-Venezia Giulia was created by Regional Law No.49 on 24 June, 1993.*
- c) Marche: In October 2002, the Ombudsman for Children and Adolescence of Marche was established by Regional Law No.18.*
- d) Lazio: The Ombudsman for Children and Adolescence of Lazio was established by Regional Law No.38 of 28 October, 2002.*

In the United Kingdom, commissioners for children and young people were appointed in Wales in 2001, in Northern Ireland in 2003, in Scotland in 2004 and in England in 2005. In Spain, an Ombudsman for children was established in Madrid in 1996; in Catalonia, a Deputy specialized in child rights was established within the Office of the Ombudsman; and in Andalucía, the legislation of the general Ombudsman was entrusted with the promotion of the rights and the care of children. In Belgium, a Delegate-General for the Rights of the Child was established by the French Community in 1991 and a Children's Rights Commissioner was established in the Flemish Community in 1998.¹³ In Italy, at least four regions have ombudspersons or commissioners for children. A bill to establish a national ombudsman for

children was drafted some years ago, but has not yet been enacted.

Local or regional ombudspersons should be seen as complementary mechanisms rather than alternatives to national ombudspersons. Although regional ombudspersons or commissioners may be more accessible and able to focus on local problems, they may not always be able to address issues arising under national law and policy and to influence overall policy actions for children under the jurisdiction of the state. In Belgium, the ombudspersons of the French and Flemish communities both support the establishment of a Federal ombudsman.¹⁴ In Austria, each lander has its own children's ombudsman, having more staff and resources than that of the federal ombudsman for children.

The legislative framework of child rights institutions

National human rights institutions should, if possible, be constitutionally entrenched and must at least be legislatively mandated.

– General Comment No.2, para.8

Independent institutions dedicated specifically and exclusively to the rights of children are usually established by legislation. It is their legislative base and powers that secure their independence and give these institutions their authority and legitimacy, adding transparency and visibility to their mandate. Legislation also clarifies their distinct role vis-à-vis other mechanisms and institutions, including, for example, parliamentary committees, law-enforcement agencies, public and private agencies providing services to children, and non-governmental organisations (NGOs). Specialized units within human rights institutions are usually established by administrative decision and lack this legislative foundation.

Statutes establishing institutions vary in length and detail. In Sweden, the Act establishing a children's ombudsman contains a mere seven sections.¹⁵ Other more recent institutions have been established by more detailed legislation.¹⁶ This may well reflect the influence of the Committee through its examination of States parties reports and recommendations, including its General Comment of 2002, as well as efforts made by the Office of the UN High Commissioner for Human Rights to promote the Paris Principles and the standards adopted by the European Network of Children's Ombudspersons.¹⁷

Croatia: The Law on the Ombudsman for Children (2003)

Art.6: The Ombudsman for Children:

- *Monitors the coordination of the laws and other regulations in the Republic of Croatia, concerned with the protection of the rights and interests of children, with the provisions of the Constitution of the Republic of Croatia, of the CRC, and other international documents*

concerned with the protection of the rights and interests of children.

- *Monitors the fulfillment of the obligations of the Republic of Croatia arising from the CRC and other international documents concerned with the protection of the rights and interests of children.*
- *Monitors the implementation of all regulations concerned with the protection of the rights and interests of children.*
- *Monitors violations of individual rights of children and studies general occurrences and manners of violation of the rights and interests of children.*
- *Makes efforts towards protection and promotion of the rights and interests of disabled children.*
- *Proposes undertaking of measures intended for the creation of the coherent system of protection and promotion of the rights and interests of children and for the prevention of harmful activities jeopardizing the rights and interests of children.*
- *Informs the public on the state of children's rights.*
- *Performs other activities specified by this Law.*

The independence of child rights institutions

The office... must have the interests of the child – and no other interest – as the starting point, the focus and the goal of its work.

The ombudsman must avoid being identified with a political party or being suspected of voicing a political party's concerns.

The ombudsman must be realistic. He must base all of his statements on factual knowledge, and not hearsay, feelings or private opinions.

Particularly when there is no clear evidence on what is really in the best interest of the child, the ombudsman must be careful to present opinions based on cross-professional knowledge and reasoning.

– Malfrid Grude Flekkoy, first Norwegian Ombudsperson for Children

In order to be effective, any institution mandated to defend the rights of children, must fulfil its functions objectively and impartially. The issues it takes on, the priority it gives to them, the rigor of its investigations and the way its findings and conclusions are formulated and communicated must be determined by the best interests of the children concerned, and not by any political or institutional ambitions, loyalties or sensitivities. Independence depends in part on the values and moral integrity of the ombudsman or child rights commissioner; but it also depends on legal and structural guarantees.

Some laws establishing child rights institutions expressly recognize their functional autonomy. The

Swedish Act provides that “The Ombudsman himself/herself shall take decisions on the organization and focus of his work.”¹⁸ Malta’s Commissioner for Children Act 2003 provides that in the exercise of its functions “the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority”. Croatia’s Law on the Ombudsman for Children provides that “No one is allowed to instruct or give orders to the Ombudsman for Children in his/her work.”¹⁹

The process of appointment is central to establishing real and perceived independence, particularly as the authority of most institutions is vested in an individual ombudsman or a commissioner rather than a collective body. The Committee has recommended that appointment procedures should be “appropriate and transparent” and follow “an open and competitive selection process.”²⁰ Traditionally the ombudsman was established by parliament, appointed by it and reporting to it. This model still applies in a number of countries, such as Croatia and Lithuania. In other countries, the ombudsman or commissioner is appointed by the Head of State or government. In Norway, the Ombudsman is appointed by the King following an open and transparent selection process by an expert screening group; in Ireland the appointment is made by the President; in France, the Défenseur is appointed by the Council of Ministers; in Malta, the Commissioner for Children is appointed by the Prime Minister, upon consultation with a legislative committee. Some ombudspersons, however, are appointed by a government minister, as in the case of Denmark.

Appointment for a fixed number of years and rules specifying the grounds for removal from office also reinforce the independence of an ombudsman or commissioner. The French Défenseur and the Irish and Swedish Ombudspersons, for example, are appointed for terms of six years.

Resources

If the national institution does not have the means to operate effectively to discharge its powers, its mandate and powers may be meaningless and the exercise of their powers limited.

– General Comment No.2, para.11

The size of the staff of child rights institutions in Europe ranges from one person, as is the case of the Federal ombudsman in Austria, to 37 persons in Poland²¹. Staff of 8 to 10 persons are not uncommon.²² Institutions having larger staff include France, Norway, Sweden, the ombudsman for Madrid and the children’s commissioners for Scotland and Northern Ireland, whose staffs range from 12 to 27 persons.

The staff of most child rights institutions is interdisciplinary.²³ The nine person professional staff of the General Delegate for Children of the French Community in Belgium, for example, includes jurists, criminologists, a social worker and a nurse. Sociologists, psychologists and specialists in educa-

tion and public relations also form part of the staff of many offices.

Similarly, the budgets of child rights institutions vary widely. The child rights institutions of France, Poland and Scotland have budgets of one to two million Euros, while those of Croatia, Denmark, Iceland and Norway have budgets ranging from €350,000 to around €1 million.

The mandate and functions of child rights institutions

[National human rights institutions] 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.

– General Comment No.2, para.8-9

Promoting and safeguarding the rights of the child

The fundamental purpose of all such institutions is to promote and safeguard the rights of children; but the specific mandate and functions of child rights institutions vary. The mandate of most child rights institutions is defined in terms of both the CRC and national law. Croatia’s Ombudsman for Children, for example, “protects, monitors and promotes the rights and interests of children on the basis of the Constitution of the Republic of Croatia, international treaties and laws.”²⁴ The Children’s Rights Commissioner of the Flemish Community of Belgium is empowered “to examine any complaint regarding non-respect of the Convention...”²⁵.

Malta’s Commissioner for Children

The Commissioner for Children in Malta was established in 2003 by the Commissioner for Children’s Act. It promotes children’s rights and acts as a spokesperson for the rights, needs and interests of children; ensures that legislation relating to the protection of children’s interests is observed; advises the Government on such measures as may be required in order for the rights and interests of children to be provided for; monitors and assesses the policies and practices of social welfare services affecting children; investigates any alleged breach of the rights of children.

The Commissioner works closely with children and young people. In December 2005, the Commissioner held a consultation with young people to discuss whether their views were heard and taken into account in the places where they spend most of their time. That same

year, he organized a Children's Rights Course for children and young people that led to the election of children for the Children's Council. As an ongoing project, he is developing a strategy to promote quality programmes for children on the Media.

– Website of the Commissioner for Children, www.tfal.org.mt.

