

# UN HUMAN RIGHTS STANDARDS AND MECHANISMS TO COMBAT VIOLENCE AGAINST CHILDREN

A CONTRIBUTION TO THE UN SECRETARY GENERAL'S  
STUDY ON VIOLENCE AGAINST CHILDREN

Innocenti Research Centre

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TO COMBAT VIOLENCE  
AGAINST CHILDREN**

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

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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.

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# FOREWORD

In November 2001, the UN General Assembly requested the Secretary-General to conduct an in-depth Study on Violence against Children. The request followed the recommendation for such a study from the Committee on the Rights of the Child, based on the Committee's experience and on two days of thematic discussion, in 2000 and 2001, on violence against children.

The goals of the UN Study are to:

- raise international visibility of all forms of violence against children;
- better understand the causes of the problem and its impact on children and societies at large;
- assess existing policies and mechanisms and enhance their ability to prevent and address violence against children;
- identify an international action plan to effectively end these abuses.

In the light of the provisions of the Convention on the Rights of the Child, "Violence" includes all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, including sexual abuse, bullying in schools and corporal punishment. The Committee recommended that the study should cover violence in all contexts in which children find themselves, including within their family and the home, schools, care or residential institutions, work situations, on the streets, in detention facilities and prisons, and in relation to police action and the use of capital and physical punishment.

The UN Study on Violence against Children reaffirms this foundation. The Study is rooted in children's human rights to protection from all forms of

violence. Moreover, the Study aims to promote action to prevent and eliminate violence against children at international, regional, national and local levels. As such, improving implementation of human rights is at the core of the Study and this publication provides a snapshot of what has been achieved so far with implications for the future.

The purpose of this publication is to recall the human rights framework set out in international instruments adopted by the United Nations with relevance to the right of children to freedom from violence. It also reviews how treaty bodies established by human rights conventions to monitor progress in their implementation, as well as other UN human rights mechanisms have addressed the protection of children from violence.

As the present review highlights, protecting children from all forms of violence is an obligation enshrined in international law. States must ensure that children are not subject to violence within the family, the school or community, nor within the confines of the very state institutions established to provide them with the necessary care and protection for their healthy growth and development.

The Convention on the Rights of the Child (CRC) made a decisive contribution to this understanding by specifically stressing that children are to be protected from all forms of violence "while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"; within the education system where school discipline is to be "administered in a manner consistent with the child's human dignity and in conformity with the Convention on the Rights of the Child"; as well as from "torture or other cruel,

inhuman or degrading treatment or punishment". Violence has to be seen in the context of all aspects of children's lives and for that reason, measures to combat violence against children must, of necessity, address the general life experiences of children and the circumstances in which they grow up.

As revealed in this publication, the principles and provisions within the CRC and those embodied in other relevant international human rights instruments, underpin the work of human rights bodies and implementation mechanisms and are premised on a fundamental commitment to the protection and promotion of the rights of the child.

How such human rights instruments are implemented is also clearly a matter of great importance. The protection of children from violence cannot be based on good intentions alone and the evidence on which the key conclusions for this publication are drawn firmly suggest that despite the wealth of agreed international instruments, there is still much to be done to effectively protect children and to create a society in which they can live without being the victims of violence or indeed having to employ violence as a means of resolving disputes or relating to others. What the human rights instruments generally illustrate is that the right of children to protection from violence will not be realised if we do not address all the negative factors children encounter in their lives; if adequate support is not provided to families – including through social policy and welfare programmes – in their child rearing responsibilities; and if state policies fail to take sufficient recognition of the vulnerable position of some groups of children who are particularly at risk.

In this process, children have an important role to play. Children disproportionately suffer violence but they are also particularly well placed to contribute to policies and practices that prevent and address violence. In this spirit, the Committee on the Rights of the Child recommended that:

"[...] in conceptualising violence, [...] the critical starting point and frame of reference be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children".

Despite the fact that violence against children occupies a central position in many international human rights instruments, in practice we continue to fail too many of our children who are the victims of

violence in so many different ways in so many spheres of their lives. This paper is a small contribution to an understanding of the available relevant human rights instruments and how their implementation might best protect children from violence.

The publication highlights a number of dimensions that are of critical relevance to the further development of the UN Study and to promote respect for the right of the child to freedom from violence. They reiterate in particular that:

- in spite of the ratification by 192 countries of the Convention on the Rights of the Child, and the existence of associated human rights instruments and mechanisms, millions of children around the world remain the victims of violence
- violence against children takes place in all societies and in all settings and no single group alone can effectively address it
- children are very often the victims of violence from the very state institutions responsible for their care, welfare and upbringing
- supporting families is a powerful mechanism for preventing violence against children
- policies and measures to address violence against children will inevitably fail if they do not take account of the actual life experiences of children and involve children meaningfully in the design of effective preventive and recovery programmes
- the prevention of violence must be inextricably linked to the implementation of the provisions of the UN Convention on the Rights of the Child which address all aspects of children's lives.

It is hoped that this review of UN standards and mechanisms to protect children from violence will be widely disseminated and used. The findings reported in this document serve in the first instance as a reminder that the rights of children to be free of violence are deeply enshrined in contemporary law and policy: they are not optional. Clearly, the greatest remaining challenge is the implementation of these international standards, in order to bridge the gap between normative statements of intent and the reality experienced by children in their daily lives.

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*Director, Innocenti Research Centre*

*Prof. Paulo Sérgio Pinheiro*  
*Independent Expert*  
*UN Study on Violence against Children*

# INTRODUCTION

## The UN Study on violence against children – brief background

### **“3. Protecting against abuse, exploitation and violence.**

Hundreds of millions of children are suffering and dying from war, violence, exploitation, neglect and all forms of abuse and discrimination. Around the world children live under especially difficult circumstances: permanently disabled or seriously injured by armed conflict; internally displaced or driven from their countries as refugees; suffering from natural and man made disasters, including such perils as exposure to radiation and dangerous chemicals; as children of migrant workers and other socially disadvantaged groups; as victims of racism, racial discrimination, xenophobia and related intolerance.

Trafficking, smuggling, physical and sexual exploitation and abduction, as well as the economic exploitation of children, even in its worst forms, are daily realities for children in all regions of the world, while domestic violence and sexual violence against women and children remain serious problems”.... Children have the right to be protected from all forms of abuse, neglect, exploitation and violence. Societies must eliminate all forms of violence against children. Accordingly we resolve to: a) Protect children from all forms of abuse, neglect, exploitation and violence (United Nations General Assembly Special Session on Children. Para 3.41 and 3.43).

There can be no doubt that one of the most pressing global challenges takes the form of violence against children in most areas of their lives. In November 2001, The UN General Assembly requested the Secretary-General to conduct an in depth study on violence against children. The request followed the recommendation for such a study from the

Committee on the Rights of the Child, based on two days of general discussion, in 2000 and 2001, on violence against children.

For the purpose of the study, “violence” is to include all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, including sexual abuse, bullying in schools and corporal punishment. Further, the Committee recommended that the study should cover violence in all contexts in which children find themselves including within their family and the home, schools, care or residential institutions, work situations, on the streets, in detention facilities, and also examine the use of violence by police, capital and physical punishment.

The starting point for the UN Secretary General’s Study on Violence against Children (the UN Study) is the right of all children to freedom from all forms of violence. The purpose of this publication is to summarise the framework of human rights obligations set out in international instruments adopted by the United Nations. It also describes how the Treaty Bodies established to monitor implementation of these instruments and other UN human rights mechanisms have addressed the issue of violence against children. Given that violence touches most aspects of children’s lives, this publication follows the principles of the UN Study in identifying human rights obligations which both directly and indirectly address the issue of violence against children.

## Protection from all forms of violence – each and every child’s right

Ensuring that children are protected from all forms of violence is not simply a decisive and worthy goal for

any society. It is an obligation under international law. All children have a right to effective State protection from all forms of violence, wherever they are and in all aspects of their lives. The State must not only ensure it does not perpetrate violence against children directly, through the services and institutions it provides. It must do all that it can to deter violence and to create the necessary conditions to protect children from it wherever it occurs, including in the “private” sphere of the family. And it must support, rehabilitate and reintegrate victims of violence. All this requires the State to develop clear and enforceable laws and to take all other necessary measures - educational, social and administrative to ensure effective implementation.

In the aftermath of the Second World War, the Universal Declaration of Human Rights stressed that: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...” And it goes on to assert: “All human beings are born free and equal in dignity and rights”

The International Bill of Human Rights – the Universal Declaration and the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights – underline that recognition and respect for human dignity is fundamental to ensuring the human rights of everyone. “Everyone” includes children: children have an equal right to this respect.

Building on the foundation of these other instruments, the Convention on the Rights of the Child emphasises that children too are holders of human rights. And it gives a particular emphasis to the right of the child to freedom from violence. On the one hand, it reaffirms the right to freedom from torture and other cruel, inhuman and degrading treatment or punishment, as well as from capital punishment and life imprisonment without possibility of release. On the other hand, it affirms the State obligation to ensure that school discipline is administered in a manner consistent with the child’s human dignity and the rights of the child recognised by the Convention. Moreover, the Convention is the first international human rights instrument specifically to address protection against violence within the family and under the responsibility of care givers. Indeed, Article 19 requires States to protect the child

*“from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child...”*

But reflecting the widespread nature and variety of forms of violence to which children are subjected, the Convention articulates many other provisions which detail the obligations of the State to protect the child from violence and exploitation. As so often stated, it is for this reason that the Convention has to be read as a set of interrelated articles.

# THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child, adopted in 1989, is the most widely ratified international human rights instrument. In spite of this wide acceptance, children continue to be routinely subject to many forms of violence.

The 42 substantive articles of the Convention establish States' obligations towards children. They provide a framework of principles and detailed standards for all law, policy and practice affecting children, including protection of children from all forms of violence. The Convention is supplemented by the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on Children Involved in Armed Conflict, both adopted in 2000.

States which have ratified the Convention (192 to date) must report regularly to the Committee on the Rights of the Child on the measures adopted and the progress achieved in the realisation of the rights recognised by the Convention, initially within two years of ratification and thereafter every five years. The Committee is the 18-member Treaty Body, elected by States Parties and charged with monitoring implementation of the Convention. In recommending the study on violence against children, the Committee had in mind as its model the influential UN Study on the *Impact on Children of Armed Conflict*, also proposed by it and led by Ms Graça Machel.<sup>1</sup>

In the framework of its work, including in its examination of States Parties reports, the Committee has shown a particular concern for the right of the child to protection from all forms of physical and mental violence. The Committee's guidelines to States on how to prepare their periodic reports on progress towards implementing the Convention have a section requesting detailed information on the implementation of rel-

evant provisions and on article 19. It asks

*"whether legislation (criminal and/or family law) includes a prohibition of all forms of physical and mental violence, including corporal punishment, deliberate humiliation, injury, abuse, neglect or exploitation, inter alia within the family, in foster and other forms of care, and in public or private institutions, such as penal institutions and schools."*<sup>2</sup>

## The UN Convention on the Rights of the Child - General Principles

In seeking to understand the way in which violence against children is addressed in particular in the Convention, it is important to appreciate the general principles contained within it and the obligations undertaken by States upon its ratification.

For the purposes of the Convention, (**Article 1**), a child is every human being below the age of 18, unless under law applicable to the child majority is attained earlier. The UN Study has adopted this definition of the child and calls for the protection of all persons below 18.

**Article 4** establishes the overall obligation of the State to implement all the rights recognised in the Convention. It calls for the adoption of

*"all appropriate legislative, administrative, and other measures." In relation to economic, social and cultural rights, such measures shall be undertaken "to the maximum extent of their*

*available resources, and, where needed, within the framework of international cooperation."*

Children's right to respect for their human dignity and physical integrity, to protection from all forms of violence, is a civil right and calls for the effective and immediate action by States through the adoption of **all** necessary measures.

This duty of protection and care of children applies in **all** circumstances, in the private and the public sphere. In the implementation of this right, the State must take into account the rights and responsibilities of the child's parents and others legally responsible for the child. But, in cases where, for lack of will or ability, necessary care and protection are not provided, or when parents or caregivers are themselves perpetrators of violence against the child, the State, guided by the best interests of the child, has an obligation to step in to ensure the effective protection of the child.

The best interest of the child remains a key guiding principle in the case of institutions, services and facilities established for the care and protection of children, including State institutions and services and those provided by private and voluntary bodies, where States are required to ensure conformity

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

This is an area of vital importance for violence prevention. Over the last decade, societies in all continents have begun to learn of the scale of violence - physical, psychological and sexual - perpetrated by those charged with children's care, education and treatment in all categories of institutions. The obligation to set, monitor and enforce appropriate standards gains therefore a unique preventive and monitoring role.

## Interrelatedness of Convention Articles

As stated above, the Convention is indivisible and its articles are closely inter-related. Four provisions have been identified by the Committee on the Rights of the Child as establishing the core ethical thrust of the Convention and providing the key "general principles" for implementation - namely non discrimination, best interests of the child, survival and development of the child, and respect for the views of the child.

- All rights in the Convention are applicable to all children without discrimination of any kind and

Violence pervades the societies within which children grow up. They see it in the media. It is part of the economic, cultural and societal norms that makes up a child's environment. It has its roots in issues such as the power relations associated with gender, exclusion, absence of a primary care giver and societal norms that are not protective of children. Other factors include drugs, availability of firearms, alcohol abuse, unemployment, crime, impunity and cultures of silence. (Child Protection, Violence, UNICEF<sup>3</sup>)

effective protection is required, including from

*"all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (Article 2).*

Children disproportionately suffer violence in human societies, and certain groups of children, are at greater risk of violence. The non-discrimination principle demands that in acting to prevent and eliminate violence, special attention is paid to identifying and appropriately protecting such vulnerable groups.

