

# Child protection

A handbook for  
parliamentarians

HANDBOOK FOR PARLIAMENTARIANS N° 7

2004



INTER-PARLIAMENTARY UNION



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# Foreword

The Inter-Parliamentary Union, the world organisation of Parliaments, and UNICEF, the organisation mandated by the United Nations to promote and ensure respect for the rights of children, have worked together to produce this handbook for parliamentarians. They have done so in recognition of the ethical, legal and developmental imperatives surrounding child protection. Both organisations have a long-standing commitment to the protection of children, and both are determined to make every effort to make protection a reality.

The fulfilment of children's rights, including those to protection, depends on a global movement in which everybody not only understands and respects their duties to children, but also acts upon them. Parliaments and their members can and should be among the foremost champions of child protection. They can legislate, oversee government activity, allocate financial resources and, as leaders within their nations and communities, raise awareness of issues and provide advocacy.

This handbook addresses all of those functions. It does so in general terms, and with regard to ten specific child protection issues: birth registration and the right to identity; protection of children in armed conflict; sexual exploitation of children; trafficking and sale of children; harmful traditional practices; violence and neglect; alternative care; juvenile justice; child labour; and the rights of child victims.

The handbook includes examples of the many ways in which Parliaments and their members around the world have responded to the challenges of child protection through laws, policies, advocacy and other means. It also describes how Parliaments and their members can gain a clearer understanding of what their contribution can be, and equips them with the knowledge and tools they require to make that contribution.

We believe that it can and will be a powerful instrument for action.

Fifteen years after the entry into force of the Convention on the Rights of the Child we can take stock of the progress we have made in protecting our children. There have been important steps forward. New legislation has been developed with strengthened international standards, such as the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the use of children in armed conflict.

There have been a number of important international meetings, such as the Yokohama World Congress against Commercial Sexual Exploitation of Children in 2001 or the United Nations General Assembly Special Session on Children in 2002, which have reaffirmed the commitment of governments and civil society organizations to child protection and even laid out plans of action to achieve it.

Despite these commitments and promises, children continue to suffer violence, abuse and exploitation every day. It is clear that our efforts are as necessary today as they were fifteen years ago. We will only achieve a world fit for children when we have succeeded in protecting every child from exploitation, violence, abuse and neglect. This handbook will enable Parliaments and their members to help to deliver on these promises and reach the fundamental goal of child protection.



Anders B. Johansson  
Secretary General  
Inter-Parliamentary Union



Carol Bellamy  
Executive Director  
United Nations Children's Fund

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# **PART 1**

## **THE CHILD'S RIGHT TO PROTECTION**

*I believe the future of our world, which is the children, depends on everyone of us. Each of us should take responsibility to make things better for each other.*

*– Gokce, 16, from Turkey*



# Chapter 1

## The nature of child protection

### What is child protection?

The term 'child protection' is used in different ways by different organizations in different situations. In this handbook, the term will mean protection from violence, abuse and exploitation.

In its simplest form, child protection addresses every child's right not to be subjected to harm. It complements other rights that, inter alia, ensure that children receive that which they need in order to survive, develop and thrive.

Child protection covers a wide range of important, diverse and urgent issues. Many, such as child prostitution, are very closely linked to economic factors. Others, such as violence in the home or in schools, may relate more closely to poverty, social values, norms and traditions. Often criminality is involved, for example, with regard to child trafficking. Even technological advance has its protection aspects, as has been seen with the growth in child pornography.

This first part of the handbook will look more closely at what protection means and what general response is required to respect the protection rights of children. Part 2 will look specifically at the role of parliamentarians in ensuring that all children are protected. Part 3 will address a selection of the numerous issues concerning those who work to protect children.

### What is at stake?

Violations of the child's right to protection, in addition to being human rights violations, are also massive, under-recognized and underreported barriers to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of:

- Shortened lives
- Poor physical and mental health
- Educational problems (including dropping out of school)
- Poor parenting skills later in life
- Homelessness, vagrancy and displacement

Conversely, successful protection actions increase a child's chances to grow up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.

Child protection is an issue for every child in every country of the world:

- At any given time, more than 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries. More than 2 million children are estimated to have died as a direct result of armed conflict since 1990.<sup>1</sup>
- More than 1 million children worldwide are living in detention as a result of being in conflict with the law. In Central and Eastern Europe alone, almost 1.5 million children live in public care. Over 13 million children are estimated to be orphaned as a result of AIDS alone.<sup>2</sup>
- Approximately 250 million children are involved in child labour, with more than 180 million working in hazardous situations or conditions.<sup>3</sup>
- An estimated 1.2 million children are trafficked every year.<sup>4</sup>
- A 1995 estimate of the number of children in the commercial sex trade indicated that 1 million children (mainly girls but also a significant number of boys) entered the multibillion-dollar industry every year.<sup>5</sup> The figures may now be higher.
- Forty million children below the age of 15 suffer from abuse and neglect, and require health and social care.<sup>6</sup>
- An estimated 100-130 million women and girls living in Africa today have undergone some form of genital mutilation.<sup>7</sup>

Child protection is a special concern in situations of emergency and humanitarian crisis. Many of the defining features of emergencies – displacement, lack of humanitarian access, breakdown in family and social structures, erosion of traditional value systems, a culture of violence, weak governance, absence of accountability and lack of access to basic social services – create serious child protection problems. Emergencies may result in large numbers of children becoming orphaned, displaced or separated from their families. Children may become refugees or be internally displaced; abducted or forced to work for armed groups; disabled as a result of combat, landmines and unexploded ordnance; sexually exploited during and after conflict; or trafficked for military purposes. They may become soldiers, or be witnesses to war crimes and come before justice mechanisms. Armed conflict and periods of repression increase the risk that children will be tortured. For money or protection, children may turn to ‘survival sex’, which is usually unprotected and carries a high risk of transmission of disease, including HIV/AIDS.

Failure to protect children undermines national development and has costs and negative effects that continue beyond childhood into the individual’s adult life. While children continue to suffer violence, abuse and exploitation, the world will fail in its obligations to children; it will also fail to meet its development aspirations as laid out in such documents as the Millennium Agenda with its Millennium Development Goals.

## Chapter 2

### International standards on child protection

That children have rights has been recognized in international law as early as 1924, when the first international Declaration on the Rights of the Child was adopted by the League of Nations. Subsequent human rights instruments – both those of the United Nations, such as the Universal Declaration of Human Rights of 1948, and regional instruments, such as the American Declaration on the Rights and Duties of Man of the same year – recognized more generally the human right to be free from violence, abuse and exploitation. These rights applied to everyone, including children, and were developed further in such instruments as the International Covenant on Civil and Political Rights of 1966.

International consensus developed on the need for a new instrument that would explicitly lay out the specific and special rights of children. In 1989, the United Nations Convention on the Rights of the Child was adopted by the General Assembly. It rapidly became the most widely ratified human rights treaty in history, enjoying almost universal ratification.

The Convention on the Rights of the Child advances international standards on children's rights in a number of ways. It elaborates and makes legally binding many of the rights of children laid out in previous instruments. It contains new provisions relating to children, for example, with regard to rights to participation, and the principle that in all decisions concerning the child, the child's best interests must come first. It also created for the first time an international body responsible for overseeing respect for the rights of the child, the Committee on the Rights of the Child.

Recognition of the child's right to protection is not limited to the Convention on the Rights of the Child. There are a number of other instruments, both those of the United Nations and those of other international bodies, which also lay out these rights. These instruments include:

- The African Charter on the Rights and Welfare of the Child of the Organization for African Unity (now African Union) of 1990
- The Geneva Conventions on International Humanitarian Law (1949) and their Additional Protocols (1977)
- International Labour Convention No. 138 (1973), which states that, in general, persons under the age of 18 may not be employed in jobs that are dangerous to their health or development, and International Labour Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention on Transnational Organized Crime

## Who is a child?

Article 1 of the Convention on the Rights of the Child states that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. This is the definition used in this handbook.

Despite article 1 allowing a lower age of majority, there are rights in the Convention that continue to apply to all those under 18, regardless of the age of majority. These include the prohibition of the application of the death penalty for people under 18 and, in an Optional Protocol to the Convention, the prohibition of recruitment of those under 18 into the armed forces.

Other international instruments also use 18 as the age limit for determining when a person loses the right to the special protection to which children are entitled. Furthermore, UNICEF and other key international organizations working with children use 18 as the defining age for their work.

The Convention recognizes that the way children exercise their rights and the limits imposed on the exercise of their rights can and should vary according to the age of the child. Article 5 states that:

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

This principle is complemented by another contained in article 12 of the Convention, which states:

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

However, children’s rights to protection from violence, abuse and exploitation are not in any way limited or circumscribed as a result of their age. Children’s limited capacity to protect themselves always means that considerations of age and capacity can only suggest

stronger rights for protection, never weaker. For example, the UN Rules for the Protection of Juveniles Deprived of their Liberty recognize in article 67 the need to interpret protection rights in an appropriate manner for children when it provides that solitary confinement of children constitutes cruel, inhuman or degrading treatment or punishment, while the principle would not necessarily hold for adults.

## **International mechanisms for child protection**

One key international mechanism for child protection is the Committee on the Rights of the Child, which is made up of 18 members who are elected by the States parties to the Convention and who serve in an individual capacity.

The main function of the Committee, which meets three times a year, is to review the reports that all the States parties to the Convention are required to submit periodically. The reports are expected to contain information on the laws and other measures the State has adopted which give effect to the rights recognized in the Convention and the progress made on the enjoyment of those rights.

When a report has been received, the Committee invites the government to send a delegation to present the report and answer any questions the Committee may have. Committee members may also comment on the information contained in the report, as well as other relevant information received from UN agencies and non-governmental organizations (NGOs). It then produces its 'concluding observations' and recommendations, which often concern legislation, including references to gaps in existing legislation or provisions of laws that the Committee considers incompatible with the Convention.

There are a number of other mechanisms relating to children's protection rights. Fundamentally, children enjoy all human rights, and thus all human rights mechanisms at international and regional levels must afford them protection. This applies to UN rapporteurs or regional human rights bodies such as the African Commission on Human and People's Rights. It should be remembered that the same holds true at the national level, where mechanisms for the protection of human rights, such as constitutional courts, must also ensure that they uphold children's right to protection.

## **The links between protection and other issues**

Child protection links closely to all aspects of children's well-being. Often, the same child is prone to malnutrition and illness, deprived of early stimulation, out of school and more likely to be abused and exploited. An immunized child who is constantly beaten is not a healthy child; a school-going child taunted and abused for his or her ethnicity doesn't enjoy a good learning environment; and an adolescent sold into prostitution will not be empowered to participate in and contribute to society. Child protection is an integral part of the business of development.

Protection issues arise during consideration of almost every issue facing children today. In education, sexual abuse and violence in schools can be a hidden factor behind low retention rates. In health, violence can be behind many of the unexplained injuries that are dealt with by health services, or even the cause of longer-term disability. These links have often been recognized by the Committee on the Rights of the Child. Referring to the problem of children and AIDS, it stated:

Protection and adequate care can only be provided in an environment which promotes and protects all rights, especially the right not to be separated from parents, the right to privacy, the right to be protected from violence, the right to special protection and assistance by the State, the rights of children with disabilities, the right to health, the right to social security, including social insurance, the right to education and leisure, the right to be protected from economic exploitation, from illicit use of narcotic drugs and from sexual exploitation, the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment, and the right to physical and psychological recovery and social reintegration.

There is no issue concerning children that is not potentially in some way related to child protection. Often, protection concerns lie hidden beneath the surface of issues that seem unrelated. For example, the protection concerns with regard to school sanitation may not be immediately apparent to those working on the issue. Yet the link between shared sanitary facilities and sexual abuse of girls requires that protection be considered.

*And a child who works cannot go to school, so when a child labourer grows up he/she is uneducated and is also weak and worn out, from working so hard as a child. This means that he/she like his/her parents will have only a poorly paid job or no job at all. Therefore he/she will again rely on the money made by the children to support his/her family... It just goes on and on!*

*– Rose, 17, from Australia*

## **An ethical imperative**

Children's rights to protection from violence, abuse and exploitation are clearly laid out in international law, the legal standards of regional bodies and in the domestic law of most if not all countries in the world. This also reflects a basic human consensus that a world fit for children is one in which all children are protected.

At the UN General Assembly Special Session on Children in 2002, States committed themselves in the declaration of *A World Fit for Children*, the outcome document of that meeting, to building “a world in which all girls and boys can enjoy childhood...in which they are loved, respected and cherished...in which their safety and well-being are paramount and in which they can develop in health, peace and dignity”. These sentiments extend beyond legal standards. Every culture in the world cherishes its children yet we continue to fail to protect them.

## Chapter 3

# Ensuring child protection

The fundamental objective of child protection is to ensure that all those with a duty to safeguard the protection of children recognize that duty, and are able to fulfil it.

Given the ethical and legal imperatives, child protection is the business of everyone at every level of society in every function. It creates duties for presidents, prime ministers, judges, teachers, doctors, soldiers, parents and even children themselves.

These duties may be reflected in the legal standards that a country puts in place. They may also be reflected in the choices a government makes, including its allocation of resources.

### **The child, the family and the State**

The most important actors in any child's life are often, and should most often be, his or her parents. As such, the family can be the single most important factor in determining whether or not a child is protected. Conversely, however, given the centrality of the family in the child's life, it can also be a frequent source of violence, abuse, discrimination and exploitation.

The Convention places considerable emphasis on the role of the family in raising children and, like older human rights instruments, recognizes the right of the family to protection and support. Article 5 makes clear the responsibility of the State in protecting and respecting the role of the family, stating that:

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

According to the Convention, the primary responsibility for raising children rests with parents. When parents are unable to do so, the State has a duty to assist them. At the same time, however, article 19 refers to the State's obligation 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."



In the most extreme cases, this obligation on the State might even entail removal of the child from his or her home. However, this should always be a last resort. This is made clear in article 9 of the Convention, which provides in part that:

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

## Discrimination

Discrimination is a daily reality for millions of the world's children. It can result in or exacerbate violence, abuse or exploitation. For example, many of the children involved in the worst forms of child labour come from minority or excluded groups.

There are numerous forms of discrimination, but some of the most common are discrimination on the following grounds:

- **Gender**  
Gender-based infanticide, abortion, malnutrition and neglect are believed to be behind the 60 million to 100 million women 'missing' from the world's population.<sup>8</sup> Ninety per cent of domestic workers, the largest group of child workers in the world, are girls between 12 and 17 years old.<sup>9</sup>
- **Disability**  
Children with disabilities make up an estimated 20 per cent of all children in institutions in Central and Eastern Europe and the Commonwealth of Independent States.<sup>10</sup>
- **Ethnicity and race**  
In one Eastern European country, a 1992 study found that only half of Roma children aged 7 to 10 attended school on a regular basis.<sup>11</sup> One third had never attended or had dropped out. Roma children are routinely placed in special schools for children with mental disabilities, regardless of their actual abilities.
- **Caste and class**  
In one South Asian country, the majority of the 15 million bonded child workers are from the lowest castes.<sup>12</sup>

*The Conference calls on all States:*

*(a) To take all necessary measures, including appropriate budgetary allocations, to ensure the full and equal enjoyment of all human rights and fundamental freedoms by children with disabilities;*

*(b) To develop and enforce legislation with a view to ensuring dignity, prosperity and self-reliance for disabled children so as to facilitate their active participation in the community, including adequate and effective access to high-quality special education for children with disabilities.*

*– 106<sup>th</sup> IPU Conference (Ouagadougou, Burkina Faso, September 2001)*

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## ➤ International standards

### **The Convention on the Rights of the Child**

Article 2 states that:

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

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

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Discrimination persists despite the recognition of the equality of men and women as one of the purposes of the United Nations more than a half century ago and the proliferation of other UN and regional instruments that prohibit it. The Committee on the Rights of the Child and other international human rights bodies continue to find examples of laws that discriminate against women or particular ethnic or social groups, or which discriminate in other ways.

Discrimination goes beyond laws into the traditions, customs, attitudes and behaviour of societies, communities, families and individuals. For example, societies with higher levels of rape, child marriage and abandonment of children conceived out of marriage tend to devalue women. Women who reject traditional roles often feel the force of traditional mechanisms for enforcement of these unwritten laws, ranging from humiliation to expulsion from the family and physical violence.

Being aware of gender as a form of discrimination goes beyond an exclusive focus on girls.

While many violations of the rights of the child affect girls disproportionately, boys are the main victims of some types of violations. More boys than girls are victims of homicide, especially in late adolescence. Boys greatly outnumber girls in facilities for juvenile offenders around the world. While most victims of sexual abuse are girls, in most societies the majority of child victims of physical abuse are boys. Gender awareness requires understanding the differential impact of various types of violence, abuse and exploitation in girls and boys. It also requires making an effort to understand the underlying mechanisms and to use this knowledge to develop more effective legal, social and economic policies.

## **Building a protective environment**

The scale, extent, nature, urgency and complexity of child protection issues are daunting. Yet there are numerous examples among many countries of the varied ways in which governments, civil society actors, communities and children themselves can help prevent and respond to violence, abuse and exploitation. It is clear that the response to child protection has to be holistic, recognize the duties of all people at all levels to respect children's protection rights and apply to all children in all circumstances without discrimination. Achieving a world where children's protection rights are routinely respected requires ensuring that children grow up in an environment that is protective, where every element of that environment contributes to their protection and where every actor does his or her part.

There is no legal or other agreed definition of what constitutes a protective environment. However, it should address at least the following elements:

- **Governmental commitment to fulfilling protection rights**  
Government interest in, recognition of and commitment to child protection is an essential element for a protective environment. This includes ensuring that adequate resources are made available for child protection, for example, for programmes to combat child labour. It also includes political leaders being proactive in raising protection on the agenda and acting as advocates for protection.
- **Attitudes, traditions, customs, behaviour and practices**  
In societies where attitudes or traditions facilitate abuse – for example, regarding sex with minors, the appropriateness of severe corporal punishment, the application of harmful traditional practices or differences in the perceived status and value of boys and girls – the environment will not be protective. In societies where all forms of violence against children are taboo, and where the rights of children are broadly respected by custom and tradition, children are more likely to be protected.
- **Open discussion of, and engagement with, child protection issues**  
At the most basic level, children need to be free to speak up about child protection concerns affecting them or other children. At the national level, both media attention to and civil society engagement with child protection issues

contribute to child protection. Partnerships among actors at all levels are essential for an effective and coordinated response.

➤ **Legislation and enforcement**

An adequate legislative framework, its consistent implementation, accountability and a lack of impunity are essential elements of a protective environment.

➤ **Capacity**

Parents, health workers, teachers, police, social workers and many others who care for and live, deal and work with children need to be equipped with the skills, knowledge, authority and motivation to identify and respond to child protection problems. There are other broader types of capacity that relate to the protective environment, including the provision of education and safe areas for play.

➤ **Children's life skills, knowledge and participation**

If children are unaware of their right not to be abused, or are not warned of the dangers of, for example, trafficking, they are more vulnerable to abuse. Children need information and knowledge to be equipped to protect themselves. Children also need to be provided with safe and protective channels for participation and self-expression. Where children have no opportunities for participation, they are more likely to become involved in crime or other dangerous or harmful activities.

➤ **Monitoring and reporting**

A protective environment for children requires an effective monitoring system that records the incidence and nature of child protection abuses and allows for informed and strategic responses. Such systems can be more effective where they are participatory and locally based. It is a responsibility of government to make sure that every country knows the situation of its children with regard to violence, abuse and exploitation.

➤ **Services for recovery and reintegration**

Child victims of any form of neglect, exploitation or abuse are entitled to care and non-discriminatory access to basic social services. These services must be provided in an environment that fosters the health, self-respect and dignity of the child.

Some elements of the protective environment will overlap. For example, governmental commitment may dictate whether services for victims of abuse are provided, or whether investment is made in monitoring mechanisms. Similarly, media attention can be a key factor in influencing attitudes.

There are a number of ways to build a protective environment for children. These include:

- Addressing and mitigating the impact of economic and social poverty.
- National advocacy and initiating dialogue at all levels, from government down to communities, families and children themselves.
- International advocacy, including using international human rights mechanisms.

This might also include pushing the protection agenda at regional meetings.

- Seeking societal behaviour change, challenging attitudes and traditions that can underpin child protection abuses and supporting those that are protective. This might involve national campaigns or working closely with the media.
- Strengthening capacity to assess and analyse protection issues. Without knowing what is happening, governments and other actors will be disadvantaged in responding to protection problems.
- Putting mechanisms in place and providing resources so that those caring for and living and working with children have the skills and knowledge to do so in a way that ensures their protection through education and training.
- Recognizing that legal standards are particularly important to child protection, and that they need to be known, understood, accepted and enforced. This can involve legislative reviews, revision of laws or even the creation of new laws. It also involves scrutiny of the actual practices of those governed by the laws to ensure that they are respected.
- Developing and reviewing national monitoring systems to ensure that they properly cover child protection issues. In particular, this may involve disaggregation of national statistics to ensure that patterns of discrimination become apparent.
- Ensuring access to services for recovery and reintegration for children who have suffered abuses.
- Promoting child participation and strengthening children's own resilience.

At the same time, it is not effective to address protection as a separate and stand-alone issue. Given the relationships between child protection and other areas, it is valuable to consider the protection aspects of any issue being considered. For example:

- When considering education policy, it is necessary to consider safety and security in schools and to discourage the use of corporal punishment. This might include initiatives to address violence among children in schools, such as bullying.
- When considering the care practices of family and early childhood, parents should be discouraged from using violent forms of discipline and encouraged to ensure that their child's birth is registered.
- Any consideration of HIV/AIDS is incomplete without considering the stigma often attached to children affected by HIV/AIDS, as well as the increased protection risks faced by vulnerable children who have been orphaned by AIDS.

Thus, an appropriate response to child protection involves understanding it both as an issue in its own right and as a consideration with regard to other issues. It also requires that every actor plays his or her part in ensuring a protective environment for children.

## **PART 2**

# **THE ROLE OF PARLIAMENTS AND THEIR MEMBERS**

*History will judge us harshly if we refuse to use our knowledge, our resources and our will to ensure that each new member of the human family arrives into a world that honours and protects the invaluable, irreplaceable years of childhood.*

*– Carol Bellamy, Executive Director of UNICEF*

## Chapter 4

# The various roles of parliaments and their members

Parliaments are the principal representative institution of a State. They are responsible for representing the interests of all sectors of society, articulating these interests into relevant policies and making sure that these policies are implemented efficiently.

Parliaments and their members should be among the key champions of child protection. They have the capacity not only to influence the decisions and actions of government but also to connect with communities and constituencies to influence opinions and actions.

Irrespective of their nature and structure, parliaments perform three main functions:

- **Legislate**  
They approve, and can initiate, laws that govern society in a structured manner.
- **Oversee government activity**  
They monitor the government's performance to ensure that it acts in a responsible and accountable manner for the overall good of society.
- **Allocate financial resources**  
Through the budgetary process, parliaments are responsible for approving the national budget, thereby allocating resources to the government, and monitoring government spending.

As opinion leaders and representatives of the people, parliamentarians also play an important advocacy role, raising awareness on specific societal issues of concern in their constituencies as well as at national and international levels.

### Legislating for child protection

One of the most important and often more technical roles for parliaments and their members is to ensure that national legislative standards offer the best possible protection for children from violence, abuse and exploitation. Clearly, laws alone are not sufficient to protect the rights of children. Appropriate economic policies, institutional reform, training of professionals, social mobilization and the modification of attitudes and social values are essential to achieving child protection. Nonetheless, law reform remains fundamental to the broader, coordinated goal of protecting all rights of children, including the right to be protected.

## International and regional legal instruments

Becoming party to international and regional legal instruments dealing with child protection sends a clear signal to the international community and stakeholders at the domestic level that a country is committed to ensuring child protection, as well as the implementation of laws, policies and programmes to achieve those goals.

As described in part 1, there are numerous international instruments addressing the question of child protection. These include:

- Convention on the Rights of the Child
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- ILO Convention on Minimum Age (no. 138)
- ILO Convention on the Worst Forms of Child Labour (no. 182)
- Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Information on the ratification status of these international legal instruments can be found on the websites of the International Labour Organization ([www.ilo.org](http://www.ilo.org)) and the Office of the UN High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)).

### Checklist for action

#### What parliaments and their members can do

##### **Ratification of international legal instruments on child protection**

If your State is not yet a party to the various international legal instruments listed above, or if your State has signed but not yet ratified some of them, you can:

- Find out whether ratification/accession is under consideration
- Put an oral or written question to your Government to determine why ratification or accession has not been achieved
- Consider using your right to introduce a private member's bill on the matter
- Encourage a parliamentary debate on the question
- Mobilize public opinion

Practical information on how to ratify or accede to international conventions can be found in the Treaty Handbook prepared by the UN Treaty Section of the Office



of Legal Affairs, available through the Permanent Mission of your country in New York and on the website of the Treaty Section of the Office of Legal Affairs (<http://untreaty.un.org>).

### **Reservations or declarations of understanding**

If your Government intends to ratify or has ratified with reservation(s) or declaration(s) of understanding that limit the legal instrument's scope, you can:

- Determine or review the validity of the suggested reservation(s)
- Encourage a parliamentary debate on the matter of reservations
- Mobilize public opinion to encourage the Government to ratify or accede without any reservation(s) or declaration(s) of understanding

## **National legislation and standards**

There are various ways of incorporating protection standards into national law. The constitutions of some countries provide that duly ratified treaties – or a certain category of treaties or specified treaties – automatically form part of the national law. In other cases, new or revised legislation is required.

### **Enshrining child protection principles in the constitution**

Child protection principles can be incorporated into national legal standards by enshrining them in the country's constitution. The constitution or basic law of a country embodies the principles and laws that govern society and constitutes the fundamental charter that determines the form of government and sets forth the general principles of the country's social contract. The constitution serves as the framework for other legislation. Enshrining child protection principles in national constitutions or a country's basic law therefore provides the basis for the protection of children and government obligations in this context.