The mandate of the Northern Ireland Commissioner for Children and Young People refers not only to the rights of children and to the CRC, but also to the need to take the child's own wishes into account:

- (1) The principal aim of the Commissioner ... is to safeguard and promote the rights and best interests of children and young people. In deciding whether and, if so, how to exercise his functions ... in relation to a particular child (a) the Commissioner's paramount consideration shall be the rights of the child or young person; and (b) the Commissioner shall have regard in particular to the ascertainable wishes and feelings of the child or young person (considered in the light of his age and understanding
- (2) In deciding whether and, if so, how to exercise his functions ... the Commissioner shall have regard to (a) the importance of the role of parents in the upbringing and development of their children; and (b) any relevant provisions of the United Nations Convention on the Rights of the Child.²⁶

Promoting the rights of children is an essential and inherent part of the mandate of all such institutions. Promotion is a very broad and flexible concept. In Malta, the law indicates that the responsibilities of the Commissioner for Children include:

to ensure that children are being given the opportunity to express their opinions and that these are in fact considered; to seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organisations when decisions on policies affecting children are taken; to promote the protection of children...; to promote the protection of family unity; to promote compliance with the UN Convention on the Rights of the Child as ratified by Malta and with such other international treaties, conventions or agreements relating to children....²⁷

Some promotional activities are intended to make the public at large or broad sectors of the public (e.g. parents, school children) aware of children's rights. Others promote specific issues and are directed to some institutions or networks of interrelated agencies and institutions. The General Delegate of the French Community in Belgium has mounted a number of campaigns that illustrate this promotional function, including a campaign on the treatment of juvenile offenders, one on sexual abuse of children and one on children whose parents are imprisoned.²⁸ In Sweden, where local authorities play a large role in ensuring the rights of children, the Children's Ombudsman supports and supervises local govern-

ments with respect to their responsibilities concerning the safeguard of the rights of children.²⁹

Assessing the situation of child rights

Some independent child rights institutions also are mandated to study the general situation of child rights in the country – a function that the Committee refers to as 'independent monitoring' of the CRC.³⁰ This is often linked with the preparation of reports on the rights of the child. In Sweden, for example, the Ombudsman for Children is required to "collect facts and statistics" on children and prepare an annual report based on them.³¹

Listening to children

In most countries, the need for child rights institutions to listen to the views and concerns of children and to take them into account is recognized; in some of these countries, providing a channel for children to make their views known to public officials and society at large – or facilitating children's exercise of their right to participate – is considered one of the main functions of a children's ombudsman or commissioner. The Swedish Ombudsman for children is considered "representative of the interests and guardian of the rights of children."³² The Children's Rights Commissioner of the Flemish Community of Belgium also has a mandate to "increase children's possibilities to participation in society."³³ In 2000 the Commissioner organized a poll that collected the views and concerns of over 70,000 children aged 8 to 12.³⁴

We always try to put the child's interest first and see things from his or her perspective: parents often wrongly assume that their interests are the same as the child's.

We seek the active involvement of children: they are able to articulate their needs and wishes.... By making our office accessible to children, we have taken a first step towards an efficient representation of their interests.

– Michael Singer, former Children's Ombudsman of Vienna

Investigating complaints

The investigation of complaints with a view to obtaining a voluntary resolution of the matter within a reasonable time and at no cost to the complainant is an important dimension of 'ombudswork'.³⁵ In most cases, the investigative role includes the handling of individual complaints and the investigation of situations affecting particular groups of children, such as children in care, minority children, children with disabilities or child asylum seekers. Some institutions lack authority to handle individual complaints - such as the Swedish ombudsman for children. The justification for this limitation is that the investigation of individual cases would limit the ability of the ombudsman to undertake activities that would have a broader impact on the realisation of children's rights. The Committee considers that child rights institutions:

“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... Where appropriate, [institutions] should undertake mediation and conciliation of complaints.”³⁶

Traditionally, the ombudsman function was limited to reviewing and investigating issues arising between the individual and state-provided services and institutions. In recent decades, however, the role of ombudspersons and human rights commissions has expanded. Taking into account the CRC’s call upon States to safeguard the rights of the children also within the family and private institutions of all kinds, the Committee has stressed that the mandate of child rights institutions “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.”³⁷

The mandate of most child rights institutions that investigate individual complaints cover both public and private actors, but their precise limits vary. For example, the mandate of the Norwegian Ombudsman excludes complaints that concern the relationship between a child and his or her parents or guardian, and complaints by one parent or guardian against another.³⁸ The mandate of the French Défenseur includes any complaint where the rights of a child have been violated by any public or private person.³⁹

Commissioner for Children and Young People of Northern Ireland – The ability to intervene in legal proceedings

One of the abilities an independent human rights institution may have is the ability to intervene at legal proceedings. This is not the case for all Ombudspersons for Children. In Northern Ireland, however, the Commissioner for Children and Young People has been granted by law the power to:

- *Bring proceedings (other than criminal proceedings) involving law or practice concerning the rights or welfare of children and young persons.*
- *Intervene in any proceedings involving law or practice concerning the rights or welfare of children or young persons.*
- *Act as amicus curiae in any such proceedings.*

The law also specifies in which cases the Commissioner shall refrain from intervening in proceedings, and the circumstances in which the Commissioner can assist a child or a young person.

– Arts. 14 and 15, *The Commissioner for Children and Young People (Northern Ireland) Order, 2003*

As a rule, children’s ombudspersons and commissioners may receive both complaints made by children and complaints made on their behalf.⁴⁰ The

Children’s Rights Commissioner for the Flemish Community of Belgium reports that nearly half of all complaints received come from children.⁴¹ Some laws or regulations provide that a child must be notified of a complaint made on his or her behalf; others require that parents be notified of complaints made by children in their own name.⁴²

The investigatory powers given to child rights institutions – to require access to information, records and premises and so on – are often similar to those of a court. For instance, the General Delegate of the French Community in Belgium has the right of access to all public services and private services subsidized with public funds.⁴³ Obstructing the ombudsman, refusing to comply with requests for information or giving false information, is an offence under some legislation.⁴⁴ In contrast to courts, however, child rights commissioners or ombudspersons do not have the power to adopt binding orders or decisions. Nevertheless, some legislation recognizes the duty of concerned parties to inform the commissioner or ombudsman of the measures taken to comply with its decisions, or the reasons for failing to do so.⁴⁵ Furthermore, some ombudspersons or commissioners are able to forward cases to the competent court or law enforcement agency. The Commissioner for Children and Young People of Northern Ireland, for example, may bring or intervene in legal proceedings concerning children, and may assist children in legal proceedings.⁴⁶

The norms and standards governing the activities of child rights institutions also often address the way children are treated in the course of investigations. Standards concerning the confidentiality of proceedings are common.⁴⁷ Irish law provides that, if the Ombudsman decides not to investigate a complaint, the child or other complainant must be informed of the decision and the reason(s) for it.

Evaluating children’s ombudspersons, commissioners and similar national independent institutions

Few efforts have been made to objectively evaluate the accomplishments of children’s ombudspersons, commissioners and similar national independent institutions, and no such efforts have been made regionally or internationally.⁴⁸ In 2002, the UNICEF Innocenti Research Centre, in preparation of the first Global Meeting of Independent Human Rights Institutions for Children, circulated a questionnaire to these institutions. The accomplishments they listed themselves included the following:

- Initiating or proposing inquiries into particular policy areas or on the rights of particular groups of children;
- Promoting child-sensitive legal reform in many sectors including tax and social security, health, education, welfare, accident prevention, sports, juvenile justice, family law, the media, etc.;
- Preparing annual “State of Children” reports;
- Acting as a channel to ensure that children’s views are heard by government at all levels;

- Proposing structures for involvement of children in local government and promoting respect for children's views;
- Increasing involvement of children in the development of school policies and rules and upholding children's rights to freedom of expression in schools;
- Improving provision and standards of school meals;
- Ensuring that authorities in conflict areas understand and respect children's rights;
- Developing materials and programmes to increase awareness of children's rights among adults and children;
- Training for professionals working with/for children;
- Raising awareness of the rights of minority children and challenging discrimination against refugee children, children in detention, children with disabilities and other vulnerable groups;
- Challenging tolerance of violence against children by promoting prohibition of corporal punishment and developing anti-bullying policies;
- Promoting child friendly procedures for dealing with victim of abuse and exploitation;
- Challenging media violations of children's rights to privacy and to protection from harmful material;
- Promotion of and support for child-led organisations;
- Increasing child safety by promoting the monitoring of accidents and accident prevention;
- Promoting juvenile justice systems that comply with the CRC and related UN standards (e.g. challenging the placement of children in prisons; intervening to prevent the execution of juvenile offenders; resisting public and political pressure to lower age of criminal responsibility)
- Separating children from adults in mental health institutions;
- Encouraging banks and other financial institutions to develop appropriate rules and policies for their relationships with children.