- The best interests of the child (**Article 3(1)**) must be "a primary consideration" in all actions concerning children. This principle requires public and private bodies, courts and administrative authorities to consider the impact of actions on children in order to ensure that the best interests of the child are taken in due account as a primary consideration. Moreover, interpretations of "best interests" cannot override other rights of the child recognised by the Convention and cannot be used to justify or condone any form of violence against the child.
- **Under Article 6**, Every child has the inherent right to life and States should "ensure to the maximum extent possible the survival and development of the child". The Convention envisages the development of the child in a holistic manner, addressing its physical, mental, spiritual, moral and social dimensions. Being exposed to violence, both directly and as an observer, compromises this development.
- Every child has the right (**Article 12**) to express his or her views freely "in all matters affecting the child" and these views shall be given due weight "in accordance with the age and maturity of the child". In the recommendations adopted following its 2001 General Discussion Day on violence against children in the family and schools, the Committee on the Rights of the Child emphasised:

*"In conceptualising violence, the Committee recommends that the critical starting point and frame of reference be the experience of children themselves. Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children."*

The Concept Paper for the UN Study follows this up, stating:

"Ways in which children can be involved and participate in a meaningful and significant way and in their best interests, including as observers and researchers and in the planning, analysis and dissemination stages, will be facilitated."

**Article 12** requires that all child protection systems must ensure the child has consistent opportunities to express his or her views, including on any proposed interventions or placements.

It also includes the right

*"to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body"*

This must include any proceedings related to the protection of the child from any form of violence.

Another important provision in the Convention should be recalled in this regard, without which the Convention would fail to be realised. Under Article 42, the Convention needs to be made known to all key parties, including children. To achieve this aim, States are required to:

*“make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”*

Children must know their rights, including to be protected from all forms of violence. All adults living or working with children, including their parents, must know and ensure respect for children’s rights; awareness-raising, information campaigns and training focused on children’s human rights is an essential strategy for preventing all forms of violence against children.

These key general principles clearly do not relate only to the issue of violence against children but to the situation of children in general. Nevertheless, it is equally clear that any attempt by States to address violence has to be accommodated with policies and strategies which adhere to these general principles. Addressing discrimination, promoting the best interests of the child, recognising the right to life and maximum development and allowing children the right to express their views on all aspects of decisions and policies which may affect them must be key elements of any strategy seeking to prevent the infliction of violence on children in whatever form it may take. The failure of many policies and practices to enhance the lives of children can be attributed to the fact that they often bear little relationship to the actual life experiences of children. Any study of violence for example, if it is to truly address the situation of many of our children and to improve their life situations, should be informed by their own experiences.

## The right to protection from all forms of violence: Article 19 and other relevant provisions

As noted above, the Convention is the first international human rights instrument to have an explicit provision on the protection of children from all forms of violence including within the home. Under **Article 19**, States must take

*“all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”*

The Committee on the Rights of the Child has emphasised the breadth of this obligation and its requirement that all violence against children should be prohibited, including all forms of corporal punish-

ment, however light. In addition, protective measures should include the promotion of positive, non-violent forms of childrearing, caring and discipline, as well as

*“effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment ... and, as appropriate, judicial involvement.” (19(2))*

**Article 19** directly addresses the issue of violence in general. Other articles of the Convention address particular forms of violence and exploitation of children, and set out rights for children in particular situations – children with disabilities, exploited through labour, involved with the juvenile justice system, seeking asylum or being refugees, and so on. Of particular significance are the infliction of punishment on children in the school context and the cruel treatment experienced by many children within the juvenile justice system.

● In terms of the education system, **Article 28(2)** requires that school discipline must be

*“administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”*

which also means without any form of violence. The Committee on the Rights of the Child has repeatedly stated that this requires prohibition of corporal punishment and all other humiliating and harmful forms of discipline. In its first General Comment, on “The aims of Education; Article 29(1)”, the Committee states:

*“Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life.”*

*“Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognized in article 29(1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child. The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights.”*

The General Comment also underlines that:

*“A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29(1).”*

Article 29 requires that education shall be directed to “the development of the child’s personality, talents and mental and physical abilities to their fullest potential” and to “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

● In reference to the Juvenile Justice system, within **Article 37** (protection from torture and inhuman or degrading punishment or treatment) every child has the right to protection from

*“torture or other cruel, inhuman or degrading treatment or punishment, from capital punishment and from life imprisonment without possibility of release.”*

This absolute prohibition complements Article 19, emphasising the need for protection of children in all circumstances from these extreme forms of violence. The article also prohibits all “arbitrary or unlawful” deprivation of the liberty of children and sets standards and conditions for any restriction of liberty, which apply equally to such restriction imposed for “welfare” as well as “penal” purposes.

Complementing Article 37, **Article 40** provides a detailed set of safeguards for children caught up in the juvenile justice system. Children who come into conflict with the law should be

*“treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”*

Together with article 19 and related provisions, this requires the State to ensure that children do not suffer violence at the hands of state or other officials at any stage of the system. Treatment and any imposed punishment must not involve physical or mental violence of any kind, nor any degrading or inhuman treatment or punishment. Responses to those found guilty of infringing the law should include alternatives to institutional care “such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes.” The Committee has made it clear that corporal punishment or other forms of child ill-treatment are unacceptable both as a sentence for crime and as a disciplinary measure in penal institutions or in any situation where the child is deprived of liberty.

Though most of the Articles in the Convention relating to violence refer to prevention and protection, the Convention also recognises the importance of children being supported in their recovery from violence and their reintegration in their family or community. **Article 39** requires States to

*“take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of*

*neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.”*

This must take place “in an environment which fosters the health, self-respect and dignity of the child.” An integral part of protecting children from all forms of violence is the provision of effective recovery and reintegration to victims. Though the Convention addresses recovery and reintegration from violence in only this article, its importance cannot be overstated.

## Other articles particularly relevant to protecting children from violence

Other articles are relevant to any interventions to prevent or respond to violence against children, ensuring respect for children’s civil rights and freedoms, for their privacy and limiting separation from their parents. Again, the indivisibility of the articles of the Convention requires that measures to address violence are seen in the context of the general drive to promote and protect the rights of children.

For example, under **Article 9** only in exceptional circumstances should a child be separated from his or her parents. Such circumstances include “abuse or neglect of the child by the parents” and separation should only occur when “competent authorities subject to judicial review” consider it to be in the best interests of the child. Child protection systems have to include legislative frameworks for emergency and longer-term separation of a child, where this is necessary for protection – but such systems have to have judicial safeguards, take account of the importance of family ties and ensure that they do not add further damage to the child.

The civil rights to freedom of expression and to information (**Article 13**), conscience and religion (**Article 14**) and association and peaceful assembly (**Article 15**) must be respected and promoted in all circumstances. They should not be undermined as a result of violence against children; moreover, actions to protect the child from violence should not lead to compromising the enjoyment of these rights.

Child protection systems and interventions, and placement outside the home must respect the right of the child to privacy (**Article 16**), with no “arbitrary or unlawful interference with his or her, family, home or correspondence.” Records kept on children and families by social services, health workers and others involved in child protection and systems for maintaining and sharing them must respect the child’s and family’s privacy.

**Article 17** recognises the key positive role of the mass media in informing children and promoting their well-being and mental health, including through its contribution to violence prevention. But it also acknowledges the threat posed by portrayals of violence in the media, and calls on States to encourage “the development of appropriate guidelines for the

protection of the child from information and material injurious to his or her well-being”

Parents have primary responsibility under the Convention for (**Article 18**) for “the upbringing and development of the child”; the child’s best interests will be their “basic concern”. In ensuring the rights set forth in the Convention, including the protection of children from all forms of violence, States should “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities” and “ensure the development of institutions, facilities and services for the care of children”. The State has a duty to support and assist parents in the task of upbringing to ensure the healthy growth and development of the child—an important element in the process of not only preventing violence against children but also preventing violence by children when they become adults.

Furthermore, the State under **Article 20** has an obligation to provide “special care and assistance” to children who are temporarily or permanently deprived of their family environment or are removed from it in their own best interests.

Children with disabilities have the right under **Article 23** to

*“a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child’s active participation in the community”.*

In recognition of the particular vulnerability of children with disabilities, including to violence, such children have the right to special care and assistance, and access to services “in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development”. This is particularly relevant when consideration is given to the placement in institutions of children with disabilities as a measure of last resort and to the prevention of intensified risks of violence in such institutions.

**Article 24** obliges States to “diminish infant and child mortality” and to ensure “the provision of necessary medical assistance and health care to all children” as well as information and preventive health care. Violence is a public health issue and health services before and after birth can contribute to the prevention of all forms of violence against children by their prime carers, through advice and information to them and through monitoring children’s development. Health services are also vital to the care, recovery and reintegration of child victims of violence.

Article 24(3) requires States to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children”. There has been a particular focus on female genital mutilation, identified as one of the most extreme violent and harmful traditional practices. Taken together with article 19, this provision requires a review in every State of any traditional practice that involves violence and/or may be prejudicial to the health and development of the child, with a view to promoting their effective abandonment.

For those children placed in institutions or any other form of care, **Article 25** plays an important role in the protections from violence. It foresees the right to a periodic review of the treatment of the child and of the circumstances relevant to the child’s placement and should inform such review should take (for example, invariably considering the ascertainable views of the child) and the action that should follow.

Many children in the world live in situations of extreme poverty and while there is no direct causal relationship between poverty and levels of violence against children, poverty can exacerbate family and community stress and increase the risk of violence for the child, both as a witness and a direct victim.

**Article 27** recognises the right of the child

*“to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”*

Though, as stated earlier, parents, “within their abilities and financial capacities” have the primary responsibility to secure this, States must assist parents and others to implement this right,

*“and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”*

One of the issues closely related to the violence inflicted on children is that of the exploitation of children in all its forms. The provisions contained in **Article 32 to 36** cover the child’s rights to protection from economic exploitation and from

*“any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”* (**Article 32**);

*from “the illicit use of narcotic drugs and psychotropic substances” and involvement “in the illicit production and trafficking of such substances”* (**Article 33**);

*from “all forms of sexual exploitation and sexual abuse”, including prostitution and pornography* (**article 34**); *from abduction, sale and trafficking* (**Article 35**);

*and from “all other forms of exploitation prejudicial to any aspects of the child’s welfare”* (**Article 36**).

**Article 38** requires States to prevent children’s recruitment and direct involvement in armed conflict and to take “all feasible measures to ensure protection and care of children who are affected by an armed conflict”. It is supplemented by the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000). The UN Study is limiting its consideration of issues relating to children and armed conflict because of the major previous study on the Impact of Armed Conflict on Children, led by Graça Machel

and presented to the General Assembly in 1996. This Study, like the current Study on Violence against Children, was proposed by the Committee on the Rights of the Child.

The Convention establishes a clear statement of human rights standards as they apply to children who are at risk of or have been the victims of violence in any of its forms. What must be emphasised

however is that though for the particular purposes of the UN Study, violence is the focus, the articles of the Convention have to be read as interrelated as the basis for efforts to enhance the life experiences of children generally. The discussion above highlights the importance of seeing violence in the context of all areas of their lives where children have no less protection of their human rights than adults.

#### Notes

- 1 Impact of Armed Conflict on Children, Report of the Expert of the Secretary-General, Ms Graça Machel, A/51/306, 26 August 1996
- 2 Guidelines for Periodic Reports, CRC/C/58, October 1996, para.88
- 3 [http://www.unicef.org/protection/index\\_violence.html](http://www.unicef.org/protection/index_violence.html)

# COMMITTEE ON THE RIGHTS OF THE CHILD

## General Discussion Days on Violence against Children

The recommendations of the Committee on the Rights of the Child on the protection of children from violence and its interpretation of the Convention in relation to this issue are outlined in most detail in the conclusions adopted following two General Discussion Days on violence against children. These were held in September 2000, on “State violence against children”<sup>4</sup> and in September 2001 on “Violence against children within the family and in schools.”<sup>5</sup> The Committee emphasised that this division into two discussions did not imply any conceptual distinction, as recognised

*“the many aspects shared by all forms of violence against children, and in particular the fact that the root causes of such violence are often the same wherever it occurs.”<sup>6</sup>*

The Committee’s proposal for the comprehensive UN Study on violence against children was made as one of the key recommendations following these General Discussion Days.

The Committee emphasised that it considers violence against children unacceptable under any circumstances, in accordance with the provisions of the Convention on the Rights of the Child. In conceptualising violence, the Committee recommended that the critical starting point and frame of reference be the experience of children themselves:

*“Therefore children and young people must be meaningfully involved in promoting and strategizing action on violence against children.”*

The involvement of children themselves and the recognition of the importance of their own life experiences as a basis for the development of strategies to combat violence against children is a recurrent theme in this and other substantive areas addressed by the Convention.

## General Discussion Day on State Violence against Children, 22 September 2000

A full report of the discussion can be read elsewhere<sup>7</sup> but it is important for present purposes to identify the key recommendations from this first Discussion Day. They illustrate clearly the main concerns voiced by the Committee and which led to the UN Study on Violence against Children.

As stated above, the Committee made no conceptual distinction between state violence against children and violence against children within the family and schools. Nevertheless, the Committee recognised that many children were the victims of violence whilst in the care of state institutions or by representatives of state institutions despite the fact that article 20 of the Convention clearly states that

*“a child temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance provided by the State.”*

All too often children are the victims of unacceptable behaviour at the hands of those entrusted with their care and welfare - both through acts of commission and omission. In particular, the Committee recognised two broad areas of concern which were addressed in the discussion day and reflected in the list of recommendations which followed. These were

the mistreatment, abuse and neglect of children in the care of the state on the one hand, and violence inflicted on children in the context of “law and public order” on the other. In both cases, the Committee also identified the importance of protection being afforded to particularly vulnerable children, including those in institutions, those with disabilities, those involved with the system of juvenile justice, girls, children belonging to ethnic minorities and indigenous peoples, as well as children of socio economically marginalised children.

The police treat us badly. They hit us. Not for any particular reason. . . just because they feel like it. They've hit me lots of times. They hit with their rifles, or with sticks, on our backs and stomachs. And sometimes they just punch us in the stomach with their hands. They also take our paint thinner and pour it over our heads. They've done that to me five times. It's awful, it hurts really bad. It gets in your eyes and burns; for half an hour you can't see anything.