### **Child protection principles in constitutions: The case of South Africa**

Article 28 of the Constitution of the Republic of South Africa, adopted in 1996, reads: Every child has the right -

- a. to a name and a nationality from birth;
- b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
- c. to be protected from maltreatment, neglect, abuse or degradation;
- d. to be protected from exploitative labour practices;
- e. not to be required or permitted to perform work or provide services that:
  - i. are inappropriate for a person of that child's age; or

- ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- f. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
  - i. kept separately from detained persons over the age of 18 years; and
  - ii. treated in a manner, and kept in conditions, that take account of the child's age;
- g. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- h. not to be used directly in armed conflict, and to be protected in times of armed conflict.

## **The best interests of the child**

Article 3 of the Convention on the Rights of the Child requires that:

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

This provision applies to child protection as to all rights of the child, and creates two obligations for parliaments. First, whenever they adopt legal standards applied by courts or administrative authorities on matters relevant to child protection, they should ensure that such standards indicate that the best interests of the child should be the decision maker's primary consideration. Second, parliaments themselves must have the best interests of children as a priority in the overall drafting of the law.

### **National legislation for child protection**

Once child protection principles are enshrined in the constitution, the next step is to develop and adopt national legislation to implement child protection.

One effective way to do this is to carry out a review of national laws and standards to see if they meet the protective provisions of international instruments to which States are party.

- The process of reviewing and amending legislation often takes a number of years, and may not be completed during the mandate of the government in power

when the process begins. It is therefore important to approach law reform in a non-partisan way, with the active participation of legislators representing the broadest possible spectrum of political parties, to ensure that the process survives a change in government.

- Law reform for child protection is not only the business of lawyers. An interdisciplinary approach, involving experts and practitioners from all the pertinent legal, medical and social fields, may result in better legislation than that which only takes a legal perspective into account.
- Law reform entrusted to small committees runs the risk of being delayed due to the emergence of other priorities, or the opposite risk of being approved hastily without due consideration of all the relevant issues and points of view. In contrast, the involvement of a broad range of professional associations, children's groups and other concerned interest groups (such as women's groups, youth groups, groups dedicated to the rights of ethnic and religious minorities, parents of children with disabilities and religious groups involved in the rehabilitation of juvenile offenders) has a number of advantages.
  - First, those most closely involved with a specific area, including parents, practitioners and children themselves, often have insights of great value in law reform.
  - Second, the involvement of so many helps ensure that the process will not lose momentum for lack of interest.
  - Third, the active participation of those who work with children facilitates achievement of effective implementation of new legislation.
  - Fourth, wide participation in a legal review and reform process can have value in its own right as an awareness-raising exercise.
- Studies on the impact of existing legislation – covering issues such as the extent to which it is actually applied in practice, the extent to which the objectives of the law are being achieved and the apparent reasons for any shortcomings identified by the study – can make a valuable contribution to law reform. These studies can also identify gaps in the existing legislation on the protection of children and identify, quantify and analyse violations of the rights of children that need to be addressed. This research can make an important contribution not only in creating awareness of the need for new legislation, but also in helping fashion legislation that is well adapted to the socio-economic and cultural dynamics underlying the violations in question.
- In order for new legislation to be effective, the costs of implementation should be calculated and the appropriate legislative, executive and judicial authorities should make commitments to establish, strengthen or expand the coverage of the institutions and programmes necessary for implementation. Legislation that fully conforms to international standards concerning the rights of children, but is impossible to implement because the necessary infrastructure does not exist,

does little and may even be counter-productive in some respects.

- In some areas of the world, the exchange of experiences and other forms of cooperation concerning law reform can be useful, particularly those where countries are small or have limited legal resources and share a common culture, belong to a common legal tradition and experience similar social and economic problems.
- Some countries have a specific children's code or law that consolidates in one place all legislation relating to children. This can be effective in some cases, providing a single reference point for all children's rights, including those to protection. In others, this proves less effective, with overlaps, inconsistencies or even incompatibilities between the children's code and other pieces of legislation.

### **Checklist for action**

#### **What parliaments and their members can do**

National legislation sets the principles, objectives and priorities for national action to ensure child protection and creates the machinery for carrying out that action.

It is therefore crucial that Members of Parliaments take the following steps :

- Ensure that Parliament adopts national legislation that corresponds to the international legal instruments to which your State is party.
- Ensure that existing legislation is reviewed – by the competent services of Government, a special parliamentary committee or other official body – to determine whether its provisions are consistent with the Convention on the Rights of the Child.
- Where necessary, make use of parliamentary procedure to ensure that the Government sends draft legislation, or amendments to existing legislation, to Parliament.
- Do not hesitate to enter into contact, consult and cooperate with civil society groups working on child protection issues when developing national legislation, so as to have access to comprehensive data and experience. Children and youth should also be involved in the process.
- Make sure that national legislation is accompanied by the corresponding rules and administrative measures to ensure adequate implementation.
- Make sure that implementing costs of the new legislation are taken into account in the national budget.
- Exchange best practices with neighbouring and other countries.

## Overseeing government activity

Overseeing government activity is one of parliament's central roles. Parliaments and their members are entitled to information allowing them to assess and scrutinize the activities of all branches of government. Parliamentarians can ask questions about what is being done, or why something has not been done. Through their questioning they can draw attention to failures in policy or shed light on issues that may have been overlooked by government.

Child protection is potentially a concern in any of the matters that come before a parliament. Given this, the first part of any parliamentarian's role is to consider or seek information on the potential child protection implications of subjects that come before him or her. The child protection perspective relating to some subjects may not always be apparent. Parliamentarians can gain additional insight into the protection aspects of a range of subjects through contact with NGOs and other organizations such as UNICEF.

### Areas that have potential concern with regard to child protection

- Economic and development policies
- Security measures
- Education policies
- Health policies
- Criminal law
- Trade provisions
- Labour legislation
- Media regulation
- Emergency legislation (for example, in conflict situations)
- Social welfare policies
- Child-care policies
- Immigration
- Taxation

Parliamentarians can promote the consideration of child protection in all aspects of the parliamentary agenda by raising questions. A parliamentarian might ask a question during a debate on a bill relating to military recruitment about the measures that will be put in place to ensure that those under the age of 18 are not recruited.

Parliaments and their members should ensure that governments are accountable vis-à-vis their international and national commitments. They should scrutinize government action and should also ask questions that point to ambiguities in responsibility between government departments on child protection; in many countries, responsibilities for child

protection fall between different ministries, and where this happens accountability can be lost. Indeed, it is important to be clear about the priority that different government departments or ministries are giving to child protection. Parliamentarians can productively seek answers to where responsibility lies or what key ministries, such as Education, Labour, Justice, Defence or Health, are doing to ensure protection of children. For example, a parliamentarian might insist that the capacity of a national statistical office or bureau be enhanced such that it is equipped to properly monitor, record and analyse child protection issues. Parliamentarians might also usefully push for information and action on coordination between different departments and ministries on child protection matters. For example, child labour problems require the combined efforts of Ministries of Labour, Justice and Education.

Parliamentarians can promote the protection agenda by asking for specific data. For example, a parliamentarian might ask what proportion of homicide victims over a given time period were under 18 years of age. A question of this nature serves to force those monitoring homicides to consider the child protection aspect of their work, raises the issue of violence against children and might also produce an unexpected – and in some cases shocking – answer that creates the momentum for a response.

Sometimes parliamentarians can best raise a particular child protection issue by referring to or addressing a specific individual case. Where this is done, it is essential that the protection concerns referred to above – such as ensuring confidentiality and privacy for children whose cases are discussed publicly – are taken fully into account. However, if it is possible to do so, individual cases and the stories of the children they concern can provide compelling grounds for change.

Parliaments also monitor the government's performance and action. They therefore have the capacity to ask why things have not been done. This might include failure to ratify an important international standard on child protection (see above) or the failure to allocate resources to or implement legislation for child protection. It might also include the failure to take advantage of or participate in international cooperation aimed at promoting child protection, or the failure to cooperate with international supervisory mechanisms for children's protection rights, such as by failing to report to the Committee on the Rights of the Child, or to allow visits to prisons by UN rapporteurs or the International Committee of the Red Cross.

## **Checklist for action**

### **What parliaments and their members can do**

Parliamentarians should not hesitate to make use of parliamentary procedure and mechanisms to oversee government action and ensure that they meet their child protection commitments.

More particularly, parliamentarians should make use of parliamentary mechanisms to ensure that child protection issues are mainstreamed in all parliamentary and governmental activities, and that responsibilities and mandates of governmental departments are clearly defined in order to ensure proper coordination and avoid gaps in governmental implementation.

#### **Policy development**

As key political figures and as representatives of the people, parliamentarians have an interest in major policy developments such as the launching of programmes to ensure child protection.

In overseeing government action in this field, parliaments should ensure that:

- Programmes are time-bound and that they give precise target dates for the attainment of specific results
- Adequate funding is allocated for the activities planned through the national budgetary process
- Citizens are widely informed of the activities planned
- Parliament has an opportunity to review periodically the progress being made in implementing the national programme and therefore monitor progress made in the field; you may wish to call for public hearings to be organized to examine certain situations and take stock of developments

#### **Reporting obligations**

States parties to the Convention on the Rights of the Child have an obligation to present reports on the status of implementation of the Convention. As the overseer of the government's work, parliament has an important role to play in ensuring that the State fully complies with its reporting obligation as a party to the Convention. It is important that the report is submitted on time and presents complete information.

Once your country has become party to the Convention, you can ensure that:

- An initial report and subsequent periodic reports are submitted in accordance with the periodicity established in the Convention; you should inquire about your country's reporting timetable and ensure that the Government respects this

- In cases where reporting is delayed, you may request an explanation and, if necessary, use parliamentary procedures both to urge the Government to comply with its reporting obligations as soon as possible and to mobilize public opinion
- Parliament (through its relevant committees) is involved in the preparation of the report, provides input in terms of information or is in any case informed about its contents
- Parliament's action is properly included and reflected in the report

Parliamentarians should also ensure that proper follow-up to the report and the Committee's recommendation is carried out. To that end, you may wish to:

- Ensure that the concluding observations of the Committee are presented to Parliament and debated by it
- Approach the relevant minister(s) on action taken to implement the Committee's recommendations and, if appropriate, put an oral or written question to them
- Organize or participate in public debates on the implementation of the concluding observations in order to raise awareness on the steps that need to be taken to accelerate full implementation of the Convention

States parties' reports can be found, together with the Committee's concluding comments, recommendations, guidelines and other relevant information on the UN High Commissioner for Human Rights website ([www.unhchr.ch](http://www.unhchr.ch))

## Allocating resources

In many countries, the national budget is prepared by the executive branch and submitted to the parliament for approval. Parliamentarians thus share responsibility for ensuring that sufficient funds are allocated for the protection of the rights of children. This includes both financial resources as well as the time and energy of different institutions and branches of government.

Parliamentarians should start with a clear idea of what resources are needed to address the child protection issues faced in their country. They should then see what resources are being made available, and assess them based on their knowledge of the overall national budgetary situation. In making these judgments it is often useful to draw on the work of others, be they national or international NGOs or international organizations such as ILO, UNDP, UNESCO, UNICEF, WHO and IPU.



It is important to look not just at what money was spent on but also at what that expenditure achieved. It would be unusual to consider the education sector purely in terms of the amount of money allocated to it, for example, without taking into account enrolment rates and educational attainment. The same applies to expenditure on child protection. For example, it is not enough simply to know how much money has been spent on demobilizing, rehabilitating and reintegrating former child combatants in a country that has recently emerged from war. It is also necessary to know how many children have been assisted, what sort of follow-up has been provided and what the current situation of these children is, for example by asking what proportion are now in school.

### **Examples of child-friendly budgets**

In **Chile**, Parliament is considering a modification to the budget law that would ensure a 25 per cent increase in allocations to support child protection institutions, as well as a constitutional amendment that would extend compulsory free education to 12 years.

In **Thailand**, in accordance with the Ninth Economic and Social Development Plan, the 2003 budget targets the poor and disadvantaged, children and youth, disabled persons and unemployed persons. It is expected that 15 million children will benefit from programmes under the new budget plan.

Parliamentarians could also press for a debate on the resources being made available for child protection. Such a debate, with the goal of a thorough overview of the country's efforts for protection of children from violence, abuse and exploitation, could provide a powerful basis for ongoing work.

### **Checklist for action**

#### **What parliaments and their members can do**

Parliaments read, discuss and adopt the national budget and oversee its proper implementation. In discussing the national budget, parliamentarians should ensure that:

- They work with various partners, including civil society and international organizations, to have a complete picture of child protection issues
- Data on the situation and needs of children in the country is collected and widely disseminated
- Government commitments regarding child protection issues match the protection needs of children as identified in data and analysis, and are reflected and adequately funded in the national budget

## Advocacy

As representatives of the people, parliamentarians are public opinion leaders. As such, they are well placed to promote issues of child protection within both parliaments and communities. This unique role as elected representative between the people and government provides members the opportunity, authority, legitimacy and responsibility to be advocates against violence, abuse and exploitation. In addition, through the framework of their own party manifest, parliamentarians can mobilize support around these issues.

Parliamentarians can use their voice to break the silence around child protection issues. Many issues relating to protection can be very sensitive, hidden behind stigma, secrecy, shame or corruption. They are taboo subjects, particularly where they relate to sex or to religion. This silence is a barrier to progress on child protection; it is impossible to mobilize action on something people do not accept exists. By raising issues of child protection in public and showing leadership in facing up to difficult issues, parliamentarians can overcome one of the main obstacles to addressing protection issues in many countries.

*We promise that as adults we will defend children's rights with the same passion that we have now as children.*

*– Message drafted, debated and agreed by the 400 Child and Youth Delegates of the Children's Forum, part of the United Nations Special Session on Children, 8–10 May 2002*

Through their leadership, parliamentarians can also galvanize and energize others to work on child protection, often bringing diverse people into a partnership. Such partnerships could involve trade unions, parents' groups, religious organizations and children and young people themselves.

When considering potential work as an advocate, it can help to begin by identifying constituencies that could be influential or important with regard to child protection. These might include judges, social workers, police officers, doctors and teachers. Specific activities can be planned with messages carefully tailored for such constituencies.

Parliamentarians can also take the opportunity to visit child protection services in their country, particularly in their constituencies. They can then report to their parliament on such visits. Often, visits are most interesting when they are spontaneous and unannounced. When preparing for visits, contact with organizations working on child protection can provide valuable background, maximizing the effectiveness of the visit.

In many countries, individuals and groups are already trying to generate real political and social commitment to creating a protective environment for children. Again, this might be individuals, NGOs, trade unions or religious groups. By giving public support to such efforts, parliamentarians can greatly strengthen the work of others.

*Civil society can be a major force in securing survival, development, protection and participation of children, and in assuring quality and sustainability of social services. We will promote both development of civil society and encourage civil society actions for children, in particular through laws and regulations compatible with international standards and norms. We recognize NGOs as significant contributors to social development, and will promote active cooperation and partnership between the NGO community and state structures.*

*– Ashgabat Declaration of the Inter-Parliamentary Workshop 'Implementation of the Convention on the Rights of the Child in Central Asia and Kazakhstan', organized by UNICEF and Turkmenistan under the sponsorship of the Inter-Parliamentary Union, 20-22 February 1997*

It is important to recognize that working on child protection requires thoroughness and careful consideration. Where situations have not been fully or properly assessed and analysed, actions with the best intentions can have unfortunate consequences. One commonly cited example is efforts to remove children from child labour. Experience shows that when children are removed from child labour but corresponding measures are not put in place to ensure that the root causes of child labour are also addressed, they remain under the same pressure to earn money to support themselves and their families. Thus, they are forced to go into less-regulated areas of labour, including worst forms of child labour such as prostitution. It is important to consider all possible implications of a course of action when working on child protection.

It is also important to take care when working with the media or on individual cases. Media can inadvertently sensationalize child protection issues, making the stigma and shame attached to victims worse. It is also essential to protect the confidentiality and privacy of children whose cases may come up in the course of working on a particular issue. Names should never be made public unless absolutely necessary. Documents and records detailing children's personal information should only be kept if absolutely critical; when they are, care should be taken to ensure that this information cannot be communicated more widely than is required by the individual case.

Finally, when children become involved in protection work, they are often vulnerable as a result of it. This may take the form of retribution from those who are involved in their exploitation. Maintaining confidentiality may contribute to addressing this.

## Events for child protection

In **Madagascar**, every year during the month of June, activities for children are organized. There are visits to shelters for children, and street children are brought together for communal meals, distribution of clothing, educational games and recreation. Retreat and reflection centres are set up by church groups and civil society organizations to sensitize adults to the children's problems and the Convention on the Rights of the Child.

Source: State Party report to the Committee on the Rights of the Child (CRC)

## Checklist for action

### What parliaments and their members can do

Parliamentarians should consider participating in campaigns to raise awareness and mobilize public opinion on child protection issues. Participation might include the following:

- Ensure that information on children's rights is widely disseminated and, more particularly, that the Convention on the Rights of the Child is available in the national language(s); you may wish to contact UNICEF to enquire about existing translations
- Make public speeches on specific child protection issues
- Organize or take part in public debates on television and radio
- Write articles for newspapers
- Organize public events to celebrate 20 November, International Children's Day, drawing attention to specific child protection issues
- Lend support to local efforts and projects aimed at ensuring child protection
- Pay visits to programmes and projects that support and aim to ensure child protection
- Visit local schools to encourage the efforts of teachers to explain and present children's rights
- Confer with local law enforcement agencies on the efforts they are making to identify cases of violations of children's rights and the problems they face
- Liaise with NGOs and other civil society actors working in the field of child protection
- Write articles or speeches on what you have learned during your experience in the cases mentioned above

## Chapter 5

### Parliamentary mechanisms and needs

*We will encourage the establishment or strengthening of parliamentary committees, commissions and groups on the problems facing children in our respective countries, with the purpose of undertaking a comprehensive review and assessment of legislation related to children, and formulating recommendations to change and supplement legislation.*

*– Ashgabat Declaration of the Inter-Parliamentary Workshop ‘Implementation of the Convention on the Rights of the Child in Central Asia and Kazakhstan’, organized by UNICEF and Turkmenistan under the sponsorship of the Inter-Parliamentary Union, 20-22 February 1997*

In order to fulfil its functions with regard to child protection, a parliament needs to enhance its capacity. This includes the development of parliamentary machinery for child protection, the strengthening of parliament’s research capacity on child protection issues and forming and maintaining cooperation networks with other international and national actors.

#### **Developing parliamentary mechanisms for child protection**

Parliamentary mechanisms may be crucial in securing not only ratification or accession to legal instruments covering child protection issues but also the development and implementation of corresponding national legislation, policies and programmes.

Specific mechanisms that promote these objectives should be instituted or developed and provided with necessary resources. These include:

- One or several standing or select parliamentary committees (if there is more than one committee, the activities of these committees should be coordinated to ensure that child protection issues are taken into account in all of the parliament’s work)
- A child protection committee, representing all political parties, which can generate regular parliamentary debate on the question
- An informal group on the child protection issues which closely monitors action by the government and liaises with civil society

## **Parliamentary committee on children: The case of Germany**

Within the German Bundestag, the Commission to Safeguard the Interests of Children (the Children's Commission), which has been in existence since 1988, is a subcommittee of the Committee for Family Affairs, Senior Citizens, Women and Youth. Each of the parties represented in the Bundestag appoints one member with voting rights to the Commission. The chair of the Children's Commission rotates among the parties. As the Commission operates according to the principle of consensus, resolutions and public statements are only possible when unanimity prevails. To enable it to work more effectively, the Commission, which has no right of motion, is pushing for an expansion of its powers in Parliament.

The Children's Commission sees itself as a lobby for children: as a parliamentary body that provides ideas and initiatives both inside and outside of parliament to improve the situation of children. In this regard, the Commission pursues a broad range of activities, such as hearings, discussions with experts, statements, fact-finding missions and public relations. The Commission has been concerned with bolstering the rights of children, improving their living conditions, preventing violence during the upbringing of children and the subject of sexual abuse/child pornography.

Source: Report of Germany to the Committee on the Rights of the Child, CRC/C/83/Add.7 paras 16 and 17

### **Cross-party alliances**

Another approach for parliamentarians is to create cross-party political alliances around child protection. Such alliances are seen as less partisan, survive changes in government and enjoy greater credibility both within and outside of parliaments. Alliances can also promote their work through contact and collaboration with parliamentarians in other countries either bilaterally or through multilateral organizations such as the Inter-Parliamentary Union.

### **Creation of an office of an ombudsperson on children's rights**

Some countries have established an ombudsperson on children's rights, under the authority of parliament. The ombudsperson's function is to make recommendations, assessments and criticisms, which the relevant public bodies will presumably take note of and voluntarily comply with. The role of the ombudsperson for children involves a more direct and active approach to the job than that of the ombudsperson for, say, public administration. For example, the ombudsperson may have the right to report municipalities to the police for their failure to fulfil the statutory regulations regarding children's rights. Although it does not necessarily mean that the cases need end in court or result in criminal proceedings, the ombudsperson can stimulate public debate on the subject of children's living conditions, lack of sufficient care and the children's

own reactions, thus giving these issues a more prominent place on the political agenda.

The independence of an ombudsperson for children is important. In representing the interests of children, there are two different ways of organizing the operation of Children's Ombudsperson: he or she can operate at a general level and monitor the actions of governments with regard to children's rights, or he or she can be mandated to handle specific cases or complaints from individuals. These cases can then serve as examples of how to deal with similar cases when they occur.

The first Children's Ombudsperson in the world was nominated in Norway in 1981. In Sweden, an independent evaluation of the Ombudsperson's office recommended a continuation of the function, recognizing its value. In other countries, the Ombudsperson's office has handled specific complaints or cases (for example, in France), such as those relating to children in state custody, suspected cases of exploitation or abuse, or concerning services and programmes provided by the State.

*The Conference calls on States to consider the appointment of a special ombudsman for children with the necessary independence and powers to act effectively, and to ensure that the recommendations of such independent child ombudsmen or similar institutions are enforced by relevant authorities.*

*– 106<sup>th</sup> IPU Conference (Ouagadougou, Burkina Faso, September 2001)*

### **National Commission on Children**

Some countries have also established a National Commission on Children. This should be an independent body that reports to parliament or includes parliamentarians among its members.

## **Enhancing parliament's access to comprehensive information and analysis**

As previously mentioned, by their nature, many child protection issues are hard to monitor. Stigma, secrecy, fear, shame, acceptance and criminality can all hide violence, abuse and exploitation. As a result, statistics are generally hard, if not impossible, to come by, although there are exceptions.

Despite this, it is important to work with as much information as is available. This may be contained in official reports. For example, information on rates of birth registration or homicides involving children may be available through a national statistical bureau. In other cases, it may be necessary to look further, for example, in the reports of national or international NGOs, organizations such as UNICEF or the reports of the Office of the High Commissioner for Human Rights, its rapporteurs or committees, including the Committee on the Rights of the Child. Much of this information is available on the Internet at the

websites of the High Commissioner for Human Rights ([www.unhchr.ch](http://www.unhchr.ch)) or organizations like Amnesty International ([www.amnesty.org](http://www.amnesty.org)) or Human Rights Watch ([www.hrw.org](http://www.hrw.org)).

Information should be used as the basis for a sound analysis. It is rarely enough to know a problem exists. It is also necessary to ask why it exists, what should be in place to prevent it, who should be doing what to put these things in place, why aren't they doing so and what they need to make sure they can do so. These questions contextualize the available facts to create a sound picture to inform work on child protection.

As key political figures who have the power to oversee government policies and programmes, and to modify them if need be, parliamentarians have a vested interest in ensuring that an effective system of data gathering and a mechanism for monitoring the implementation of policies and programmes are in place.

In order to assist them in their task, parliamentarians need to have access to the following:

- A legislative or research support service that can provide them with information on child protection issues. To this end, training of parliamentary staff with a view to raising awareness on child rights issues as a whole could be envisaged.
- Reliable national data on child protection issues. It may be useful to ascertain whether the national statistical office or any other unit of government is gathering information on children and to make sure that all data is disaggregated according to the different types of abuse. This information is crucial for an accurate appraisal of children's needs in a particular country and the development of appropriate responses.
- If there is no systematic collection and analysis of information on this question, parliament may wish to call for the national statistician or other competent government agency to be authorized to collect and analyse on a regular basis data relevant to children's rights. This information should be made public and accessible to everyone.

*In solidarity with a broad range of partners, we will lead a global movement for children that creates an unstoppable momentum for change.*

*– A World Fit for Children, approved by the United Nations Special Session on Children, 2002*

## **Involving children and young people**

Children and young people can be powerful advocates and actors for their own protection. When children are invited to identify their priority concerns, they routinely place violence, abuse and exploitation at the top of their agendas. Children and young people often know



best what really matters to their lives, and have the best solutions for addressing these issues. Sometimes, the most effective strategy for pursuing child protection is to give children their own voice and support their own efforts. Many organizations are now committed to encouraging and facilitating the involvement of children and young people in child rights issues in general.

### **Reasons to involve children and young people in work on protection**

- Children have a right to express their views on decisions affecting them.
- Children know their situation.
- Children can ensure that work gets carried out and followed through.
- Children know how well protection efforts are serving them.
- Involving children empowers them, contributing to their protection.

### **Developing national and international cooperation**

Given the challenges involved in working on child protection, the chances of success are always increased by working with partners. There are many different types of partners, all of whom may be able to contribute to a joint effort on a specific child protection issue or more generally. Many countries have energetic and skilled civil society movements that are extremely concerned about child protection issues. There are numerous examples of private sector organizations that are willing to work with others on child protection issues.

There are also international partners, such as UNICEF, international NGOs or even parliamentarians from other countries. Building coalitions, providing leadership and support, and identifying opportunities for collaboration are all potential aspects of good child protection work. Parliamentarians should ensure that their governments participate fully in international efforts to promote respect for children's rights as enshrined in the Convention.

Establishing contacts with parliamentarians from other countries is often useful and enables members of parliaments to share experiences on success stories and lessons learned and discuss possibilities of bilateral or multilateral cooperation, particularly regarding violation of rights that require cross-border cooperation (for example, trafficking).

One key partner is often the media. Journalists, who have an exceptional capacity to affect opinions, knowledge, attitudes and behaviour, can become engaged with particular issues or cases. Different parts of the media can be more effective in different contexts and for different groups. For example, in many countries radio can be a very powerful tool for communicating to rural populations.