The participation of children and civil society

"The composition of the national institution and the appointment of its members ... shall ... ensure the pluralist representation of the social forces (of civil society) involved in the protection and promotion of human rights, particularly... non-governmental organizations... trends in philosophical thought; universities ..."

— Paris Principles, para.1 of the section on Composition and guarantees of independence and pluralism

Since most child rights institutions in Europe are not collective bodies, it is not possible for different sectors of civil society to be represented directly at the highest levels of such institutions. In some countries, however, different sectors of civil society are consulted in the process of selecting the ombudsman or commissioner for children. Indeed, children

were consulted as part of the process of selection of the Children's Commissioner for Wales in 2001, the Commissioner for Children and Young People in Northern Ireland and the Children's Ombudsman in Ireland, both in 2003.

In some countries, advisory bodies have been established in order to provide civil society an opportunity to influence the way an ombudsman or commissioner for children fulfils his or her functions. In Malta, the Children's Commissioner has an advisory council composed of representatives of the most relevant ministries and civil society. The law provides that the latter "shall, as far as possible, be children and people involved in the promotion of children's rights"⁴⁹ The Act, establishing the Commissioner for Children of Scotland, contains detailed provisions concerning consultation with children.⁵⁰

The European Network of Ombudspersons for Children

The European Network of Ombudspersons for Children (ENOC) was established in 1997⁵¹ to promote sharing of information and strategies among member-institutions, to encourage the development of new institutions in every country and to act as a collective voice for children's rights in Europe. By 2003 ENOC had adopted Standards for Independent Children's Rights Institutions. Initially, the Network included 10 institutions but despite a tightening of its membership criteria to require a legislative base clearly focused on the promotion of children's rights, its membership has since steadily grown.

Conclusion

Although few studies have been conducted on the impact of children's ombudspersons and commissioners and child rights units of independent human rights institutions, there is evidence that they can make a unique contribution to the protection and promotion of children's rights. Their independence allows them to identify gaps and shortcomings in child-related activities and in services provided by public agencies, and to address issues relevant to the realization of children's rights that may not be a government priority. Their broad mandate allows them to advocate for change in any area that touches on the rights of the child, and their focus on the rights of children allows them to develop a high degree of expertise and knowledge that cuts across inter-agency and inter-disciplinary boundaries. The combination of independence and expertise lends weight to their advocacy role.

The experiences briefly reviewed here suggest that there is no one model that will meet the needs of all countries. An independent institution for the rights of children must be fashioned taking into account the history, geography, political circumstances and culture of each nation. Moreover, the structure, mandate and powers of child rights institutions tend to evolve with time, as lessons are learned and the institution

wins broader acceptance and support. Comparative studies of the mandates, infrastructure and activities of independent child rights institutions and evaluations of their achievements would enhance an understanding of their effectiveness and promote and support the development of these institutions in countries where they do not yet exist.

Yet, even without a wide range of evaluative studies, the information available allows some general lessons to be drawn. First, the mandate of child rights institutions should not be limited to promotion, but should also include the investigation of complaints. Ombudswork is intended to ensure that alleged victims of child rights violations have access to a public authority who will listen to their complaint and, if it appears to be founded, seek a rapid, negotiated and appropriate solution. Ombuds offices have traditionally been conceived as a way of providing an individual with an effective remedy for a wrong, without obliging that individual to resort to costly and time-consuming legal action. For this reason, it is an especially useful mechanism for protecting the rights of the child, since

children often lack a source of income and distinct legal standing. Moreover, the informality that has traditionally characterized ombudswork facilitates forms of interaction that are more responsive to the language, perceptions and concerns of children.

Two other basic lessons that can be drawn are that the institution must function with genuine independence, and must have sufficient resources to respond quickly and efficiently to the demand for the services it provides.

Finally, recent experiences that incorporate representative groups of children into the work of children's ombudspersons and commissioners reveal the strong potential of this trend to enhance the impact of such institutions. When children are provided with a forum for making their voices and concerns heard, they become allies in helping society understand the importance of listening to children and taking action.

Notes

- 1 Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, June 1993, UN General Assembly, A/CONF.157, para.36.
- 2 The Principles relating to the status of national institutions reaffirmed its support for such institutions in 2002 with Resolution 56/158.
- 3 The term "ombudsman" originated in the Nordic countries, as an institution established to protect the rights of individuals against abuse of power: Sweden appointed the first ombudsman in 1809.
- 4 A World Fit for Children, outcome document of the UN General Assembly Special Session on Children, May 2002, A/RES/S-27/2, para.31.
- 5 UN Committee on the Rights of the Child, General Comment No.2, The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child: "CRC/GC/2002/2", 15/11/2002 para.7 and 1, respectively. The Committee's Guidelines for Periodic Reports also request States to include information on such institutions in their Reports to the Committee (CRC/C/58, 1996, para.18)
- 6 General Comment No.2, supra note 5, para.5.
- 7 The concept was developed by a non-governmental organisation – Rätts Barnen (Save the Children Sweden) and promoted during the International Year of the Child (1979).
- 8 This model is prevalent in Latin America.
- 9 Children's Ombudsmen: Save the Children Norway's experiences with supporting and cooperating with independent institutions supporting child rights, Vol.1, P.Miljeteig, Oslo, 2005, p.13 (referring to the Federation of Bosnia and Herzegovina, which governs most of territory of the State of Bosnia and Herzegovina.)
- 10 The Concluding observations on the Report of Estonia ("CRC/C/15 Add. 196, 17/03/2003", para.11 and 12), for example, include these comments:
The Committee welcomes the existence of various mechanisms for filing complaints, such as the Legal Chancellor, also mandated to serve as Ombudsman. Nevertheless, it is concerned that this is not a specialized body with an explicit mandate to address effectively violations of children's rights and to monitor and regularly evaluate progress in the implementation of the Convention.
The Committee recommends that the State party consider the establishment of a Unit, or a specialized body, within or outside the Legal Chancellor's Office, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ("The Paris Principles") (General Assembly resolution 48/134, annex) and the Committee's General Comment No.2.
See also the UN Committee on the Rights of the Child, Concluding Observations, second periodic reports: Czech Republic 18/08/2003, CRC/C/15/Add.201, paras.16-17 and Slovenia 26/02/2004, CRC/C/15/Add.230, paras.8-9
- 11 According to the third periodic report of States parties due in 2001: Russian Federation. 15/11/2004, CRC/C/125/Add.5, para.24
- 12 Idem, para.25
- 13 UN Committee on the Rights of the Child, Initial reports of States parties due in 1994: Belgium. 06/09/1994, CRC/C/11/Add.4, para.24. See also page 6, of the report, available at http://www.crin.org/docs/resources/treaties/crc.30/belgium_commissioner_report.doc,
- 14 Report of the Children's Rights Commissioner of the Flemish Community (Belgium) regarding the second report from Belgium, 2001, pp.6 and 24
- 15 An English version of the text is available at www.bo.se See also Act No.5 of March 6, 1981 establishing the Norwegian Ombudsman for Children, available at www.barneombudet.no/cgi-bin/barneombudet/imaker?id=3724&visdybde=1&aktiv=3724
- 16 See, for example, the Ombudsman for Children Act 2002 of Ireland, available at www.irishstatutebook.ie/ZZA22y2002.html; the Commissioner for Children Act 2003 of Malta at docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chpat462.PDF; see also Decree of 15 July 1997 establishing the Children's Rights Commissioner of the Flemish Community of Belgium, annexed to the Commissioner's 2001 Report to the Committee on the Rights of the Child, supra note 15. See www.crin.org
- 17 The Greek law establishing the national ombudsman is an exception: article 1 provides that the Ombudsman "has the mission of defending and promoting the rights of children" and that one of the five Deputy Ombudsmen shall be Deputy Ombudsman for Children; other articles include particular powers and duties relating to safeguarding and promoting children's rights (Law 3094/2003).
- 18 The Children's Ombudsman Act of 13/05/1993, Section 6.
- 19 Art.4 of the Commissioner for Children Act of Malta supra 17; Art.3(2) of the Law on the Ombudsman for Children (2003) of Croatia (Nardone novine 96/03).