*Beto R., fifteen, Guatemala<sup>8</sup>*

Though the vulnerability of certain groups of children were highlighted, the Committee made it clear that the infliction of violence on all children was completely unacceptable. The main purpose of the discussion day was to present, analyse and discuss the nature, extent, causes and consequences of violence against children; to present and discuss policies and programmes to prevent and reduce violence, as well as to treat appropriately and rehabilitate child victims; and to present recommendations which could be taken by States parties to reduce and prevent violence against children.

Again, it has to be emphasised that the focus on State violence against children at the first discussion day is not to be taken as indicative of a prioritisation of the contexts in which children are subjected to violent behaviour in whatever form it may take. Rather, the division of discussion into two days was to allow for in depth analysis on each theme. The recommendations made by the Committee reflect the main areas of discussion and where action is seen to be most urgent - the international arena, and, at the national level, review of legislation, awareness raising, sensitisation and training, and prevention including alternatives to institutions. In addition to the recommendations for action in relation acts of violence against children, the Committee also identified the important role to be played through monitoring and complaint mechanisms (**See Recommendations 26–28**), the availability of adequate and appropriate resources (**See Recommendations 29–32**) and the significant role to be played by NGOs (**Recommendations 33-36**).

The main recommendation for the establishment of a UN Study of Violence against Children with the same weight of authority and comprehensiveness of the report on the Impact of Armed Conflict of Children clearly illustrates the commitment to an evidence based approach to the development of strategies and policies to address violence against children.

## SELECTED RECOMMENDATIONS FROM GENERAL DISCUSSION DAY ON STATE VIOLENCE AGAINST CHILDREN

### At the International Level

1 The Committee recommends that the Secretary-General be requested, through the General Assembly, to conduct an in-depth international study on the issue of violence against children, as thorough and influential as the 1996 report of the expert of the Secretary-General, Mrs. Graça Machel, on the impact of armed conflict on children (A/51/306). Such a study should:

(a) Explore the different types of violent treatment of which children are victims (including State violence, as well as violence in the home and in schools), identify their causes, the extent of such violence and its impact on children;

(b) Explore the links between different provisions of the Convention on the Rights of the Child and other international human rights treaties in relation to violence against children;

(c) Collect information on the activities of different human rights mechanisms and United Nations bodies and agencies and the extent to which the problem of violence against children is addressed in those activities from a human rights perspective;

(d) Put forward recommendations regarding actions to be taken, including effective remedies and preventative and rehabilitation measures.

2 The Committee will consider the preparation of a set of general comments on different forms of violence against children.

3 The Committee urges all States, concerned United Nations agencies and bodies and non-governmental organizations to give priority attention to violence against children at the United Nations General Assembly Special Session on Children in 2001, and to include steps to eliminate such violence in its resulting plan of action.

4 The Committee recommends that efforts be made by United Nations human rights mechanisms with a mandate to consider individual complaints concerning violations of human rights to identify ways to respond more effectively to individual complaints concerning violence against children. It encourages non-governmental organizations to disseminate information about the existence and functioning of relevant mechanisms, including those under the Optional Protocol to the Interna-

tional Covenant on Civil and Political Rights, under article 22 of the Convention against Torture, and under the new Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Information should also be disseminated about other United Nations human rights mechanisms for urgent action, particularly by the Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions and by the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention. The Committee also encourages non-governmental organizations and others to consider ways in which they can provide legal and other assistance for bringing individual complaints related to violations of the right of children to be protected against torture and other forms of violence before the relevant United Nations and regional human rights mechanisms.

5 The Committee recommends that effective measures be sought in order to strengthen existing United Nations human rights mechanism to ensure that violence against children and the situation of children living and/or working in the streets is adequately addressed. The Committee encourages the Office of the High Commissioner for Human Rights to organize a special workshop for all relevant treaty bodies, special procedures, and United Nations bodies and agencies to examine:

- (a) Violence against children;
- (b) The effectiveness of existing United Nations mechanisms in addressing this phenomenon
- (c) The need for improving and possible ways to improve such effectiveness, including consideration of the need to review the application of the existing definition of torture in order to take into account more adequately the special characteristics of children;
- (d) The possible need for either an optional protocol to the Convention to establish a procedure for individual complaints, or the establishment of a new "special procedure" of the Commission on Human Rights; and
- (e) Consideration that could be given to providing from within existing United Nations voluntary funds, assistance for the rehabilitation of child victims of violence.

### **Prevention, Including Alternatives to Institutionalization**

17 The Committee recommends that States parties develop the use of alternative measures in order to

avoid long-term placement of children in institutions that do not provide the type of setting children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity and to prepare the child for an individual life in a free society, in accordance with article 6 of the Convention.

18 The Committee calls the attention of States parties to the provisions of paragraphs 3 (b) and 4 of article 40 of the Convention, which call on State parties to deal with children alleged to have infringed or recognized as having infringed penal law without resorting to judicial proceedings, whenever appropriate, and by ensuring the availability of a variety of alternatives to institutional care to deal with such children in a manner appropriate for their well-being and proportionate to their circumstances as well as to the offence.

19 The Committee recommends that efforts be made to implement fully the provisions of article 18 (2) of the Convention, providing appropriate assistance to parents and legal guardians in their child-rearing responsibilities. The Committee notes that home visits by case workers with workloads small enough to allow for them can be effective in reducing the need for institutionalization.

20 In particular, the Committee points out that, in accordance with the provisions of article 23 of the Convention, special care as well as access to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities should be provided in a manner "conducive to the child's achieving the fullest possible social integration and individual development". The Committee encourages States parties to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent possible on an outpatient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions.

21 The Committee recommends that States parties make every effort to implement fully the provisions of article 20 (3) of the Convention; that special protection provided to children deprived of a family environment include as preferable options providing for the placement of children with suitable families, including members of their own families (including, where appropriate, child-headed families), foster families or adoptive families, whenever appropriate, and providing such families with the necessary support and supervision; and that regularly temporary placements be monitored and reviewed. In developing such alternatives.

Recommendations were also made that States parties review legislation and repeal any laws which allowed the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18 (**Recommendation 6**); ensure that all criminal legislation and procedure dealing with children under 18 reflects appropriately article 37 and 40 of the Convention on the Rights of the Child and also the main international instruments on juvenile justice (**Recommendation 7**); ensure the prohibition of all forms of violence against children—including torture or cruel or degrading treatment such as flogging, corporal punishment or other violent measures (**Recommendation 8**); ensure that children under 18 in need of protection are not treated as offenders (**Recommendation 9**); that children be afforded appropriate safeguards whilst in custody (**Recommendation 11**).

The Committee also recognised the importance of raising awareness about the very existence and nature of violence against children and the need to address firmly held beliefs and assumptions about the permissibility of inflicting on children violence in whatever form. Any system which deals with children is of course highly dependent on the quality and skills of the personnel involved and responsible for children. For that reason, the Committee also recommended (**Recommendation 15**) that minimum standards be set for the training and qualification of key personnel.

Equally, it recommended that urgent attention be given to the establishment of effective systems to monitor the infliction of violence on children (**Recommendation 26**) and which would include such measures as open access to information, unannounced monitoring visits of institutions, monitoring of the status and condition of children and regular review of placements in institutions. It also argued for the provision of appropriate complaints mechanisms and in particular full guarantees of independent and through investigation of complaints.

From a preventive perspective the committee recommended (**Recommendations 29–32**) that States parties make available sufficient resources to improve the prevention, protection and rehabilitation of all children from all forms of State violence. In this respect, the important role to be played by NGOs was also addressed by the Committee and recommendations were made (**Recommendations 33–36**) which urge NGOs to fulfil a protective and monitoring role. NGOs are crucial in the development of appropriate strategies and policies to protect and assist children at risk of or victims of violence.

The general discussion on State Violence against children has to be seen in reference to the outcome of the second General Discussion Day as both sets of recommendations complement each other and allow for a comprehensive statement of the recommendations made by the Committee.

### **General Discussion on “Violence against Children, Within the Family and in Schools”, 28 September 2001<sup>9</sup>**

At the second general discussion day on violence,

the Chair of the Committee noted (See Para 689 of the report on the Discussion day) that while violence against children within the family could seem a minor problem in comparison with some of the more horrifying acts of violence inflicted on children reported in the news, violence against children in such contexts posed very serious threats to children’s development. The following extract from the report on the day (Para 689) sums up the general area of concern of the Committee

*“Many millions of children were physically, sexually and emotionally abused within the home and many were also victims of bullying and violence from teachers. Special attention should be given to the vulnerability of children suffering ethnic discrimination and socio-economically marginalized, who could be singled out for harassment at school or subjected to family violence that escaped detection. Gender discrimination also posed distinct problems as girls and boys were both subjected to violence but could experience different patterns of abuse and vulnerability, with girls sometimes at higher risk of sexual abuse or forms of family violence that included “honour killings” and traditional harmful practices, while boys could be discriminated against by legislation or social values that could make them subject to brutal forms of school or family “discipline” not applied to girls.”*

In the guiding principles outlined after the General Discussion day, the Committee suggested that the notions of “family” and “school” be taken in the widest sense possible. “Family” is to be understood as not only referring to the “nuclear” family but also extended family or guardians or care givers, and neighbours. “Schools” are to be understood as including schools, teaching institutions and other formal and non-formal learning environments. Another key guiding principle is that the experience of children themselves should be the basis on which development in policies and strategies to address violence against children should proceed. Not only should their experience be taken account of but more importantly, children themselves should be actively involved in attempts to combat violence. Just as the two General Discussion days should not be considered in isolation, so the themes of violence in families and violence in schools have to be seen as inextricably linked and for that reason, what is required is a comprehensive and holistic approach.

The main Recommendation from the Discussion day for a UN Study on Violence against Children should then lead to

*“...the development of strategies aimed at effectively preventing and combating all forms of violence against children, outlining steps to be taken at the international level as well as by States to provide effective prevention, protection, intervention, treatment, recovery and reintegration.” (**Recommendation 7**)*

The Committee also recommended that domestic

## SELECTED RECOMMENDATIONS FROM GENERAL DISCUSSION DAY ON VIOLENCE AGAINST CHILDREN WITHIN THE FAMILY AND IN SCHOOLS

### Other Prevention and Protection Strategies

725. The Committee points out that, to maximize the protection against violence for children particularly vulnerable due to disability and in accordance with the provisions of article 23 of the Convention, special care for children with disabilities, as well as access to education, training, health-care and recovery services, preparation for employment and recreation opportunities should be provided in a manner “conducive to the child’s achieving the fullest possible social integration and individual development”.
726. The Committee recommends that particular attention be given to the different patterns of family abuse and vulnerability and of effective measures that can be adopted for different age groups. Within the family, gender discrimination can produce different patterns of vulnerability. While both boys and girls are subject to physical and sexual violence, boys can be particularly exposed to physical violence and girls to sexual violence, which must be taken into account in planning prevention and responses while ensuring that the impact on both boys and girls is not neglected. The need to prevent racial and related forms of discrimination, as well as that based on socio-economic marginalisation must be also taken into account in the planning and implementation of the provision of support to families, or investigation and intervention based on assessment of risk or actual victimisation.
727. The Committee recommends that appropriate attention be also given to discrimination issues in preventing and responding to violence against children in schools. Gender discrimination can result in different patterns of risk and abuse suffered by boys and girls. Boys may be more often exposed to corporal punishment as a form of discipline and less effectively protected from violence and bullying by other students, as well as from involvement in violence. While both boys and girls are subject to sexual abuse, girls may be more often exposed to sexual violence at the hands of teachers and of other students that can also result in a denial of their right to education when fear of such risk leads to avoidance of schools. Racial discrimination and xenophobia, socio-economic factors, sexual orientation, and physical size or strength can be factors exposing children to a higher risk of victimization.
728. The Committee recommends that efforts be made to implement fully the provisions of articles 18(2), 19(2), 24 and 27 of the Convention, providing appropriate assistance to parents and legal guardians in their child-rearing responsibilities, including to address all forms of family violence. Such assistance includes, inter alia, availability to all of quality prenatal, perinatal and early childhood health services to improve early attachment. The Committee encourages the development and implementation of home visitation programmes, noting that they can be effective in reducing the need for intervention.
729. The Committee recommends that States Parties consider the introduction of schemes designed to identify children considered to be at risk of family violence and provide appropriate services to reduce said risks, paying due attention to the provisions of articles 12 and 16 of the Convention.
730. The Committee recommends that particular attention be given to the recovery of child victims of violence, which is important in preventing the risk of renewed abuse.
731. The Committee recommends that due attention be given to the need to broaden involvement and participation in decision-making processes in schools. Involvement of parents and of students in governing processes, for example through student councils and representative membership on school boards, including in drawing up the rules and monitoring of discipline can contribute to the design of effective prevention strategies and to the creation of a positive climate in schools that discourages violence, both as a form of so-called discipline and among students.
732. Effective strategies to prevent violence in schools must also address the problems created by the availability or tolerance of weapons and of substance abuse in the school environment.

legislation be reviewed (**Recommendations 714-718**) and that as with the recommendations from the previous discussion day, awareness raising, sensitisation and training be promoted by States (**Recommendations 719-724**) with a particular focus on the situation of violence against children within families and in schools. The recommendations from the two days complement each other and for that reason it is important they be considered together. Particularly significant in both sets of recommendations are those which address prevention, and monitoring and complaints mechanisms. Given that 192 countries have ratified the Convention on the Rights of the Child but that violence against children nevertheless remains a major concern, the importance of monitoring and complaints mechanisms cannot be overstated in the effort to protect the human rights of all children.

The importance attached to awareness raising, sensitisation and training was also reflected. The Committee recommended (**Recommendation 719**) that State parties adopt clear national statements on violence against children within the family and in schools and that these be used as an advocacy tool and disseminated throughout the country.