**PART 3**  
**SPECIFIC CHILD PROTECTION ISSUES**

## Chapter 6

# Birth registration and the right to identity

*The main barrier to birth registration is that it is not universally perceived as a fundamental right, and as a result, is given a low priority at every level.*

*– Handbook on Civil Registration and Vital Statistics, p. 12*

### Birth registration

Birth registration is the official recording of the birth of a child by some administrative level of the State and coordinated by a particular branch of government. It is a permanent and official record of a child's existence.

The duty of States to register the birth of every child has been recognized for more than a quarter of a century, and has been universally recognized for more than a decade. Nevertheless, it is estimated that some 50 million births go unregistered each year.<sup>13</sup> In other words, fewer than 60 per cent of the children born each year start life with the benefit of this fundamental right.

Birth registration is essential to protect the child's right to identity and legal personality, as well as other rights. For younger children, birth records help safeguard against trafficking and abduction, and are often required for access to school and sometimes other basic services such as health care. For older children, proof of age is essential to ensure that they are not prematurely deprived of the protection that the law entitles them to, in areas such as marriage, sexual exploitation, work, recruitment into the armed forces and criminal justice.

Ideally, birth registration is part of an effective civil registration system that acknowledges the existence of the person before the law, establishes the child's family ties and tracks the major events of an individual's life, from birth to marriage and death. The data registered should include:

- The place and date of birth
- The name and sex of the child
- The name, address and nationality of both parents

In some countries, information concerning the health of the child (for example, birthweight or immunization status) is recorded. Personal identifying marks such as footprints are registered in some countries as a precaution against sale, trafficking, irregular adoption or immigration fraud.

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## ➤ International standards: Birth registration

### **The Convention on the Rights of the Child**

Article 7.1 provides that “the child shall be registered immediately after birth”.

### **The African Charter on the Rights and Welfare of the Child**

Article 6.2 similarly provides that “every child shall be registered immediately after birth”.

The Human Rights Committee has indicated that birth registration “should be interpreted as being closely linked to...special measures of protection and it is designed to promote recognition of the child’s legal personality” and that “[t]he main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of [their] rights...”

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Obstacles to birth registration include:

- Registration fees
- Limited distribution of administrative systems, especially in rural areas
- Administrative requirements (for example, that the parent present identity documents)
- Collapse of governmental infrastructures due to conflict
- Discrimination against ethnic or religious minorities or refugee populations
- Parental lack of appreciation of the value or importance of birth registration
- The use of official languages only in birth registration forms and procedures

The highest rates of non-registration are found in sub-Saharan Africa and South Asia, where only 29 per cent and 37 per cent of all births are registered.<sup>14</sup> Poverty alone does not explain the low level of registration, however. Several relatively poor countries have registration rates of 90 per cent or more, and rates within India vary from 30 per cent in some states to 90 per cent in others.<sup>15</sup>

## **The right to a name**

Traditions concerning names vary considerably from one culture to another. In most cultures, a person has at least two names. In many if not most cultures, one of the names a person bears indicates the identity of the person’s father or mother. Names have religious significance in many societies. They may indicate a person’s social class or marriage status. In some societies, a person generally uses the same name for his or her entire life; in others, the name a person uses may change as a result of marriage, adoption or other changes in status in the community.

Issues concerning the right to a name include:

- Laws that impose limits on names that may be used, which deny the rights of religious or ethnic minorities to use names that form part of their culture
- Laws that require certain persons to use names that foster social stigma, such as names that imply that an individual was born out of wedlock or that paternity is unknown
- Laws that discriminate on the basis of sex; the UN Special Rapporteur on the sale of children, child prostitution and child pornography reported that in one country, a single mother who decides to keep her child cannot give her own surname to the child, unless the male members of the family consent

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➤ **International standards: The right to identity and the right to a name**

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

Article 7 of the Convention states that:

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

Article 8 of the Convention indicates that the right to name, nationality and family relations form part of the right to identity, and that “[w]here a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

**Other instruments**

In addition, the child’s right to a name is recognized by article 6.1 of the African Charter on the Rights and Welfare of the Child and article 18 of the American Convention on Human Rights.

In some countries, legislation limits the choice of names that can be given to a child. Such laws should not deny religious or cultural minorities the right to give children names considered appropriate in their religion or culture.

The right to have a name is of special importance in the case of children born out of wedlock. In cultures where the names of a child include a reference to the name of his or her father or both parents, children born out of marriage or whose father is unknown should not be given names that encourage discrimination on the basis of birth.

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## Family relations

The right to identity includes the right of every child to know his or her parents, as far as possible. This right can be threatened in various ways, including:

- Failure to register the birth of a child
- Failure to include in the registration all available information concerning a child's maternity or paternity
- Procedures that make it difficult or impossible for single mothers to obtain recognition of the paternity of a child
- Abandonment, informal or illegal adoption and adoption procedures that protect the identity of a child's biological parents
- Theft, sale or trafficking of children
- Separation of children from their families as a result of war, natural disasters or displacement

In some countries, paternity testing is illegal. In others, a single mother is not allowed to identify the father of her child when registering the birth, unless the father admits paternity or paternity has been judicially recognized.

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### ➤ International standards: Family relations

Although the right of the family to protection has long been recognized, the concept of a right to identity that includes a right to information about one's parents is relatively new. The UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, adopted three years before the Convention on the Rights of the Child, states that:

The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care unless this is contrary to the child's best interests.

Similarly, the Hague Convention on Protection of Children and Co-Operation in respect of Intercountry Adoption provides that “[t]he competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.”<sup>16</sup>

The Committee on the Rights of the Child has taken the position that adopted children should be able to obtain information as to the identity of their biological parents. Legislation that prevents a child from knowing the identity of his or her biological father, such as legislation that establishes a conclusive presumption that the husband is the father of all children born to his wife, violates the European Convention of Human Rights.

This right should be implemented in accordance with the 'best interests' principle. It is essential that such information be preserved so that it can be made available, if requested, at an appropriate time and in an appropriate fashion.

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### **The right to a nationality**

In general, the nationality to which a person is entitled depends either on the nationality of his or her parents or on his or her place of birth. Persons who have no nationality are 'stateless'.

Statistics concerning the number of stateless children are not available, but the UNHCR estimates that there may be as many as 9 million stateless persons throughout the world.<sup>17</sup> One of the main reasons some children are stateless is that international law does not clearly define the obligations of States with regard to the right to acquire a nationality (see below). Other reasons include:

- Failure to register the birth of children, or failure to register all pertinent information concerning the identity, residence, place of birth and nationality of the child's parents
- Discriminatory refusal to apply legislation concerning nationality to members of ethnic minorities or refugees, or refusal to register their births or provide the identity documentation to which they are entitled
- Deprivation of nationality for political reasons, or denial of travel or identity documents to political opponents and their families

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## ➤ International standards: Nationality

### **The Convention on the Rights of the Child**

The Convention recognizes the right of every person to a nationality. In general, the nationality to which a person is entitled depends either on the nationality of his or her parents or on his or her place of birth. Marriage and naturalization are two other methods of acquiring nationality.

Legislation concerning the right to nationality should not discriminate. The Committee on the Rights of the Child has repeatedly encouraged States to amend legislation that recognizes the nationality of the children of a male national but not the children of female nationals married to foreigners. Legislation that discriminates against children on the basis of the marital status of their parents also violates children's right to equality before the law.

### **Other instruments**

The UN Convention on the Status of Stateless Persons (1954), the American Convention on Human Rights and African Charter on the Rights and Welfare of the Child spell out States' obligations in this regard, stating that every person has the right to the nationality of the State in whose territory he or she was born, if he or she does not have the right to any other nationality.<sup>18</sup> The Convention on the Reduction of Statelessness recognizes this basic rule and, in addition, provides that States should grant their nationality to every child whose father or mother is a national and who would otherwise be stateless.

The right to nationality includes not only the right to acquire a nationality but also the right not to be arbitrarily deprived of one's nationality. Children should not be deprived of their nationality because of changes in the marital status of their parents, for example.

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## *What can be done?*

### **Ratification of international treaties**

In order to establish an appropriate framework for eliminating statelessness, countries that are not parties to the Convention on the Reduction of Statelessness should consider becoming parties.

For the same reason, member States of the African Union and the Organization of American States that have not already done so should consider becoming parties to the African Charter on the Rights and Welfare of the Child or the American Convention on Human Rights.

### **Law reform**

#### **Legislation concerning birth registration**

Legislation should be reviewed with a view to the removal or modification of legal or administrative requirements that are an obstacle to birth registration, such as requirements that the parents present valid identity documents, or that both parents sign the registration document.

Consideration should be given to recognizing the legal obligation of parents to register the birth of their children within a certain time limit, where it does not already do so. However, legislation that establishes sanctions for late registration should be reviewed to ensure that, in practice, it does not create an obstacle to 100 per cent registration.

#### **Legislation concerning nationality**

Legislatures that have not already done so should give serious consideration to enacting legislation recognizing the right to nationality on the grounds recognized by the Convention on the Reduction of Statelessness, the American Convention on Human Rights and the African Charter on the Rights and Welfare of the Child, namely, as a right of:

- Every child born in the territory who would otherwise be stateless
- Every child having one parent who is a national if that child would otherwise be stateless (regardless of place of birth)

Legislation should be amended, when necessary, to eliminate any provisions that discriminate against women with regard to the nationality of their children, or against children on the basis of the marital status of their parents.

### **Legislation concerning the right to a name**

Legislation and regulations concerning the registration and use of names should be reviewed:

- To ensure that they do not discriminate against ethnic, religious or linguistic minorities
- To ensure that they do not foster discrimination on the basis of birth or social status

### **Legislation concerning the right to family relations**

Legislation should be reviewed to ensure that the child's right to identity, including the right to information about his or her parents and family relations, is legally recognized.

Legislation concerning adoption should be reviewed, where necessary, to ensure that the identity of the child's biological parents is preserved and to establish rules and guidelines concerning the child's right of access to such information.

### **Costa Rican law reform regarding the right to identity**

The law of Responsible Paternity introduced in Costa Rica in 2000 states that single mothers should provide all the information required for registration when a child is born in a hospital or health centre, including the name of the father. If the presumed father contests paternity, he is obliged to undergo a DNA test. If this test confirms paternity, he is included in the birth record, and the child takes his last name, followed by the mother's last name. If the man refuses to take a DNA test, the birth record will in any case carry his name and any additional information provided by the mother.

## **Administrative and social measures**

### **Measures regarding birth registration**

In order to achieve universal birth registration, it is necessary to provide effective and accessible birth registration services, as well as foster the desire to use them. This means that all levels of society – including local communities, national institutions such as parliaments, local and national governments, NGOs and international organizations – must be involved in developing, implementing and promoting policies and programmes for birth registration.

Specific measures that should be considered include:

- The elimination of all costs or fees
- The use of mobile birth registration teams or units in rural areas
- Awareness campaigns
- Facilitation of late registration

Rates of birth registration tend to be high where hospitals and clinics assume responsibility for registering births. Although the impact of this measure will be limited in areas where many births take place in the home, it is a valuable way of increasing registration for sectors of the population that have access to such facilities. The payment of a bonus to mothers when they register their child can also be effective.

Special procedures should be established, where necessary, to facilitate the birth registration of refugees, regardless of whether or not the country of refugee recognizes nationality on the basis of birth.

### **Measures regarding the right to nationality**

Administrative guidelines, training or awareness campaigns should be implemented, where necessary, to eliminate discriminatory denial of nationality to members of ethnic minorities or the children of refugees or children of migrant workers.

### **Measures concerning the right to family relations**

Where trafficking or illegal adoption have been substantial problems in the past, the appropriate government agencies should establish programmes designed to assist those concerned to recover their identity.

Civil defence and disaster-management plans and training programmes should be reviewed to ensure that they are responsive to the need to protect the identity of children separated from their parents. UNICEF, the ICRC and UNHCR have experience in protecting the identity and facilitating family reunification of children affected by conflict, displacement and disasters, and can provide assistance in this area.

## **War and internal conflict: The birth registration campaign in Angola**

Between December 1998 and October 1999, the number of officially recognized internally displaced persons (IDPs) in Angola rose from 524,000 to 1.7 million. These IDPs include children, often separated from their families, who are particularly vulnerable. Efforts to reunite them with their families have been hampered by the fact that many are unregistered and have no proof of identity. Children also need to prove their age to prevent their recruitment into armed forces.

Findings from local surveys indicate that fewer than 39 per cent of Angola's children are registered. In 2000, the Angolan Ministry of Justice suggested that this figure might be as low as 5 per cent. The Government recognizes the importance of registration and, despite the difficult internal situation, is committed to improving coverage. March 1998 saw the launch of a National Children's Registration Campaign that registered nearly half a million children. This was the foundation for a second campaign launched in August 2001 to register 3 million children by the end of 2002. The initiative is multisectoral, bringing together eight government ministries, as well as churches and other civil society organizations, NGOs, the private sector and UNICEF.

Registration under the campaign is free (it normally costs the equivalent of US\$7), and a special law has been introduced to decentralize and simplify registration. The involvement of churches has been crucial. The Government has given the Catholic and Methodist churches the legal power to register children, while other churches are participating in social mobilization, awareness raising and the formation of the mobile registration teams that began operating in rural areas in 2002. Registration initiatives have also been carried out in hospitals, IDP camps and schools. The public response has been extremely positive. The first five months of the campaign (August to December 2001) saw the registration of more than 230,000 children. While sheer numbers are important, long-term sustainability is a priority for the partners and many of the campaign's best practices – particularly the legislative changes and the free registration of children under the age of five – will be adopted on a permanent basis.

Source: Birth Registration: Right from the Start, p.16

## Chapter 7

### Children and armed conflict<sup>19</sup>

*Children continue to be the main victims of conflicts. Their suffering takes many forms. Children are killed, made orphans, maimed, abducted, deprived of education and health care, and left with deep emotional scars and trauma. Forced to flee from their homes, refugees and internally displaced children are especially vulnerable to violence, recruitment, sexual exploitation, disease, malnutrition and death. Children are being recruited and used as child soldiers on a massive scale. Girls face additional risks, particularly sexual violence. These egregious violations of children's rights take place in a pervasive climate of impunity.*

– Report of the Secretary-General on Children in Armed Conflict, 2003

#### Child soldiers

Despite some successes in negotiating commitments to stop the recruitment of child soldiers and release those in service, thousands of child soldiers continue to participate in armed groups around the world. In Colombia, for example, an estimated 14,000 persons under the age of 18 form part of private militias and revolutionary groups.<sup>20</sup>

*Children are uniquely vulnerable to military recruitment and manipulation into violence because they are innocent and impressionable. They are forced or enticed to join armed groups. Regardless of how they are recruited, child soldiers are victims, whose participation in conflict bears serious implications for their physical and emotional well-being. They are commonly subject to abuse and most of them witness death, killing and sexual violence. Many participate in killings and most suffer serious long-term psychological consequences.*

– Report of the Secretary-General on Children and Armed Conflict, 2003

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## ➤ International standards: Child soldiers

### **The Convention on the Rights of the Child**

The Convention contains standards concerning the participation of children in armed conflicts and the recruitment of children:

- States shall not recruit any person under the age of 15 into any branch of the armed forces.
- A State that recruits persons between the ages of 15 and 18 should begin with those closest to age 18.
- States must take all feasible measures to prevent the direct participation of persons under the age of 15 in hostilities, whether on the side of the government or in the ranks of any other armed group.

### **Optional Protocol to the Convention**

Strengthening this provision, an Optional Protocol to the Convention on the use of children in armed conflict was adopted in 2000 in order to allow States to make greater commitments to the protection of children from participation in armed conflict and recruitment into the armed forces. It entered into force in 2002 and provides in part that:

- Recruitment of persons under the age of 18 shall be strictly voluntary
- Non-governmental armed groups shall not, in any circumstances, recruit persons under the age of 18, nor use them in hostilities
- States shall provide children who have participated in armed conflict, in violation of the Convention or the Protocol, with any necessary physical and psychological rehabilitation and support for reinsertion into society

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*Children in war zones have been deliberately killed or maimed by parties to conflict, often in extremely brutal ways. During the genocide in Rwanda in 1994, thousands of children were massacred. In the massacres of Srebrenica in 1995, young Muslim boys were particularly targeted. The Revolutionary United Front (RUF) in Sierra Leone carried out a systematic campaign of terror, which included cutting off limbs of both adults and children.*

*– Report of the Secretary-General on Children and Armed Conflict, 2003, para.25*

## The consequences of armed conflict for the civilian population

In recent years, 90 per cent of the victims of civil wars have been civilians.<sup>21</sup> Half of all civilian casualties are children.<sup>22</sup>

The abduction of children during armed conflict is a significant problem. Some are forced to become combatants; others are used for sexual slavery or forced labour. For example, in 1999 more than 4,000 children were kidnapped during the incursion of rebel forces into Freetown (Sierra Leone); 60 per cent of those abducted were girls, most of whom were sexually abused.

The systematic sexual abuse of women and girls is another common consequence of armed conflict for the civilian population, especially in civil wars. Rates of HIV among combatants are three to four times higher than those of local populations.<sup>23</sup> As the Secretary-General of the United Nations observed, "When rape is used as a weapon of war, the consequences for girls and women are often deadly."<sup>24</sup>

### Child Protection Advisors in peacekeeping operations

At the United Nations, the Security Council and Secretary-General have placed the issue of child protection in situations of armed conflict squarely on the peace and security agenda. Security Council Resolutions 1261 (1999) and 1314 (2000) made the recommendation that child protection advisers (CPAs) be employed by the United Nations to be part of peacekeeping operations where appropriate. These CPAs assist the Special Representative of the Secretary General (as the head of a given peacekeeping or peace-building support operation) to ensure that the rights, protection and well-being of children are a priority throughout the peacekeeping process.

Child protection advisors were first deployed in the Democratic Republic of Congo in 1999, then in Sierra Leone in 2000. Since then, Child Protection Units have been included in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the United Nations Mission in Sierra Leone (UNAMSIL). Other CPAs have been deployed or approved for the UN Mission in Angola (UNMA), the UN Mission in Ivory Coast (MINUCI) and the UN Mission in Liberia (UNMIL).

Source: UNICEF

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## > **International standards: Protecting civilian populations**

### **The Convention on the Rights of the Child**

Article 38 of the Convention provides that “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.” It adds that “[i]n accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”

### **International humanitarian law**

The four Geneva Conventions of 1949 and their protocols adopted in 1977 lay out rules for the protection of civilians, including some specifically concerning the protection of children. Common Article 3 provides in part that non-combatants, including the civilian population, “shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.” In particular, all “violence to life and person,” including murder, mutilation, cruel treatment and torture, the taking of hostages and “outrages upon personal dignity,” including sexual violence and forced prostitution, are strictly prohibited. All States have the obligation to ensure that their criminal law punishes the acts prohibited by Common Article 3.

The Fourth Hague Convention on the Laws and Customs of War on Land (1907) prohibits “[t]he attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended.” Article 57(2) of Additional Protocol I to the Geneva Conventions requires that those responsible for the planning and execution of military operations must “[t]ake all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.” Article 17 of the Fourth Geneva Convention requires that when an area is besieged or encircled, the authorities should strive to reach a local agreement permitting the removal of children, as well as the wounded, sick, aged and infirm. Article 23 of the Fourth Geneva Convention requires that all States must allow free passage of medical supplies intended for the civilian population and food and clothing intended for children.

Children in general are entitled to special respect and protection against any form of indecent assault. Additional Protocol I to the Geneva Conventions in article 70(1) and Additional Protocol II in article 4(3) lay out children’s entitlement to “the care and aid they require, whether because of their age or for any other reason.” Orphans and children separated from their families must be provided with care and education. The parties to the conflict must take steps to facilitate the reunification of families separated by the conflict and, in particular, to safeguard the identity of children.

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## Landmines and small arms

Landmines are perhaps the most dangerous consequence of armed conflict, because they continue to cause harm long after a conflict has ended. During 2002 and the first half of 2003, landmines killed or injured in 65 countries, including 41 countries that were at peace.<sup>25</sup> Only 15 per cent of the casualties were military personnel. Approximately half of the 15,000 to 20,000 annual victims of landmines and unexploded ordnance are children.<sup>26</sup>

Landmines are a heavy burden on the economic and social systems of countries trying to recover from armed conflicts. They are a major cause of disability, and frequently render extensive areas of land unsuitable for habitation and agriculture.

The proliferation of small arms also can have long-term consequences for post-conflict societies. There are more than 3 million small arms in circulation in El Salvador and Guatemala – approximately one for every six persons – which “has led to intensified violence and insecurity, with children and youth as the main victims.”<sup>27</sup> The danger posed by the easy availability of arms is reinforced by the increased propensity to resort to violence or the ‘culture of violence’ generated by armed conflicts. The WHO reports that “rates of youth violence rise in times of armed conflict and repression.”<sup>28</sup>

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### > International standards: Non-international armed conflicts

#### **Protocol II to the Geneva Conventions**

This Protocol is designed specifically to cover non-international conflicts. It is binding not just on governmental forces but on all the forces participating in conflicts. It provides the following:

- In addition to the acts prohibited by Common Article 3, terrorism, collective punishment and pillage are prohibited.
- Efforts shall be made to remove children and those responsible for their care from the areas most affected by hostilities to safer areas. However, the civilian population as a whole shall not be displaced unless it is necessary to do so for their own protection, or for “imperative military reasons.”
- If the civilian population is displaced, all possible measures shall be taken in order to ensure that they have adequate shelter, hygiene, health, safety and nutrition.
- “Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”
- The right of all children to education shall be guaranteed, despite the conflict.

## Refugee children

A refugee is a person who has fled his or her home country due to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group. Increasingly, persons who flee their home countries to escape from armed conflict are also recognized as refugees, even if they are not at risk of persecution. Persons who have fled their homes but remain within their own country are internally displaced persons. Asylum seekers are persons who have requested refugee status, but whose entitlement to be considered a refugee has not been determined.

In most cases, refugees leave most of their possessions behind. Many have suffered psychological trauma and the loss of family members. They frequently have no identity documents. When they arrive in large numbers, they may be housed in camps. Asylum seekers who arrive individually or in smaller groups usually require assistance while their claim for refugee status is being evaluated. In some countries, asylum seekers are detained in closed camps or detention centres while their status is determined. The UNHCR reports that approximately 1 million persons requested refugee status during 2002, and some 293,000 persons were recognized as refugees. Asylum seekers whose application is denied are generally considered illegal migrants and repatriated; in some exceptional cases, they may receive permission to remain in the host country for humanitarian reasons. Long-term solutions include integration into the country of refuge, or return to their country of origin when the situation that caused them to leave has been resolved. Some 2.5 million refugees returned to their country of origin in 2002.

At the end of 2001, there were some 7.7 million refugees under the age of 18 throughout the world. Children who arrive in a country of asylum without an accompanying family member are especially vulnerable. In refugee camps, they are vulnerable to neglect, sexual exploitation and physical abuse. If the security of the camps is inadequate, they may risk forcible recruitment or abduction by armed groups. In countries where applications for refugee status are examined on a case-by-case basis, children often have greater difficulty than adults in presenting their claim effectively. There are approximately 100,000 separated refugee children and asylum seekers in Western Europe; every year some 20,000 children separated from their families request asylum in Europe, North America and the Pacific. Where asylum seekers are detained, children are particularly vulnerable to psychological and social risks inherent in any deprivation of liberty. Whatever their particular situation, children separated from their families require assistance in locating and re-establishing contact with them.

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## ➤ International standards: Child refugees

### **The Convention on the Rights of the Child**

Article 22 states that:

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

It also states that child asylum seekers and refugees should be provided with assistance in tracing family members and provided with alternative care whilst deprived of a family environment, as envisaged by articles 20 and 21 of the Convention. The right not to be deprived of liberty except as a last resort, set forth in article 37 of the Convention, is also applicable to child asylum seekers.

### **UNHCR guidelines**

Every refugee has the right not to be forced to return to a country where his or her life, liberty or physical integrity is at risk. This implies a duty to examine the claim of all asylum seekers. The United Nations High Commissioner for Refugees (UNHCR) has adopted detailed guidelines on the treatment of child refugees and asylum seekers, and offers technical and material aid in dealing with this issue. Some of the most basic rights of child refugees and asylum seekers are:

- The right of child asylum seekers to a hearing that takes into account their age and circumstances and to special assistance in presenting their claim
- The right not to be detained while their claim is being considered, unless detention is strictly necessary, and in any event the right not to be detained for prolonged periods
- The right of unaccompanied children to protection of their identity and to be reunited with their family, where possible
- The right to protection from physical and sexual abuse and exploitation, especially when living in large refugee camps

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## **Internally displaced children**

The needs of displaced children are similar to those of refugee children: shelter, medical care and rehabilitation, food, protection from violence and exploitation, and assistance in re-establishing contact with their families.

Some 25 million persons have been forced to flee their homes to seek refuge within their own country, according to the Representative of the UN Secretary-General for Internally Displaced Persons. Approximately half of them are under the age of 18. The most common causes of displacement include armed conflict, other situations of generalized violence, gross violations of human rights and natural disasters. Many internally displaced persons find themselves at risk of violence, sexual assault and abduction, and frequently lack shelter, food and health services. The majority of internally displaced persons are women and children. Internally displaced people often remain close to the conflict or disaster they fled from, making them more vulnerable.

Displaced populations are especially vulnerable to malnutrition, and frequently lack adequate access to medical care and shelter.

### **The rights of children in occupied territories**

The Fourth Geneva Convention contains detailed provisions concerning the rights of the population in occupied territories. The following are the most relevant to children:

- Mass forcible transfers of the civilian population are prohibited.
- The occupying forces must take steps to preserve the identity and family relations of children and “facilitate the proper working of all institutions devoted to the care and education of children” in cooperation with the local and national authorities.
- Children who are orphaned or separated from their parents shall be cared for by near relatives or friends, whenever possible.
- Children may not be enrolled into formations or organizations subordinate to the occupying power, nor obliged to perform work of any kind.
- Children, expectant mothers, maternity cases and nursing mothers shall be given priority in the distribution of relief.