- 20 General Comment No.2, supra 5, para.12.
- 21 The Austrian Federal Ombudsman for Children has only one full-time staff member, while Polish Ombudsman has a staff of 25. ENOC: www.ombudsnet.org - Consulted 29 March 2006.
- 22 The ombudspersons of Croatia, Denmark, Ireland, Lithuania and the Delegate General of the French Community in Belgium have staffs within this range.
- 23 The staff of the child rights section of the Latvian National Human Rights Organization, which consists entirely of lawyers, is an exception.
- 24 Art.2, Law on the Ombudsman for Children.
- 25 Decree of 15 July 1997, Art.6.2, reproduced as an annex to the 2001 Report of the Children's Rights Commissioner to the Committee on the Rights of the Child, supra note 15.
- 26 The Commissioner for Children and Young People (Northern Ireland) Order, Art.6, available at www.opsi.gov.uk/si/si2003/20030439/htm In contrast, the general function of the Children's Commissioner for England, established the following year, is to "promote awareness of the views and interests of children". Although the Act adds that the Commissioner "must have regard to the Convention on the Rights of the Child," the lack of a clearer mandate to protect the rights of children was criticised by the Parliamentary Joint Committee on Human Rights, NGOs and the UK National Committee for UNICEF.
- 27 Malta's Commissioner for Children Act (2003), supra note 17.
- 28 Website of the General Delegate www.cfwb.be/dgde - Consulted on 29 March 2006.
- 29 UN Committee on the Rights of the Child, Third periodic reports of States parties due in 2002: Sweden. 12/07/2004, CRC/C/125/Add.1, para.44-46.
- 30 Similarly, the Committee on the Rights of the Child has indicated that children's ombudspersons and commissioners "should contribute independently to the reporting process under the Convention" but should not be charged with preparing the reports to the Committee nor should s/he participate as member of the delegation of a State Party in the sessions of the Committee in which the state's Report is examined. General Comment 2, supra note 5, para.20-21.
- 31 Ibid, para.41 (An English language version of the report, entitled "Up to 18", is available on the website of the ombudsperson - www.bo.sw).
- 32 Ibid, para.38.
- 33 Supra note 15, p.4.
- 34 Idem, p.19.
- 35 See e.g. the Report of the Children's Rights Commissioner of the Flemish Community, supra note 15.
- 36 General Comment No.2, supra note 5, para. 13.
- 37 Ibid, para. 9.
- 38 Instructions for the Ombudsman for Children, laid down by Royal Decree including amendments made in 1998, available at www.barneombudet.no/cgi-bin/barneombudet/imaker?id=3724&visdybde=1&aktiv=3724
- 39 Law of 6 March 2000, Art.1, available at www.defenseurdesenfants.fr/defens
- 40 See e.g. Art.1 of French Law No 2000-196 of 6 March 2000.
- 41 Report, supra note 15, p.21 and note 4 (referring to the 1056 complaints received in 2000-2001; during the first year of operations barely one-quarter of the complaints received were submitted by children themselves).
- 42 The Norwegian Ombudsman's Instructions state (Supra note 38): "If an application concerns a specific child and the application does not come from the child itself, the Ombudsman shall not deal with the case without the permission of the relevant child. When the child's age so indicates, the permission of the guardian shall also be obtained. If general considerations so indicate, the Ombudsman may deal with the case even though permission as mentioned above has not been obtained". Section 10(b) of the Irish Ombudsman for Children Act provides "If a complaint is made... by a child or on behalf of a child by a person other than a parent of the child, the Ombudsman for Children shall, before investigating the complaint, inform a parent of the child of the complaint."
- 43 See www.cfwb.be/dgde - Consulted 28 March 2006.
- 44 See, e.g. Malta's Commissioner for Children Act, 2003, section 20.
- 45 See e.g. Art.13 of Croatia's 2003 Law on the Ombudsman for Children and the Commissioner for Children Act of Malta, Section 17.
- 46 Section 14 and 15 of the Commissioner for Children and Young People (Northern Ireland) Order 2003.
- 47 See e.g. Art. 3 of French Law No 2000-196 of 6 March 2000.
- 48 Independent assessments of the Norwegian and Swedish Children's Ombudsman were carried out 1995 and 1999, an independent evaluation of Denmark's National Council for Children took place in 1997 and an independent evaluation of the Division for the Rights of the Child of the Federation of Bosnia and Herzegovina was carried out in 2001.
- 49 Commissioner for Children Act, Malta, 2003, section 12. The General Delegate of the French Community in Belgium also has an advisory council. (See the website, supra).
- 50 Commissioner for Children and Young People (Scotland) Act 2003, section 6, available at www.barneombudet.no/cgi-bin/barneombudet/imaker?id=8809
- 51 Informal regional or sub-regional networks also exist in the Asia-Pacific region, Central America and the Nordic countries.

3

NATIONAL COORDINATING MECHANISMS

The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognise and realise 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....

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

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

State 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 State 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.

Many State 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.

– Committee on the Rights of the Child, General Comment No.5, paras.27, 37-39

The need for national coordinating mechanisms

States parties to the CRC undertake an obligation to ensure that all children subject to their jurisdiction enjoy all the rights recognized by it. Developing efficient mechanisms for coordinating efforts to safeguard children's rights is instrumental to achieve such a purpose. The wide range of human rights set forth in the CRC requires action by a diverse set of actors, most directly by a wide range of government line ministries, departments and agencies, but also by the legislature, the judiciary, independent human rights institutions and civil society. Effective protection of the rights of the child depends, in part, on the extent to which the activities of such actors are complementary and mutually reinforcing.

Specific government ministries or agencies may be identified as having primary responsibility for action in relation to some areas or individual articles of the CRC. However, assigning exclusive responsibility for specific rights to different ministries or agencies – for example, responsibility for the right to education to the Ministry of Education, the right to health to the Ministry of Health and so on – cannot ensure comprehensive protection of any right and leads to a partial and fragmented consideration of the child. A holistic approach to the right to health, to give but one example, should require the active participation of at least those agencies responsible for education, for social welfare, for the environment and for finances in order to address the relevant range of causes, and consequences, of poor health. It is organizationally efficient for specific Ministries or agencies to assume the lead role in efforts to guarantee the realization of specific rights. However, a truly effective approach requires coordination with other actors who, by virtue of their responsibilities and competencies, are in a position to make their own unique contributions to the effort. Interagency and inter-sectoral coordination allows gaps to be filled, duplication avoided, information shared and joint action undertaken, where useful.

Interagency and interdisciplinary efforts are needed to make progress in the protection of many – if not most or all – the rights of children: the prevention of child neglect and ill-treatment, juvenile delinquency, sexual exploitation and abuse, support for families in their child rearing responsibilities, and so on. In many countries, sectoral coordinating mechanisms have been established to organise and monitor action in certain sectors or with regard to specific children's rights or issues. These inter-sectoral considerations are multiplied in the context of the interlinkages among the different areas, carrying significant implications at the strategic and organizational levels. Experience from many countries thus points to the importance of establishing a coordinating body with overall responsibility for promoting effective cooperation in all these fields.

Effective implementation of the CRC also requires coordination throughout the territories governed by a State party. In some countries, provincial or territorial administrations play a major role in ensuring the delivery of basic services, and they may enjoy a con-

siderable degree of autonomy and authority. In federal states, provincial or state departments often have primary responsibility for most social policies and programmes; state or provincial agencies usually have primary responsibility for law enforcement, and state courts generally have primary responsibility for matters concerning family law, the protection of children and criminal offences. The division of authority between state or provincial governments and the national government thus can pose a special challenge to the coordination of efforts to safeguard the rights of children. Even in countries where there are no regional governmental administrative structures, the national government may delegate to local authorities a substantial, direct role in the organization, financing and delivery of basic services. Within and across these territorial, administrative and organizational regions and structures, important challenges may arise from the need to articulate actions, finance their implementation and identify and overcome prevailing disparities.

The focus on national coordinating mechanisms does not imply that local or regional coordination is not important: coordination is unquestionably important on all levels. In most countries, however, the coordination function at the national level establishes the framework, operating standards and direction of coordination in states and provinces, and so merits particular attention.

In addition to challenges to equitable implementation that derive from the political structures of States and from the respective competencies and resources of state, regional and local governments, relevant geographical, historical and socio-economic factors also must be taken into account. The challenge of ensuring that efforts to implement the CRC are carried out in such a way as to benefit fairly all children throughout the territory of a State party is not restricted to particular types of countries. In all countries, the coordination of efforts to protect the rights of children has important spatial and administrative dimensions.

The diverse types of coordinating mechanisms established in Europe

More than half of the countries studied have established national mechanisms to coordinate implementation of the CRC.¹ Central Asia appears to be an exception: of the four republics that have reported to the Committee (Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan) none have national coordinating mechanisms.

Most such bodies around the world are inter-ministerial commissions or committees. In Europe, however, other models prevail. Several countries have entrusted responsibility for coordinating implementation of the CRC to a line ministry or department. In France, for example, the Ministry of Health and Solidarity has this function; in Germany, the Ministry for Family Affairs, Senior Citizens, Women and Youth; in Norway, the Ministry for Children and Family Affairs; in Poland, the Ministry of Education and

Sport; and in Romania, the National Authority for Child Protection and Adoption.