Further the Committee recommended that every State Party undertake a comprehensive study on the extent, nature, causes and consequences of violence against children and that this be widely disseminated and used to formulate policy and programmes (**Recommendation 720**). Reflecting the general concern of the Committee to involve children, **Recommendation 721b** also stated that children and parents should be involved in all aspects of the design and implementation of awareness raising campaigns. Training in child rights for all workers responsible for children with minimum standards set for qualifications were also recommended by the Committee (**Recommendations 722 and 723**). School curricula are to include information on rights and protection from violence and children (**Recommendation 724**). The main thrust of the recommendations of the Committee in this respect is to make society in general aware of the issue of violence against children; to involve children themselves in strategic development of policies and measures and to ensure a body of trained and well qualified workers.

As in the recommendations from the earlier General Discussion Day, and reflecting the importance attached to it, the Committee also recommended that there be established effective monitoring systems to monitor the treatment received by children and to report and investigate cases of suspected ill treatment including within the family and the schools (**Recommendation 733**). To be effective, monitoring was then to be of the general profile of violence against children but also of particular cases which also necessitated an effective complaints system.

In its recommendation about resources, the Committee emphasised the importance of coordination and the integration of strategies at international, regional, national and local levels in order to address the root cause of violence (**Recommendation 737**).

NGOs and other groups with civil society were again encouraged (**Recommendation 741-745**) to pay

increasing attention to the prevention of, and protection of children from violence within the family and the school, and to support efforts to ensure that the views and experiences of children on violence are taken into account.

What the two discussion days have produced – quite apart from the recommendation for the UN Study on Violence against Children – is a set of recommendations and standards to be followed by States Parties in addressing the issue of violence, in promoting the human rights of children, and in assisting children to recover from the effects of all forms of violent behaviour against children. Of particular significance is that the recommendations reflect the consistent stance taken by the Committee that the legal and social acceptance of the physical punishment of children – whether it be in the home, schools, institutions, within the juvenile justice system etc- is incompatible with the Convention on the Rights of the Child.

#### A Call to Action

Prevention: I believe in preventing rather than stopping something that has already happened. If you find a ....cure...the child may not have the physical damage. However, they will carry through their adulthood the emotional damage of being abused and mistreated by a stranger, or worse someone they know (*Australian girl, 16*)

#### Other General Discussion Days

Other General Discussion Days that the Committee held have also provided recommendations relevant to the issue of violence against children – on children in armed conflict (5 October 1992),<sup>10</sup> on economic exploitation of children (4 October 1993),<sup>11</sup> on the role of the family in the promotion of the rights of the child (10 October 1994),<sup>12</sup> on the girl child (21 January 1995),<sup>13</sup> on the administration of juvenile justice (13 November 1995),<sup>14</sup> on the child and the media (7 October 1996),<sup>15</sup> and on children with disabilities (6 October 1997),<sup>16</sup> on children living in a world with Aids (5 October 1998).<sup>17</sup>

## Extracts from General Comments of the Committee on the Rights of the Child

In spite of its steady and strong attention to the right of the child to freedom from violence, including in the examination of States parties reports (see below) and thematic discussions (see above), the Committee has not as yet issued a specific General Comment on the right of children to protection from all forms of violence. But its series of General Comments, issued since 2001, include relevant dimensions, summarised below.

#### The aims of education

The Committee devoted its first General Comment, in 2001, to the aims of education under article 29(1).<sup>18</sup> The Committee emphasised that:

*“Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline. Compliance with the values recognised in article 29(1) clearly requires that schools be child-friendly in the fullest sense of that term and that they be consistent in all respects with the dignity of the child...”*

### **Independent Human Rights Institutions for Children**

The Committee’s General Comment No. 2 (2002) is on “The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child”.<sup>19</sup> It welcomed the establishment of national human rights institutions and children’s ombudspersons/children’s commissioners and other similar independent bodies:

*“It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights.”*

The General Comment sets out basic requirements for such institutions, which can play an important role in advocating for the protection of children from all forms of violence. It notes in particular the role that they can play in ensuring effective protection for children in institutions, by undertaking visits, reporting and making recommendations. It also notes that children’s human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to such issues as trafficking, child pornography, child labour and other forms of exploitation.

### **HIV/AIDS and the rights of the child**

The Committee’s third General Comment is on HIV/AIDS and the rights of the child.<sup>20</sup> It recognises that the exposure of children to various forms of violence and abuse may increase the risk of HIV infection, and that they may also be exposed to violence as a result of such infection (para.37). The General Comment includes sections on child victims of sexual and economic exploitation and of violence and abuse. Violence, including sexual violence, may be perpetrated by family members, foster carers or those working with children and the Committee emphasises the obligation on States to protect children from “all forms of violence and abuse, whether at home, in school or other institutions, or in the community” (para.37). The Committee notes that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention:

*“Measures to prevent violence and abuse in these situations are critical, and States parties*

*must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States parties’ obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict - and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.” (para.38)*

### **Adolescent health and development**

In July 2003, the Committee issued its General Comment on adolescent health and development in the context of the Convention.<sup>21</sup> It recognises that adolescents who are subject to discrimination on any ground are more vulnerable to abuse and other types of violence and exploitation, and should therefore receive special attention and protection (para.6). In discussing the right to protection from all forms of violence and exploitation, the Committee explains that States should pay increased attention to the specific forms of violence affecting adolescents, with particular attention to adolescents with disabilities and adolescents affected by poverty (para.12):

*“In this regard, financial and human resources need to be allocated to promote research that would inform the adoption of effective local and national laws, policies and programmes. Policies and strategies should be reviewed regularly and revised accordingly. In taking these measures, States parties have to take into account the evolving capacities of adolescents and involve them in an appropriate manner in developing measures, including programmes, designed to protect them. In this context, the Committee emphasizes the positive impact that peer education can have, and the positive influence of proper role models, especially those in the worlds of arts, entertainment and sports.” (para.12)*

In recognition of the important role of school in adolescents’ lives, the Committee observes that States should “take the necessary actions to prevent and prohibit all forms of violence and abuse, including sexual abuse, corporal punishment and other inhuman, degrading or humiliating treatment or punishment in school, by school personnel as well as among students” (para.17). The Committee also notes the links between violence, ill-treatment, abuse and neglect, including sexual abuse, and suicide and mental ill-health among adolescents (para.22). It states:

*“Violence results from a complex interplay of individual, family, community and societal factors. Vulnerable adolescents such as those*

who are homeless or who are living in institutions, who belong to gangs or who have been recruited as child soldiers are especially exposed to both institutional and interpersonal violence. Under article 19 of the Convention, States parties must take all appropriate measures to prevent and eliminate: (a) institutional violence against adolescents, including through legislation and administrative measures in relation to public and private institutions for adolescents (schools, institutions for disabled adolescents, juvenile reformatories, etc.), and training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police; and (b) interpersonal violence among adolescents, including by supporting adequate parenting and opportunities for social and educational development in early childhood, fostering non-violent cultural norms and values (as foreseen in article 29 of the Convention), strictly controlling firearms and restricting access to alcohol and drugs.” (para.23)

The Committee further urges States to take all effective measures, including awareness raising campaigns, education programmes and legislation, against harmful traditional practices such as honour killings, early marriage and female genital mutilation (para.24).

Adolescents who are homeless, including those working in the informal sector, require special protection, and States should develop and implement policies and legislation to protect such adolescents from violence, for example by law enforcement officials (para.36). Adolescents who are sexually exploited are also exposed to significant risk of violence and

have the right to “physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity” (para.37). In this connection, States are obliged

*“to enact and enforce laws to prohibit all forms of sexual exploitation and related trafficking; to collaborate with other States parties to eliminate inter-country trafficking; and to provide appropriate health and counselling services to adolescents who have been sexually exploited, making sure that they are treated as victims and not as offenders”* (para.37)

## General measures of implementation

In its general Comment No. 5 (2003), the Committee interprets the overall implementation obligations taken on by States which ratify the Convention:

*“Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.”*<sup>22</sup>

The General Comment highlights the importance of 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. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels”*

## Notes

- 4 Report on the twenty-fifth session, CRC/C/100 (14 November 2000), paras.666-688
- 5 Report on the twenty-eighth session, CRC/C/111 (28 November 2001), paras.674-745
- 6 Report on the twenty-fourth session, CRC/C/97 (17 July 2000), Annex VI Outline for the day of general discussion (22 September 2000) on “State violence against children”
- 7 A full report of the discussion can be seen at <http://www.unhcr.ch/html/menu2/6/crc/doc/days/school.pdf>
- 8 Human Rights Watch <http://hrw.org/reports/2001/children/5.htm>
- 9 A full report of the discussion can be seen at <http://www.unhcr.ch/html/menu2/6/crc/doc/days/school.pdf>
- 10 CRC/C/10, paras.61-77
- 11 CRC/C/20, paras.186-196
- 12 CRC/C/34, paras.183-201
- 13 CRC/C/38, paras.275-299

- 14 CRC/C/46, paras.203-238
- 15 CRC/C/96, paras.242-256
- 16 CRC/C/69, paras.310-339
- 17 CRC/C/80, para. 243
- 18 General Comment No.1: The aims of education Article 29(1), CRC/GC/2001/1, 17 April 2001
- 19 General Comment No. 2: The Role of National Human Rights Institutions in the Protection and Promotion of the Rights of the Child, CRC/GC/2002/2, 4 October 2002
- 20 General Comment No.3: HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003
- 21 General Comment No.4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003
- 22 General Comment No. 5: General measures of implementation for the Convention on the Rights of the Child : CRC/GC/2003/5, 3 October 2003

# OTHER KEY HUMAN RIGHTS INSTRUMENTS AND VIOLENCE AGAINST CHILDREN

Other international human rights instruments, adopted by the UN General Assembly earlier than the adoption of the Convention on the Rights of the Child in 1989, guarantee to “everyone” – including children – a range of rights relevant to freedom from violence. The following section summarises briefly relevant interpretations of these instruments in General Comments issued by the Treaty Bodies established to monitor their implementation. Almost all these instruments now have Additional Protocols allowing individuals to submit communications to the relevant Treaty Body alleging breaches of their rights; this section summarises any relevant cases and conclusions.

## International Covenant on Civil and Political Rights

Implementation of the International Covenant on Civil and Political Rights (1966) is monitored by the Human Rights Committee. In 2000, the Committee adopted General Comment No.28 on article 3 (equality between men and women),<sup>23</sup> which notes that States must provide information on legislation and practice regarding domestic and other types of violence against women, including rape, and that where the practice of female genital mutilation exists, States should provide information on its extent and the measures in place to eliminate it (para.11). States should also provide information on measures to eliminate trafficking of women and children and forced prostitution, and measures to protect women and children from slavery disguised as domestic and other personal service (para.12). The minimum age for marriage should be equal for men and women and should ensure women’s capacity to make an

“informed and uncoerced decision” (para.23). The use of corporal punishment to enforce clothing regulations represents a violation of article 7 (prohibition of torture) (para.13).

In General Comment No.17 on article 24 (the right of every child to the protection by his family, society and the State required by his status as a minor),<sup>24</sup> the Human Rights Committee states that “every possible economic and social measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means” (para.3).

In General Comment No.20 on article 7 (the prohibition of torture and other cruel, inhuman or degrading treatment or punishment),<sup>25</sup> the Committee states that the prohibition “relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee’s view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for crime or as an educative or disciplinary measure” (para.5).

### Individual communications

On ratifying Optional Protocol No.1 to the International Covenant on Civil and Political Rights, States allow individuals within their jurisdiction to submit individual communications to the Human Rights Committee, complaining about breaches of their rights under the Covenant. These complaints should be sent to the Committee by the victim him/herself or

by a third party acting on the victim's behalf if s/he is unable to do so. The complaint cannot be considered if the problem is being investigated under another international procedure, nor if all domestic remedies have not been exhausted.

There have been a number of complaints relating to violence against children. One complaint was from veterans of the Second World War concerning their experiences of incarceration as very young children during the war; it was considered inadmissible because, among other reasons, it occurred before the entry into force of the Covenant.<sup>26</sup> Another was a custody case where the alleged victims were a mother and three children, which was found inadmissible because local remedies had not been exhausted.<sup>27</sup> Cases concerning deprivation of liberty have successfully been brought to the Committee. One 15-year old was imprisoned with adults and the state was found to have breached articles 10(2b) (separation of juveniles from adults) and 24 (special protection of children).<sup>28</sup> In the case of a minor who disappeared after being provisionally released from custody, the Committee considered that the failure to investigate her disappearance violated article 24, and the abduction, disappearance and prevention of contact with her family violated articles 7 and 9(1) (the right to liberty and security of person).<sup>29</sup> A case of the detention as aliens of a family with five children was considered to be a violation of articles 9(1/4) and 24(1), and potentially 17(1) (freedom from interference in privacy and family) and 23(1) (protection for the family).<sup>30</sup>

There have been no individual communications by or on behalf of children specifically on the question of corporal punishment, but in respect of adults the Committee has made strong statements on the unacceptability of judicial corporal punishment.<sup>31</sup>

## International Covenant on Economic, Social and Cultural Rights

In its General Comment No.13 on the right to education,<sup>32</sup> the Committee on Economic, Social and Cultural Rights, which monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966), discussed discipline in schools, stating that "corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human rights and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some States parties which actively encourage schools to introduce 'positive', non-violent approaches to school discipline." (para.41)

In its General Comment No.14 on the right to the highest attainable standard of health,<sup>33</sup> the Committee declared that States are obliged "to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence" (para.35). The Committee notes that failure to protect women against violence and to prosecute perpetrators, as well as the failure to discourage the continued observance of harmful medical or cultural practices constitute a violation of the States' obligation to protect (para.51).