## *What can be done?*

### **Ratification of international instruments**

Legislatures in States that have not done so should consider ratifying or acceding to the international treaties that protect children from the dangers of armed conflict, to ensure that their present political commitment to protecting children becomes permanent and legally binding. Some of the most important instruments of this kind include:

- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts
- Protocols I and II to the Geneva Conventions
- The 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- The 1993 Paris Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction

Consideration should be given to adopting agreements concerning cooperation with other States in the prosecution of war crimes, for example, through the extradition of war criminals who seek refuge in their territory.

Countries that have not already done so also should consider becoming parties to:

- The Statute of the International Criminal Court, which recognizes the competence of the Court over crimes of genocide, crimes against humanity and war crimes
- The 1951 Convention on the Status of Refugees and its 1967 Protocol

Member States of the African Union should consider becoming parties to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

### **Law reform**

Criminal legislation should be reviewed with a view to ensuring that grave breaches of international humanitarian law – including deliberate execution, torture, mutilation and sexual abuse of civilians and attacks on the civilian population – are recognized as crimes, as required by the Geneva Conventions and Protocols.

Immigration legislation should be reviewed with a view to ensuring that the following rights are recognized:

- The right of child asylum seekers to humane treatment, appropriate legal and other assistance and prompt decision on their claim
- The right of child refugees to live with and be cared for by their families

Countries having displaced populations should consider adopting legislation based on the Guiding Principles on Internal Placement.

## **Other measures**

### **Measures concerning children and armed conflict**

Parliamentarians should strive to ensure that the armed forces receive adequate training in the rules of international humanitarian law, especially those concerning the protection of civilians.

When an internal armed conflict comes to an end, the competent legislative and administrative authorities should:

- Consider adopting an amnesty for children detained or convicted for reasons related to the conflict
- Establish programmes for the reinsertion of those displaced by the conflict and the reconstruction of communities damaged by hostilities, and ensure that such programmes take into account the special needs of children
- Reinforce programmes for the physical and psychological rehabilitation of those affected by the conflict, with priority to children and their caregivers

### **Measures concerning child asylum seekers and refugees**

- Ensure that guidelines on the protection of asylum seekers fully take into account the special needs of families with children and unaccompanied child asylum seekers
- Establish programmes to ensure that child asylum seekers whose claims are unfounded are returned to their family promptly and are treated humanely
- Establish programmes that assist child refugees in adapting to the society of the country of asylum
- Establish programmes designed to protect the cultural identity of child refugees

### **Measures concerning child victims of political repression**

After a period of political repression, it is important to take measures to help restore the rights of victims. Measures that have been adopted by some countries include:

- The establishment of programmes to trace children taken illegally or separated accidentally from their families
- Investigating the fate and whereabouts of disappeared persons in order to provide families with the information to which they are entitled, mitigate their psychological suffering and, when possible, recover the remains of the disappeared so that they may be treated in accordance with the religious or cultural beliefs of the family
- Providing special support (for example, free education) to children from families that have suffered the loss of the head of household
- Providing special support for the social and economic reinsertion of families who return from exile

## Chapter 8

# Sexual exploitation of children

*The Conference recommends that all countries allocate sufficient funds for prevention and education campaigns aimed at combating child prostitution and sexual abuse. [It] urges all countries to introduce or strengthen legislation to protect children and to prohibit the commercial sexual exploitation of children, which targets in particular the service providers, customers or intermediaries in child prostitution, child trafficking and child pornography, as well as the distribution of child pornography via electronic means such as the Internet. [It] strongly recommends that all countries establish or strengthen networks for co-operation between national and international law enforcement authorities, in order to counter the increasingly transnational nature of commercial sexual exploitation of children.*

*– 98<sup>th</sup> Inter-Parliamentary Conference (Cairo, Egypt, 15 September 1997)*

It is difficult to imagine a more shocking or shameful example of the violation of human rights than the sexual exploitation of children. Every year, more than 1 million children worldwide are forced into prostitution, trafficked and sold for sexual purposes or used in child pornography.<sup>29</sup>

The Convention on the Rights of the Child affirms the right of children to protection from “all forms of sexual exploitation and sexual abuse,” including child prostitution, child pornography and other unlawful sexual practices.<sup>30</sup> The term ‘sexual abuse’ is often used to refer to abuse within the home or family, but there is no real agreement as to the distinction between sexual abuse and sexual exploitation. For this reason, the term ‘commercial sexual exploitation’ is sometimes used to refer to child prostitution and child pornography. However, children clearly have the right to protection from any form of sexual exploitation, whether commercial or not: sexual exploitation of domestic servants or students by teachers (for example, trading good grades for sexual favours) violates the rights of the victims regardless of whether there is any ‘commercial’ dimension. Systematic sexual abuse of the civilian population in times of conflict or repression is also a crime against humanity, whether the victims are children or adults.

This chapter focuses on child prostitution, including sex tourism, and child pornography. Sexual abuse or exploitation of children within the home, or by relatives or other persons who have care and custody of children, is covered in Chapter 11. Child marriage, which in many cases also may be considered a form of sexual exploitation, is covered in Chapter 10 on harmful traditional practices. The trafficking of children for purposes of prostitution is covered in Chapter 9.



## Child prostitution

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines child prostitution as “the use of a child in sexual activities for remuneration or any other form of consideration.”

Studies and research carried out in the 1990s show that:

- From 28,000 to 30,000 children under the age of 18 are used for purposes of prostitution in South Africa, approximately half of whom are between the ages of 10 and 14<sup>31</sup>
- In India, from 21,000 to 30,000 prostitutes under the age of 18 are exploited in the six largest cities<sup>32</sup>
- The number of child prostitutes in the Dominican Republic is estimated to be some 30,000<sup>33</sup>
- The number of child prostitutes in the United States is estimated at 300,000<sup>34</sup>

Prostitution is not limited to girls. In some American cities, half of all child prostitutes are boys.<sup>35</sup> In Sri Lanka, prostitution of boys is more widespread than prostitution of girls, because of differential sex roles – girls are more protected, while boys have greater freedom from supervision and are expected to contribute to the family income. Prostitution of boys in Morocco also is reportedly due mainly to the expectation that boys will contribute to the family income and the lack of other employment opportunities.<sup>36</sup> Homophobia in the home and at school is a major contributing cause to prostitution by boys in some countries. A Canadian study found that many homosexual boys leave home due to discrimination and harassment, and turn to prostitution to survive.<sup>37</sup>

In some wealthier countries, poverty does not appear to be the main cause of child prostitution. In the United States, broken families, child abuse within the family and neglect, including emotional neglect, are among the main causes that children leave home and subsequently become involved in prostitution.<sup>38</sup>

The consequences of sexual exploitation are devastating. In addition to psychological, social and physical damages, child prostitutes are particularly vulnerable to AIDS and other sexually transmitted infections, because they are rarely in a position to negotiate safe sex.

Prostitution and substance abuse are closely linked. Children who are addicted to drugs or alcohol may turn to prostitution to support their habits, and adults who exploit child prostitutes may encourage them to use drugs to make them more dependent. Addiction can be a serious obstacle to rehabilitation of victims of sexual exploitation.

## Factors contributing to the commercial sexual exploitation of children

**Gender inequality and gender discrimination:** The pervasive legal, social and economic inequality faced by women and girls increases their vulnerability to commercial sexual exploitation. The intersection of gender discrimination and racial or ethnic discrimination heightens this vulnerability, as is evident in the disproportionate representation of racial or ethnic minorities in the commercial sex trade. The stigma attached to victims of sexual exploitation and abuse can lead to further marginalization and re-victimization.

**Poverty:** Poverty is not the only reason for commercial sexual exploitation of children, but it is the principal catalyst. For example, procurement agents thrive in urban slums and poor rural villages, where there are few educational or employment opportunities. Poverty may push families to go to desperate lengths to survive.

**Demand for sexual services:** Child-sex offenders can be found in any profession, in rich and poor nations, may be married or single, foreigners or locals, heterosexual or homosexual. The majority are male. They often justify their abusive behaviour on the grounds that the children have chosen to be involved in the commercial sex trade or come from cultures where children are more open and sexually experienced at an early age, and that they are helping these children by giving them money.

**HIV/AIDS:** Feeding the demand for child sex is the belief that a child is more likely to be 'clean' and unable to transmit diseases such as HIV/AIDS. However, children are physiologically more prone to disease and less likely than adults to be able to require 'customers' to use condoms. The HIV/AIDS epidemic has also increased the number of orphans and child-headed households. These children are often more vulnerable to sexual exploitation.

**Misuse of the Internet:** Child pornography, information on sex tourism and mail-order brides are openly available on the Internet. Forums such as chat rooms facilitate communication between gangs and trafficking networks and have become meeting grounds for pimps and predators stalking children.

**Family dysfunction/breakdown:** Some families live in desperately difficult circumstances. Parents may suffer from physical or mental illness, drug abuse or alcoholism, causing children to leave home at an early age to try to survive on the streets through whatever means are available, exposing them to the risks of sexual exploitation. Also, for many children, sexual abuse occurs in the home at the hands of a close relative or friend.

**Immaturity:** In many developed countries, some young people mistakenly gravitate toward prostitution not to escape poverty but simply to make extra money. They are lured by the prospect of earning large amounts of money quickly.

**War and instability:** Commercial sexual exploitation of children intensifies during times of instability. Children can become separated from their families, or suffer the consequences of the breakdown of social norms, protective systems and social structures.

**Corruption of authorities:** Some countries benefit from the revenues brought in from child sex tourism and other activities linked to the continued exploitation of children and, as a result, fail to provide adequate protective legislation and law enforcement to address the problem. In addition, corruption among police and other authorities has, in some instances, helped to sustain the sex trade.

## Sex tourism

Sex tourism is a major industry. For example, according to a 1998 United Nations report, every year some 200,000 German men travel abroad for sex.<sup>39</sup>

Inadequate laws and inefficient judicial systems are among the main causes of sex tourism affecting children, because they lead paedophiles to believe that they can go to developing countries and abuse children without risk of prosecution. For example, in some countries sexual offences against children can only be prosecuted on the basis of a complaint by the parent. As prevention and protection efforts improve in Southeast Asian countries, Central American countries are fast becoming desirable destinations for child-sex tourists. The problem is particularly grave in Costa Rica. The capital city of San José is home to more than 2,000 child prostitutes, who are regularly sold to foreigners as part of 'sex-tour' packages widely advertised on the Internet. There are approximately 70 websites promoting Costa Rica as a sex-tourist destination.<sup>40</sup>

Although women and girls are the main victims of sex tourism, boys are also affected. In Sri Lanka, most child prostitutes are boys whose clients are male tourists, while in some countries in Africa and the Caribbean, the exploitation of 'beach boys' by female tourists is a problem.

In 1995, the World Tourism Organization condemned the grave social, cultural and health consequences of sex tourism and adopted a series of measures and resolutions to combat this phenomenon.

## Child pornography

The Optional Protocol to the Convention on the Rights of the Child defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." The working definition adopted by the International Criminal

Police Organization (Interpol) is similar: “the visual depiction of the sexual exploitation of a child, focusing on the child’s sexual behaviour or genitals.”

Child pornography is harmful to children in two ways. First, it encourages the sexual abuse and exploitation of children. Second, every photo or videotape of child pornography is evidence of that child’s abuse. The distribution of that depiction repeats the victimization over and over again, long after the original material was created.

Due to the clandestine nature of the industry, information on the volume of child pornography in circulation is often exposed only through police action and subsequent prosecution. However, the scale of the problem is evident from the result of just one operation. In the late 1990s, a highly organized and technologically advanced child pornography ring known as the Wonderland Club was uncovered by police. The ring was found to have 180 members spread across 49 countries, possessing 750,000 pornographic images and over 1,800 hours of digitalized child sex abuse.

### **Child pornography and the Internet**

The digital age has facilitated the production and dissemination of child pornography. Advances in computer technology have made the creation and distribution of child pornography easier, cheaper and more difficult to detect. It has developed into a multimillion-dollar industry that can be run from within the exploiter’s home. The Internet is used by paedophiles to exchange information and to contact potential victims through chat rooms. It is virtually impossible to ensure the physical destruction of child pornography once it has been posted on the Internet.

### **The Internet Safety Group: New Zealand**

The Internet Safety Group was established to protect New Zealand’s young people from the risks of commercial sexual exploitation on the Internet through activities including:

- Distributing an Internet safety kit to schools with information on how to construct a safe Internet learning environment, and sample educational documents for students, parents and the wider community
- Establishing an information-rich, user-friendly website
- Establishing a toll-free phone line for queries in implementing the Internet safety kit
- Mounting a publicity campaign for the kit, website and phone line launch, and for the general issue of Internet safety
- Following up with further communication, cooperation, and collaboration

Source: Good practices in combating CSEC, ECPAT International

Digital technology also has led to a new phenomenon sometimes called 'pseudo-child pornography', which consists of creating or manipulating images to produce depictions of sexual activity involving children, without the participation of a real child in any sexual activity. Several countries, including Canada, the United Kingdom and the United States, have amended their legislation to prohibit this type of pornography. The UN Special Rapporteur supports making this material illegal because it encourages paedophiles to view their desires as normal and to engage in the exploitation of real children.

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## ➤ **International standards: Sexual exploitation of children**

### **The Convention on the Rights of the Child**

Article 34 of the Convention provides that:

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

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

### **The Optional Protocol on the sale of children, child prostitution and child pornography**

An Optional Protocol on the sale of children, child prostitution and child pornography was adopted in May 2000 and entered into force in January 2002. Whereas the Convention emphasizes the prevention of sexual exploitation, the Protocol emphasizes the criminalization of child prostitution and pornography and requires that any participation in these acts, including attempt and conspiracy, be subject to penalties that take into account the gravity of these offences (article 3). It also requires States to close any premises used for child prostitution and pornography and seize and confiscate the proceeds of such activities, as well as any means used to commit or facilitate them (article 7) and contains detailed provisions concerning the treatment of victims. (See Chapter 9.)

### **ILO Convention No. 182**

International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour also requires States parties to adopt penal or other sanctions against child prostitution and pornography. Like the Optional Protocol, it requires that legal provisions that protect children against sexual exploitation apply to all persons under the age of 18. It has been ratified by 147 States.

## *What can be done?*

A comprehensive programme against the sexual exploitation of children should include components on prevention; detection, reporting and intervention; reduction of demand and the prosecution of offenders; and the proper treatment of victims and compensation. It should be based on empirical research and designed for implementation on the local and national level. It should also include international cooperation, in particular in the prevention and repression of trafficking for purposes of prostitution, pornography and sex tourism.

### **Ratification of international instruments**

States that have not already done so should give serious consideration to becoming party to the Optional Protocol on the sale of children, child prostitution and child pornography, in order to establish an appropriate framework for reviewing the provisions of criminal law and procedure concerning the sexual exploitation of children.

States that have not already done so should consider ratification of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and by so doing make a clear commitment to the adoption of comprehensive, time-bound programmes of action for the elimination of the sexual exploitation of children as well as other particularly severe forms of exploitation of children.

### **Law reform**

The criminal law should be reviewed to ensure that:

- It prohibits all forms of sexual exploitation of all children, including both sexes and all ages under the age of 18
- The possession, production and dissemination of child pornography are prohibited
- Child victims of sexual exploitation are not subject to punishment as criminals or juvenile delinquents
- All forms of sexual abuse of children are punishable by sentences that reflect the gravity of these offences
- Neither filing of a complaint nor prosecution of an offence requires the permission of the parents of the victim

Evidentiary law and procedures should be reviewed to ensure that:

- The law does not establish requirements (such as those requiring witnesses to abuse) that deter or constitute an unnecessary obstacle to prosecution (one example cited by the UN Special Rapporteur on the sale of children, child prostitution and child pornography in his 2001 mission report to Morocco is legislation that imposes a prison sentence on an unwed mother unless she is able to prove with the testimony of two witnesses that the father of the child committed rape).
- Every effort is made to balance the right of the accused to due process with the need to avoid re-victimization of child victims (for example, through laws that allow videotaped declarations of the victim to be accepted as evidence or allow child witnesses to be cross-examined in a child-friendly setting through the intermediary of a court-appointed specialist).

Consideration also should be given to the adoption of legislation establishing extraterritorial jurisdiction over crimes involving the sexual exploitation of children abroad and establishing an appropriate legal basis for extradition and international cooperation in the investigation and prosecution of crimes involving the sexual exploitation of children (see the box on universal jurisdiction in Chapter 9).

### **Balancing due process and the rights of the child victim**

In Durban (South Africa), the UN Special Rapporteur visited the Child Abuse Court, which is currently the only one in the country specially designed to deal with sex offences against children. The court uses video link facilities so that the child can give his or her testimony in a different room and does not have to face the accused. A social worker sits with the child, and the prosecutors, who are specialists in dealing with child victims, address their questions to the child with sensitivity and patience.

Source: UN Special Rapporteur on the sale of children, child prostitution and child pornography, Report on a mission to South Africa, E/CN.4/2003/79/Add.1, para.63

## Prevention

Programmes to reduce sexual exploitation should recognize that victims of other rights violations are more liable to become victims of sexual exploitation or trafficking. The approach should encourage all social services that come in contact with children, such as health services, schools or day-care centres, to be part of the identification and referral of abuse at home.

Efforts should be made to reach out to children who have left home and dropped out of the school system in order to provide them with shelter and reinsertion into an appropriate form of education, and an alternative to life on the streets.

Parliamentarians should promote improved access to quality education, which specifically includes addressing the obstacles to the full participation of girls. Primary education should be compulsory and available free to all (including school fees, textbooks and uniforms). In addition to providing children with the skills to change and improve their lives, schools must educate children to recognize and avoid high-risk situations, while addressing the specific needs of those children who have suffered from sexual abuse. At the same time, schools must provide a safe and protective environment for children, free from the threat of sexual abuse or exploitation.

Parliamentarians are encouraged to use their leadership to secure financial commitments for programmes to combat sexual exploitation of children. This includes budgeting for prevention measures aimed at root causes of sexual exploitation, such as poverty alleviation, promotion of gender equality, education and protection of children without caregivers.

### Prevention in rural Thailand

The northern regions of Thailand are well-known prostitution recruitment areas for young children. The Development and Education Programme for Daughters and Communities Centre (DEP) has been carrying out a preventive programme for girls at risk of being sent or recruited into prostitution, who are given temporary shelter and are enrolled in educational programmes. The programme provides skills training, non-formal education and leadership training. A local academic institution, the Rachapat Institute, is trying to strengthen cooperation between local NGOs and local government institutions. The Institute provides training to NGOs and local teachers to enable them to take action against child prostitution. The programmes are enacted with the idea that if all sectors of the local community, including the children, are made aware of the problem and the dangers of prostitution through education, there is a fair chance of protecting even the children at greatest risk of being sold or trafficked for prostitution.

Source: UN Special Rapporteur on the sale of child, child prostitution and child prostitution, E/CN.4/1998/101



Parliamentarians should also enquire about and ensure clarification of mandates and reporting and referral mechanisms of the different line ministries in the cases of abuse and violence.

## **Sexual health education**

Sexual health education of children is important for several reasons:

- It enables the child to understand the nature of sexual activity and helps safeguard against sexual abuse based on misrepresentation of the nature of the act.
- It helps children who become sexually active to protect themselves against the dangers of sexually communicable diseases, including HIV infection.
- It can help reduce the incidence of adolescent pregnancy, including pregnancy in unmarried teenagers, which in many countries may lead to prostitution.

Recent studies also show that, rather than encouraging early sexual activity, quality programmes actually do not lead to increased sexual activity and can in fact help delay the event of first intercourse.

Parliamentarians and other opinion makers should actively support sexual health education programmes that:

- Begin before the onset of sexual activity
- Provide a clear explanation of the risks of unprotected sex and the methods, including abstinence, of reducing these risks
- Include the practice of communication and negotiation skills

## **Reporting, detection and intervention**

Mechanisms for reporting crimes against children and for providing assistance to victims should be widely available and publicized. Measures that have proven useful include:

- Telephone hotlines
- Providing adolescents with easy access to confidential counselling
- Ensuring access to police stations in rural areas
- Ensuring that female victims have ready access to female officers
- Ensuring that all police officials understand the gravity of sexual exploitation of children and the needs of victims
- Establishing special teams composed of police officers and medical and/or social personnel to receive and investigate complaints of sexual exploitation

## **A child-sensitive approach to investigation**

In the United States, the San Francisco Police Department is trying to address the complex issues involved by having police experts on 24-hour call for any cases that involve child prostitution and pornography.

The subsequent investigation follows a 'triad approach', whereby a social worker, a doctor or nurse therapist and a police officer immediately attend child victims. The State then provides the child victim with psychological support and medical care. Experience shows that most rehabilitated victims can cope as long as counselling is available. The San Francisco police also believe that it is crucial for trauma specialists to work with victims of sexual abuse and rape. This is particularly important since law enforcement is the first entry point for the victim into the criminal justice system and immediate confidence-building is required.

Source: UN Special Rapporteur (supra) Report of a mission to the United States, E/CN.4/1997/95/Add.2,

## **The role of the media**

The media can play an important role with regard to sexual exploitation of children. In the first place, the media can act so that it neither violates the rights of child victims nor prejudices the rights of accused offenders to a fair trial. Second, the media can avoid reporting that reinforces prejudices and preconceived ideas that contribute to a tolerance of sexual exploitation of children, and help mobilize public opinion to participate in the struggle against sexual exploitation. Ethical reporting should:

- Respect the privacy and the best interests of the child victims
- Avoid reporting that may prejudice the right of the offender to a fair trial and thus prevent prosecution
- Avoid reporting that explicitly or implicitly attributes blame to the victim

Media content that fosters the image of adolescents or younger children as sexually mature also should be avoided.

Parliamentarians should ensure that basic rules are enshrined in legislation, and that more comprehensive and detailed guidelines are adopted, applied and monitored, in particular by the relevant professional associations and bodies.

## Sex tourism

Programmes for the prevention of sex tourism should be established by both sending and receiving countries, and should include the following actions:

- Mobilize competent departments, including National Tourism Administrations, to undertake measures against organized sex tourism
- Gather evidence of organized sex tourism and encourage the education of concerned government officials and top executives in the tourism sector about the negative consequences of this activity
- Issue guidelines to the tourism sector insisting that it refrains from organizing any forms of sex tourism and from exploiting prostitution as a tourist attraction
- Establish and enforce legal and administrative measures to prevent and eradicate child sex tourism, in particular through bilateral agreements to facilitate the prosecution of tourists engaged in any unlawful sexual activity involving children and juveniles

### The tourism industry and sex tourism

The private sector can:

Cooperate with NGOs at points of origin and destination in the identification of patterns of sex tourism and appropriate preventive measures

Inform tourists of the negative consequences of sex tourism for children and warn them of the potential legal and health consequences

Develop and strengthen professional codes of conduct and industry self-regulatory mechanisms

Educate travel professionals on negative consequences of sex tourism

Adopt incentives and rewards for enterprises that take action against sex tourism

Source: World Tourism Organization, Resolution A/RES/338 (XI)

## Recovery and reintegration

Many of the children abused through sexual exploitation are multiply disadvantaged and are in need of long-term, comprehensive and accessible services. Recovery and reintegration programmes should help restore a child's dignity and physical and mental health. In addition, these programmes should aim to bring about an improvement in the child's previous circumstances, through increased physical well-being, elevated self-esteem and an improved capacity for self-protection.

Parliamentarians should:

- Adopt a non-punitive approach to child victims of commercial sexual exploitation in keeping with the rights of the child, taking particular care that judicial procedures do not aggravate the trauma already experienced by the child and that the response of the system is coupled with legal aid assistance, where appropriate, and provision of judicial remedies to the child victims
- Provide/strengthen a wide range of culturally appropriate and accessible services for the child victims of commercial sexual exploitation, which take into account the differing needs and interests of boys and girls; these may include peer counselling, hotlines/help lines in local languages, shelters, medical treatment, psychosocial counselling and vocational training
- Train health and social service providers and religious and community members in the provision of child-friendly services, including medical and psychosocial services, HIV/AIDS, substance abuse programmes and life skills development for child victims

### **Medical and psychosocial training of service providers**

Recognizing the critical role of medical and psychosocial service providers in the prevention of sexual exploitation and abuse, and in the victim's recovery and reintegration into society, the Human Resources Development (HRD) Section of the Economic and Social Commission for Asia and the Pacific (ESCAP) developed and implemented a training programme for medical and psychosocial service providers in the Greater Mekong Sub-region, South Asia and the Philippines. The goal is to help sexually abused and sexually exploited children and youth through upgrading the skills of medical and psychosocial service providers who are well placed to address their specific needs.

Source: Good practices in combating CSEC, ECPAT International

## Chapter 9

### Trafficking and sale of children

*Needing to find work, but unable to pay any transportation cost, she accepted a bus driver's offer to take her for free to a factory job in Thailand. She was sold there to a brothel owner, who told her that she could not leave until she worked off the money he had paid the bus driver. She has never been told how much this was, how much she earns per client or how long it will take her to work off her debt.*

*– Story of a child victim of trafficking<sup>41</sup>*

Trafficking of persons is on the increase. 200,000 to 250,000 women and children are trafficked annually in South-East Asia alone.<sup>42</sup> Trafficking in children “is truly a global phenomenon connecting all countries and regions of the world in a complex network of illicit movement” that affects an estimated 1.2 million children annually.<sup>43</sup>

Traffic in persons has been defined as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>44</sup>

However, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered trafficking, regardless of whether or not force, abduction, fraud and the other means mentioned above are employed.

Sale of children means “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”<sup>45</sup> The concept of sale overlaps with that of trafficking, except that trafficking implies a practice whereby a child is moved.

Trafficking may be from one country to another, but may also occur within a country, often from rural to urban areas. The smuggling of migrants, although illegal, is not trafficking if the migrants freely contract the services of smugglers and if they are not exploited. Smuggling becomes trafficking if fraud or deception of the migrants is involved, or if they are forced to live and work in conditions of servitude.

The root causes of sale and trafficking are multiple and complex, and include poverty, lack of employment opportunities, low social status of the girl child and a general lack of education and awareness. Minority and tribal children, stateless or undocumented children and children in refugee camps are particularly vulnerable.