A few countries have adopted different solutions, such as appointing a Commissioner or similar figure. The Netherlands, for example, appointed a Youth Commissioner to ensure cooperation among ministries and between the central and local government. In Belgium, the Flemish Community gave the Minister for Youth responsibility for coordinating efforts to implement the CRC; the Minister in turn created an interdepartmental child rights working group. Similarly, in Portugal a High Commissioner for the Promotion of Equality and the Family was established by a decree in 1996, under the office of the Prime Minister, with a mandate to 'promote coordinated measures by the competent public bodies' in favour of children. The High Commissioner in turn established a National Commission on the Rights of the Child, with the participation of representatives of the Ministries of Justice, Health, Education and Social Welfare and NGOs.

In the Czech Republic, responsibility for coordinating governmental activities concerning human rights lies with the Council for Human Rights, established in 1998. The Council is chaired by the Commissioner for Human Rights, and includes an equal number of representatives of government bodies, and civil society; its mandate is defined in terms of national and international standards, and includes monitoring, reporting and advice on law reform as well as coordination. The Council has a number of standing committees, and responsibility for matters concerning implementation of the CRC has been given to a Committee, composed of representatives of the Ministries of Education, the Interior, Labour and Social Affairs and Foreign Affairs, representatives of NGOs and child rights experts.

In Georgia, a unit of the Social Affairs Service of the Chancellery is responsible for coordinating the activities of both governmental and non-governmental bodies involved with the rights of women and children.

Some European countries have established two coordination mechanisms, one to coordinate the activities of different parts of the central government, and another to coordinate the activities between the central authorities and regional entities. In Spain, for example, the Office for Social Affairs, Families and Disabilities from the Ministry of Labour and Social Affairs is responsible for the preparation, coordination and monitoring of programmes for the promotion and protection of children, while coordination between the central government and the autonomous communities is accomplished through periodic meetings of the Directors-General of the Ministry of Labour and Social Affairs and the Directors-General responsible for children's affairs of the Communities.

Italy established a National Observatory for Children, in part in response to the Committee's recommendation about the need for greater coordination of efforts to implement the CRC.² In addition, meetings between representatives of the central government and regional governments are held regularly in order to coordinate activities and monitor the

implementation of policies. In Germany, the Ministry for Family Affairs, Senior Citizens, Women and Youth coordinates implementation of the CRC within the federal government, while the Lander are linked by two coordinating mechanisms: the Association of Supreme Land Youth Authorities and the conference of Land Youth Ministers.

European countries that have adopted the inter-ministerial model include Belarus, Belgium and the Ukraine. In Belarus, a National Commission on the Rights of the Child was established by Presidential Decree in 1996, following a recommendation of the Committee³. The broad mandate of the Commission, defined by reference to the CRC and the Rights of the Child Act, includes monitoring, programme design and public awareness in addition to coordinating the work of the ministries, other central government agencies and local executive authorities. The Ukraine established an interdepartmental commission presided by the Deputy Primer Minister to coordinate efforts to implement the CRC and the national programme for children adopted to meet the World Summit for Children commitments. Its mandate includes the preparation of an annual report on children and contributing to law reform and coordination among departments and between central and local authorities. In Belgium, an Inter-ministerial Conference on the Protection of the Rights of the Child was established in 1997.

A few countries, including Sweden and the United Kingdom, have no permanent, national coordinating mechanism. In the United Kingdom, various ministries coordinate implementation of different aspects of the CRC and inter-departmental coordinating bodies exist in England, Northern Ireland, Scotland and Wales, but no body has overall responsibility for coordination of efforts to implement the CRC as a whole throughout the Kingdom. In Sweden, the central government uses a combination of legislation, capacity building and monitoring by the Ombudsman for Children to ensure that local governments take effective action to implement the CRC.⁴

Some European countries have established, and later abandoned, coordinating mechanisms. In Denmark an interministerial child committee was eliminated when a change of government occurred. Responsibility for coordinating programmes concerning children and families was subsequently vested in the Ministry for the Family and Consumer Affairs, established in 2004. The Russian Federation adopted a coordinating mechanism during the 1990s, following a recommendation by the Committee.⁵ Nevertheless, it was abolished in 2004 as a result of a general policy of decentralization. The Committee expressed concern at this development and recommended that such a mechanism should be re-established.⁶

Salient characteristics of coordinating mechanisms: an overview

The characteristics of the mechanisms surveyed above vary greatly. Some are devoted primarily or

exclusively to coordination, but many have other functions, such as establishing policy, monitoring or promoting awareness on children's rights. The Committee considers that it can be useful to combine the functions of planning, coordination and monitoring of implementation, particularly when the body responsible for monitoring is inter-ministerial in nature.⁷ When these functions are entrusted to a line Ministry responsible for service delivery, the coordinating function may not receive the necessary priority, and the Ministry itself may not possess the necessary authority to ensure effective coordination.

The mandate of some coordinating mechanisms expressly includes and may even emphasize implementation of the CRC, while the mandate of others is formulated in terms of child welfare or national plans, policies or laws concerning children.

Some coordinating mechanisms are established by law, and others simply by administrative decision. In a few cases, the decisions adopted by coordinating mechanisms are binding on the participating bodies, while others are only recommendations. The power to adopt binding decisions appears to be limited to mechanisms established by law. Mechanisms established by legislation also benefit from somewhat more stability in case of change of government.

Some national mechanisms have their own budget and staff, while others are dependent upon the resources of line ministries or agencies.

Some mechanisms function in an essentially horizontal manner, facilitating articulation and collaboration among departments at similar level of public administration, and relying on internal structures of the participating agencies to ensure effective implementation at all relevant levels of decisions taken. In other cases, the national coordinating mechanisms form part of pyramidal structures or systems that also include coordinating bodies at the regional and local levels.

In some countries coordinating mechanisms, participation is limited to government bodies. In others, there is a combination of governmental agencies and representatives of NGOs and civil society. In some cases, UNICEF, religious authorities, representatives of the private sector, professional groups, political organizations and individual experts also take part in these coordinating bodies.

The effectiveness of coordinating mechanisms: observations of the Committee on the Rights of the Child

There are significant challenges to assessing the effectiveness of coordinating mechanisms. Coordination processes emerge in the specific national political, social and administrative environment, and in relation to the overall progress of the realisation of children's rights in each country.

Understanding the needs for coordination, the potential for responding to these needs and opportunities, and the accomplishments of a particular coordinating structure requires an appreciation of both the facilitating and constraining factors of each situation.

No in-depth study of the subject has been conducted so far and case studies allowing significant lessons to be drawn are also lacking. It is still too early to fully understand the effectiveness of coordinating mechanisms. Guided by its extensive experience in the review of State parties reports on CRC implementation, the Committee has, however, identified a number of factors that in its view limit the effectiveness of coordinating mechanisms. The following are some of the observations it has made with regard to mechanisms in the European continent.

In a number of cases where the mandate of a coordinating body is defined in terms of social policies or child protection programmes, the Committee has expressed concern that the coordination will not be comprehensive and will not extend to the full range of children's rights issues covered by the CRC.⁸ Similarly, when multiple bodies have coordination functions, the Committee has expressed concern with the absence of a single mechanism with overall responsibility.⁹ When advisory bodies are responsible for coordination, the Committee has expressed concern that they lack the authority needed to coordinate effectively.¹⁰ Moreover, the Committee has expressed concern that some coordinating bodies have insufficient resources to fulfil their mandate.¹¹

The Committee also has expressed concern at approaches that fail to include NGOs and civil society and has recommended their involvement.¹² Civil society can play an invaluable role in promoting advocacy and mobilisation in favour of children's rights and in providing a wide range of services for children, and the impact of governmental programmes is enhanced by adequate coordination with the activities of the non-governmental sector. Furthermore, the State has an obligation to ensure that the activities of private and non-governmental organizations are carried out in conformity with the rights and principles set forth in the CRC. While monitoring may be the main way of fulfilling this obligation, coordination also can play a part.

The decentralization of responsibility for the provision of basic social services for children to regional or local governments has the potential to enhance understanding of children's needs but can also lead to a crisis in the availability of such services, or to regional disparities. The Committee has pointed out that decentralization increases the importance of effective coordination. In some cases, a major effort was undertaken to decentralize child care facilities but difficulties in the implementation were also reported, including as a result of lack of availability of resources amongst decentralized authorities.

Conclusion

Implementation of the CRC is influenced greatly by the extent to which efforts across all sectors and

across regions within each country are well articulated. The advent of the CRC and increasing awareness of the rights of the child has led to countless initiatives in different areas, on the part of central, regional and local governments and civil society. The greater the number of institutions that have a role in protecting the rights of children, the greater the need for their efforts to be coordinated.