### Individual communications

There is currently no system in place for the receipt of individual complaints concerning alleged violations of the Covenant rights, although a draft Optional Protocol is currently under preparation in the framework of the Commission on Human Rights.<sup>34</sup>

## International Convention on the elimination of all forms of Racial Discrimination

The implementation of this Convention (1966) is monitored by the Committee on the Elimination of Racial Discrimination. According to the Committee's General Recommendation XV on article 4,<sup>35</sup> all racially motivated violence is unacceptable and should be prohibited, including "acts of violence against any race or group of persons of another colour or ethnic origin"(para.3). General Recommendation XXV on gender-related dimensions of racial discrimination (2000)<sup>36</sup> recognises that certain forms of racial discrimination may be directed towards women specifically because of their gender, including sexual violence in detention and abuse of women in the informal sector or domestic workers (para.2). The Committee also recommends specific measures to address racial violence against Roma people (paras.12 to 16 and 36).

### Individual communications

An individual or group of individuals claiming to be the victim of racial discrimination may lodge a complaint directly with the Committee under article 14 of the Convention, provided that the state concerned has recognised the competence of the Committee to receive such complaints. States who have declared their recognition may also establish a national body to receive petitions from individuals who have exhausted other local remedies. Only if all of these domestic remedies have failed may a complaint be made to the Committee. If the Committee decides that a violation has occurred, it may make recommendations to the State concerned. A summary of all communications associated with each complaint,

including the Committee's correspondence with the State on the matters concerned and the Committee's own views, is included in the Committee's annual report. This review identified no communications concerning violence against children

## Convention on the elimination of all forms of discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (1979) contains no specific provision prohibiting violence against women. In its General Recommendation No.19 on violence against women (1992),<sup>37</sup> the Committee on the Elimination of Discrimination against Women states that gender-based violence is "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (para.1) and that "the full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women" (para.4). The protection afforded to women should cover both public and private spheres (paras.8 and 9).

In its General Recommendation No.21 on equality in marriage and family relations,<sup>38</sup> the Committee urges States to comply with General Recommendation No.19 "to ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals" (para. 40).

In General Recommendation No.24 on article 12 (non-discrimination in health care),<sup>39</sup> the Committee again draws attention to violence against women, stating that they may be

*"exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability" (para.12b).*

Gender-based violence are equally addressed under the obligation to protect rights relating to women's health, and States should ensure such measures as legislation and health policies to address violence against women and sexual abuse of girl children, the enactment and enforcement of laws prohibiting female genital mutilation and marriage of girl children (para.15).

### Individual communications

States which are party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1999 and in force from 2000, recognise the competence of the Committee on the Elimination of All Forms of Discrimination

against Women to receive complaints from persons within their jurisdiction alleging violations of their rights under the Convention. These complaints should be sent to the Committee by the victim herself or by a third party acting on her behalf. The complaint cannot be considered if the problem identified is being investigated under another international procedure, nor if all domestic remedies have not been exhausted. Complaints cannot be considered concerning violations before the entry into force of the Optional Protocol for the state. Once a decision is taken and the violation found to have occurred, the Committee may make recommendations to the State concerned. Under article 7 of the Protocol, the state is required to respond within six months of receiving the Committee's recommendations, detailing the action taken.

The Declaration on the Elimination of Violence against Women (1993) defines violence as

*"any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercions or arbitrary deprivation of liberty, whether occurring in public or in private life"*

According to the Declaration, violence against women encompasses, but is not limited to, physical, sexual and psychological violence:

- (a) That occurs in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) That occurs in the community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) That is perpetrated or condoned by the State, including during time of armed conflict.

## Convention against torture and other cruel, inhuman or degrading treatment or punishment

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) contains the most detailed definition of torture to be found in international instruments, and article 16 refers to the concept of "cruel, inhuman and degrading treatment" that has been developed into a useful additional framework for the prevention and protection of children from violence.

At its General Discussion Day on "State violence against children," the Committee on the Rights of the Child observed that articles 10, 12, 13 and 14 of the Convention against Torture provide useful guidance on how to implement the provisions of article 37 of the Convention on the Rights of the Child, and the mecha-

nism for the examination of individual complaints established under article 22 of the Convention against Torture provides an additional possibility for enforcing international human rights standards to protect children.<sup>40</sup> In its reporting process under the Convention, the Committee against Torture often includes specific reference to the situations faced by children.

### Individual communications

Private individuals may lodge complaints about alleged violations of the rights recognised by the Convention directly with the Committee, provided that the state concerned has recognised the competence of the Committee under article 22 and the individual is subject to the jurisdiction of that state. The communication must be submitted by the individual who claims to be the victim of the alleged violation, or a relative or representative acting on his/her behalf. In order to be considered admissible, the complaint must not be anonymous or incompatible with the provisions of the Convention; it

must comply with the requirements of article 22; and it must not be the subject of a current or past examination under another procedure of international investigation or settlement. It is also a requirement that all domestic remedies must have been exhausted. A summary of all communications associated with each complaint, including the Committee's correspondence with the State and the Committee's own views, is included in the Committee's annual report.

Children are very rarely the main subject of individual communications, although in one case the complainants were parents together with their two children. They alleged that the whole family, including the children, would be subject to torture if they were to return to their country.<sup>41</sup> Violence against children is often disclosed in the course of complaints, including children experiencing threats and persecution,<sup>42</sup> being forced to clear minefields,<sup>43</sup> witnessing the rape of their mother,<sup>44</sup> and being kidnapped and threatened with death.<sup>45</sup>

### Notes

- 23 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.168-174
- 24 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.132-134
- 25 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.139-141
- 26 Communication No.601/1994, in A/52/40, 1999
- 27 Communication No.755/1997, in A/52/40, 1999
- 28 Communication No.800/1998, in A/54/40, 1999
- 29 Communication No.540/1993, in A/51/40, 1997
- 30 Communication No.1069/2002, CCPR/C/79/D/1069/2002, 6 November 2003
- 31 Jamaica CCPR/C/68/D/759/1997, 13 April 2000, para.11, and CCPR/C/74/D/792/1998, 25 June 2002, para.6; Trinidad and Tobago, CCPR/C/73/D/928/2000, views adopted 25 October 2001
- 32 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.74-89
- 33 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.90-109
- 34 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.184-185
- 35 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.194
- 36 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.194-
- 37 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.216-222
- 38 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.222-231
- 39 Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.5, 26 April 2001, pp.244-251
- 40 CRC/C/100, 14 November 2000, para.674
- 41 Communication No.103/1998, in A/54/44, 26 June 1999
- 42 Communication No.49/1996, in A/56/44, 18 June 2001; Communication No.149/1999, in A/56/44, 18 June 2001
- 43 Communication No.131/1999, in A/55/44, 2000
- 44 Communication No.41/1996, in A/51/44, 9 July 1996
- 45 Communication No.31/1995, in A/51/44, 9 July 1996

## OTHER RELEVANT HUMAN RIGHTS INSTRUMENTS

There are a number of other human rights instruments of direct relevance to relevant of substantive areas relating to violence. Note should also be made of the fact that a number of Conventions and Recommendations adopted by the Council of Europe are directly relevant to the issue of violence against children. These are the subject of a separate publication.

a) Protection of the child from abduction or inter-country adoption contrary to the child's best interests

**The Hague Convention on the Civil Aspects of International Child Abduction, 1980** is a critical treaty aiming to protect children who have been wrongfully abducted, removed or retained abroad – in breach of someone's rights of custody – if the Convention is in force between the two States involved. **The Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, 1993** establishes safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights; to establish a system of cooperation among States to ensure these safeguards are respected and thus prevent the abduction, sale of or traffic in children; and to secure recognition of adoptions made in accordance with the Convention.

b) Protection of the child from economic exploitation, child labour and trafficking

To protect from exploitation and trafficking, it is important to consider the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000**. The purpose of the Protocol is to promote action to prevent and combat trafficking, in particular of women and children, to protect and assist

victims of trafficking with full respect for their human rights; and to encourage international cooperation to meet these objectives.

A number of **ILO Conventions** address the issue of child labour, two of them deserve a particular reference.

● **Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour** (adopted in 1999), together with ILO Recommendation no. 190 on Worst Forms of Child Labour (which supplements the Convention) define "worst forms" and require "immediate and effective measures" to secure their prohibition and elimination as a matter of urgency.

● **ILO Convention No. 138 on the Minimum Age for Admission to Employment** (adopted in 1973 together with Recommendation No. 146) consolidates principles gradually established in various earlier instruments and applies to all areas of economic activity, whether children are employed for wages or not.<sup>46</sup>

c) Protection of the rights of the child in the context of juvenile justice

In the Juvenile Justice field, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) 1985 provide minimum standards for the handling of juvenile offenders, emphasising impartiality and non-discrimination. The UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990 provide principles and broad proposals for prevention, emphasising that its success "requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood". Similarly, the UN Rules for the

Protection of Juveniles Deprived of their Liberty, 1990 highlight that deprivation of liberty of juveniles should only be used as a last resort and establish minimum standards for their treatment,

*“..with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society”*

The UN Standard Minimum Rules for Non-Custo-

dial Measures (the Tokyo Rules), 1990 provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Vienna Guidelines for Action on Children in the Criminal Justice System, elaborated by an expert group in Vienna from 23 to 25 February 1997 promote the effective use and application of international standards and norms in the area of juvenile justice.

## Notes

- 46 Many other ILO convention are relevant to child labour; for full list see [www.ilo.org](http://www.ilo.org)

# CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD AND OTHER TREATY BODIES

The Concluding Observations of the Committee on the Rights of the Child to States Parties are important sources of information on the many aspects of violence inflicted on children and the importance for States in addressing them. They usually contain specific sections on abuse and neglect, economic exploitation, sexual exploitation, juvenile justice and corporal punishment. They also reflect the interconnected nature of different forms of violence against children, with comments on corporal punishment and harmful traditional practices, for example, appearing in a variety of sections. Moreover, they are indicative of the fact that violence against children not only takes different forms, but that those forms can occur in all of the settings in which children find themselves – the home, schools, other institutions and forms of childcare, and the penal system.

All recommendations reflect the importance placed on the ratification of relevant human rights instruments, law reform and the need for comprehensive studies and for awareness raising and public education activities. In virtually all Concluding Observations, the Committee welcomes legislative progress where it has been made. It also urges the ratification of relevant human rights instruments, such as the Optional Protocols to the Convention, ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ILO Convention No.138 on the Minimum Age for Admission to Employment, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Commonly, the Committee urges States to take note in developing strategies of the Declaration and

Agenda for Action and the Global Commitment adopted at the 1996 World Congress against Commercial Sexual Exploitation of Children and its 2001 Yokohama follow-up, as well as of its own recommendations adopted following the General Discussion Days on children and violence.

In connection with juvenile justice, the Committee has recommended that States take into account, in addition to the relevant articles in the Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the UN Guidelines for the Protection of Juvenile Delinquency (the Riyadh Guidelines), UN Rules for the Protection of Juveniles Deprived of their Liberty, the Vienna Guidelines for Action on Children in the Criminal Justice System, and the Committee's recommendations made at the 1995 General Discussion Day on the administration of juvenile justice.

Recommendations and comments in Concluding Observations of the other human rights monitoring committees only occasionally make specific reference to children. Instances of such references are noted below, together with other relevant references which naturally pertain to children even if they are not explicitly mentioned.

## Challenging all forms of violence

### Committee on the Rights of the Child

In its concluding observations, the Committee has welcomed various initiatives and programmes addressing abuse and neglect,<sup>47</sup> including studies on abuse<sup>48</sup> and efforts to address domestic violence.<sup>49</sup>

The Committee has frequently expressed concern at the extent of violence, including sexual abuse,<sup>50</sup> in schools and institutions as well as in the home,<sup>51</sup> and the impact of maltreatment on children's health.<sup>52</sup> It has also expressed concern at domestic violence, including its increase and effect on children.<sup>53</sup> It has noted the lack of comprehensive strategies and mechanisms to deal with the problem,<sup>54</sup> including a lack of awareness raising and public education,<sup>55</sup> a lack of clear and systematic reporting procedures,<sup>56</sup> the rarity of prosecution of perpetrators,<sup>57</sup> inadequate monitoring,<sup>58</sup> and a lack of adequate assistance and recovery support for victims.<sup>59</sup> Legislation is often lacking or inadequate.<sup>60</sup>

Particular groups of children have been recognized as particularly vulnerable to abuse, including street children,<sup>61</sup> migrant children,<sup>62</sup> disabled children,<sup>63</sup> children in institutions and alternative care,<sup>64</sup> Roma children,<sup>65</sup> children orphaned by HIV/AIDS,<sup>66</sup> and domestic servants (mostly girls).<sup>67</sup>

The Committee has recommended public education and awareness raising campaigns to prevent and combat abuse and domestic violence generally<sup>68</sup> and specifically to change attitudes towards Roma children<sup>69</sup> and children with disabilities,<sup>70</sup> as well as on the negative consequences of child abuse<sup>71</sup>; on the importance of child protection system,<sup>72</sup> on parenting<sup>73</sup> and the responsibilities of fathers to their children.<sup>74</sup> For many countries the Committee has identified a need for proper study of the problem to provide accurate data<sup>75</sup> to inform policies and programmes.