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## ➤ **International standards on trafficking**

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

Article 35 of the Convention on the Rights of the Child provides that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”. Children who have been victims of any form of exploitation have the right to physical and psychological recovery and social reintegration (article 39). If the victim’s right to identity has been affected, the State also has an obligation to provide assistance and protection in re-establishing the victim’s true identity (article 8). Identity includes name, nationality and family ties (see Chapter 6).

### **The UN Convention on Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)<sup>46</sup>**

This Convention and Protocol were adopted by the UN General Assembly on 15 November 2000 and entered into force in December 2003. In addition to calling for comprehensive policies and programmes to prevent trafficking in persons, especially women and children, they contain detailed provisions on the obligation of legislatures to enact laws against trafficking, on law enforcement and on the treatment of victims. The provisions concerning law enforcement deal with:

- the exchange of information between law enforcement agencies concerning persons and groups suspected of international trafficking and the means and methods used;
- border controls;
- the security of identity and travel documents; and
- the training of law enforcement and border control authorities.

The Protocol also contains detailed guidelines regarding the repatriation of victims of trafficking to their country of origin (articles 7 and 8).

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## Trafficking and sexual exploitation

The trafficking of children, especially girls, for purposes of prostitution is well documented in many parts of the world.

- In 2002, it was estimated that from 28,000 to 30,000 girls were engaged in prostitution in South Africa, many of them from Angola, Cameroon, Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Rwanda, Senegal, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.<sup>47</sup>
- Adolescent girls from Africa are trafficked to Europe, in particular Belgium, Italy and the Netherlands. An estimated 2,000 to 6,000 girls and young women are trafficked into Italy annually, most of them between the ages of 14 and 18.<sup>48</sup>
- Children from Bangladesh and Nepal are trafficked to India for purposes of sexual exploitation. Children from South-East Asia are trafficked in large numbers to Japan and Thailand. Trafficking of girls from rural areas to cities for purposes of prostitution is widespread in Cambodia, China, Thailand and Viet Nam.<sup>49</sup>
- The collapse of the economies and social structures of Eastern Europe in 1989 and the Balkan crisis gave rise to large-scale trafficking from Eastern to Western Europe and within Eastern Europe. Despite considerable efforts in law enforcement and victim protection, every country in the region is still either a destination, a point of transit or a country of origin for trafficking in human beings. Within this large pattern more specific ones can be detected, such as the traffic of adolescent girls from the Baltic States to Scandinavia, from Russia and the Ukraine to Germany and Poland, and from Albania to Italy and Greece.
- It has been shown that as stricter legislation is developed in some countries the trafficking route changes through other transit and destinations countries. The very flexible nature of trafficking networks requires a global or regional approach rather than this issue being addressed in one country at a time.

The victims of this particular form of trafficking are often stigmatized, which poses special challenges to social reintegration and even repatriation.

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## ➤ **International and regional standards on trafficking and sexual exploitation**

### **The Optional Protocol on the sale of children, child prostitution and child pornography**

This Protocol to the Convention on the Rights of the Child entered into force on 18 January 2002. It applies to the sale of children for purposes of sexual exploitation, child labour or adoption, and covers prevention, prohibition and assistance to victims. With regard to prevention, the Protocol indicates that this should include efforts designed to make the general public more aware of the harmful effects of sale on the children as well as efforts that focus on the most vulnerable.

The most detailed provisions of the Protocol are those concerning prohibition and punishment. It indicates that the criminal or penal law shall cover the person who offers a child for sale, anyone who buys a child and any intermediaries, and that any participation in such acts (including attempt or complicity) shall be punished by penalties “that take into account their grave nature”. It also indicates that the Parties to the Protocol shall assist one another in investigating such crimes and bringing the offenders to justice, and that premises used for these purposes shall be closed and the proceeds seized.

The Protocol also contains provisions designed to help establish ‘universal jurisdiction’ over these crimes.

### **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**

In January 2002 the South Asian Association for Regional Cooperation adopted a treaty on the trafficking of women and children for purposes of prostitution. It is narrower than some other instruments in that it applies only to trafficking for purposes of prostitution, but it is broader than the Palermo Protocol in that it applies to trafficking within a country as well as internationally.

The SAARC Convention obliges States Parties to criminalize trafficking and establish penalties that take into account the grave nature of this crime, and to sensitize law enforcement agencies and the judiciary with regard to the nature and causes of trafficking in women and children.

It also contains detailed provisions concerning cooperation among national law enforcement agencies.

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## Trafficking and child labour

Recent studies in Africa and Asia confirm that children are often trafficked for domestic labour or to work in service industries, construction, agriculture, fishing and begging. Various patterns of trafficking have been documented in different parts of the world.

- In West Africa, children are often trafficked by 'employment agencies' for domestic service or work in mines or on plantations.
- Children from Central and Eastern Europe are trafficked to Western Europe into the service and entertainment sectors, as well as for begging, prostitution and petty crime.
- In South Asia, children are trafficked for use in carpet and garment factories, construction, tea plantations and begging.
- In the Middle East, trafficking of girls for domestic labour is the predominant form of trafficking of children.
- In South-East Asia, trafficking occurs for a wide range of services and for industrial and agricultural work.

Trafficking for purposes of child labour is largely demand-driven, and is part of a large unmet demand for labour that is cheap and malleable. The ILO points out that child labour is attractive not because it is cheap, but rather because children are easier to abuse, less assertive and less able to claim their rights than adults; they can be made to work longer hours with less food, poor accommodation and no benefits. Victims of trafficking for child labour often work in conditions that risk their physical and mental health.

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### > **International standards: Worst forms of child labour**

The Worst Forms of Child Labour Convention (ILO Convention no. 182) provides an entry point to address the most harmful situations and is a stepping stone towards the ultimate goal of ending child labour altogether. It defines as a Worst Form of Child Labour:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children;
  - debt bondage and serfdom;
  - forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
  - the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and
  - the use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs (as defined in relevant international treaties).
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## International adoption

In the last two decades, intercountry adoption has progressively changed. From its initial purpose of providing a family environment for children, it has become more demand-driven. Increasingly in industrialized countries, intercountry adoption is viewed as an [option] for childless couples.... To meet the demand for children, abuses and trafficking flourish: psychological pressure on vulnerable mothers [to give up their children]; negotiations with birth families; adoptions organized before birth; false maternity or paternity certificates; abduction of children; children conceived for adoption; political and economic pressure on governments.... Indeed, a booming trade has grown in the purchase and sale of children in connection with intercountry adoptions.

Source: C. Saclier, International Social Service, cited in Intercountry Adoption, Innocenti Digest No. 4.

## Trafficking, sale of children and adoption

Trafficking and sale of children for purposes of adoption have been reported at the national level, but the danger is much greater in intercountry adoption. An estimated 20,000 babies from Asia, Central and Eastern Europe and Latin America are adopted annually by couples and individuals from wealthy countries, and the demand for healthy babies is growing rapidly.<sup>50</sup>

Illegal practices used to obtain children for adoption include:

- Abduction
- Falsely informing a mother who gives birth in a hospital or clinic that her newborn has died
- Offering cash or goods in exchange for a child
- False declarations of paternity
- Substituting the name of an adoptive mother or an intermediary for that of the biological mother when registering the birth of a child
- Obtaining parental consent to adoption under false pretences
- Inciting or pressuring vulnerable pregnant women, especially single adolescents, to agree to abandon their child at birth

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## ➤ **International Standards on trafficking and adoption**

### **The Convention on the Rights of the Child**

In addition to the provisions concerning adoption in general, the Convention contains additional standards concerning intercountry adoption. It states that:

- intercountry adoption is acceptable only as a last resort when foster placement, adoption or other suitable alternative care cannot be found in a child's country of origin;
- no one involved in intercountry adoption should receive improper financial gain; and
- safeguards and standards applicable to intercountry adoption must be equivalent to those existing in the case of national adoption.

Countries that allow intercountry adoption are also encouraged to enter into international agreements to prevent abuses of and ensure adequate protection of the rights of the children concerned.

### **Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption**

This Convention, which came into force in 1995 and now has 55 Parties, contains provisions designed to ensure that consent for the adoption has not been obtained improperly, and requires that:

- persons, institutions and authorities whose consent is necessary for adoption have been counselled as necessary and informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;
- such persons, institutions and authorities have given their consent freely, in the required legal form, expressed or evidenced in writing;
- consent has not been induced by payment or compensation of any kind and has not been withdrawn; and
- the consent of the mother, where required, has been given only after the birth of the child.

Ratification of this treaty is an appropriate way for the countries that allow international adoption to fulfil their obligations under article 21 of the Convention on the Rights of the Child.

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## **Universal jurisdiction: A tool for fighting the worst violations of the rights of children**

Normally, criminal laws apply only in the country where they were enacted. However, in some instances, laws can apply to crimes committed by citizens while abroad, or crimes against national interests committed abroad by a foreigner.

Gaps in legislation may allow serious crimes to go unpunished when there is an international dimension. For example, if a European who purchases a child in an Asian country manages to leave the country before the crime is discovered and there is no extradition treaty between his country and the country where the crime took place, then he or she could escape prosecution.

Agreements between States that they will widen the jurisdiction of their national courts help to ensure that certain crimes committed in the territory of any one of them will not go unpunished. The Optional Protocol on the sale of children, child prostitution and child pornography is the most recent human rights instrument to establish the basis for this kind of international cooperation.

All the Parties to the Protocol agree to:

- make the sale and prostitution of children, and their use in pornography, a crime;
- ensure that their courts have jurisdiction over such crimes when committed in the national territory;
- give their courts jurisdiction over any person physically present in their territory who is suspected of committing such a crime regardless of his or her nationality, the nationality of the victim or where the crime took place (unless the suspect is extradited); and
- recognize these crimes as extraditable offences under any extradition agreements between any of the Parties to the Protocol.

The International Criminal Court also has jurisdiction over certain crimes against children, including trafficking in children and the forced transfer of children from one ethnic group to another, when these practices take place in circumstances that allow them to be considered crimes against humanity or a form of genocide.

## Trafficking and impunity

Inadequate legislation and weak law enforcement are two of the root causes of the trafficking and sale of children. Problems include gaps in the criminal law that fail to define trafficking as a crime, or only define it as a crime when committed for the purposes of prostitution, and inadequate funding of law enforcement mechanisms, including the police, border guards and the judiciary.

*[T]he sale [or] trafficking of a person reduces that person to the level of a commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out. Thus, the argument that in most cases of adoption the children end up in much improved living conditions would not in any way justify the trafficking of babies and children.*

*– Ofélia Calcetas-Santos, UN Special Rapporteur on the sale of children, child prostitution and child pornography*

## *What can be done?*

### **Ratification of international instruments**

In order to lay a solid foundation for enhanced international cooperation in the prevention and repression of trafficking and create an appropriate framework for law reform, States that have not already done so should consider becoming parties to:

- The Optional Protocol on the sale of children, child prostitution and child pornography
- The UN Convention on Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

Countries that allow or recognize intercountry adoption should likewise consider ratification of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.

### **Law reform**

All countries should review their legislation in the light of the principles recognized by the international instruments mentioned above, and in particular:

- They should ensure that all forms of trafficking of children for any purpose are punishable under criminal law by sentences that reflect the gravity of this offence.
- They should include an offence of trafficking in persons in the criminal code, defining trafficking in such a way that it encompasses all forms of human trafficking. The definition of trafficking in the criminal code should be modelled after the definition contained in the Palermo Protocol (articles 3 and 5):

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”
- The legal framework should reflect the specific protection needs of trafficked children, which may not be the same as those of adults (such special protection measures could include the right to humanitarian visas and legal guardianship, described below). In any legal or administrative procedures, where there are doubts about the age of the trafficked person they should be considered a child and benefit from the appropriate protection.

- Legislation should be adopted to give effect to universal jurisdiction for trafficking and sale of children.
- Legal requirements and procedures that may cause the 'revictimization' of victims of trafficking should be eliminated as far as possible, and an agency mandated to provide children who participate in legal proceedings (for example, as witnesses in a criminal prosecution) with appropriate assistance.
- The right of victims to privacy, to claim compensation for damages and, when necessary, to prompt assistance in the restoration of their identity should be recognized and regulated by law.

In addition, in order to deter the sale or trafficking of children for purposes of adoption, States that allow or recognize adoption should review their legislation to ensure that the following practices are prohibited:

- Improperly inducing consent for adoption
- Accepting fees or compensation in excess of those permitted
- Arranging adoption without authorization of the competent authorities
- Depriving a child of his or her identity (e.g. by making false declarations of paternity, maternity or neonatal death or falsifying identity documents)

### **Developing programmes: The need for a comprehensive approach**

The implementation of international obligations related to trafficking should not be limited to legal measures. States also have an obligation to develop policies and programmes to combat trafficking and to protect and offer assistance to people who are trafficked. Legislatures can take the lead in this regard.

Programmes and policies to reduce trafficking in children must be comprehensive and should stress prevention through a number of measures, including the following:

- Reduce the vulnerability of children, families and communities by attacking the root causes of trafficking, including poverty and social attitudes. Legislators may use their leadership to secure financial commitments for anti-trafficking measures. These include social budgeting for prevention measures aimed at addressing poverty alleviation, education, promotion of gender equality and non-discrimination, and protection of children without caregivers

- Address the processes associated with trafficking at the point of origin, at transit areas and at destinations
- Close legislative loopholes and strengthen law enforcement
- Reduce public tolerance of trafficking and, where possible, the demand by clients
- Reinforce cooperation among the countries of origin, transit and destination of specific trafficking routes with regard to prevention, law enforcement and assistance to victims. Legislators should work towards regional cooperation between countries, potentially through Memorandums of Understanding between bordering countries

### **Memoranda of Understanding between bordering countries: The case of Mali/Côte d'Ivoire**

In February 2000, UNICEF and the ILO supported a sub-regional consultation in Libreville, Gabon, which led to the creation of a Memorandum of Understanding on child trafficking between the Governments of Côte d'Ivoire and Mali. The first such agreement signed in Africa, it provided for cross-border cooperation in the repatriation of children and the detection and tracking of child trafficking networks. On 24 March 2000, Mali also adopted a comprehensive National Emergency Plan to Fight Against Child Trafficking.

### **Advocacy**

For anti-trafficking frameworks to be truly effective, legislation and programming needs to be supplemented by advocacy. Parliamentarians can play crucial roles in effective advocacy.

In so doing, MPs should keep in mind that child trafficking is a violation of multiple human rights. In addition to the exploitation implicit in trafficking, the development and even survival of the child is threatened. When child trafficking is challenged, the rights of victims must be ensured; in particular, victims must be protected against re-victimization, the best interests of the child must be given priority in legal proceedings, and the participation of children must be provided for in decisions regarding their well-being.



## Addressing connections between HIV/AIDS and child trafficking

HIV/AIDS is both a cause and consequence of being trafficked. The disease heightens poverty and has left millions of children as orphans. Child prostitutes are particularly susceptible to HIV/AIDS. Domestic workers, street children and child labourers are frequently victims of rape. The stigma often attached to AIDS orphans or rape victims intensifies their vulnerability to trafficking and rights violations. In a recent address, Carol Bellamy, the Executive Director of UNICEF, laid out six challenges:

1. Leaders must break the silence that denies the existence of HIV/AIDS, prevents discussion of the human rights violations fuelling the pandemic and constrains the mobilization of resources and partnerships required to expand prevention and care.
2. Efforts to ensure that every child goes to school must be intensified.
3. Young people's rights to information and services for HIV prevention must be fulfilled.
4. The special needs of young people involved in sex work or the use of intravenous drugs must be addressed.
5. All forms of gender-based discrimination and the exploitation and abuse of girls and women must be ended.
6. All sectors of society must be quickly mobilized in the stepped-up drive against HIV/AIDS.

Source: 'Accelerating the Momentum in the Fight against HIV/AIDS in South Asia', Kathmandu, February 2003

## **An example of interception**

Effective interception and rescue can prevent child victims of trafficking from further exploitation. Interception can take place at the points of departure, transit and arrival. In the Philippines, the International Programme on the Elimination of Child Labour (IPEC) has been supporting the Visayan Forum, an NGO that runs a programme to identify and receive children arriving unaccompanied at Manila Port and to provide them with basic information that will reduce their vulnerability (for example, about accommodation, available services and their rights), as well as access to social services if they need them. The model of identification of at-risk children, reception and introduction to multisectoral services at the point where the children become most vulnerable is an effective protection mechanism, since it interrupts the chain of trafficking. It could be used at other places where children are vulnerable, such as airports and train or bus stations.

The Visayan Forum project has built strong links with the captains of the ships on which the children travel, with the crews of the ships and with the shipping lines. Some captains provide free passage to children to return immediately to their homes.... [This] is a good example of coalition building and awareness-raising among groups directly involved in the movement of children.

Source: Unbearable to the Human Heart, pp.48-49

## **Protection and assistance**

All too often the importance of protecting and assisting the victims of trafficking is overlooked. The rescue and recovery of such children and their return or reintegration into their home community is perhaps the most challenging area of programme intervention. Victims of trafficking have multiple, urgent needs that include:

- Accommodation
- Basic provisions
- Confidential counselling
- Assistance to return
- Legal advice
- Protection against reprisals
- Support to begin building a future

States may therefore consider the following actions:

- Establish collaborative relations with NGOs to offer assistance in countries of destination in the form of safe and adequate accommodation, health care and counselling
- In cases where trafficked persons return to their countries of origin, cooperate with NGOs and with national authorities in both countries of origin and transit countries to assist in the safe return and reintegration of trafficked persons. This involves ensuring that proper travel and identity documents are provided, and that children who are returning to their home countries are always accompanied, either by a parent or by temporarily appointed guardians
- Refer trafficked persons returning to their home countries to NGOs that provide reintegration assistance
- Where appropriate, create an office in countries of origin to coordinate safe return and reintegration of trafficked persons

# Chapter 10

## Harmful traditional practices

The Convention on the Rights of the Child prohibits traditional practices harmful to the health of children. The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights defines the concept more broadly in Article 1(g) as "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity".

During the last decade, a broad consensus has emerged that these practices include female genital mutilation, child marriage, forced marriage, 'honour killing' and the preferential feeding and care of male children. The Committee on the Elimination of Discrimination against Women has also referred in this context to polygamy and marital rape. Other harmful traditional practices include:

- scarring, tattooing, binding and branding
- dowry-related killings
- abandonment or neglect of children with birth defects
- female infanticide
- tests of virginity of future brides
- forced feeding of young women and nutritional taboos for pregnant women
- killing of children related to ritual sacrifices
- gifting of virgin girls to temples, shrines or priests (e.g. Deuki, Devadasi, Trokosi)

This chapter focuses on female genital mutilation, honour killings and child marriage.

### Female genital mutilation

Female genital mutilation, also known as female genital cutting or female circumcision, is widespread in some 29 countries the majority of which are in sub-Saharan Africa. In many countries, well over 90 per cent of women of reproductive age have been circumcised.<sup>51</sup> In recent years, the practice has spread from countries where it is customary within refugee and migrant populations. The UN Special Rapporteur on traditional practices affecting the health of women and the girl child has praised the valuable contribution to the struggle against female genital mutilation and other harmful practices made by religious leaders in Africa who have campaigned against and denounced the erroneous exploitation of religions to perpetuate such practices. Female genital mutilation is an initiation rite in many

societies, frequently carried out by traditional practitioners with rudimentary tools in unsanitary conditions. In addition, according to the UN Special Rapporteur on traditional practices affecting the health of women and children, it is a deeply rooted symbolic reaffirmation of the subordination of women to men.

Different forms of genital mutilation are practiced. The most common form, excision, involves removal of the clitoris. About 15 per cent of the victims are subjected to infibulation, or the partial closure of the vaginal opening, usually by sewing. An estimated 100 to 140 million women and girls have undergone some form of genital mutilation, and 2 million are at risk annually.<sup>52</sup>

The health consequences of this practice vary according to the procedure performed. Short-term consequences can include severe pain, shock, haemorrhage and infection; haemorrhage and infection may be fatal. Long-term consequences include scar formation, incontinence, sexual dysfunction and difficulties with childbirth.

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## ➤ **International standards on female genital mutilation**

### **The Convention on the Rights of the Child**

Article 24 of the Convention on the Rights of the Child, concerning the right to health, contains a paragraph that provides:

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

### **General recommendations of the United Nations Committee on the Elimination of Discrimination against Women**

The Committee's general recommendation 14 recommends:

- (i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;
- (ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;
- (iii) The encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to cooperate in influencing attitudes towards the eradication of female circumcision; and
- (iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision.

It further recommends including in national health policies appropriate strategies aimed at eradicating female circumcision in public health care. These could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision.

### **African standards on harmful traditional practices**

The provisions of African treaties on the rights of children and women provide additional protection. Article 21 of the African Charter on the Rights and Welfare of the Child, entitled ‘Protection against Harmful Social and Cultural Practices’, provides that:

States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; ...

The Charter also condemns all child marriage in the strongest terms:

Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

In June 2003, the African Union adopted a Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples’ Rights. The draft Protocol had been adopted at a 1999 meeting of African parliamentarians. Article 2 requires States Parties to “enact and effectively implement appropriate legislation or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and well-being of women” and adds that:

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for women and men.

Article 5 of the Protocol, entitled 'Elimination of Harmful Practices', provides:

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6 of the Protocol provides that "States Parties...shall enact appropriate national legislative measures to guarantee that...no marriage shall take place without the free and full consent of both parties [and] the minimum age of marriage for women shall be 18 years...".

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## **Parliamentarians campaigning against female genital mutilation**

In September 2001, on the occasion of the 106<sup>th</sup> Inter-Parliamentary Union (IPU) Conference, a panel was organized on the question of female genital mutilation (FGM), marking the beginning of a parliamentary campaign to combat the practice. As a result of the panel, the following challenges and strategies were identified by participants:

### **Main challenges**

- Immigrant communities are closely knit, and cases of FGM are only detected during visits to hospital. Children are sworn to silence and are completely defenceless.
- At the national/local level, most children are brought up in a communal system where both their parents and other relatives bring pressure upon the girl-child to undergo FGM, failing which she could be severely ostracized and face the threat of remaining unmarried.
- Governments have a tendency to leave the matter to the community concerned, on the grounds that the decision is a tribal/cultural one.
- At the international level, immigrant communities have devised strategies for circumventing the law by sending their daughters back to their country of origin or to countries where FGM is not yet eradicated or repressed, ostensibly for holidays but in reality to undergo FGM.

### **Strategies for parliamentarians**

- Declare FGM a national scourge and organize public campaigns to sensitize, educate and mobilize people against it
- Commit substantial funds to the campaign
- Organize national campaigns in partnership with non-governmental organizations (NGOs), both local and international
- Legislate in all countries concerned in order to eradicate FGM and punish its practitioners and promoters
- Mobilize the media in the fight against FGM in the countries where immigrant communities reside, in particular by advertising, in the languages of the populations concerned, the government's initiatives and laws and the activities of NGOs
- Work towards a possible convention on the eradication of FGM
- Organize to that effect a parliamentary conference on action to eradicate FGM, which participants urged should be convened jointly by the IPU and the African Parliamentary Union. The Conference should bring together MPs, religious and traditional leaders, NGOs and former practitioners



## Honour killings

The term 'honour killings' refers to the murder of women by members of their immediate family purportedly motivated by the desire to save the honour of the family. While such killings are reported primarily in the Middle East and Asia, some cases have been reported in Europe. The motives include:

- Adultery (actual or presumed)
- Sexual 'defilement' including being the victim of rape
- Premarital relationships (with or without sexual relations)
- Falling in love with a person of whom the family disapproves
- Refusing an arranged marriage
- Abetting the sexual or romantic liaisons of a single woman

The decision to carry out a killing may be taken by the husband, father or brother of the victim or by an improvised court composed of male members of the community. Such killings are invariably illegal, but in some countries the law imposes a lesser sentence than for other forms of homicide. In one country, for example, sentences of six months to two years are the norm. Those convicted are often treated as heroes.

While reliable data on this practice is difficult to obtain, partly because official records often disguise the cause of death, it is clear that the practice is not rare. For example, a report by the UN Special Rapporteur on violence against women indicated that 4,000 women had been killed in Iraq during the previous decade.<sup>53</sup> Many of the victims are adolescents, and there are indications that the practice is on the rise in some countries.

### **Women parliamentarians of the world protest against 'crimes of honour'**

Meeting in Amman, on the occasion of the 103<sup>rd</sup> IPU Conference, 140 women parliamentarians from 90 countries unanimously adopted the following motion:

"We, women parliamentarians of the world, meeting at the 103<sup>rd</sup> Conference of the Inter-Parliamentary Union extend our solidarity and support to the women and parliamentarians of Jordan in their endeavours to put an end to the impunity enjoyed by the perpetrators of 'crimes of honour' committed against women and girls in the name of traditions which are a grave violation of human rights."

## **Child marriage, arranged or forced marriages and adolescent pregnancy**

The issues of child marriage, arranged or forced marriages and adolescent pregnancy are closely related. All marriages should be based on the freely-given consent of both parties. Marriages that do not respect this principle are considered a practice similar to slavery, violating the rights of those concerned, whether male or female, regardless of their age. A person cannot consent to marriage until they are mature enough to fully understand the consequences of the commitment and able to disregard any improper pressures. While premature marriages imposed on an adolescent against his or her will are especially serious, in a sense all marriages of persons below the minimum age established by law are non-consensual. The vast majority of persons who marry prematurely are girls. Such marriages are most prevalent in societies where traditional values concerning the subservience of children and women are strong.

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### **> International standards on early marriage**

UN human rights instruments indicate that there should be a minimum age for marriage, but do not specify the age considered appropriate. There is, however, a tendency to interpret these standards as prohibiting the marriage of persons under the age of 18. The Committee on the Elimination of Discrimination against Women has stated that it:

Considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act (General recommendation 21).

Establishing a lower minimum age for marriage for girls than boys is considered discrimination.