This study on General Measures of Implementation has identified many different forms of coordinating mechanism, including interministerial committees, ministries for children, coordination by line ministries, child rights bodies within the Office of the President or Prime Minister and a variety of ad hoc arrangements. In some countries, multiple coordinating mechanisms have been created. This can be advantageous, as long as there is one body that has overall responsibility for coordination. Experience shows that it is important for coordination to have both horizontal and vertical dimensions, that is, coordination of actions of different ministries as well as between central and sub-national authorities. The advantages of incorporating civil society into coordinating mechanisms also has been amply demonstrated. Aside from these general conclusions, the most appropriate form of coordinating mechanism will be determined by local and national factors. No one form or type of coordinating mechanism will suit all countries.

The mandate of many of the coordinating mechanisms established in the early 1990s was limited to National Plans of Action adopted in response to the World Summit for Children. With time, however, the mandate of many grew to encompass implementa-

tion of the CRC and all of the rights contained therein. This is a critical step. The mandate of many, if not most, coordinating bodies includes additional functions, such as research, promoting awareness of child rights, preparing national plans and strategies, training, evaluating legislation or the need for law reform and preparing reports on the situation of child rights and reports to the Committee.

Factors that inhibit the development of effective coordinating mechanisms include:

- The lack of sufficient resources.
- Weak political priority given to coordination, and multidisciplinary and cross-sectoral cooperation.
- The failure of coordinating mechanisms to involve governmental departments responsible for planning and resource allocation.
- Fragmentation of efforts across sectors.
- The failure to transfer central funds in support of local initiatives.
- The failure to ensure the active participation of regional/local authorities.
- The failure to involve civil society.

The mere existence of a coordinating mechanism does not, of course, mean that the CRC is being effectively implemented. Much more attention needs to be paid to the effectiveness of the various types of mechanisms that exist and the factors that correlate with effectiveness – or ineffectiveness – of various approaches to coordination. No one model will suit all, and further research is required to ascertain which forms of mechanism are more effective in different social, cultural and political contexts.

Notes

- 1 Approximately 35 out of 41. Information available covers only 49 countries and is insufficient to classify another 7 countries.
- 2 UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under art 44 of the convention: Italy. 12/07/2002, CRC/C/70/Add.13, para.77(e).
- 3 UN Committee on the Rights of the Child, Periodic reports of States parties due in 1997: Belarus. 26/09/2001, CRC/C/65/Add.15, para.5
- 4 UN Committee on the Rights of the Child, Written replies by the Government of Sweden: Sweden. 08/12/2004, CRC/C/RESP/74, pp.10-11.
- 5 UN Committee on the Rights of the Child, Third periodic reports of States parties due in 2001: Russian Federation. 15/11/2004, CRC/C/125/Add.5, para.28.
- 6 UN Committee on the Rights of the Child, Concluding observations: Russian Federation. 23/11/2005, CRC/C/RUS/CO/3, para.11-12.
- 7 UN Committee on the Rights of the Child, General measures of implementation for the Convention on the Rights of the Child: 03/10/2003, CRC/GC/2003/5, para.39
- 8 See e.g. the UN Committee on the Rights of the Child, Concluding observations: Denmark. 23/11/2005, CRC/C/DNK/CO/3, para.12. and Concluding observations of the Committee on the Rights of the Child: Belgium. 13/06/2002, CRC/C/15/Add.178 para.12
- 9 See e.g. UN Committee on the Rights of the Child, Concluding Observations: Italy. 18/03/2003, CRC/C/15/Add.198, para.10 and Concluding observations: Germany. 26/02/2004, CRC/C/15/Add.226, para.11.
- 10 See e.g. UN Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Belarus. 13/06/2002, CRC/C/15/Add.180, para.14 and Concluding observations: Slovenia. 26/02/2004, CRC/C/15/Add.230, para.10.
- 11 UN Committee on the Rights of the Child, Concluding Observations: Czech Republic. 18/03/2003, CRC/C/15/Add.230, para.12.
- 12 See e.g. UN Committee on the Rights of the Child, Concluding Observations regarding Italy, para.10 (supra note 9) and the Czech Republic, para.13 (supra note)

4

MONITORING IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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 CRC 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.

...Sufficient and reliable data collection on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation. It is essential not merely to establish effective systems for data collection, but to ensure that collected data is evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children...

– General Comment No. 5, paras.45 and 48

The concept of monitoring

Monitoring is often used with two different meanings: monitoring progress in the implementation of the CRC and monitoring violations of the rights of children. Monitoring violations involves registering and promoting appropriate action on specific incidents that violate the rights of children¹. Systems for

monitoring violations are designed primarily to detect such incidents so that the competent authorities can address them effectively; compiling statistics is a secondary objective. Monitoring implementation of the CRC entails a broader effort to systematically evaluate the extent to which all the rights of all children are effectively protected and fulfilled. In either case, the term implies a permanent effort and continuous assessment of progress to enable a steady enhancement of the safeguard of the rights of the child. It is important to ensure that the monitoring process addresses all the rights contained in the CRC and not only a smaller subset of rights, such as those recognized in the national law or included specifically in a national plan of action for children². This paper focuses on monitoring implementation of the CRC.

Monitoring the situation of child rights implies an effort to measure objectively the extent to which all children in a given society actually enjoy all the rights contained in the CRC. This endeavour is necessary for two reasons: a) to identify the rights that are not adequately protected or enjoyed, and the groups of children that may be particularly disadvantaged, at risk of abuse, exploitation and discrimination, and who otherwise are left behind by public policies; and b) to evaluate the relevance and effectiveness of the measures that are in place to promote the safeguard of the rights of the child. A further important purpose of monitoring is to allow informed social debate on public policies concerning the rights of children and, in the words of the Committee on the Rights of the Child, “public scrutiny of government policies”³.

Sufficient and reliable data collection on children ... is an essential part of implementation. ...

Self-monitoring and evaluation is an obligation for government. ...

– Committee on the Rights of the Child, General Comments No.5, paras 46 and 48

Monitoring implementation of the CRC is not a one-time assessment of the extent to which children enjoy, or are deprived of, specific rights. Such assessments may be used to mobilize awareness of a problem and generate political commitment to take action, or to identify the causes of certain violations or the characteristics of the populations affected. However, no matter how relevant these studies may be, they must be periodically conducted in order to measure changes in the enjoyment of children's rights, taking stock of positive achievements and identifying prevailing challenges. Only then can progress be assessed by comparison between subsequent assessments.

Neither can monitoring be reduced to reporting to the Committee. National monitoring is necessary to fulfil adequately the international obligation of States Parties under Article 44 of the CRC⁴. The CRC expressly provides that "*Reports shall ... contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned*" and the Committee has developed extensive guidelines as to the type of data it considers necessary for that purpose⁵. This should not, however, obscure the fact that the primary purpose of monitoring should be to aid the State in meeting its obligations towards children under its jurisdiction by designing and adjusting as necessary the legislative, administrative, educational and other measures to protect and fulfil the rights of children. Some States seem to view the collection and systematization of information on children and the safeguard of their rights as a task to be undertaken simply with a view to preparing their periodic reports to the Committee. This reflects a failure to appreciate the real value of national monitoring.

The following sections focus on particular aspects of monitoring implementation of the CRC. However, before addressing them it is important to highlight an important provision enshrined in article 2 of the CRC – children's right to protection from discrimination of any kind, including by race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. This implies that all indicator data used for reporting on the implementation of all other rights must be disaggregated by these characteristics. This process needs to be interwoven into data collection, processing, analysis and reporting. It is a fundamental requirement of any monitoring process for reporting on the CRC implementation.

An example of the utility of monitoring: how it is used to inform advocacy and policy reforms

Only occasionally do Reports to the Committee provide examples of the usefulness of monitor-

ing - usually when monitoring produces evidence of the positive consequences of measures taken to protect the rights of children. In the Russian Federation, for example, a comprehensive programme to combat drug abuse and the illicit drugs trade was adopted in 1994, but monitoring showed increased usage until 1998. The campaign was reinforced by a Presidential Order adopted that year, and the rate of drug use subsequently fell by 35.9%. The number of drug offences committed by juveniles also declined by 36.4% between 1998 and 2001.

– Third periodic reports of States parties due in 2001: Russian Federation. 15/11/2004, CRC/C/125/Add.5, para.348-349

Indicators

In the context of monitoring, an indicator can be broadly described as a measurable factor, characteristic, or attribute of an individual or a system. Monitoring focuses on measurement of an indicator over time, with the purpose of assessing change and interpreting what this change infers with respect to individual or system on which the indicator reports.

The Committee provides a framework for delineating indicators, as well as examples of indicators, in the annex to the general guidelines on periodic reports to be submitted by States parties under article 44 of the CRC⁶. This framework groups the provisions of the CRC into eight thematic clusters (see box) of related provisions and will be used subsequently in this paper to report on aspects of data collection, data usage and related progress and challenges.

The indicators in the annex of the Committee's guidelines are not intended to form a comprehensive list but rather to provide a basic set for States parties reporting obligations. Selection and development of other relevant indicators is ongoing in a variety of organisations and sectors, such as UNICEF⁷, WHO, ILO, UNESCO, UNHCR, Save the Children⁸ and Childwatch International⁹.