States should adopt and implement adequate measures and policies and/or national plans to prevent and combat ill-treatment and abuse, and domestic violence,<sup>76</sup> including a coordinated strategy for the reduction of child deaths due to violence.<sup>77</sup>

Cases of domestic violence, ill-treatment and abuse in the family should be effectively investigated, through a child-sensitive inquiry and judicial procedure,<sup>78</sup> with attention given to the socio-economic barriers which may prevent victims from seeking assistance.<sup>79</sup> Reporting systems for abuse and domestic violence should be strengthened and their use encouraged.<sup>80</sup> Effective, child-sensitive procedures and mechanisms to deal with complaints should be established<sup>81</sup> and made known to children<sup>82</sup> and there should be proper training of all professionals involved.<sup>83</sup> All crimes committed against children should be recorded.<sup>84</sup>

Legislative measures recommended by the Committee include developing legislation to prohibit all violence against children,<sup>85</sup>; to deal with racially motivated attacks,<sup>86</sup>; to amend discriminatory legal age limits for protection of violence,<sup>87</sup>; and to give adequate protection to children in their homes through restraining and removal of the perpetrator where necessary.<sup>88</sup> There should be specific legislation on domestic abuse,<sup>89</sup> a system of statutory child death inquiries,<sup>90</sup> and legislative measures to support child victims in legal proceedings.<sup>91</sup> Existing laws should be reviewed and implemented.<sup>92</sup> Criminalisation and stigmatisation of victims should be avoided.<sup>93</sup>

The Committee has urged States to address violence in schools,<sup>94</sup> including bullying.<sup>95</sup> It should also

be addressed in institutions, for example by improving their conditions,<sup>96</sup> guaranteeing the right to periodic review of placements,<sup>97</sup> providing support for children leaving institutions,<sup>98</sup> and by promoting alternatives to institutionalisation<sup>99</sup> and using it only as a last resort.<sup>100</sup> There should be appropriate training of those who work with and for children.<sup>101</sup>

Preventive measures should be taken to protect children in institutions and alternative care.<sup>102</sup> The situation of these children in institutions, as well as those in the family, should be monitored,<sup>103</sup> and both disabled children and street children should be properly protected from violence.<sup>104</sup> Other preventive measures include the development of child-centred family policy<sup>105</sup> and the provision of more support for families.<sup>106</sup>

There should be care, recovery and social reintegration programmes and support for victims of violence and neglect,<sup>107</sup> including street children.<sup>108</sup> Institutionalisation of victims of violence should be avoided.<sup>109</sup>

## Other Committees

- The Committee for the Elimination of Discrimination against Women has paid special attention to violence in the home, particularly domestic violence against women which also affects children. In its concluding observations on States' reports examined in 2002, it expressed concern at: the incidence of domestic violence;<sup>110</sup> discriminatory provisions in family laws, a lack of specific legislation on domestic violence, the failure of police to respond to complaints with gender sensitivity and effectively;<sup>111</sup> as well as the lack of a comprehensive approach to prevention and elimination of violence against women.<sup>112</sup>

The Committee recommends: prioritising comprehensive measures to address violence against women in the family and in society;<sup>113</sup> ensuring that domestic violence is considered a crime under criminal law and perpetrators are prosecuted and punished;<sup>114</sup> providing immediate means of redress and protection for victims;<sup>115</sup> proper training of public officials in all forms of violence against women;<sup>116</sup> public awareness raising and taking measures to make violence against women socially and morally unacceptable;<sup>117</sup> enactment of specific legislation on domestic violence;<sup>118</sup> and ensuring implementation and monitoring of existing plans, policies and laws relating to violence against women.<sup>119</sup>

- The Committee on Economic, Social and Cultural Rights, in sessions in 2002 and 2003, expressed concern at: the practice of *vidomégon* – placing children in domestic service where they suffer abuse, violence and exploitation<sup>120</sup> as well as at the incidence of domestic abuse;<sup>121</sup> insufficient efforts to address domestic violence;<sup>122</sup> the lack of legislation on domestic violence;<sup>123</sup> underreporting of domestic violence;<sup>124</sup> and the impunity of perpetrators.<sup>125</sup>

The Committee recommends: taking all effective legislative, economic and social measures to end the practice of placing children in domestic service;<sup>126</sup> awareness raising campaigns;<sup>127</sup> enacting specific leg-

isolation on domestic violence;<sup>128</sup> providing support and rehabilitation services and facilities for victims, including safe housing and counselling;<sup>129</sup> implementing existing national plans of action for the advancement of women and for combating domestic violence;<sup>130</sup> implementing existing legislation;<sup>131</sup> adopting adequate policies and administrative measures to ensure effective remedies concerning domestic violence;<sup>132</sup> and training law enforcement officials.<sup>133</sup>

- The Human Rights Committee has welcomed legislative progress in the area of domestic violence,<sup>134</sup> as well as other efforts to address this problem.<sup>135</sup> However, it has noted with concern the persistence of domestic violence and violence against women<sup>136</sup> a failure to take care of victims,<sup>137</sup> the existence of discriminatory legislation,<sup>138</sup> a failure to prosecute and punish perpetrators,<sup>139</sup> and the lack of a comprehensive approach to its prevention and elimination.<sup>140</sup>

Recommendations by the Human Rights Committee include: the revision and enforcement of existing legislation and enactment and implementation of new legislation;<sup>141</sup> training of law enforcement officials;<sup>142</sup> public awareness raising and human rights training;<sup>143</sup> encouraging women to report domestic violence;<sup>144</sup> the provision of shelters and other support for victims;<sup>145</sup> prosecution and punishment of perpetrators;<sup>146</sup> and more effective preventive measures.<sup>147</sup>

## Corporal punishment

### Committee on the Rights of the Child

The Committee on the Rights of the Child has consistently stated that legal and social acceptance of corporal punishment of children, however light, in the home and in institutions, is not compatible with the Convention.

Corporal punishment is not simply a particular category of violence against children. Its significance is its legality and the persisting social acceptance of it in most countries: this reflects most symbolically the low status of children and the lack of respect for their human dignity and physical integrity. The Committee's preoccupation with prohibiting and eliminating all corporal punishment is understandable. All states have laws prohibiting physical assault between adults. But in a large majority of states, assault of children in the home is condoned when described as "discipline" or "control"; globally, only about 12 states have prohibited all corporal punishment including in the family. In a sizeable minority of States, corporal punishment continues in schools, alternative care and penal systems for young offenders.

Since 1993, in its recommendations following examination of reports from States Parties to the Convention, the Committee has recommended prohibition of all corporal punishment in the family and institutions, and education campaigns to encourage positive, non-violent child-rearing and education.

The Committee has repeatedly expressed concern at the social acceptability and prevalence of cor-

poral punishment,<sup>148</sup> even of young children, in the home,<sup>149</sup> in schools,<sup>150</sup> in care and penal institutions,<sup>151</sup> and as a sentence for crime.<sup>152</sup> It particularly highlighted insufficient efforts to prevent and combat corporal punishment in the family.<sup>153</sup>

The legality of corporal punishment is a key concern of the Committee, including case law which specifies a level of violence to be reached before corporal punishment is considered physical violence,<sup>154</sup> definitions of corporal punishment as a crime only if it is considered prejudicial to the child's health<sup>155</sup>, legal prohibition of school corporal punishment not applicable to all schools<sup>156</sup>, retention of legal defences of "reasonable" chastisement or force<sup>157</sup>, and the regulation rather than prohibition of corporal punishment in law<sup>158</sup>. It has criticised a lack of prohibition of corporal punishment generally<sup>159</sup>, and specifically within the family<sup>160</sup>, schools<sup>161</sup>, other institutions<sup>162</sup>, and in the penal system,<sup>163</sup> including as a sentence for juvenile crime.<sup>164</sup> Where laws do prohibit corporal punishment, their enforcement has sometimes been found to be problematic.<sup>165</sup>

In Concluding Observations on examination of States parties' reports in 2002 and 2003, the Committee has specifically welcomed the legal prohibition of corporal punishment in all contexts,<sup>166</sup> as well as prohibition within the family<sup>167</sup>, in schools<sup>168</sup>, in other institutions<sup>169</sup> and the penal system,<sup>170</sup> and Court decisions outlawing corporal punishment<sup>171</sup>. Studies and promotion of alternative forms of discipline of children have been greeted with appreciation and approval.<sup>172</sup>

In response to these concerns, the Committee has recommended the implementation and monitoring of bans on corporal punishment in schools,<sup>173</sup> the removal of defences justifying violence against children,<sup>174</sup> and explicit prohibition in domestic law of all corporal punishment in all contexts,<sup>175</sup> including in the family,<sup>176</sup> in schools,<sup>177</sup> in other institutions<sup>178</sup> and in the juvenile justice system.<sup>179</sup> Existing legal prohibitions should be implemented and enforced.<sup>180</sup>

Awareness raising and public education campaigns are among the most important non-legislative ways to address corporal punishment and the Committee has recommended they be carried out to end corporal punishment,<sup>181</sup> with specific campaigns on children's right to protection from corporal punishment,<sup>182</sup> the promotion of alternative forms of discipline among parents and professionals, including teachers,<sup>183</sup> and on the harmful effects of corporal punishment.<sup>184</sup> In addition, policy and administrative measures should be taken to end corporal punishment in schools<sup>185</sup> and children should be involved in discussion of school disciplinary measures.<sup>186</sup>

### Other Committees

- The Committee against Torture has also expressed concern about the use of corporal punishment in the context of a judicial decision, e.g. welcoming the exemption of children but urging the re-examination of the use of such punishment generally.<sup>187</sup> In 2004 it echoed a recommendation of the Committee on the Rights of the Child, calling for the

prohibition of corporal punishment in the family.<sup>188</sup>

- The Committee on Economic, Social and Cultural Rights has welcomed the abolition of corporal punishment in schools<sup>189</sup>, and expressed concern at the use of corporal punishment in the home, and has recommended prohibition of all forms of corporal punishment<sup>190</sup>, including in schools and in families.<sup>191</sup>
- The Human Rights Committee has criticized the use of corporal punishment, particularly in schools and in the penal system, and has urged States to bring it to an end, including through its prohibition in legislation.<sup>192</sup>

## Gender-based violence

### Committee on the Rights of the Child

The Committee on the Rights of the Child, in a number of recommendations in the light of article 2, has called upon States to recognise the principle of equality before the law and forbid gender discrimination, including the adoption of legislation prohibiting harmful traditional practices such as genital mutilation and forced and early marriage of girls.

The Committee on the Rights of the Child has welcomed States' efforts to prevent and combat harmful traditional practices,<sup>193</sup> e.g. in campaigns and strategies against female genital mutilation,<sup>194</sup> as well as to prevent early marriage,<sup>195</sup> and the harmful effects of food taboos.<sup>196</sup>

At the same time, the Committee has repeatedly expressed concern at traditional practices which threaten the life, survival and development of children,<sup>197</sup> including: traditional food taboos<sup>198</sup>; forced feeding<sup>199</sup>; female genital mutilation<sup>200</sup>; early marriage<sup>201</sup>; male circumcision in unsafe medical conditions<sup>202</sup>; as well as severe legal penalties for women pregnant outside of marriage resulting in concealed pregnancies and child abandonment, with a low survival rate of these children.<sup>203</sup> The Committee has noted the impact of early marriage on girls' health<sup>204</sup> and education,<sup>205</sup> the low or no minimum age for marriage;<sup>206</sup> and the disparity in minimum age for marriage between boys and girls.<sup>207</sup>

Legislative measures should be taken to end all traditional practices harmful to the health, survival and development of children<sup>208</sup>, including the prohibition of female genital mutilation.<sup>209</sup>

Other recommendations have included the undertaking of a study on female genital mutilation,<sup>210</sup> seeking cooperation with countries that have positive experiences of combating harmful practices<sup>211</sup> finding alternative employment for practitioners of harmful practices,<sup>212</sup> and taking all possible measures to prevent early marriages<sup>213</sup> and end harmful traditional food taboos.<sup>214</sup>

### Other Committees

- The Committee on the Elimination of Discrimination against Women has expressed concern at the legality of early marriage<sup>215</sup>, and has recommended the amendment of laws on early marriage.<sup>216</sup>

The Committee has repeatedly expressed concern at cultural practices which foster violence against women and girls, e.g. the perpetuation of gender-based violence through traditional patriarchal attitudes<sup>217</sup>; lack of a comprehensive approach to crimes of honour<sup>218</sup>. The Committee has recommended the prohibition of practices that legalise violence against women<sup>219</sup>. It has also urged States to prioritise measures to address violence against women in the family and in society, including public awareness campaigns.<sup>220</sup>

- The Committee on Economic, Social and Cultural Rights has expressed concern at inadequate efforts to combat female genital mutilation<sup>221</sup> and early marriage.<sup>222</sup> The Committee has recommended that States combat customary practices that violate women's rights by all available means,<sup>223</sup> eradicate forced marriages,<sup>224</sup> and make greater efforts to end female genital mutilation,<sup>225</sup> including establishing mechanisms to protect women from this practice<sup>226</sup> and compensation for practitioners of female genital mutilation who cease their practices.<sup>227</sup>

- The Human Rights Committee has welcomed efforts to combat female genital mutilation, including its legal prohibition<sup>228</sup>. However, it has more often expressed concern about the prevalence of female genital mutilation and the lack of a clear prohibition.<sup>229</sup> It has also criticised the practice of early marriage<sup>230</sup> and the prevalence of 'honour crimes'.<sup>231</sup>

In this spirit, the Committee has recommended that to address the problem of early marriage, States raise the minimum age for marriage for girls to equal that for boys and providing better protection for minors generally in this area.<sup>232</sup> States should also continue to address and eradicate female genital mutilation, including through legislation and awareness raising.<sup>233</sup>

## Economic exploitation

In its Concluding Observations, the Committee on the Rights of the Child has frequently expressed concern about economic exploitation of children, which damages children's health and development and impedes their access to education.

During the sessions in 2002 and 2003, exploitation identified was wide ranging and included not only sexual exploitation but also domestic work, involvement in drug trafficking, farming and agriculture and in modelling; working on the street, in fishing, manufacturing, construction and tourism, as well as camel racing, and mining.