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Child marriages are incompatible with the rights of girls and boys not only because they deny the right freely to decide whether or not to marry and to choose one's spouse, but also because they entail serious risks to reproductive health. Of course, premature sexual relations and especially premature pregnancy endanger the health of girls whether or not they are married, but marriage is a risk factor because it almost invariably leads to sexual relations. Moreover, in societies where child marriage is widespread there is frequently strong pressure to produce a child without delay, and the rate of contraception among young wives is very low.

Premature pregnancy outside marriage is a cause of early and non-consensual marriage. In some countries, this is facilitated by legislation that allows children under the usual minimum age to be married 'in exceptional circumstances' with the permission of their parents or a court. The legislation of some countries still provides that subsequent marriage of a rapist with the victim is a bar to prosecution for rape.

Every year some 14 million girls aged 15 to 19 give birth, and another 5 million girls of this age have unsafe abortions.<sup>54</sup> In some countries, half of all women have their first child before reaching the age of 18. Women of this age group are twice as likely to die in childbirth as those in their 20s, and girls under the age of 15 are five times as likely to die in childbirth. Deaths related to pregnancy are the leading cause of death for women aged 15 to 14 around the world.<sup>55</sup> For every woman who dies in childbirth, 15 to 30 survive, but with chronic disabilities.<sup>56</sup> Children born to mothers under the age of 19 also have a much higher risk of mortality.

There is a strong correlation between poverty and early marriage. Poorer young women are more likely to marry at an early age. Poor families may regard a young girl as an economic burden and her marriage as a necessary survival strategy for the family. They may think that early marriage offers protection for their daughter from the dangers of sexual assault, or more generally offers the care of a male guardian. Early marriage may also be seen as a strategy to avoid girls becoming pregnant outside of marriage.

Girls who marry or become pregnant generally leave school, if they had not already done so. Their earning potential is affected, making them more dependent on their spouses or other men, and they tend to have larger families. The UN Population Fund comments that "Early childbearing in poor families perpetuates an inter-generational cycle of poverty".<sup>57</sup> Poverty is not merely economic. A UNICEF study indicates that too often premature marriage prejudices not only educational opportunity but also personal development, leading to "a life-time of domestic and sexual subservience".<sup>58</sup>

## Premature marriage and AIDS

Biologically, the risk of HIV infection during unprotected sex is two to four times higher for women than for men. The risk is even greater for girls who are still maturing physically, because injury resulting from penetration facilitates infection.<sup>59</sup>

In some countries, it is common for young women to have sexual relations on an ongoing basis with older men, within or outside of marriage. The age difference makes it more difficult for the woman to negotiate safe sex. In addition, it increases the chances that the older partner is HIV positive. One study in Kenya found that half of the women whose husbands were 10 years older than them or more were HIV positive, while none of the sample whose husbands were no more than 3 years older tested positive.<sup>60</sup>

Globally, more than half of all HIV/AIDS cases detected annually affect persons aged 15 to 24. In sub-Saharan Africa and South Asia, the percentage of women in this age group living with HIV/AIDS is much higher than the percentage of men, while in most other regions of the world, the proportions are reversed.<sup>61</sup> These are also the two regions where early marriage is most common, which suggests a link between the AIDS pandemic and the cultural patterns that tolerate the sexual exploitation of adolescent women.

At least 13 million children under the age of 15 have been orphaned by AIDS. In the African countries most affected by the pandemic, the percentage of orphans in the population has increased from 2 to 15 per cent.<sup>62</sup>

## *What can be done?*

### **Law reform**

- Countries that do not have legislation that specifically outlaws all female genital mutilation, whether performed by traditional practitioners or qualified medical personnel, should adopt such legislation.
- Legislation applicable to 'honour killings' should be reviewed with a view to ensuring that the sentences imposed are no less than those imposed for other homicides.
- Legislation concerning the minimum age for marriage should be reviewed to ensure that it does not discriminate on the basis of sex or religion, and countries should consider raising the minimum age to 18.
- Legislation concerning child marriages should be reviewed with a view to ensuring that the applicable sanctions and other legal consequences are effective in deterring this practice.
- Legislation that bars the prosecution of rapists who marry their victims should be repealed.
- Legislation that provides that a male relative has authority to contract marriage on behalf of women should be repealed.
- Consideration should be given to repealing or amending legislation that allows children under the minimum age for marriage to marry in exceptional circumstances, especially when this allows them to marry without a judicial determination that marriage is in their best interests.
- Consideration should be given to the adoption of legislation that recognizes the right of adolescents to reproductive health services.

Any legislative reform concerning these issues should be accompanied by programmes designed to ensure public awareness and support for the changes, as well as effective enforcement by the police and judiciary.

### **Database on existing legislation on female genital mutilation**

As at 13 January 2003, at least 33 countries had introduced legislation to prevent harmful traditional practices. The text of the existing laws, as well as references to relevant sections of international treaties, can be found on the Inter-Parliamentary Union's website at [www.ipu.org/wmn-c/fgm.htm](http://www.ipu.org/wmn-c/fgm.htm).

## Other measures concerning female genital mutilation

Social mobilization against female genital mutilation is vital. Enlisting the participation of religious leaders is important. While women, being more directly concerned, often take the leadership in social mobilization against this practice, the active participation of men is also necessary in order to convince the female population that departure from this tradition will not affect the possibility of marriage. A recent report of the UN Secretary General indicates that social mobilization campaigns should not be limited to the practice as such, but should also be designed to modify “the underlying values that support such practices”.<sup>63</sup>

One approach that has been successful in some areas has been to modify initiation ceremonies for adolescent girls to eliminate this mutilation, rather than attempt to convince girls to refuse initiation and communities to abandon it altogether.

### Combating female genital mutilation village by village

Hundreds of Senegalese villages have renounced the practice of female genital mutilation, thanks in large part to the activities of Tostan, a grass-roots NGO. The organization started as a literacy and skills-training programme for women. Eventually, the discussion of health issues such as infections and childbirth led participants to discuss and question the sensitive practice of female genital mutilation. Although Tostan advocates respect for rights, the health risks were the key to mobilizing communities against the practice.

Men as well as women became involved. Getting whole villages to make a commitment to stop practicing female genital mutilation ensured that no one would be stigmatized. The movement gained momentum, and in 1999 the Parliament and President outlawed the practice.

“It is a hard thing to admit that something you and your ancestors had considered right all your life is in fact wrong,” an elder said.

Source: Based on The State of the World Population 1999, box 15 (citing V. Walsh, ‘Circumcising a Ritual’, L.A. Times-Washington Post News Service, 11 June 1998).

## Education

Education is as vital a component in the prevention of child marriage as it is for preventing other forms of exploitation of children, and particularly the continuing education of girls through secondary school. Preventing school-leaving by girls can involve ensuring that the cost of schooling is not an obstacle for poor families, providing programmes that offer

children the possibility of earning some income while attending school and campaigns to make parents more aware of the advantages of education for girls.

Making schools safe and supportive environments for girls is also an essential component of programmes designed to prevent school-leaving by adolescent girls.

This may require:

- Locating schools within easy distance of communities (since anxiety about the security of girls who walk to and from school is a factor in school-leaving)
- Improvement of sanitary facilities at schools
- Concerted efforts to reduce sexual harassment, exploitation and abuse of female students by teachers and fellow-students

### **Life skills education and adolescent reproductive health services**

Life skills education includes activities intended to provide participants with accurate practical knowledge of health, hygiene, sexuality, reproduction and responsible parenting as well as an understanding of the rights and responsibilities of each person, enhanced self-esteem and the confidence and ability to defend one's own interests and viewpoint in social relations. Life skills education helps empower adolescent girls to make decisions about their future and to avoid or resist practices or situations that pose a danger to their basic human rights. It is no less important for boys, in order to modify attitudes and beliefs that encourage behaviour that endangers their own health and development or perpetuates discrimination and exploitation of women. It should be provided both in the formal school system and in community-based initiatives. The active participation of adolescents themselves in the design and execution of such programmes helps ensure their effectiveness.

Ensuring that adolescents have effective access to reproductive health services is necessary to protect their health, to reduce the risk of premature pregnancy, to encourage them to assume responsibility for their own sexual behaviour and to provide assistance to those who have been victims of abuse or exploitation (see Chapter 8). Experience suggests that not only must the right of access to such services be recognized, but that they must also be made 'youth-friendly'. Effective messaging should emphasize the ABC of reproductive health: Abstain, Be faithful and use a Condom.

Cost-benefit studies of programmes intended to reduce risky sexual behaviour in adolescents indicate that each dollar invested produced an estimated savings in the range of \$2.65 to \$5.10.<sup>64</sup>

## **Cairo declaration for the elimination of FGM**

(June 2003)

### *Excerpts:*

The prevention and the abandonment of FGM can be achieved only through a comprehensive approach promoting behaviour change, and using legislative measures as a pivotal tool

article 2: The use of law should be one component of a multi-disciplinary approach to stopping the practice of FGM. Depending on the national context, outreach efforts by civil society and governments aimed at changing perceptions and attitudes regarding FGM should precede or accompany legislation on FGM. These activities should reach as many members of the public as possible and should include the participation of both elected officials and other government actors and members of civil society, including advocates, religious leaders, traditional leaders, medical providers, teachers, youth, social workers, and the all forms of media including electronic media. In particular, men must be targets of outreach, as well as family members, including grandmothers, mothers-in-law, etc. Means of outreach should take as many forms as available in each country, including community gatherings, media (radio, theatre) and other creative means of communication.

article 5: Governments should formulate time-bound objectives, strategies, plans of action, and programmes, backed by adequate national resources, whereby FGM laws will be enforced, taking into account that legislation condemning FGM has a moral force and an educational impact that could dissuade many individuals from submitting girls to the practice.

Source: Afro-Arab Consultation on "Legal Tools for the Prevention of Female Genital Mutilation". (Cairo, 23<sup>rd</sup> of June 2003)



## What makes health services youth-friendly

### Service providers:

- Specially trained staff
- Respect for young people
- Privacy and confidentiality honoured
- Adequate time for client-provider interaction
- Peer counsellors available

### Health facilities:

- Separate space or special times set aside
- Convenient hours and location
- Adequate space and sufficient privacy
- Comfortable surroundings

### Programme design:

- Youth involved in design, service outreach and delivery, and continuing feedback
- Drop-in clients welcomed or appointments arranged rapidly
- No overcrowding and short waiting times
- Affordable fees
- Publicity and recruitment that inform and reassure youth
- Boys and young men welcomed and served
- Wide range of services available
- Necessary referrals available

### Other possible characteristics:

- Educational material available on site to take
- Group discussions available
- Delay of pelvic examination and blood tests possible
- Alternative ways to access information, confidential counselling and services

Source: State of World Population 2003, box 21.

# Chapter 11

## Violence and neglect

*Globally, around 40 million children are subjected to child abuse each year.*

*– WHO, Statement to the Committee on the Rights of the Child, 28 September 2001*

In the ground-breaking World Report on Violence and Health, published in 2002, the World Health Organization (WHO) described violence as “an extremely diffuse and complex phenomenon” that includes physical, sexual and psychological violence, as well as deprivation and neglect. The report also concluded that violence needs to be addressed in a more comprehensive and holistic manner.

Violence is found in the family, in schools, in institutions such as orphanages and other places of residential care, on the streets, in the workplace and in prisons. It can arise as a result of cultural beliefs, norms and traditional practices or within the context of conflict situations.

A small proportion of violence against children leads to death, but most does not even leave visible marks. Yet it is one of the most serious problems affecting children today. Much violence is hidden. Children may not feel able to report acts of violence for fear of retribution from their abuser. Both child and abuser may see nothing unusual or wrong in the child being subjected to violence. They may not consider an act of violence actually to be violence at all, perhaps viewing it as justifiable and necessary punishment. Child victims may feel ashamed or guilty, believing that they deserved to be subjected to violence, and they may therefore be unwilling to speak about it.

This chapter focuses mainly on violence and neglect in the home. While related to other forms of violence, this problem is more widespread and has characteristics that deserve special attention. Various forms of what can be called ‘institutional and societal violence’ are analysed in the chapters on alternative care, traditional practices, juvenile justice and armed conflict.

For every young person killed violently, 20 to 40 are injured seriously enough to require hospital treatment.<sup>65</sup> The effects of violence can last for months or years, and may include permanent disability. In addition to physical injury, victims of violence are at increased risk of a wide range of psychological and behavioural problems, including depression, alcohol abuse, anxiety and suicidal behaviour.

The economic cost of violence is staggering. A recent study concluded that in the country with the highest rate of violence in Latin America, the cost of health care alone for victims of violence is the equivalent of 5 per cent of the gross domestic product.<sup>66</sup>

## Violence against children in the home

In the year 2000, some 57,000 children under the age of 15 years were victims of homicide. Very young children are at greatest risk: homicide rates for children aged 0-4 years are more than twice those for children aged 5-14 years (5.2 per 100,000 compared to 2.1 per 100,000). The most common cause of death is head injury.<sup>67</sup>

Many children experience physical violence at some point during childhood. Patterns of violence vary from one society to another, and according to the age and sex of the child. In most cases it is inflicted by relatives within the home, and occurs repeatedly. A recent study of secondary school students in the United States, for example, found that 17 per cent of girls and 12 per cent of boys were victims of physical violence. Two thirds of the boys who reported abuse indicated that it happened in their homes and that the abuser was a relative.<sup>68</sup>

Consequences of violence can take many different forms. In addition to the psychological and physical effects, victims of physical abuse during childhood leave an increased risk of becoming violent offenders themselves. One study in the United States concluded that the experience of abuse or neglect increased the likelihood of arrest as a juvenile offender by 53 per cent. A study in the United Kingdom found that 72 per cent of juveniles who committed serious offences were victims of abuse.<sup>69</sup>

Violence is also one of the main reasons that children leave home. The American study found that 12 per cent of all the girls interviewed said that they did not feel safe at home and that 25 per cent of them, as well as 58 per cent of those who were victims of physical or sexual abuse, said that there had been a time when they had wanted to leave home because of violence.<sup>70</sup>

### Help lines

Establishing a help line for children is one way to assist with counselling those who are in crisis. In Sweden, the help line BRIS (the Child's Right in Society) was started in 1971 and since then has assisted thousands of children every year. It was established in response to the killing of a four-year-old girl by her stepfather.

Today BRIS is a national association with a nationwide free phone number. The help line has been supplemented with a mail service, and the initiative has also included communication efforts to inform children of its existence.

Child Helpline in India has been so successful that it has expanded to over 50 cities. It has responded to over 3 million calls since its inception in 1996.

## Corporal punishment

The use of corporal punishment as a means of disciplining children is culturally and legally accepted throughout most of the world and is widespread. Studies in the United Kingdom and the United States found that 90 per cent of all children are physically punished during childhood.<sup>71</sup> Studies from different cultures indicate that physical punishment is most often inflicted by women, presumably because they usually bear the greatest responsibility for raising children.<sup>72</sup>

The elimination of traditionally accepted forms of corporal punishment is not only important because any amount of violence violates the rights of children. Social acceptance of a certain level of violence in the home also opens the door to more severe forms of violence and tends to socialize children in the use of violence. The British Psychological Society has stated: "There is now a weight of evidence to show a link between exposure to even minor violence...and acquisition of violent modes of behaviour." Or, as the Australian Institute for Criminology puts it, "families constitute the training ground for aggression".

### Banning corporal punishment

The Committee on the Rights of the Child urges States Parties, as a matter of urgency, to review and amend their legislation in order to prohibit all forms of violence, however slight, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37 (a).

In 1979, Sweden became the first country to ban all physical punishment of children. The aim of the new law was educational rather than to prosecute parents or increase state intervention in family life. It aimed to change attitudes and practice and to make hitting children as unacceptable as hitting adults. Implementation of the law was accompanied by a large-scale educational campaign, building information about the new law and its purpose into the education system and into all forms of parenting education and support.

In 1982, the European Human Rights Commission upheld the law, stating: "The actual effects of the law are to encourage a positive review of the punishment of children by their parents, to discourage abuse and to prevent excesses which could properly be described as violence against children". In 16 years there has only been one prosecution in Sweden for what might be regarded in other countries as 'ordinary' physical punishment: A father was given a small fine for spanking his 11-year-old son. In 1994, research commissioned by the Swedish Department of Health and Social Affairs found just 11 per cent of respondents still approved of physical punishment, compared with 65 per cent a few decades previously. And only 1 per cent of a large sample of Swedish 15-year-olds reported ever having

been hit with an implement (compared with up to 25 per cent of children in some other countries that have not prohibited physical punishment). Drug and alcohol abuse and delinquency have declined among teenagers brought up since the ban on physical punishment was introduced.

Source: Children and Violence, Innocenti Digest No.2, p.7.

## **Sexual abuse of children**

International standards also define sexual abuse as a form of violence. The Declaration on the Elimination of Violence against Women (1993) for instance defines violence against women to encompass, but not be limited to, “Physical, sexual and psychological violence occurring in the family, including battering, [and] sexual abuse of female children in the household...”.

Although data on sexual abuse of children is often unobtainable or difficult to obtain, WHO estimates that 20 per cent of women and 5-10 per cent of men have suffered sexual abuse as children.<sup>73</sup> In the United States approximately 44 per cent of rape victims are under the age of 18, and approximately 15 per cent are under age 12. In 93 per cent of reported cases of sexual abuse of children, the perpetrator was known by the victim: 34 per cent were family members and 59 per cent acquaintances.<sup>74</sup> Sexual abuse of boys is one of the few types of child abuse that is more likely to occur outside the home than in it.

The physical consequences of sexual abuse may include premature and unwanted pregnancy, sexually transmitted diseases, including HIV/AIDS, and sexual dysfunction. The psychological consequences of sexual abuse for child victims are often devastating. The UN Special Rapporteur on the sale of children, child prostitution and child pornography found that nearly half of adolescent girls who had been victims of sexual or physical abuse reported symptoms of depression. Adolescent boys who had been victims of physical or sexual abuse were more than four times as likely as other boys their age to report symptoms of poor mental health, and twice as likely as their peers to use drugs and alcohol. More than half reported having thought about suicide.<sup>75</sup>

One third of the children who live on the streets in the United States have left home because of sexual abuse.<sup>76</sup>

## **Sexual abuse of domestic servants**

The UN Special Rapporteur on the sale of children, child prostitution and child pornography has stated that child domestic servants are “extremely vulnerable” and “are often victims of sexual abuse”. This particular form of abuse has been well documented in those parts of the world where the use of children as domestic servants is widespread.

## Psychological and emotional abuse

Psychological and emotional abuse consists primarily of verbal behaviour that terrorizes, intimidates, humiliates or demeans the victim. Depriving children of normal contact with other persons is a form of psychological and emotional abuse, which children with disabilities are particularly prone to suffer in a number of societies. Some studies indicate that psychological and emotional abuse can have an even greater impact on the victims than physical violence.

## The indirect consequences of domestic violence for children

Spousal violence is widespread throughout the world: 20-50 per cent of women suffer violence at the hands of their spouses or partners.<sup>77</sup> This has serious consequences for children. One study reported that children of women who were physically and sexually abused by their partners were six times more likely than other children to die before the age of five.<sup>78</sup> Living in a home where domestic violence occurs also adversely affects success in school. One study found that children from homes in which women suffer violence leave school on average three years earlier than other children.<sup>79</sup>

### One child's story of emotional neglect

This is the story of a girl interviewed by the UN Special Rapporteur on the sale of children, child prostitution and child pornography:

Shortly after her birth, her parents divorced and her mother remarried an extremely wealthy man, who was not interested in having a step-daughter. Other children were born, but the oldest daughter was never treated as part of the new family. Even her mother made her feel that she had been an unwanted mistake. She told the Special Rapporteur that she had every toy imaginable and a large bedroom with her own television, but she had no memory of ever sitting on her mother's lap. By the time she was 14, she was visiting bars every night as an alternative to returning to a loveless environment. When an older man told her that she had beautiful eyes, the first compliment she ever remembers receiving, she asked him to take her home with him and quickly entered into a sexual relationship with him. She would do anything to ensure his continuing 'love', as she perceived it to be, and did not take much persuading when he asked her to earn money for him by prostituting herself to men he brought to the house.

## Neglect and abandonment

Neglect is a broad concept that includes failure to meet the material and emotional needs of children and failure to provide physical and intellectual stimulation and adequate supervision and guidance. Inadequate supervision is a leading cause of death and injury due to accidents in the home, and contributes to the involvement of children in dangerous activities such as drug abuse and premature and unprotected sexual activity. WHO reports that 400,000 children under the age of 5 die annually from accidents such as drowning, burns, poisons and road traffic accidents.<sup>80</sup> Data from the United States indicates that neglect causes more deaths of children under the age of 18 than violence.<sup>81</sup>

The abandonment of children is an extreme form of neglect. The decision to abandon a child may sometimes be a response to lack of support mechanisms or the weight of cultural traditions. In some countries, children are abandoned because the parent or parents feel unable to provide them with the means of subsistence, or believe that abandoning the child to families or institutions with more resources is the only way to offer their child a chance for a better future. And in some cultures, the stigma attached to conception outside marriage causes most children conceived out of wedlock to be abandoned at birth.

Numerous studies indicate that neglect, including weak supervision, inconsistent discipline and failure to reinforce positive social behaviour, contributes to the risk of children coming into conflict with the law.

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### > International standards

#### **The Convention on the Rights of the Child**

Article 9(1) states that:

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

The State should take a holistic approach to the protection of children against violence and neglect while in the care of parents or other caretakers. This includes:

- preventive measures
- measures for detecting, identifying and investigating cases
- treatment
- law enforcement

Article 27 recognizes the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development, and indicates that parents have the primary responsibility for providing children with adequate living conditions, in so far as they are able to do so.

The Committee on the Rights of the Child, in its Guiding Principle No.3 on Violence against Children in the Family and Schools, stated that all corporal punishment of children violates the rights recognized by the Convention.

When parents are not able provide their children with a safe and healthy environment suitable for their development, even with assistance, children should be removed from the home. The operative criteria for removal of children from the home, according to Article 9 of the Convention, is that “such separation is necessary for the best interests of the child”. Children removed from their home have the right to suitable alternative care.

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## *What can be done?*

### **Legal reform**

Legislation should be reviewed in the light of the following recommendations concerning the abuse and neglect of children:

- that violence against children be prohibited by law
- that professionals and others who report cases or suspected cases be protected from legal liability or administrative reprisals
- that independent investigation of all child deaths should be mandatory, and that causes (often clustered in the category 'other causes') are disaggregated to highlight deaths related to violence and abuse
- that legal and investigative procedures in the law enforcement, judicial, health and social welfare sectors be reviewed to ensure that they respect the needs and rights of victims
- that rules of evidence that prevent effective prosecution of rapists, in particular those that require corroboration of the testimony of the victim, be repealed
- that laws and policies concerning prosecution and sentencing be revised, as necessary, to end the culture of impunity for sexual crimes, in particular sexual crimes within the family, that is prevalent in many countries

### **A positive, holistic approach**

Action against violence, therefore, should seek to strengthen the protective environment around children. This includes involving teachers and health and social workers as well as others who are often the frontline of those caring for and more generally interacting with children. They need to be equipped with the skills to recognize when children are being subjected to violence and know how to respond. In addition, they will often require a referral service for cases to be followed up.

This approach should also address attitudes, customs and traditions, and emphasize non-tolerance of all forms of violence. Physical violence and other more severe forms of violence are more likely where everyday harassment is tolerated.

There is a need for integrated multisectoral strategies and plans of action at the international, regional, national and local levels, to ensure that efforts for the prevention of violence within the family and the care for child victims are fully coordinated and multidisciplinary, address the root causes of violence (including socio-economic factors, discrimination and others), and involve children in the design of effective prevention and response strategies.

## Home visiting programmes

Home visiting programmes that monitor child development and provide advice, support and referral to families with young children have been described as the best and most practical method of bringing about a significant reduction in child abuse and neglect.

Confronting the possibility of child abuse is a small part of the work of most health visitors. Nonetheless, one of the most important advantages of such services is that they can help to prevent the conditions in which child abuse is likely to arise, and also identify at the earliest possible time those children who are either being abused or are thought to be at serious risk.

Home visiting services have been found to be far less effective when they attempt the narrower task of targeting only those families where child maltreatment is suspected. Not only are such interventions likely to be too late, they are also likely to cause hostility, resentment and denial as families feel themselves accused and stigmatised. Home visiting, therefore, works best when it is extended to all families with young children, when it is embedded within regular health and social services, and when it makes first contact with the family in the first few days or weeks of a child's life. In this way all families can be supported and resources can eventually be targeted, with less risk of confrontation, lack of cooperation or stigma, to those families who might otherwise begin the descent into the kinds of problems that are the favoured breeding ground of child abuse and neglect.

Home visitation also has the advantage of being relatively inexpensive and cost-effective.

## Adopting and implementing a clear and comprehensive national policy

National policy should provide for:

A better understanding, assessment and monitoring of the situation through the development of:

- Comprehensive and up-to-date assessment and analysis of the extent, nature, causes and consequences of violence against children as a basis for policy and programmes
- Constant evaluation of the effectiveness of existing programmes and approaches
- Ongoing research on the socio-economic costs of violence against children
- Services, such as hotlines, that allow children to report cases of violence against them
- The maintenance of official records on child deaths, disaggregated by cause

Attitudinal change through:

- Public information campaigns involving religious, traditional and community leaders
- Media campaigns, although the media needs to be careful when handling cases of violence against children so as not to expose victims to stigma or retribution
- Peer education involving parents and children

Early detection and rapid response by:

- Training teachers and health professionals in the detection of symptoms of ill-treatment
- Educating children in identifying potentially violent situations, avoiding them and dealing with them. Children also need to be provided with safe and positive avenues for self-expression and participation. Where these are not available, there is an increased risk of children becoming involved in crime, drug abuse and the violence that is often associated with these
- The allocation of sufficient resources for prevention and detection of violence

Protection and recovery of child victims:

- Child survivors of violence need special care – not only medical care in the case of physical injury, but also help in dealing with the mental effects
- Sufficient funding must be ensured for assistance programmes to child victims

## **Additional elements**

Specific actions in response to violence recommended by WHO include:

- Programmes for the prevention and treatment of drug and alcohol abuse
- Poverty alleviation
- Socio-economic programmes targeting single-parent families
- Campaigns against social and cultural norms associated with violence, including rigid gender roles, male dominance over women and children and a generalized tolerance of sexual violence
- Social development programmes designed to help children and adolescents develop social skills, manage anger, resolve conflicts and develop a moral perspective
- Therapeutic programmes, including counselling for victims of violence and others at risk of harming themselves
- Treatment programmes for people who abuse their partners and children
- Training in good parenting practices and family therapy programmes for general, long-term prevention
- Training for police and health-care workers in recognizing domestic violence, handling of evidence and sensitivity to the needs of the victims.