However, more is generally not better in indicator development. It is preferable to develop a smaller set of indicators that represent all clusters of the CRC, and that countries can reasonably be expected to measure. These indicators should not only be clear as to their rationale, purpose and use, but also have internationally acceptable methods of measurement documented and tested for each. An example of this is provided by the Millennium Development Goal metadata document¹⁰.

Obtaining relevant data

Administrative data systems, such as for health, education and justice, have been in existence for many years in countries of the region and it therefore makes economic sense to draw on these existing sources of data, where appropriate, to provide data to monitor implementation of the CRC. However, the data are frequently not the most appropriate, due to

definition or poor data quality, or because it is simply not feasible to obtain the relevant data through administrative systems. Hence this section is divided into two sections: (a) administrative data; and (b) data obtained through other methods.

Administrative data

Administrative data are primarily collected for management of sector programmes and systems, such as those of health, education and justice. Such data are extensive, have a long time series and involve few additional costs since the data system already exists, except for data analysis. A major limitation is that such data generally report on children that have contact with the relevant sectoral system. However, the data do not report on children who have no contact, such as those not going to school, not born in a health facility, or those who have been victimized, but not reported to the legal or police systems. And it is often the worst-off children that are not reached by systems that could provide them support. Administrative data provide overall estimates without geographical or other relevant detail which is important in identifying where situations may be worse and ameliorating actions that may be better targeted.

Administrative data in Europe have been expanded over the last two decades and this has facilitated monitoring implementation of the CRC. However, these systems are limited in the data that they can feasibly collect since their primary purpose is the management of sectoral programmes. Administrative data tend to be strong in relation to the CRC clusters¹¹. However, there is considerable variation in the quality of administrative systems across the region. For example, vital registration systems, that cover virtually all deaths of children in some countries, may cover only half or less in others. This has serious implications not only for reporting on the right to life, survival and development, but also on the health and welfare indicators.

Another example is on child abuse, where fewer than half the reports to the Committee contained any quantifiable data. Where data were reported they tended to be on sexual and physical abuse, with only very sparse data on mental or psychological components. For example data on abuse reported by the Czech Republic are more comprehensive than most, including information on abandonment, psychological cruelty, abduction, infanticide and other forms of homicide and physical injury, and rape and other forms of sexual abuse, disaggregated by the age of the victim¹². However, the administrative data only covered a portion of children impacted by abuse, and a survey of adolescents was carried out to quantify the unreported abuse, disaggregated by sex of the victim and the perpetrator, the nature of the relationship between them and other contextual factors¹³.

Data obtained through other methods

The other methods of obtaining appropriate data for monitoring are primarily of the quantitative type, such as household surveys (including censuses), surveillance sites, special purpose studies and the like.

Sample household surveys, that apply scientific probability samples, are used extensively throughout the world to obtain nationally and sub-nationally representative data for monitoring child rights. Even the most developed countries, with very extensive administrative data, make extensive use of household surveys. One reason is that such surveys can obtain data from a representative sample of all members of a specific target population – for example, all children born in last five years, or all children of school age irrespective of whether they are going to school. A second reason is that well-implemented surveys focus on obtaining high quality data through tested collection and processing tools, by carefully training survey staff and by supervising the staff to maintain high data quality. A third reason is the wide range of data that surveys can obtain across the spectrum of child rights, whether it be health and welfare, education and leisure, victimization, families, and civil rights and freedoms. As a small example, surveys generally collect a range of socio-economic data as a starting point, which stands in contrast with administrative data that generally has a much more truncated coverage. However, as noted in the opening section, socio-economic data is important for assessment of discrimination and marginalization of children.

Sample surveys also have their drawbacks, particularly when it comes to providing estimates at the small sub-national area level, since such surveys require very large samples and are therefore costly. A census does gather appropriate data since it collects from every household. However, for cost and data quality reasons, censuses are restricted to a very minimum of data, primarily related to counting people by age, sex, ethnic origin and a few other simple socio-economic characteristics.

Other quantitative methods can be used to explore particular aspects of a child's situation, particularly when data collection entities other than households are involved – such as schools, health facilities or institutions. Qualitative methods, such as focus groups, case studies or conversation analysis are also relevant to monitoring, with specific strengths in providing information for interpretation of quantitative data. However the purpose of this chapter is not to provide a comprehensive coverage of methods of obtaining data, but to highlight the most common methods used in monitoring the situation of children and the enjoyment of their rights.

In the region there are a wide variety of household and other surveys used to obtain data for a range of purposes, primarily sectoral. Eurostat has been supporting the development of standardized household surveys across the European Union in the area of employment, for example. In other countries both Eurostat and international organisations have been contributing to the development of household surveys, which have a relatively short history in CIS countries. Here the Demographic and Health Surveys (DHS), supported by USAID, and the Multiple Indicator Cluster Surveys (MICS), supported by UNICEF, have contributed substantially. Whereas the DHS primarily focus on population and health

issues¹⁴, the MICS, particularly the second and current cycle (MICS3), has a broader perspective, covering health, education, child development and discipline, child work, as well as aspects of civil rights and freedoms¹⁵. WHO is supporting a study on the Health Behaviour of School-aged Children (HBSC) in 38 countries in the region¹⁶. Many of these countries have collected similar data at several points over the past 20 years. The data cover health and influences of family, schools and peers on young people, including data on bullying, fighting and injuries. ILO has helped several countries in the region mount child labour surveys that have explored both formal and informal work, including work considered hazardous¹⁷.

There is a growing use of surveys that directly ask questions of children. Historically national surveys have focused on asking questions of persons 15 to 18 years and older, and generally in relation to adult-related issues. Data for persons below the age of 15 was generally asked of parents. This is slowly changing, with surveys directly asking younger children, particularly in relation to aspects of civil rights and freedoms. *Young Voices* is a household survey carried out in 2001 that interviewed children aged 9-17 years of age in 35 countries in the region on their opinions of home, school, safety, their future, and how well informed they were¹⁸. While the frequency of surveys asking children directly will likely grow in the future, development of appropriate tools is needed since cognitive development affects response quality and there is little experience with asking questions to young children. And there are also ethical considerations as to what questions should be asked of young children, as well as how the influence of parents may affect their responses.

Further research and development of improved tools should also cover an area highlighted in a recent report to the Committee by Italy¹⁹. The report underlines the difficulty of obtaining good quality data on certain aspects of child rights, particularly those whose violation may involve severe criminal penalties. Such pressures are likely to affect reporting and hence could lead to significant biases in data used for monitoring.

Usage of data

This chapter has separated the obtaining of data, in the previous section, from the use of data, in the current section, because of both the importance and also lack of adequate priority given to data use. The primary focus of monitoring is the child, but what usually happens is a sectoral assessment of progress, on education, or health, or welfare, or labour, or courts or police. Yet we know that a child is much more than the sum of disparate parts. Nevertheless, there appears to be very limited evidence in the region that countries treat the child as a person who necessitates a holistic analysis and reporting of his or her situation.

Some countries are attempting to fill this gap, an example being the Child Rights Observatory in Romania that has a mandate not only to provide a

holistic picture of the implementation of child rights, but also stimulate research on the situation of children and youth and promote awareness raising on children's rights²⁰. There are also university-connected centres in the European Community that are endeavouring to provide a more holistic or at least a cross-sectoral analysis of the child.

Another weakness is in the use of different sources of data to monitor and interpret progress. Health reports focus on types of services provided but very little on the socio-economic status of children receiving or not-receiving them. Education reports focus on the age and sex of children enrolled in school at various levels and their transition from one level to another, but very little on the economic status of children in school and not in school. Many European countries report on the amount of resources allocated to programmes for poor families, the number of families and/or children receiving such benefits and the amounts of benefits to which they are entitled. At the same time, however, almost no reports contain information about the number of families or children living in poverty who do not receive assistance, or who receive assistance that is insufficient to provide them with that standard of living to which every child is entitled, according to the CRC²¹.

Countries from Central and Eastern Europe tend to have quantifiable data related to the right to information and to participation in cultural activities, such as the number of books or magazines for children published, television programmes for children broadcast or plays for children performed. However, there is little information about the quality or impact of such goods and services, that is, the extent to which children enjoy or appreciate them, or what kind of cultural or recreational activities children prefer. Similarly, many countries from this region collect data on children's membership in organized sports clubs or other recreational clubs. What is often lacking is data concerning access to or participation in activities of this kind, whether organized or not, amongst representative samples of the child population.