The Committee has also repeatedly expressed concern at the use and prevalence of child labour<sup>234</sup> and its social acceptability,<sup>235</sup> children having to perform the same work as adults,<sup>236</sup> the hazardous situation of children involved in camel racing,<sup>237</sup> the lack of a national plan and effective measures to combat child labour<sup>238</sup> and of accurate data and information,<sup>239</sup> inadequate monitoring of child labour,<sup>240</sup> inadequate

legislation<sup>241</sup> and its enforcement,<sup>242</sup> inappropriate and harmful minimum ages for admission to employment,<sup>243</sup> economic exploitation linked to trafficking,<sup>244</sup> the impact of child labour on a child's education,<sup>245</sup> and the poor conditions for child labourers.<sup>246</sup>

Child domestic servants (usually girls) are recognised as particularly vulnerable to economic exploitation and other forms of exploitation and abuse<sup>247</sup> and requiring a particular attention by States.<sup>248</sup> Another vulnerable group of children are those working as child beggars.<sup>249</sup>

The Committee has criticised legislation which exempts family and domestic enterprises from child labour laws<sup>250</sup> and the lack of protection faced by many of these workers.<sup>251</sup>

The Committee has made recommendations in a number of areas concerning the economic exploitation of children, designed to afford such children full protection from all forms of abuse and violence and enjoyment of their rights under the Convention. Recommendations concerning legislation include the prohibition of slavery,<sup>252</sup> and of employment of children in hazardous work,<sup>253</sup> the use of legislation to combat trafficking and economic exploitation,<sup>254</sup> and the importance of such laws to be in line with the International Labour Organisation Conventions and international instruments<sup>255</sup>. Setting and implementing an appropriate minimum age for admission to employment has been a key concern.<sup>256</sup> Penalties should be imposed for violations of labour laws.<sup>257</sup> Complaints of violence should be properly investigated, through child-sensitive judicial procedures, and sanctions should be applied to perpetrators.<sup>258</sup>

The Committee has recommended the eradication of trafficking and economic exploitation<sup>259</sup>, including through programmes aimed at preventing and combating trafficking and sale of children,<sup>260</sup> cooperating with other countries to address trafficking,<sup>261</sup> and the prosecution of those engaged in the abduction, sale and purchase of children.<sup>262</sup>

The Committee has recommended the eradication of all child labour,<sup>263</sup> including through addressing root causes, e.g. poverty/lack of education,<sup>264</sup> facilitating access to education,<sup>265</sup> social integration programmes,<sup>266</sup> and support to vulnerable families<sup>267</sup>. The worst forms of labour, including slavery, should be eliminated immediately<sup>268</sup>. Recovery and rehabilitation programmes should be provided for child victims of trafficking and/or economic exploitation.<sup>269</sup>

The Committee has very frequently recommended awareness raising campaigns,<sup>270</sup> including on the child's right to respect for physical and mental integrity,<sup>271</sup> to prevent trafficking and economic exploitation,<sup>272</sup> and on the protection of the rights of the child.<sup>273</sup>

In addition, States have been advised to undertake studies on child labour, including informal situations (such as domestic labour),<sup>274</sup> children living and working in the street<sup>275</sup>, and trafficking, including for economic exploitation<sup>276</sup>. The systematic collection of reliable data has been considered central to addressing the problem.<sup>277</sup>

Where children are working, States should develop

effective systems of inspection and monitoring,<sup>278</sup> provide full protection for all child labourers under 18,<sup>279</sup> and ensure that all children have access to education.<sup>280</sup>

## Other Committees

- The Human Rights Committee has noted the incidence of child labour and the associated risk of ill-treatment,<sup>281</sup> and the trafficking of children for slavery and forced labour.<sup>282</sup> It has recommended that States intensify efforts to punish those responsible for exploitation of working children,<sup>283</sup> and adopt and develop appropriate complaint and protection mechanisms for these children, including effective supervisory systems.<sup>284</sup> It has also recommended that States undertake studies on the issue of child labour.<sup>285</sup>

## Violence in the juvenile justice system

### Committee on the Rights of the Child

In its Concluding Observations, the Committee on the Rights of the Child has repeatedly drawn attention to the harmful, harsh and poor conditions of detention experienced by children in conflict with the law.<sup>286</sup> A lack of independent monitoring perpetuates the risk of abuse and violence against the children.<sup>287</sup> Often there are insufficient alternatives available to detention,<sup>288</sup> and detention is not reserved as a last resort.<sup>289</sup> Similar problems have been identified with pre-trial detention, including poor detention condition,<sup>290</sup> absence of legal protections,<sup>291</sup> and unlawful detention.<sup>292</sup> The practice of holding children in isolation and/or incommunicado is a cause for concern.<sup>293,294</sup>

Often corporal punishment is not prohibited as a disciplinary measure in penal institutions, and in too many cases it is even retained as a judicial sentence. Sometimes severe penalties are imposed on children<sup>295</sup>, including death sentence or life imprisonment.<sup>296</sup> Another common practice which exposes children to risk of abuse and violence is the failure to separate children and adults in detention.<sup>297</sup>

The Committee repeatedly confronts ill-treatment by law enforcement officers in detention, and police stations<sup>298</sup> and including against street children<sup>299</sup> and "foreign" children.<sup>300</sup> The Committee has expressed concern at the use of torture in detention centres<sup>301</sup> and at the failure of police to protect victims of racially motivated violence.<sup>302</sup> The lack of effective complaints mechanisms for children<sup>303</sup> ensures such violence is rarely reported or investigated. There is frequently a failure to adequately investigate and prosecute perpetrators of police brutality.<sup>304</sup> The use of physical restraint in custody and the high incidence of injuries resulting from restraints and measures of control used in prisons have been called into question.<sup>305</sup>

In terms of legislation, the Committee has urged States to review and amend legislation, e.g. to review the powers of the police<sup>306</sup> and review penalties to make them conducive to the realisation of goals of juvenile justice;<sup>307</sup> amend torture legislation to bring it into line with art 37;<sup>308</sup> enact legislation to prohibit all

forms of torture and other cruel, inhuman or degrading treatment or punishment;<sup>309</sup> apply a distinct juvenile justice system to all below 18;<sup>310</sup> adopt legislative measures for the fullest compensation and rehabilitation of child victims of torture;<sup>311</sup> ensure that the practise of traditional law on children is in full compliance with the Convention;<sup>312</sup> guarantee that capital punishment and life imprisonment without release are not imposed for crimes committed by under 18s.<sup>313</sup>

Detention should be kept as a last resort and for as short a time as possible<sup>314</sup> and illegal detention should end.<sup>315</sup> Conditions should be improved and monitored;<sup>316</sup> use of solitary confinement should be reviewed;<sup>317</sup> also diversion programmes and alternatives to punishment should be strengthened;<sup>318</sup> detention conditions improved (e.g. by providing special centres for children suitable to their needs and age and ensuring the presence of social services in all detention centres);<sup>319</sup> the use of incommunicado detention should be ended.<sup>320</sup>

Other recommendations include: end all acts of violence by police towards children, including through prosecution of police officers guilty of such acts and through the presence of social workers during investigation and in places of detention;<sup>321</sup> allow visits to institutions, etc. by independent bodies and ensure children's access to child-sensitive complaint procedures;<sup>322</sup> end all police brutality against children<sup>323</sup>, including against children belonging to minorities, especially Roma children<sup>324</sup> and street children<sup>325</sup>, and detainees;<sup>326</sup> establish and enforce instructions for full compliance with the Convention by law enforcement officials;<sup>327</sup> train law enforcement officials in children's human rights<sup>328</sup> and in ways that avoid the use of force;<sup>329</sup> investigate effectively reported cases of killings, torture and ill-treatment of children;<sup>330</sup> bring perpetrators of torture and ill-treatment to justice;<sup>331</sup> suspend/transfer alleged perpetrators during investigation and dismiss and/or punish them if found guilty<sup>332</sup>, and publicise court proceedings and sentences;<sup>333</sup> provide compensation for victims of torture and/or ill-treatment.<sup>334</sup>

Recovery and social reintegration services should be provided for child victims of torture and/or ill-treatment<sup>335</sup> and for children involved in the juvenile justice system<sup>336</sup>; professionals should be trained in recovery and social reintegration of children.<sup>337</sup>

States should address state violence against children by all necessary measures,<sup>338</sup> and should investigate all allegations of state violence, torture and ill-treatment,<sup>339</sup> ensuring the inadmissibility of evidence obtained by torture<sup>340</sup> and ending impunity for perpetrators of state violence.<sup>341</sup>

### Other Committees

- The Committee against Torture has expressed concern about reports of abuse of underage detainees by law enforcement officials, the lack of monitoring, investigation and prosecution in complaints of abuse and sexual harassment by law enforcement officials, and contact between adults and children in detention.<sup>342</sup> It is also concerned at the ill-treatment of unaccompanied minors during enforced

expulsion. The Committee has recommended the end of all practices involving abuse of minors in detention, the punishment of law enforcement officials found responsible and a ban on holding minor detainees with adult detainees.<sup>343</sup>

The Committee against Torture has also been concerned with conditions of detention, including those affecting children. The Committee has expressed concern about the use of isolation for juvenile delinquents<sup>344</sup>; about reports of abuse by law enforcement officials and the lack of monitoring, investigation and prosecution following complaints of abuse and sexual harassment by law enforcement officials<sup>345</sup>; about contact between children and adults in detention<sup>346</sup>; and about reports of conditions in institutions or places of detention which amount to inhuman or degrading treatment.<sup>347</sup> The Committee has recommended legislation on unaccompanied minors that takes account of the best interests of the child and the use of isolation of juvenile delinquents only in exceptional cases, and for a limited period<sup>348</sup>; an end to all practices involving abuse of minors in detention and the punishment of law enforcement officials who abuse minors in detention<sup>349</sup>; a ban on detaining children with adults<sup>350</sup>; distribution to and implementation of instructions to all relevant officials on the prohibition of ill-treatment and torture against children in State institutions and prisons.<sup>351</sup>

The Committee on the Elimination of Discrimination against Women, has expressed concern - although not directed specifically at children - at the high incidence of gender-based violence<sup>352</sup> and has recommended the strengthening of initiatives to combat gender-based violence<sup>353</sup> and monitoring the behaviour of law enforcement officials, prosecuting them for violence against women and taking all necessary measures to prevent acts of violence against women.<sup>354</sup>

The Committee on Economic, Social and Cultural Rights has expressed concern at the excessive use of force by police<sup>355</sup> and has recommended the effective implementation of existing legislation.<sup>356</sup>

The Human Rights Committee has been concerned at reports of excessive force by law enforcement officials at student demonstrations and other gatherings,<sup>357</sup> and has recommended that allegations of excessive force by law enforcement officials be properly investigated.<sup>358</sup>

## Child trafficking and sexual exploitation and abuse

### Committee on the Rights of the Child

In its concluding observations, the Committee has welcomed the adoption of policies and initiatives addressing trafficking and/or child sexual exploitation<sup>359</sup> and particularly welcomed cooperation with other countries in these efforts.<sup>360</sup>

The Committee has repeatedly expressed concern at the often increasing incidence of trafficking and/or sexual exploitation and sexual abuse,<sup>361</sup> including in schools<sup>362</sup> and in institutions.<sup>363</sup> Measures

addressing trafficking and/or sexual exploitation and abuse have been found to be often inadequate and uncoordinated.<sup>364</sup>

In terms of legislation, the Committee has drawn attention to the lack of adequate laws and policies,<sup>365</sup> and poor implementation<sup>366</sup>; at the low or lack of a minimum age for sexual consent,<sup>367</sup> as well as at the criminalization of child victims of sexual exploitation.<sup>368</sup>

There is often a low incidence of reporting procedures for child sexual exploitation and abuse; whether this takes place commercially or in the family home,<sup>369</sup> investigations are often lengthy,<sup>370</sup> child victims are treated as offenders,<sup>371</sup> and there is a failure to prosecute perpetrators.<sup>372</sup> Sometimes reporting is not mandatory<sup>373</sup> and children have fears of negative consequences of speaking out which prevent them from reporting.<sup>374</sup> There is frequently no comprehensive system of protection and assistance for reintegration and rehabilitation to all child victims.<sup>375</sup>

The Committee has noted the following groups of children as particularly vulnerable to sexual exploitation and abuse: street children,<sup>376</sup> children orphaned by HIV/AIDS,<sup>377</sup> girls,<sup>378</sup> children in children's homes,<sup>379</sup> and adolescents.<sup>380</sup>

The Committee has recommended that States take preventive measures<sup>381</sup>; cooperate with other countries to combat sexual exploitation and trafficking (e.g. make agreements for repatriation, tighten border controls)<sup>382</sup>; and undertake studies to examine the issue and gather accurate data<sup>383</sup>, including studies on abuse<sup>384</sup>, on commercial sexual exploitation and/or trafficking<sup>385</sup>.