# Chapter 12

## Alternative care

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

*– Preamble to the Convention on the Rights of the Child*

While children have the right to be cared for by their parents or family, a child who no longer has a family, has become separated from his or her family, or whose family represents a serious danger to his or her health or development has the right to alternative care. Four types of alternative care are mentioned in Article 20 of the Convention on the Rights of the Child:

- Foster placement
- Kafala (see definition below)
- Adoption
- Institutional placement

States need not offer all four kinds of care; the essential obligation is to provide some suitable form of care for each child who needs it. In all cases, care outside of the family should be considered as a 'last resort' when selecting the most appropriate solution.

It is widely agreed that three principles should guide decisions regarding long-term substitute care for children, once the need for such care has been demonstrated:

- Family-based solutions are generally preferable to institutional placements
- Permanent solutions are generally preferable to temporary ones
- National (domestic) solutions are generally preferable to those involving another country

Alternative care is culturally sensitive. 'Institutional placement', for example, may mean different things in different societies. The concept of adoption, too, has different meanings in different cultures. In industrialized Western societies, some forms of alternative care are highly developed. These are also present in developing countries, though they may have very limited capacity.

Traditional forms of placement or caring for children who cannot be cared for by their own parents predominate in many countries. In a number of them, however, these are being overwhelmed by the unprecedented impact of the AIDS pandemic on family and communal structures. Moreover, some traditional forms of placement lend themselves to practices that are not compatible with the best interests of the children concerned. In this, of course, they are not unique: All types of alternative care entail a risk of exploitation, abuse and other forms of disrespect for the rights of children. Institutional care has raised particular concerns in this regard.

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## > **International standards**

### **The Convention on the Rights of the Child**

The Convention provides that every child “temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment” has a right to “special protection and assistance”. Such protection and assistance “shall be provided by the State”, in accordance with its national laws, and “could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.” In selecting the most appropriate form of alternative care “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background” (article 20).

Article 9 provides standards concerning when removal from the family is warranted and the procedures that should be used to make such a determination (see Chapter 11). Article 21 contains additional standards applicable to adoption (see below).

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## **Foster placement**

Foster placement is placement of a child who has become separated from his or her family, or who cannot be left with his or her family, in the care of another family or individual. In contrast to adoption, it is generally considered a temporary arrangement to be used while the child’s own family overcomes a problem that prevents it from offering proper care to the child, or while a more permanent placement is being sought.

In practice, however, it may become a long-term arrangement. In some countries the term is used for placement with a family or persons to whom the child is not related, while in others it is used for the formal placement of a child with relatives other than a parent. In contrast to most forms of adoption, it has no permanent consequences for the legal relationship between a child and his or her biological parents.

## Kafala

Adoption is not recognized by Islamic law, because it is considered incompatible with the child's right to identity. Kafala is a form of alternative care intended to ensure the right of every child to a family environment. The Declaration on Child Rights and Protection in Islam states that:

Islam views the family, based on legal wedlock, as the natural environment for the upbringing of the child, and stipulates that every child has the right to live in a family which is built on mutual amity and compassion, no matter whether it is his or her own natural family or a foster family that provides him or her with kafala in cases where his or her natural family is lost, or in cases of abandonment by his or her natural family (Principle 6).

## Adoption

Adoption consists of the establishment of a legal link between an individual and a family, in particular the link of parent-child. It is a diverse phenomenon, and in some societies there are different forms of adoption that serve different purposes. Some forms of adoption are primarily a way of transferring property; others are a way of consolidating the composition of a new nuclear family (for example, when the spouse of a widowed or divorced person adopts the children of his or her new partner in marriage).

From the perspective of the child's right to protection, adoption is a way of providing a new, permanent family to children who have been irreparably separated from their biological family, in particular by death or abandonment. As a rule adoption is not the appropriate solution for children who have been removed from their family against the will of their parents because of mistreatment or neglect. The child's right to identity and the obligation of the state and society to protect and support the family mean that, in such situations, all possible efforts should be made to resolve the problems that pose a danger to the child, so that he or she may be returned to his or her birth family. Only if it is clear that the problems are beyond solution may adoption be considered appropriate. However, when it is certain that a child has become permanently separated from his or her biological family, then that child has a right to a new family environment if possible, and adoption becomes the best choice.

Two factors that distort the functioning of adoption in many parts of the world are:

- The growing demand of childless couples eager to adopt
- The idea that adoption is the solution to the difficulties faced by some families, especially poor single mothers, in providing their children with an adequate standard of living

The combination of these factors encourages both the disintegration of poor but viable families, and also the trafficking of infants for purposes of adoption. At the same time, it diverts attention from the need to address the root causes of poverty.

In some parts of the world, cultural traditions are a major obstacle to adoption and adversely affect the availability of adoptive homes for children needing them.

### **Intercountry and international adoption**

Intercountry adoption involves adoption of a child from one country by a couple or individual living in another country, regardless of their nationality. In some countries, it is not uncommon for migrants living abroad to adopt children from 'back home'.

International adoption is the adoption of a child by a couple or individual who do not have the same nationality as the child. Usually, although not always, it involves the transfer of the adopted child from his or her country of birth in the developing world to an industrialized country. China, the Republic of Korea and some countries of Eastern Europe are important sources of children adopted in North America and Western Europe. International adoption increased substantially during the 1980s and 1990s.

Intercountry adoption is prone to abuse, which is why the Convention on the Rights of the Child contains detailed provisions concerning safeguards that must be respected. Some countries, for instance, have declared a moratorium on intercountry adoption as a result of international pressure to solve the problem. (Abuses of international adoption are described in Chapter 9 on trafficking of children.) The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption provides the international standards and conditions for cases where intercountry adoption may be considered.

Article 21 of the Convention on the Rights of the Child states that:

- The best interests of the child are the paramount consideration in decisions concerning adoption
- Competent authorities must ensure that an adoption is undertaken in accordance with the law, with free and informed consent on the part of those responsible for the child
- Intercountry adoption should only take place if the child cannot be suitably cared for in his or her country of origin
- No improper gain should result for any party to an adoption

The Committee on the Rights of the Child has made a series of recommendations on intercountry adoptions, highlighting abuses.

## Institutional placement

The State bears ultimate responsibility for ensuring that all children without a family home receive alternative care, but many different actors also play a role. Some institutions for orphans and abandoned children and other children in need of a home are established and operated by national or local governments. In many parts of the world, however, such institutions are operated by religious or secular charitable organizations. Some of them are privately operated but publicly funded, some are privately funded and still others rely on a mixture of public and private funds.

Some institutions receive children of different ages who are in need of care for diverse reasons. Others cater for particular groups of children, such as those with physical disabilities, or developmental or behavioural problems. In principle, childcare institutions are intended primarily for long-term care for children who can neither be returned to their own family nor placed in a new family. In practice, since the demand for short-term placement often exceeds the supply of families willing to receive children on a temporary basis, institutions often meet both short-term and long-term needs.

Residential or boarding schools are a special case. Where parents maintain contact with children attending such schools, continue to provide such support as they are able and participate actively in the exercise of parental responsibilities, such institutions should be governed by the standards and principles applicable to schools. But when children are placed in such schools mainly because their parents are unable to provide for, supervise or control them, and the parents in effect surrender parental responsibility to the school, it may be more appropriate to apply the standards and principles concerning alternative care. This applies whether the schools are operated by the state or by private charities or religious groups.

Institutional care during the first years of a child's life usually has a negative impact on their development. One study found that children who had spent eight months or more in an orphanage during the first two years of their life were delayed in social, motor and language development.<sup>82</sup> In addition, the placement of children in an institutional setting inevitably entails a risk of exploitation and abuse. In some institutions children risk becoming victims of discrimination.

Studies in some parts of the world confirm that most children in institutions have a family, although one that is poor and disadvantaged or dysfunctional. A recent study on Eastern Europe, for example, found that only 4-5 per cent of institutionalized children were actual orphans.<sup>83</sup> This highlights the need for greater attention to the 'last resort' principle and effective support mechanisms for families at risk.



## The duty to monitor care

Children who have been placed for purposes of care or protection have a right to periodic review of their treatment and all other circumstances relevant to their placement (Article 25, Convention on the Rights of the Child). This applies not only to children in institutions, but to all forms of placement including adoption, foster care, guardianship and kafala. Procedures should be established to receive complaints from children in this situation.

### Foster care

The Convention on the Rights of the Child does not contain any standards specifically concerning foster care. However, in 1986 the UN General Assembly adopted a Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally. The Declaration provides in Articles 10 and 12 that “Foster placement of children should be regulated by law” and that “a competent authority or agency should be responsible for supervision to ensure the welfare of the child”. The same standards should apply in cultures where extended families foster children.

### Institutional care

Article 20 of the Convention suggests a hierarchy of care options for children deprived of parental care: first, family relative; second, substitute family through fostering or adoption; third, an appropriate institution. When institutional care is necessary, it should be used for the shortest possible time. This is because it is difficult in an institutional setting to provide children with the type of individual attention, emotional support, intellectual stimulation and moral guidance that a family environment ideally provides.

Where private organizations assume this function, it is important for the appropriate authorities to assume responsibility for ensuring that they operate according to acceptable standards. Such standards should govern physical conditions and the professional qualification and training of the staff, including the condition that they not have a prior record of violence. ‘Quality of life’ standards, which measure to what extent the service provided guarantees the development and well-being of the child, should also be taken into account.

Children deprived of a family environment have the same rights as other children. Institutional placement should not be seen as confinement. Unless restrictions on their liberty are needed to ensure their protection, children placed in institutions for their care should enjoy a degree of liberty comparable to that enjoyed by other children of their age.

## **Adoption**

The first rule concerning adoption is that “the system of adoption shall ensure that the best interests of the child shall be the paramount consideration” (Article 21, Convention on the Rights of the Child). States that allow or recognize adoption must pass legislation that identifies the authorities having competence over adoption proceedings and “ensure that no adoption takes place without the approval of the competent authorities” (Article 21, Convention on the Rights of the Child). The legislation should identify criteria for determining when a child may be adopted, in particular a requirement that the child’s parent or parents (when known and living) give their informed consent. Other requirements that the law should take into account are implicit in other articles of the Convention, including:

- The child’s right to have his or her views taken into account, in accordance with his or her age and development
- The principle of equal rights and responsibilities of both parents
- The principle that, in selecting the most appropriate placement due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background

## **Intercountry adoption**

In addition to the standards that apply to any adoption, the Convention on the Rights of the Child requires special safeguards concerning intercountry adoption. The first rule is that intercountry adoption shall not be authorized if adoption or foster placement within the child’s country of origin is possible. Two other safeguards are that States must:

- Ensure that the child concerned enjoys safeguards and standards equivalent to those existing in the case of national adoption
- Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved

## **Kafala**

Kafala is a valid way of providing alternative care to children in need of it, provided that it is implemented in accordance with the principles contained in the Convention on the Rights of the Child. In particular, all placements should be approved by judicial decision, children placed through kafala should receive the same social benefits as other children and there should be no discrimination on the basis of sex.

## *What can be done?*

### **Institutional care**

Policies and practices concerning institutional care should be reviewed to ensure that they conform to the following principles and recommendations:

- For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure.
- Every effort should be made to avoid the isolation from the community of children residing in institutions (e.g. by enrolment in community school and use of community recreation facilities) to maximise the chances of successful transition upon departure.
- Institutionalization should not involve deprivation of liberty.
- Institutionalization should not be equated with abandonment nor should it automatically result in legal abandonment. Contact between children living in institutions and their families should be encouraged, unless it would be contrary to the best interests of the child. In order for this to happen, updated records and files should be kept.
- Staff should be carefully selected and trained and adequately compensated.
- Each case should be considered in the light of the child's specific situation and needs and be reviewed on a regular basis.

### **Adoption**

Adoption legislation should be reviewed to ensure that it complies fully with the principles and safeguards established in the Convention on the Rights of the Child, in particular:

- Rules governing parental consent to adoption
- Requirements concerning the eligibility of adoptive parents
- Prohibition of 'private adoption' arrangements
- Recognition of the child's right to be heard, and rules concerning how the views of the child shall be ascertained and the weight to be given to them
- Guidelines concerning implementation of the principle that continuity of care and the child's ethnic, religious, cultural and linguistic background shall be taken into account

Procedures should also be reviewed to ensure that children are not left in institutions for prolonged periods without determining their status. When adoption is the best solution for a child, unnecessary delay in finding a suitable family should be reduced as far as possible.

## Prevention of abandonment

National networks of family support centres that provide parents with assistance so that they can become self-sufficient in caring for their children can help reduce rates of institutionalization. These centres should provide services such as:

- Training in parenting skills
- Social and psychological counselling and support
- Legal counselling
- Crisis intervention

Home supervision visits by social workers are a valuable means of child protection that can help reduce unnecessary resort to institutionalization (see Chapter 4).

Since many children institutionalized by their parents are born to very young, often single mothers, or to women who already have several children, effective access to family planning is an essential component of a comprehensive plan to reduce the number of abandoned children. It is particularly important to ensure that adolescent girls have access to such services.

## Family reintegration

The reintegration of the child in her or his birth family is in principle the best possible alternative for institutionalized children. Services must initiate attempts to secure this as soon as the child is taken into institutional care. The reintegration process should entail:

- Locating members of the child's birth family, including the extended family and particularly the grandparents, if necessary by means of a police inquiry
- Analysing the specific problems of the family and the child
- Providing financial, social or psychological support to the family, where necessary including family therapy (for instance, psychotherapy, or drug or alcohol rehabilitation)
- Identifying those families where reintegration is possible
- Providing, if necessary, for a transitory period of placement in a foster family or an institution, in order to give time for the family to solve its problems, and encouraging and facilitating contact between the family and the child during this period

In all cases, the child must be prepared for the change and allowed to participate, to the extent possible and appropriate, in devising the reintegration plan established in consultation with the family. Support for the family and child after reintegration should also be provided.

## Monitoring children in alternative care

The Committee on the Rights of the Child called for “urgent attention be given to ensuring the establishment and effective functioning of systems to monitor the treatment received by children deprived of a family...”, as well as other residential facilities for children, such as medical facilities and those for juvenile offenders. Monitoring systems should:

- Ensure full access to the facilities and records of all institutions, both public and private
- Permit unannounced visits and private consultation with children and staff
- Emphasize the status and condition of the children and their development, as well as the state of the facilities or the provision of services
- Include procedures for receiving complaints from children, their parents or guardians, staff and others
- Require mandatory reporting by staff of all violent incidents
- Ensure the thorough and independent investigation of complaints, including judicial investigation for any deaths or cases of grievous bodily harm
- Ensure that the perpetrators of violence are appropriately disciplined, including, when warranted, dismissal and the bringing of criminal charges
- Such procedures also should respect the right of children to privacy and include safeguards against reprisals.

Source: Committee on the Rights of the Child, *State Violence Against Children*, para.26

# Chapter 13

## Juvenile Justice

*The Conference calls on all States to take appropriate steps in accordance with the UN Beijing Rules and Riyadh Guidelines:*

- (a) To ensure compliance with the principle that children should be deprived of their liberty only as a measure of last resort and for the shortest appropriate period of time, in particular before trial, and to ensure that, if they are arrested, detained or imprisoned, children are separated from adults;*
- (b) To ensure that no child in detention is sentenced to forced labour or deprived of access to and provision of health-care services, hygiene and environmental sanitation, education and basic instruction, taking into consideration the special needs of children with disabilities;*
- (c) To promote law enforcement and separate juvenile justice systems with specially trained staff that fully safeguard child rights and seek children's reintegration into society.*

*– 106<sup>th</sup> IPU Conference (Ouagadougou, Burkina Faso, September 2001)*

Juvenile justice is a broad topic covering prevention of delinquency, the type of offences with which children may be charged and the way they are treated by the police, by the courts and in facilities for juvenile offenders.

### **Delinquency prevention vs. criminalization**

There is a high correlation between neglect or exposure to violence during childhood and involvement in crime. Psychologists have recognized that exposure to violence in the home leads children to themselves acquire violent modes of behaviour. A study in the United States concluded that the experience of abuse or neglect increased the likelihood of arrest as a juvenile offender by 53 per cent, and another in the United Kingdom found that 72 per cent of juveniles who committed serious offences were victims of abuse (see Chapter 11). Addressing the problems that cause delinquency would go a long way towards preventing it.

There is also a need for effective programmes that help adolescents involved in crime overcome their problems, to the extent possible, and assist them in preparing for life as law-abiding members of society. Exposing them to further violations of their rights when they come into conflict with the law is always both wrong and counter-productive.

## Violations of the rights of children by law enforcement agencies

Violations of the rights of children by law enforcement agencies can be extreme. In 'The Street Children Case', the Inter-American Court of Human Rights found Guatemala responsible for the summary execution of five young men, including one aged 15 and two aged 17, in June 1990. Four of the victims were forced into a vehicle by police officers in civilian dress, apparently at the behest of the operator of a food stand known for her animosity towards children living or working on the streets. Their bodies were found with bullet wounds to the head and signs of torture. The fifth victim was shot on the street several days later by a police officer in plain clothes. The officers were prosecuted but acquitted, despite the testimony of eye-witnesses and ballistic evidence. The Inter-American Court concluded in November 1999 that these killings formed part of a "common pattern of illegal acts perpetrated by State security agents against 'street children' [that] included threats, arrests, cruel, inhuman and degrading treatment and homicides as a measure to counter juvenile delinquency and vagrancy". The Court ordered reparations to be paid in June 2001.

Not all violations of children's rights are as extreme as those in the Guatemala case. However, violence and other abuse of children in conflict with the law is commonplace and takes many forms.

### **Prevention vs. criminalization: The opinion of the Inter-American Court of Human Rights**

...When States violate the rights of at-risk children, such as 'street children' in this way, it makes them victims of a double aggression. First, such States do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the "full and harmonious development of their personality". Second, they [such States] violate their physical, mental and moral integrity and even their lives.

When the State apparatus has to intervene in offences committed by minors, it should make substantial efforts to guarantee their rehabilitation in order to "allow them to play a constructive and productive role in society"....

Source: Inter-American Court of Human Rights, 'The Street Children Case', para.191-197 (citing the Preamble to the Convention on the Rights of the Child and Rule 26 of the Beijing Rules)

## Children in detention

Children in detention often suffer egregious violations of their basic rights – including no education and lack of basic medical care. Frequently, the conditions under which they live are deplorable and inhumane – no heat, inadequate food, insufficient beds, lice-ridden blankets, poor sanitation facilities and no exercise. Some are kept in solitary confinement for long periods. Physical abuse is common. Injuries include broken bones, broken hands, damaged eardrums, bruises and, most substantially, deep emotional trauma, often resulting from torture and interrogation. Children are frequently sexually abused. In many cases, even the most fundamental principles of due process are violated. Arrest, detention and sentencing are often arbitrary – the results of extrajudicial proceedings by police and military systems in which no civil protections exist. Detained children are often below the age of criminal responsibility and kept with adult prisoners from whom they may suffer abuse. Parents are commonly denied visitation rights and are often not informed of a child's whereabouts. The detention of children is frequently severely distressing and disruptive for their families.

Estimates from 2002 suggest that more than 1 million children world-wide are deprived of their liberty by law enforcement officials.<sup>84</sup>

### **Violations of the rights of adolescents by the courts and correctional agencies**

The Inter-American Commission on Human Rights adopted an important decision in 1999 concerning the detention of adolescents in jails and prisons. Following a notorious case in which an adolescent killed his parents, the Supreme Court of the country concerned authorized the detention of juveniles in adult facilities while a secure facility for dangerous juvenile offenders was being built. The Commission found that, far from being dangerous offenders, many children confined in adult facilities were accused of acts that did not even constitute crimes, often by criminal court judges who did not have jurisdiction over juveniles. The decision states in part:

The Commission considers that the practice of incarcerating a minor, not because he committed a criminal offence but simply because he was abandoned by society or was at risk, or is an orphan or a vagrant, poses a grave threat....

Far from punishing minors for their supposed vagrancy, the State has a duty to prevent and rehabilitate and an obligation to provide them with adequate means for growth and self-fulfilment.



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## ➤ International standards: Juvenile justice

### **The Convention on the Rights of the Child**

Article 40 of the Convention on the Rights of the Child states that:

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

Article 37 of the Convention also prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18.

### **Other instruments**

International standards also include three instruments specifically concerned with juvenile justice: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), the United Nations Guidelines on the Prevention of Delinquency (the 'Riyadh Guidelines') and the United Nations Rules on the Protection of Juveniles Deprived of Liberty.

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## **Delinquency prevention**

As the Riyadh Guidelines state:

The successful prevention of juvenile delinquency 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.

### **Checklist: Fundamental principles underlying any approach to issues of juvenile justice**

These include:

- presumption of innocence
- immediate notification of parents or guardians and their right to be present upon the apprehension of a juvenile
- avoiding detention before trial if possible and ensuring that any pre-trial detention is for the shortest possible period

- right to facilities and services that meet all the requirements of health and human dignity, and to adequate medical care, both preventive and remedial
- prohibition of all disciplinary measures constituting cruel, inhuman or degrading treatment including corporal punishment that may compromise the physical or mental health of the juveniles concerned
- right to fair and humane treatment, including the right to visits, to privacy, to communication with the outside world and to time for daily exercise
- provision of education (provided outside the detention facility by qualified teachers) suited to his or her needs and designed to prepare him or her for return to society
- ensuring that children are detained separately from adults unless they are members of the same family

A proper approach to juvenile justice also requires that efforts be made to prevent children coming into conflict with the law in the first place. This is an obligation at all levels from government to communities and families.

## **The minimum age for treatment of children as offenders**

Article 40.3 of the Convention on the Rights of the Child provides that States “shall seek to promote...the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”. Neither the Convention on the Rights of the Child nor the related international instruments specify what this age limit should be. In recent years, the Committee on the Rights of the Child has suggested that it considers the age of 15 to be appropriate, and that behaviour by younger children that is punishable by law should instead be dealt with by child welfare or child protection authorities and procedures.

## **Law enforcement and the rights of the child**

Law enforcement officials must ensure that every child has a right to be treated in a manner consistent with the promotion of his or her sense of dignity and worth. This is the first step towards rehabilitation, assuming that rehabilitation is needed. Violence or exploitation creates resentment and may be seen by the child as legitimating his or her own use of violence and exploitation.

Children suspected of committing an offence have the same rights as adults, including the right to be presumed innocent, the right to privacy (which includes the right not to be searched without sufficient cause), the right not to be obliged to give information and the right not to be interrogated without the presence of an advisor. In addition, they have the right to

special protection, which includes the right not to be confined with adults and the right to have their families or another responsible adult notified of their situation immediately.

Law enforcement officials should also respect basic international rules concerning the use of force, including the following:

- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.<sup>85</sup>
- Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.<sup>86</sup>

## **Diversion**

Instead of depriving children of liberty, the Convention on the Rights of the Child urges States to “seek to promote...measures for dealing with such children without resorting to judicial proceedings” (Article 40). Entry into the formal justice system can be traumatic and can stigmatize an adolescent. It should therefore be avoided whenever the matter can be adequately dealt with in a less formal way. Diversion can take the form of a warning that future offences will have more serious consequences, voluntary acceptance of some form of supervision or counselling, a commitment to attend school or to avoid persons or places associated with the offence, community service, or restitution to or reconciliation with the victim. The alternative to formal adjudication must be compatible with the rights of the child, which precludes measures such as corporal punishment.

## **Deprivation of liberty prior to trial**

Article 37(b) of the Convention on the Rights of the Child states that: “No child shall be deprived of his or her liberty unlawfully or arbitrarily”. It adds that “The arrest, detention or imprisonment of a child...shall be used only as a measure of last resort and for the shortest appropriate period of time”. This applies to all phases of proceedings, from investigation to sentencing.

With regard to adolescents under investigation or awaiting trial, the ‘last resort’ requirement means that detention is not warranted unless there is no other way to avoid a substantial risk of flight, the commission of additional offences or tampering with evidence. The payment of caution (bail) as an alternative to detention prior to trial is not appropriate

because it discriminates against adolescents from poor families. Where the family's ability to ensure effective supervision is uncertain, additional forms of supervision conditions may be imposed or the child may be placed in foster care on a temporary basis. In the case of children who have left home due to abuse or neglect, or whose family cannot be identified or located, release into the care and supervision of another responsible adult or organization should be considered. When the detention of an adolescent awaiting trial is unavoidable, priority should be given to completing the trial as soon as possible.

Adolescents in detention have the same basic human rights as other persons, including the right to humane treatment, the right to contact with their families, the right to be informed of the reasons for detention, the right to legal assistance and the right to challenge the legality of the deprivation of liberty. In addition, they have the right laid out in Article 37 of the Convention on the Rights of the Child not to be detained with adults and the right to be treated in accordance with the needs of persons of their age. The right not to be detained with adults is intended primarily to prevent abuse, exploitation or victimization by other prisoners. The implications of the right to special treatment depend on the age and circumstances of the individual adolescent prisoner and the prevailing conditions of detention. They may include, for example, food that meets the special needs of a growing adolescent, different forms of recreation, more frequent contact with family and access to appropriate counselling.

### **The right to due process and to specialized procedures**

An adolescent accused of an offence is entitled to the same minimum due process rights as any other person. This does not mean that accused adolescents should be treated like adults, however, for they also have the right to special protection. Ideally they should be tried by specialized courts, because it would be difficult for an ordinary criminal court to adequately protect this right.

The legislation of some countries allows persons under 18 to be tried as adults if they are accused of certain offences. This type of legislation is incompatible with the Convention on the Rights of the Child. The nature of an offence is not a reliable indicator that the offender is mentally and emotionally mature enough to deserve to be treated as an adult.