An example of analysis that can be done is provided by the MONEE project, initiated by UNICEF Innocenti Research Centre in 1991. In cooperation with a network of national statistical offices, the project researches in 27 countries of Central and Eastern Europe and the Commonwealth of Independent States and produces regional monitoring reports such as the *Social Monitor*, as well as national and regional studies on specific topics, such as child poverty, institutional care, social security, children and disability, and children at risk²². Strengthening the monitoring capacity of governmental counterparts is one of the aims of the programme.

Another aspect is the use of data in advocating child rights. Data that are used for monitoring a situation can and should be used to improve children's situation by drawing attention to weaknesses of implementation of the CRC and to help focus attention and advocacy on relevant actions. Many presentations of data are dry, limited to text, tables and some charts. However, there are other tools that can be used to display data in a more visual way and help

Box: List of CRC Clusters

In its *Guidelines for Initial Reports and Periodic Reports*, the Committee on the Rights of the Child has grouped the provisions of the CRC in clusters: "This approach reflects the Convention's holistic perspective of children's rights: that they are indivisible and interrelated, and that equal importance should be attached to each and every right recognized therein" (CRC/C/58, para. 9). The following are the clusters:

I General measures of implementation

Article 4 implementation obligations: **42** making CRC widely known: **44(6)** making reports widely available: (in *Guidelines for Periodic Reports*, also **41** respect for existing standards).

II Definition of the child

Article 1.

III General principles

Article 2 non-discrimination: **3(1)** best interests to be a primary consideration: (in *Guidelines for Periodic Reports*, also **3(2)** the State's obligation to ensure necessary care and protection, and **3(3)** standards for institutions, services and facilities): **6** the right to life, survival and development (see also VI): **12** respect for the views of the child.

IV Civil rights and freedoms

Article 7 right to name, nationality and to know and be cared for by parents: **8** preservation of child's identity: **13** freedom of expression: **14** freedom of thought, conscience and religion: **15** freedom of association and peaceful assembly: **16** protection of privacy: **17** child's access to information, and role of mass media: **37(a)** right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The *Guidelines for Periodic Reports* indicates (para. 48) that these are not the only provisions in the CRC which constitute civil rights and freedoms.

V Family environment and alternative care

Article 5 parental guidance and child's evolving capacities: **18(1-2)** parental responsibilities and State's assistance: **9** separation from parents: **10** family reunification: **11** illicit transfer and non-return: **27(4)** recovery of maintenance for the child: **20** children deprived of their family environment: **21** adoption: **25** periodic review of placement and treatment: **19** protection from all forms of violence: **39** rehabilitation and integration of victims of violence (see also VIII).

VI Basic health and welfare

Article 6 right to life, survival and development (see also III): **18(3)** support for working parents: **23** rights of disabled children: **24** right to health and health services: **26** right to social security: **27(1-3)** right to adequate standard of living.

VII Education, leisure and cultural activities

Article 28 right to education: **29** aims of education: **31** right to leisure, play, participation in cultural and artistic activities.

VIII Special protection measures

A Children in situations of emergency. Article 22 refugee children: **38** children and armed conflict: **39** rehabilitation of child victims (see also V).

B Children involved with the system of administration of juvenile justice. Article 40 administration of juvenile justice: **37(a)** prohibition of capital punishment and life imprisonment: **37(b-d)** restriction of liberty: **39** rehabilitation and reintegration of child victims (see also V).

C Children in situations of exploitation. Article 32 child labour: **33** drug abuse: **34** sexual exploitation: **35** sale, trafficking and abduction: **36** other forms of exploitation.

D Children belonging to a minority or an indigenous group. Article 30.

Excerpted from Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 1998, page 579.

make data more understandable and actionable by policy makers and particularly civic leaders. For example the use of coloured geographical maps has been shown to capture the attention of politicians and policy makers. DevInfo, developed by the UN and now used for monitoring progress to the Millennium Development Goals by many national governments, is one such mapping and display tool²³.

Conclusion

Reports to the Committee do not contain comprehensive empirical data on all of the rights contained in the CRC, and not enough of the data that are reported are disaggregated.

Furthermore, many countries seem to view monitoring as part of the process of international accountability rather than an effort to measure their own performance in the area of child rights, to detect problems and promote national appropriate solutions.

Clearly more data on children relevant to monitoring the implementation of children's rights have become available in the region. Administrative systems have been improved and household surveys are being used more extensively. In fact this region probably has the most data on children of any region.

However, the analysis of these data, and their reporting, is often weak. Not only is there limited integration of diverse data sources in particular sectors, but there is also a lack of a holistic approach to

monitoring that focuses on the child as an individual rather than as a sum of sectoral parts.

There are also gaps in the data needed for monitoring the child, particularly in the sectors/clusters that do not have a long development history such as health and education. These include civil rights and freedoms, family environment and alternative care and special protection.

Existing and new tools can help fill many of the gaps – such as household surveys that ask questions directly to children, more intra-sectoral analysis across diverse sources, much more analysis focussed on the child as an individual, as well as mapping and other display tools to better communicate the child's situation to those who can and should take action, as well as to the general public.

International and regional organizations could support the work by helping develop standards, tested tools and examples of how better use can be made of existing data and, particularly, how more holistic analysis and reporting on the child can be promoted, developed and used.

In summary, while considerable progress has been made in developing national processes for monitoring implementation of the CRC, significant challenges remain for governments and for the international community. Some of the tasks needed to improve the situation have been touched on in this paper, and could form the basis for a more in-depth discussion, with relevant partners, as to what issues should be tackled, how and with whom.

Notes

- 1 Many human rights specialists would argue that the concept of a violation of the rights of children applies only to acts committed by a state actor, or those committed by private persons for which the state has legal responsibility due to tolerance, failure to protect, failure to investigate and punish the perpetrator and, in the absence of some specific grounds for state responsibility, does not apply to acts committed by private persons. In practice, most of the systems for monitoring violations of the rights of children described in the reports of States to the Committee on the Rights of the Child ignore this distinction and focus largely on acts committed by private persons, such as sexual exploitation, child abuse or child labour. In any event, systems for monitoring violations such as child abuse, sexual exploitation and child labour are important components of comprehensive child rights monitoring systems.
- 2 Of course, countries that have made a valid reservation to the CRC have no obligation to monitor the situation of the right or rights to which the reservation applies. Conversely, some national laws on the rights of the child recognize rights that are not set forth in the CRC, so that a system for monitoring the implementation of such laws might, in theory, be more comprehensive than a system for monitoring implementation of the CRC as such. No such systems have been identified in the countries studied, however.
- 3 UN Committee on the Rights of the Child, 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: 30 Oct. 1991, CRC/C/5, para.3 (A third purpose is to provide raw material for the reporting process).
- 4 Art.44.1 and 44.2, CRC
- 5 Article 44.2; Supra note 3; and UN Committee on the Rights of the Child, General guidelines regarding the form and content of periodic reports : 29/11/2005, CRC/C/58/Rev.1
- 6 General guidelines regarding the form and content of periodic reports, supra note.
- 7 UNICEF, Indicators for global monitoring of child rights, New York, Nov. 1998
- 8 Save the Children, What indicators can best monitor the delivery of the Children's strategy?, Children's Law Centre and Save the Children, 2005.
- 9 Childwatch International, <http://www.childwatch.uio.no/projects/monitoring/index.html>, consulted 28 May 2006
- 10 UN Development Group, Indicators for monitoring the Millennium Development Goals: definitions, rationale, concepts and sources, ST/ESA/STAT/SER.F/95, New York, 2003.
- 11 See clusters 6 and 7 and parts of 3, 4, 5 and 8B.
- 12 UN Committee on the Rights of the Child, Periodic reports of States parties due in 1999: Czech Republic. 17/06/2002, CRC/C/83/Add.4, para.347
- 13 Ibid, para.343
- 14 Demographic and Health Surveys, <http://www.measuredhs.com/>, consulted 28 May 2006.
- 15 Multiple Indicator Cluster Surveys, <http://www.childinfo.org/>, consulted 28 May 2006.

- 16 Health Behaviour of School-aged Children, <http://www.hbsc.org/>, consulted 28 May 2006.
- 17 ILO-SIMPOC, <http://www.ilo.org/public/english/standards/ipecc/simpoc/>, consulted 28 May 2006.
- 18 Young Voices, Young Voices: opinion survey of children and young people in Europe and Central Asia, UNICEF, Geneva, 2001.
- 19 UN Committee on the Rights of the Child, Consideration of reports submitted by states parties under article 44 of the CRC: Italy. 12/07/2002, CRC/C/70/Add.13, para.289(b)
- 20 Romania, http://www.unicef.org/romania/child_rights.html, consulted 28 May 2006.
- 21 Article 27, CRC
- 22 MONEE, <http://www.unicef-icdc.org/research/>, consulted 28 May 2006.
- 23 DevInfo, <http://www.devinfo.org/>, consulted 28 May 2006.



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: 88-89129-42-5
ISBN-13: 978-88-89129-42-5
June 2006