The Committee has recommended legislative measures to address these problems,<sup>386</sup> including the extension of protection to all under 18s,<sup>387</sup> the establishing of a minimum age for sexual consent,<sup>388</sup> and the prohibition of trafficking and/or commercial sexual exploitation and abuse.<sup>389</sup> Criminalization and stigmatization of victims should be avoided.<sup>390</sup> Legislation and policies should be implemented and monitored.<sup>391</sup>

The Committee has urged awareness raising to change practice and attitudes<sup>392</sup> including on the child's right to respect for his/her physical and mental integrity,<sup>393</sup> on sale and trafficking and/or commercial sexual exploitation and abuse.<sup>394</sup>

States have been urged to develop and implement policies and programmes for recovery and reintegration of child victims of sexual abuse, sexual exploitation, commercial sexual exploitation and trafficking,<sup>395</sup> and to evaluate services for the rehabilitation and recovery of victims of commercial sexual exploitation.<sup>396</sup> Victims should be provided with education and training, as well as counselling and psychosocial assistance.<sup>397</sup>

States have been urged to protect all children from all forms of sexual exploitation.<sup>398</sup> They should develop national policies and plans to combat trafficking and commercial sexual exploitation,<sup>399</sup> as well as mechanisms to identify sexual exploitation of children and to recover exploited children.<sup>400</sup> There should be cooperation with countries of origin and transit in commercial sexual exploitation<sup>401</sup>, ensuring the best

interests of children are paramount in cross-border efforts to address trafficking.<sup>402</sup> There should be training for law enforcement officials and other professionals with regard to child prostitution<sup>403</sup>, and in processing complaints in a child-sensitive manner.<sup>404</sup>

In relation to sexual abuse, the Committee has urged states to: develop effective child-sensitive complaint mechanisms in schools and deal with perpetrators;<sup>405</sup> improve protection and services for street children;<sup>406</sup> properly investigate cases of violence, through child-sensitive reporting and judicial procedures, and apply sanctions to perpetrators, including ending impunity;<sup>407</sup> prosecute and punish perpetrators of sexual abuse;<sup>408</sup> train adult officials involved in these cases;<sup>409</sup> address socio-cultural barriers inhibiting victims from seeking assistance;<sup>410</sup> provide support as well as punishment for perpetrators in the family;<sup>411</sup> work on prevention – in family, schools and by the State;<sup>412</sup> and increase the protection of vulnerable groups of children, including those in children's homes<sup>413</sup> and street children.<sup>414</sup> Investigate sexual abuse and exploitation in schools, through child-sensitive complaints procedures, and take disciplinary measures against perpetrators.<sup>415</sup>

## Other Committees

- The Committee against Torture has expressed concern about reports of sexual abuse of girl detainees by law enforcement officials, and recommended an end to all practices involving abuse of minors in detention.<sup>416</sup>
- The Committee on the Elimination of Discrimination against Women has expressed concern at inadequate legislation on sexual offences including discriminatory legal provisions,<sup>417</sup> the incidence of trafficking<sup>418</sup>, the lack of comprehensive policies and specific legislation on trafficking,<sup>419</sup> the incidence of sexual abuse,<sup>420</sup> and the inadequacy of women's education which leads to vulnerability to sexual exploitation.<sup>421</sup>

The Committee recommends amending and adopting new laws relating to sexual offences,<sup>422</sup> adopting and implementing specific legislation on trafficking,<sup>423</sup> implementing and strengthening current laws, policies and programmes aimed at combating trafficking and sexual violence and exploitation against women,<sup>424</sup> and increasing collaboration with other countries to address problem of trafficking.<sup>425</sup> States should provide social support and reintegration programmes for victims of trafficking,<sup>426</sup> and accessible and effective means of redress and protection for victims of incest.<sup>427</sup> Traffickers should be prosecuted and punished,<sup>428</sup> and trafficked women and girls should be supported to testify against traffickers.<sup>429</sup> Border police and law enforcement officials should be trained to recognise and support victims of trafficking.<sup>430</sup>

- The Committee on Economic, Social and Cultural Rights has also expressed concern at the incidence of sexual violence, sexual exploitation and trafficking and the inadequate efforts to address the problem.<sup>431</sup> It has also raised concern at the impunity of perpetrators of sexual offences<sup>432</sup>, and the particu-

lar vulnerability of street children and of children placed in domestic service to abuse, violence and exploitation.<sup>433</sup>

The Committee recommends that States take all effective measures to eliminate all forms of violence against women,<sup>434</sup> including reviewing existing laws, enacting new legislation,<sup>435</sup> and ensuring law enforcement.<sup>436</sup> Traffickers should be prosecuted.<sup>437</sup> There should be regional cooperation between States to combat trafficking and sexual exploitation of women

and children,<sup>438</sup> awareness raising and education campaigns<sup>439</sup>, and relevant training of law enforcement officials and the judiciary.<sup>440</sup> Rehabilitation programmes should be provided for victims of trafficking.<sup>441</sup>

● The Human Rights Committee has been concerned repeatedly with the problem of trafficking, welcoming steps to combat it,<sup>442</sup> and recommending that States take measures to prohibit this practice,<sup>443</sup> ensure cooperation with border states,<sup>444</sup> and the provision of support and rehabilitation for victims.<sup>445</sup>

## Notes

- 47 Chile, CRC/C/15/Add.173, 3 April 2002, para.5; Cyprus, CRC/C/15/Add.205, 2 July 2003, paras.34 and 45; Czech Republic, CRC/C/15/Add.201, 18 March 2003, para.39; Estonia, CRC/C/15/Add.196, 17 March 2003, para.30; Greece, CRC/C/15/Add.170, 2 April 2002, para.50; Iceland, CRC/C/15/Add.203, 31 January 2003, para.28; Israel, CRC/C/15/Add.195, 9 October 2002, para.38; Italy, CRC/C/15/Add.198, 18 March 2003, paras.3b/f and 37; Jamaica, CRC/C/15/Add.210, 4 July 2003, para.36; Moldova, CRC/C/15/Add.192, 31 October 2002, para.31; Netherlands Antilles, CRC/C/15/Add.186, 7 June 2002, para.36; Republic of Korea, CRC/C/15/Add.197, 18 March 2003, para.44; Romania, CRC/C/15/Add.199, 18 March 2003, para.38 and 60; St Vincent and the Grenadines, CRC/C/15/Add.184, 13 June 2002, para.38; Switzerland, CRC/C/15/Add.182, 7 June 2002, para.38; UK, CRC/C/15/Add.188, 9 October 2002, para.39; Zambia, CRC/C/15/Add.206, 2 July 2003, paras.44 and 56.
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# OTHER HUMAN RIGHTS MECHANISMS AND VIOLENCE AGAINST CHILDREN

## Commission on Human Rights

The Commission on Human Rights meets annually and adopts resolutions, decisions and the Chairperson's statements on matters relevant to individuals' human rights in all regions and circumstances. It also meets exceptionally between these regular meetings to address urgent human rights situations. It is assisted in this work by the Sub-Commission on the Promotion and Protection of Human Rights, and a number of working groups, independent experts and Special Rapporteurs who report on specific issues, and on the human rights situation in specific countries. For example, the Sub-Commission's Working Group on Contemporary Forms of Slavery has examined reviews of developments in the field of contemporary forms of slavery which focus on exploitation of children, particularly in the context of prostitution and domestic servitude,<sup>446</sup> and on trafficking in persons.<sup>447</sup>

### Extract from Commission on Human Rights 2004 Resolution on the Rights of the Child, Resolution 2004/48

#### "... Freedom from violence

19. Welcomes the establishment of a secretariat for the Secretary-General's study on the question of violence against children in collaboration with the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the World Health Organization, invites Member States, United Nations bodies and organizations, including the Committee on the Rights of the Child, as well as other relevant intergovernmental organizations, to provide substantive and, where appropriate, financial support, including through voluntary contributions, for the effective conduct of the

study and invites non-governmental organizations to contribute to the study, taking into account the recommendations of the Committee made following the general discussions on violence against children held in September 2000 and 2001, and, further, encourages the independent expert to seek also the participation of children in the study, taking into account their age and maturity;

20. Requests the Secretary-General to submit a substantive progress report on the study to the Commission at its sixty-first session and the final in-depth study to the Commission at its sixty-second session for its consideration, with the aim of evaluating all possible complementary measures and future actions;
21. Requests all relevant human rights mechanisms, in particular special rapporteurs and working groups, within their mandates, to pay attention to the special situation of violence against children, reflecting their experience in the field;
22. Calls upon all States to take all appropriate national, bilateral and multilateral measures to prevent, and to protect children from, all forms of physical, sexual and psychological violence, including violence occurring, inter alia, in the family, in public or private institutions, in society, or perpetrated or tolerated by private individuals, juridical persons or the State;
23. *Also calls upon* all States to investigate and submit cases of torture and other forms of violence against children to the competent authorities for the purpose of prosecution and to impose appropriate disciplinary or penal sanctions against those responsible for such practices...!"

## UN Special Rapporteurs

Many of the Special Rapporteurs have made particular contributions to the issue of violence against children.

- *Special Rapporteur on extrajudicial, summary or arbitrary executions*

The Special Rapporteur on extrajudicial, summary or arbitrary executions has been particularly concerned about the situation of children. In reports to the Commission on Human Rights areas of special focus have included violations of the right to life of children, including an emphasis on state impunity<sup>448</sup>, the plight of children in armed conflict,<sup>449</sup> and “honour killings.”<sup>450</sup> Concern has repeatedly been expressed at arbitrary killings of children, especially of street children and disappearances.<sup>452</sup> Another recurring concern is the imposition of capital punishment for crimes committed under the age of 18.<sup>453</sup> The report of one recent country mission is devoted to the issue of extrajudicial killings of children and juveniles, and includes the voices of the children themselves.<sup>454</sup>

- *Special Rapporteur on the sale of children, child prostitution and child pornography*

The mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography was established in 1990, and the appointment was most recently renewed in 2001. In addition to detailing the work of the Rapporteur in investigating exploitation of children around the world, primarily through communications with states, recent annual reports to the Commission on Human Rights have focused on the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,<sup>455</sup> on the criminalization of child victims,<sup>456</sup> and on the role of the business sector.<sup>457</sup>

- *Special Rapporteur on Torture*

In his contribution to the Committee on the Rights of the Child’s discussion day on state violence, the Special Rapporteur on Torture emphasized that his mandate covers the situation of children. Introducing the discussion on violence in the context of “law and order concerns”, he noted violent attacks on street children, and the torture and ill-treatment suffered by juvenile offenders during interrogation, pre-trial detention and deprivation of liberty once convicted. He emphasised the need to identify examples of effective measures, policies and programmes to implement article 1 of the Convention against Torture and articles 37 and 19 of Convention on the Rights of the Child, especially the need for alternative sentences, review of legislation, bringing to justice perpetrators of torture and providing compensation and rehabilitation to victims, and for activities aimed at sensitization, education and training.

In his reports, the Special Rapporteur on torture has addressed a number of issues, including the non-derogability of the prohibition of torture,<sup>458</sup> corporal punishment of children,<sup>459</sup> and gender-specific forms of torture.<sup>460</sup>

- *Special Rapporteur on violence against women, its causes and consequences*

Since 1994 there has been a Special Rapporteur

on violence against women, its causes and consequences. The definition and breakdown of violence against women contained in the Declaration on the Elimination of Violence against Women (see above) has played a significant role in structuring the activities of the Special Rapporteur.

In country reports, the Rapporteur has drawn attention to violence by women against children,<sup>461</sup> reports of state violence against children,<sup>462</sup> the effects of violence against women on children,<sup>463</sup> and the rise in trafficking and prostitution of girls.<sup>464</sup> She has produced annual reports to the Commission on Human Rights on the subjects of forced marriages,<sup>465</sup> female genital mutilation,<sup>466</sup> violence against women and/or condoned by the state during armed conflict,<sup>467</sup> and cultural practices in the family that are violent towards women.<sup>468</sup> Violence against girls is inherent in this subject matter, although the Rapporteur notes that child trafficking needs “different, child-specific remedies that are likewise gender-specific” and refers to the work of the Special Rapporteur on the sale of children, child prostitution and child pornography.<sup>469</sup>

The report on cultural practices in the family that are violent towards women emphasises the state’s responsibility to eradicate violence in the family and documents positive strategies that have been developed by states in cooperation with women’s organisations to deal with harmful cultural practices. It includes sections on female genital mutilation, honour killings, the pledging of girls for economic and cultural appeasement, witch hunting, caste, marriage, discriminatory laws, son preference, restrictive practices, practices that violate women’s reproductive rights, beauty and incest. The Rapporteur “urges States not to invoke any custom, tradition or religious consideration to avoid their obligation to eradicate violence against women and the girl child in the family”. Instead:

“States should develop penal, civil and administrative sanctions in domestic legislation to punish violence in the family and provide redress to women victims, even if violence is associated with a cultural practice. The penal sanctions should be strong and effective and not merely on paper. Furthermore, States should develop national plans of action to eradicate violence in the family, particularly violence relating to cultural practices, through health and education programmes at the grass-roots level. Finally, States should adopt all appropriate measures in the field of education to modify the social and cultural patterns of conduct that foster cultural practices in the family that are violent towards women.”<sup>470</sup>

- *Special Rapporteur on the right to education*

The Special Rapporteur on the right to education has been concerned with issues of violence against children in schools and of educating children in non-violence. Her annual reports to the Commission on Human Rights have drawn attention to violence against minority schools,<sup>471</sup> the use of human rights education to promote non-violence,<sup>472</sup> and issues of school discipline.<sup>473</sup> On corporal punishment, she has stated:

*“Another issue which requires attention is school discipline, especially corporal punish-*

*ment. The process of prohibiting and eliminating corporal punishment will be long because violence against children is part of our global heritage. Using violence to instil obedience into schoolchildren and to punish them for wrongdoing openly conflicts with the purposes of education as they are spelled out in international human rights law, translated into many domestic laws and by an increasing number of court judgments.”<sup>474</sup>*

### Other extra-convention mechanisms

There has been little specific concern with children in the work of other Special Rapporteurs. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has addressed the removal of indigenous children from their families and communities,<sup>475</sup> and has noted reports of violence against children,<sup>476</sup> the association between child labour and race,<sup>477</sup> and between race and trafficking.<sup>478</sup> The Special Rapporteur on the right to development has noted the problem of trafficking and sexual exploitation.<sup>479</sup>

Reports of the Working Group on Arbitrary Detention have referred to specific acts of violence involving children, such as being arrested with their families<sup>480</sup> and problems of self harm,<sup>481</sup> as well as poor conditions in which children have been detained.<sup>482</sup> Children are sometimes listed by the Working Group in its appeals to States.<sup>483</sup>

Violence against children is a pervasive phenomenon and impacts on all aspects of their lives. It is damaging to their healthy growth and development, it affects their self esteem; it harms their ability to trust and form relationships, and presents them with difficulties in adulthood. It is also a destructive force

of societies and perpetuates the beliefs, attitudes, conditions and circumstances which continue the cycle of violence against children and deprives them of basic human rights.

A number of key principles are embedded in human rights standards relating to violence against children. These include:

- in spite of the ratification by 192 countries of the Convention on the Rights of the Child, and the existence of associated human rights instruments and mechanisms, millions of children around the world remain the victims of violence
- violence against children takes place in all societies and in all settings and no single group alone can effectively address it
- children are very often the victims of violence from the very state institutions responsible for their care, welfare and upbringing
- supporting families is a powerful mechanism for preventing violence against children
- policies and measures to address violence against children will inevitably fail if they do not take account of the actual life experiences of children and involve children meaningfully in the design of effective preventive and recovery programmes
- the prevention of violence must be inextricably linked to the implementation of the provisions of the UN Convention on the Rights of the Child which address all aspects of children’s lives.

Given that young people emphasise that we are all responsible for keeping them safe (family, community, schools, government, religious institutions), their continued participation is highly encouraged and much needed. Together, we can all make our voices heard to stop the violence against Children. (Violence against Children: What Young People Say<sup>484</sup>)

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