Where the legal age of majority in a country is lower than 18, the Convention is not applicable to those over this age of majority. However, there is one important exception. The death penalty cannot be imposed on any person under the age of 18 at the time of the offence, regardless of the age of majority under national law. In addition, recent years have seen a growing acceptance of the idea that all persons under the age of 18 accused of an offence should be entitled to special treatment.

## Sentencing

As noted above, the Convention on the Rights of the Child prohibits the imposition of the death penalty for any crime committed by a person under the age of 18 without exception. The African Charter on the Rights and Welfare of the Child and the American Convention on Human Rights also prohibit the imposition of the death penalty on persons under the age of 18, as well as on pregnant women.

The use of corporal punishment is prohibited by other provisions of the Convention on the Rights of the Child, according to the Committee on the Rights of the Child. The Human Rights Committee considers corporal punishment 'cruel, inhuman or degrading treatment', prohibited for children and adults alike by the International Covenant on Civil and Political Rights.

Sentences to juvenile correctional facilities "shall be used only as a measure of last resort and for the shortest appropriate period of time", and non-custodial sentences shall be used whenever appropriate. This rule is based on the Beijing Rules, which state in part:

Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

## Rehabilitation

"Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society" (UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 12).

The UN Rules for the Protection of Juveniles Deprived of their Liberty set forth a comprehensive approach to the rehabilitation of juvenile offenders, inspired by the Convention on the Rights of the Child. Some of the main principles are:

- Facilities should be decentralized, to prevent juveniles from being detained far from their families and communities, and small enough to allow for individualized attention.
- The system should include open or semi-open facilities, to meet the needs of children who require a residential setting but do not pose a serious danger to the community.

- Treatment should begin with an evaluation of the needs of the individual, and should include appropriate forms of education, work, spiritual and psychosocial counselling, recreation and care of medical problems, including drug or alcohol dependency.
- Respect for the rights of the child is essential to rehabilitation, because it encourages respect for the rights of others.

## Torture

The prohibition of torture is one of the most fundamental precepts of international human rights standards. Torture is defined in international law<sup>87</sup> as an act that:

- causes severe physical or mental pain or suffering;
- is inflicted intentionally for such purposes as obtaining information or a confession, in order to punish, intimidate or coerce the person tortured or a third person, or for discriminatory motives (e.g. racial or religious hatred, xenophobia, homophobia, etc.); and
- is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Physical torture usually affects persons deprived of liberty, but moral or psychological torture may also affect persons at liberty. Practices that have been recognized as torture include:

- Forcing a person to witness the torture or abuse of others, especially family members
- Severe anxiety caused by depriving a person of information about the fate or whereabouts of family members
- Grave threats, such as threats of death or mutilation
- Intrusive body searches
- Sexual abuse, when perpetrated by an official for one of the purposes mentioned in the definition above

It is not the nature of the act as such but the impact on the victim that determines whether an act should be considered torture. The characteristics of the victim, such as age or health, are relevant; what may not be torture for a healthy adult may be for a person in ill health or a child. Abuse committed by staff of facilities for children that are not serious enough to be considered torture may well violate other provisions of the Convention on the Rights of the Child, including Article 37(c). For example, the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment has described solitary confinement as constituting cruel, inhuman or degrading treatment or punishment of children, when the same would not necessarily apply to adults.

States have a duty to take all possible measures to prevent torture, as well as to investigate all complaints of torture or information regarding suspected torture, to prosecute all persons suspected of torture and to impose sentences that reflect the gravity of this crime. The right of child victims to rehabilitation is recognized by article 39 of the Convention on the Rights of the Child (see Chapter 10).

## *What can be done?*

### **Legal reform**

Legislation concerning juvenile justice should be reviewed to ensure that:

- Juveniles are not treated as offenders for behaviour that does not constitute a criminal offence
- Juveniles accused of an offence are entitled to all the guarantees of due process listed in article 40.2 of the Convention on the Rights of the Child
- Juveniles accused of an offence have the right to legal assistance
- The confidentiality of all stages of proceedings is legally recognized

Legislation concerning juvenile justice should also be reviewed, where necessary, with a view to ensuring compatibility with the following recommendations of the Committee on the Rights of the Child:

- The minimum age for adjudication as a juvenile offender should be the age of 15 or as close as possible to that age.
- Alternatives to adjudication should be recognized, and appropriate standards concerning recourse to adjudication should be incorporated into the law.
- All persons under the age of 18 accused of an offence should be treated as juveniles.

Legislation concerning the detention of juveniles should be reviewed to ensure that:

- The 'last resort' principle is incorporated into the relevant provisions of national law
- The duty to notify parents or guardians is recognized
- The detention of juveniles with adults is prohibited, except where such detention would be in the best interests of the juvenile

Legislation concerning the sentencing of adolescents convicted of an offence should be reviewed with a view to ensuring that:

- The 'last resort' and 'shortest appropriate period' principles are expressly recognized
- Neither the death penalty nor corporal punishment is authorized.



Consideration should also be given to incorporating the UN Rules for the Protection of Juveniles Deprived of Liberty into national law, as suggested by Rule No.7.

In addition, legislation should be reviewed to ensure that violations of the rights of children by law enforcement, judicial and correctional personnel are prohibited and punishable by appropriate sanctions.

## **Delinquency prevention**

A comprehensive policy regarding delinquency prevention should be elaborated, in consultation with civil society and in conformity with the following general principles recognized by the Riyadh Guidelines:

Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children.

Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

## **Specialized courts**

Consideration should be given to establishing specialized courts, where they do not exist, for the handling of cases involving juvenile offenders. Where such courts already exist, consideration should be given to expanding the network of specialized tribunals, if necessary, to ensure that they cover all parts of the national territory and have sufficient capacity to handle the case load expeditiously. All judges responsible for cases involving juvenile offenders should receive adequate interdisciplinary training in the rights of the child, child psychology and related areas.

## **Law enforcement**

All law enforcement personnel regularly involved in handling cases involving children and adolescents should receive appropriate training in child development and the rights of the child.

Effective, independent mechanisms should be established to investigate complaints against law enforcement agencies or officials alleging violations of the rights of the child.

## Challenging attitudes and presumptions about juvenile justice

Establishment of appropriate juvenile justice mechanisms can be difficult if public opinion demands tougher responses, including custodial sentencing, to children in conflict with the law. Public opinion leaders, such as parliamentarians and the media, should promote more appropriate approaches to juvenile justice, including community service and other traditional non-custodial methods.

## Rehabilitation

The system for the rehabilitation of juvenile offenders should be reviewed to ensure the following:

- Non-residential programmes are available, including guidance and supervision, probation, community service, compensation and restitution to the victim and group counselling.
- Residential facilities are small enough to facilitate individual treatment, and decentralized so as to permit juveniles to receive treatment near their community.
- Residential facilities offer rehabilitation programmes involving education, counselling, vocational training and recreation, adapted to the needs of the different types of offenders, in cooperation with community-based services and programmes when possible.
- Isolation from the community should be no greater than necessary, and contact between the residents and their families should be encouraged and facilitated, unless it would be contrary to the interests of the child.
- Disciplinary rules and procedures should comply with the UN Rules for the Protection of Juveniles Deprived of Liberty.
- Personnel should be carefully selected and trained, and adequately compensated.
- Independent bodies should monitor conditions in residential facilities, and residents should have access to complaints procedures.

## Examples of law reform concerning juvenile justice

Many countries have enacted legislation to make their juvenile justice systems more compatible with the Convention on the Rights of the Child and related international standards, especially in Latin America. For example, in order to avoid the detention of children in police stations, the Dominican Republic's Child Protection Code provides that any child picked up by the police shall be taken immediately to the office of the children's legal defender, brought before a court within 24 hours and released, unless accused of a serious crime. Other Codes provide specific guidelines as to the duty of the police to take arrested juveniles to the appropriate juvenile authorities or facilities, often specifying a deadline for doing so and in some cases specifying the sanction for non-compliance.

The legislation adopted by several of these countries' legislatures also establishes diversion procedures, to allow less serious cases to be handled without formal adjudication. In some instances, the law allows the prosecutor to decide not to proceed to trial, in exchange for agreement by the adolescent to participate in a community-based, non-custodial programme. Legislation adopted by other countries provides for pre-trial conciliation between the accused and the victim. If they reach an agreement, proceedings can be suspended. If the agreement is carried out within the prescribed time, the suspension becomes permanent. Other laws provide that the competent authorities can halt proceedings on grounds such as the nature of the injury suffered by the victim, efforts made by the adolescent to repair the damage or the fact that the perpetrator and victim are members of the same family.

In order to stop children coming before courts on vague charges such as vagrancy, the new legislation adopted by several countries expressly provides that they may not be brought before the courts unless they are charged with an recognized offence defined in the criminal law.

Different approaches have been adopted in incorporating the 'last resort' and 'shortest appropriate time' principles into legislation concerning the detention of adolescents prior to trial. The legislatures of some countries have simply incorporated them into the national law. In some countries, specific limits for the duration of pre-trial detention have been enacted. In one, the legislature enacted a provision, based on the Beijing Rules, which bars detention of juveniles unless they are charged with a crime of violence or have a record of prior serious offences.

The legislatures of many countries have also incorporated the 'last resort' principle into legislation concerning the sentencing of juvenile offenders. The Codes of some countries provide that juvenile offenders may not be detained in closed facilities, unless no other means of rehabilitating them exists. In others, legislation has been adopted incorporated this principle together with some of the specific standards contained in the Beijing Rules, such as the rule that juveniles shall not be sentenced to closed facilities unless convicted of a crime of violence or unless they are repeat offenders. Another new law provides that the failure to respond to non-custodial sentence on a prior occasion may justify a sentence to a closed facility.

The 'shortest appropriate period of time' principle has been incorporated into the juvenile justice legislation of some countries in the form of provisions establishing the maximum length of a sentences to closed facilities for juvenile offenders, ranging from 2 to 4 years.

Source: Based on *Infancia, Ley y Democracia*, E. García-Mendez and M. Beloff, UNICEF-Temis-DiPalma, 1998

# Chapter 14

## Child Labour<sup>88</sup>

*We take sheep to a distance of 10-15 kilometres for rearing. We walk a long distance and work in the sun. It is difficult to bear the scorching heat. We carry drinking water from our home. We may not find fodder for the sheep in the field. We have to climb trees and cut down leaves for the sheep. We are prone to health problems like headaches and burning eyes, hands and legs. It causes heatstroke. We have to stop the sheep from straying. It is dangerous for both us and the sheep if a jackal attacks.*

*Sometimes we have to spend the night with the sheep in the fields. We don't get food or sleep if we stay there overnight. We have to make temporary shelters, which we shift every day. If there is an emergency we don't have any support. We cannot play or rest. If it rains we have to take the sheep home. Generally when it doesn't rain we take the sheep out for three days at a time. Girls face a lot of problems while herding sheep. Boys cause problems in the fields for the girls.*

– Uttungamma, spokesperson for 823 working children from six villages in Karnataka, India, 2001.

– *A Future Without Child Labour*, Box 2.2

### What is child labour?

Work is not necessarily bad for children. Children can help their parents in the home or in the family farm or business, as long as the work is not dangerous and does not interfere with school attendance and other normal childhood activities. This is often referred to as 'light work'. The term 'child labour' refers only to forms of employment or unpaid work that violate the rights of children and should be prohibited.<sup>89</sup>

There are two main types of child labour: under-age employment and hazardous employment. Both are widespread throughout the world. An estimated 67 million children in the 5-14 age group are engaged in non-hazardous child labour.<sup>90</sup> More than 180 million are estimated to be engaged in hazardous employment.<sup>91</sup>

The 'worst forms of child labour', a term used in International Labour Organization Convention No. 182, include grave forms of exploitation that violate the rights of any person regardless of age, such as slavery, trafficking and forced labour, as well as certain forms of exploitation specifically prohibited by the Convention on the Rights of the Child. These include sexual exploitation, the use of children in the production and trafficking of illegal drugs and forced recruitment into armed forces. An estimated 8 million children are victims of these kinds of child labour.<sup>92</sup> Sexual exploitation and trafficking are considered in Chapters 8 and 9 of this Handbook, and the participation of children in armed forces and armed conflicts in Chapter 7. The 'Handbook for Parliamentarians No. 3', published jointly

by the International Labour Organization and Inter-Parliamentary Union in 2002, explores this topic in greater detail. This chapter focuses on underage and hazardous child labour.

## **Underage employment**

The right to obtain an education is a basic right of every child. Education encourages the intellectual and social development of children, and enhances their ability to earn a decent living. It is also a vital component of national development. It helps the individual become a better parent, an informed citizen and an active participant in civil society. In addition, it has a beneficial impact on problems such as delinquency and domestic violence.

The main purpose of minimum ages for employment is to protect the right of children to obtain an education. The relationship between education and child labour is an oppositional one. Many children leave school or are unable to meet the demands of the school system because of the need to work. Other children become child labourers because no schools are available, because they cannot afford the cost of school attendance, because the education offered is of poor quality or perceived as irrelevant, or because the school environment is hostile. While some children are deprived of their right to an education because of premature entry into the labour market, others enter the labour market prematurely because their right to obtain an education is not effectively guaranteed.

It is just possible for a child to work and remain in school, but few manage to do so. Only 7 per cent of children aged 5 to 9, 10 per cent of children aged 10 to 14 and 11 per cent of children aged 15 to 17 attend school while working.<sup>93</sup>

The main causes of underage employment are structural, and are related to weaknesses in the economic, social and educational systems. Structural adjustment programmes, privatization and transition to market-oriented economies have had a significant impact on school enrolment and child labour in many countries. Legal and cultural factors also play a role, however. In many countries, the minimum age for employment is lower than the age of compulsory school attendance, which leads to a paradoxical situation where children have a right to seek employment while being legally obliged to attend school.

*The Conference calls on all national parliaments, governments and the international community:*

- (a) To translate into concrete action their commitment to the progressive and effective elimination of child labour that is likely to be hazardous, interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development, and to the immediate elimination of the worst forms of child labour;*
- (b) To this end, to promote education as a key strategy, as well as to examine and devise economic policies, where necessary, in cooperation with the international community, that address factors contributing to these forms of child labour.*

*– 106<sup>th</sup> IPU Conference (Ouagadougou, Burkina Faso, September 2001)*

## **Hazardous employment**

Every child has the right to living conditions that are suitable to his or her physical, mental, spiritual, moral and social development. Hazardous work is work that is likely to prejudice the development of the child concerned in any of these areas. Almost two thirds of all children engaged in hazardous work are under the age of 15.<sup>94</sup> Work may be hazardous due to the nature of the activity itself, the tools or materials used in the workplace, or the hours or conditions of work. Certain types of labour, such as agriculture, fishing and mining, have long been recognized as dangerous for children, but other types of labour may also be hazardous depending on the circumstances, including the age, health and sex of the child. Children who are malnourished or stunted, for example, are more vulnerable to physically demanding work. Girls employed as domestic servants are particularly vulnerable to sexual exploitation. Statistics from developed countries, where more data is available, indicate that child workers are more vulnerable to work-related accidents and injuries than adults, and that girls are generally more vulnerable than boys. In the United States, for example, the rate of injury for children and adolescents is almost twice as high as that of adult workers.<sup>95</sup>

## **The causes of child labour**

Poverty is obviously one of the principal causes of child labour. Many children who work, whether in the home or in paid employment, do so in order to help their families to survive. Paradoxically, however, child labour is also a cause of poverty. It usually deprives children of an education and the opportunity to acquire skills, and in some cases also results in physical disabilities that further limit the earning potential of the victim.

The link with poverty is reflected in the number of children who work outside the home. The rate ranges from 2 per cent of children under the age of 14 in industrialized countries to 29 per cent of children under the age of 14 in sub-Saharan Africa.<sup>96</sup>

Other causes of child labour include family indebtedness, the lack or poor quality of schools, breakdown of the extended family, uneducated parents, cultural expectations concerning the role of children, high fertility rates and consumerism.

*The informal economy is where by far the most child labourers are found.*

*– A Future Without Child Labour, para.72*

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## ➤ International standards

### **The Convention on the Rights of the Child**

Article 32 recognizes the right of the child “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. The second paragraph of this article spells out the corresponding obligations of States. These include a general obligation to “take legislative, administrative, social and educational measures to ensure” effective protection of this right, and three specific obligations, namely, to:

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

### **The African Charter on the Rights and Welfare of the Child**

Article 15 provides that:

Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development.

The second paragraph of this article recognizes the obligation of States to take legislative and other measures to protect this right, including the establishment of minimum ages for employment.

### **International Labour Organization (ILO) Conventions**

ILO Convention No.138 establishes three age limits:

- 18 for hazardous work
- 15 for full-time employment in non-hazardous work
- 13 for ‘light’ work that does not interfere with education

Each country is to establish a list of the types of employment that are considered hazardous. Countries whose economic conditions and educational system would make these age limits unrealistic may lower the minimum age for ‘light’ work to age 12 and for other non-hazardous work to age 14.

ILO Convention No. 182 on the Elimination of the Worst Forms of Child Labour also prohibits the employment of any person under the age of 18 in hazardous



employment and, unlike Convention No. 138, it allows for no exceptions. The Committee on the Rights of the Child considers that the general obligation of the States Parties to the Convention on the Rights of the Child to set minimum age limits for employment should be interpreted and applied in the light of the age limits set forth in these ILO Conventions.

In 1998 the ILO adopted a Declaration on Fundamental Principles and Rights at Work, which recognizes the abolition of child labour as one of the four basic principles that all Member States of the Organization are bound to respect. This supports the position that the abolition of the employment of children in work that is hazardous or deprives them of their right to education is a customary rule of international law that all members of the international community are obliged to respect.

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*“Generally speaking, working in the informal sector means working to survive, and rarely to build a future.... Without social protection, most children work in conditions which endanger their lives, whether in searching for gold by traditional methods or working down mines, in factories, in craft industries, at home or in the fields. They lose any chance of attending school, of an education and of leisure activity.*

*– Ms. Akila Belembaogo, Minister for Social Affairs and the Family of Burkina Faso and Member of the Committee on the Rights of the Child, 1993*

## *What can be done?*

### **Ratification of international instruments**

States that have not already done so should consider ratifying ILO Conventions No. 138 and 182 to establish a clear legal framework for legislation and programmes against child labour.

*The provision of quality education for all children... is of crucial importance for the abolition of child labour.*

*– A Future Without Child Labour, para.281.*

### **Offering quality educational opportunities**

A comprehensive programme for improving school systems should be implemented to reduce school drop-out, as well as to encourage and facilitate the integration or reintegration of child labourers into the school system. Experiences in different parts of the world indicate that the following measures can be valuable components of such a programme:

- Primary education should be made free and obligatory, and action should be taken to reduce or eliminate informal fees or indirect costs that are an obstacle to the enrolment of children from the most disadvantaged sectors of the society.
- Teachers should be well-trained and motivated. Their salaries should be adequate and paid on a regular basis.
- School curricula should be reviewed to ensure that they are relevant to children. Vocational training programmes should be reviewed to ensure that they are adapted to the demands of the local labour market and the circumstances of the students.
- Schools should be made 'child-friendly'. In particular, steps should be taken to eliminate discrimination against girls and ensure their safety. Flexible school schedules should be adopted where necessary, in particular in agricultural areas, to minimize the conflict between school attendance and part-time or seasonal work of children.
- Non-formal education programmes should be put into place to facilitate the transition of children labourers into the school system.

## **The Brazilian experience of economic incentives**

The bolsa escola is a family stipend/school scholarship initiative that has been taken up on a national scale in Brazil. It provides a minimum monthly salary to poor families that agree to keep all their 7-14-year-olds enrolled in and recording 90 per cent attendance in school. Unemployed adult family members have to be enrolled in the national employment system. At the same time, a School Savings Programme was implemented as an additional incentive. The school drop-out rate was reduced to a minimal level. Such schemes can alleviate poverty in the short term as well as increase a family's assets in the long term. And the cost need not be prohibitive: In Brazil, it was 1 per cent of the Federal District's annual budget. The initiative is now being extended to the least developed countries in Africa.

Source: A Future Without Child Labour, para.335

## **Community-based social support systems**

Since children often become child labourers in response to a sudden event that affects the family income or expenses such as illness, death or the loss of employment by an adult wage-earner, community-based programmes designed to help families surmount such crises make a valuable contribution to comprehensive programmes to reduce child labour. Similarly, community-based programmes designed to enhance the earning power of adult family members in sectors and communities where child labour is most prevalent, such as through providing access to credit or training, can be effective.

*The struggle against child labour is first and foremost a matter of changing attitudes.*

– A Future Without Child Labour, para.323

## **Cultural change and community ownership**

Comprehensive efforts are needed to eliminate cultural values that encourage child labour, including attitudes that discriminate against girls. Such efforts should be made at community and national levels.

At the community level, they are most effective when linked to programmes designed to provide alternatives to families that rely on the income of child labourers or are at risk. Experience in many countries confirms that non-governmental organizations can play a vital role in such activities, especially through the use of participatory approaches that foster a sense of community ownership, which is essential for the sustainability of programmes against child labour. The active participation of children, including former child labourers, enhances the effectiveness of such activities.

At the national level, politicians and other public figures can play a key role in changing attitudes towards child labour.

The participation of trade unions, employers associations and the media also greatly enhances the effectiveness of efforts to reduce child labour.

### **A community-based programme in Pakistan**

The Bunyad Literacy Community Council in Punjab, with the Pakistan Carpet Manufacturers' and Exporters' Association, set up training and education for carpet-weaving children as a community-based rehabilitation and prevention programme. This encouraged awareness and participation of community members in a range of project activities aimed at improving the situation of child carpet-weavers, including counselling, non-formal education, recreation and health and safety services. Once the programme had gradually gained acceptance in the community, social workers were able to advise families on a whole range of issues related to work and child development.

Source: A Future Without Child Labour, para.352

## **Enforcement**

Enforcement is an important part of comprehensive efforts to reduce child labour, although experience suggests that traditional enforcement methods by labour inspection services must be complimented by other approaches and reinforced by the participation of other actors. Measures to enhance the effectiveness of enforcement include:

- The participation of labour inspectors in research on child labour and in peer training
- Non-traditional activities, such as assisting employers' associations to self-inspect and participation in community awareness activities
- The adoption of local ordinances or regulations that serve as a basis for monitoring and enforcement by local authorities
- Mobile inspection units
- Partnerships with trade unions and non-governmental organizations

## **Improving labour inspection services: The Kenyan experience**

The Kenyan Tripartite Labour Inspection Project concentrated on strengthening the organization and management of the Labour Inspectorate, upgrading its operations and raising the numbers and quality of inspections. Inspection emphasized the importance of cooperating with worker representatives, of holistic monitoring that 'mainstreamed' child labour issues in labour inspection reports and of determined follow-up. Meetings were held with employers to discuss infringements, prioritizing the most important ones. The numbers of inspection visits vastly increased during the project and have since been sustained. In spite of external funds no longer being available, the Kenya Labour Department is still undertaking some 20,000 inspections annually. Success factors included full publicity of activities and results within and outside the service, tripartite project management structures, participation and empowerment of all inspection staff, and extensive training programmes.

Source: A Future Without Child Labour, Box 4.11

## Chapter 15

# The Rights of Child Victims

Each year, countless children suffer serious violations of their rights. When this occurs, they are entitled a variety of different rights, including the right to confidentiality, the right to humane treatment during legal proceedings, the right to repatriation and social insertion and the right to seek reparations.

Yet many children find that the initial violation is compounded by other violations. Some examples include the following:

- Children who have been forced into prostitution are treated as criminals
- Victims of sexual abuse are subjected to humiliating and even traumatic experiences in the course of legal investigations and proceedings. They may be stigmatized, expelled from their family and even killed to protect the 'honour' of the family
- Children displaced by armed conflict find themselves at the mercy of armed gangs that exploit them sexually, recruit them as combatants or force them into servitude
- Children who have been trafficked may be exposed to particularly unhealthy and dangerous working conditions, or deprived of their identity
- Children who have been abandoned or removed from their homes due to neglect or abuse may be placed in institutions where they are isolated from the community, deprived of affection and subjected to corporal punishment
- Children who have fled their homes due to mistreatment may be exploited, threatened and treated violently by criminals and the police alike

Even when such 'revictimization' does not follow, many children who have suffered serious violations of their rights receive no care for the consequences of the violation, either because help is unavailable or because they are afraid of the stigma that would result from disclosing what has happened. For example, in the United States, less than half the adolescent girls who are victims of physical or sexual abuse seek assistance.

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## ➤ **International standards: The rights of victims**

### **The Convention on the Rights of the Child**

The Convention contains two articles concerning the rights of victims. Article 39 addresses the rights of victims of particularly serious violations. It provides:

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

Article 8, which recognizes the child's right to identity, also contains a paragraph regarding children whose right to identity has been violated. It provides:

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

Several other instruments contain more detailed standards concerning the rights of victims. The most relevant are summarized below.

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### **The right to confidentiality**

The right of victims to confidentiality to protect their privacy, honour and reputation may be affected in two ways. Firstly, the media may publish or broadcast images of the victim or his or her name or other information that permits the public to identify the victim. Secondly, the victim may be stigmatized by the community, regardless of whether or not the incident has received any media coverage. This is most common with regard to children who are victim of sexual abuse or exploitation in societies where the social norms against extra-marital relations are strong.

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## ➤ **International standards: The right to confidentiality**

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography provides that States should protect "the privacy and identity of child victims" and take measures "to avoid the inappropriate dissemination of information that could lead to the identification of child victims".

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) to the UN Convention on Transnational Organized Crime provides that “In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential”.

The South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution also provides that judicial authorities shall ensure that the confidentiality of child victims is maintained.

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## **The right to humane treatment during legal proceedings**

Only a small percentage of the victims of violence and abuse seek assistance. Fear of insensitive treatment by law enforcement agencies, medical and social investigators and the courts is one of the main reasons why victims do not come forward.

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### **➤ International standards: The rights to humane treatment during legal proceedings**

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography contains a comprehensive list of the rights of children who have been a victim of any of these three practices. These standards are based in large part on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and summarize basic principles concerning the way children should be treated in any legal proceeding. They should be considered relevant to any criminal proceeding in which child victims may be involved, as well as in civil or administrative proceedings involving child victims, such as civil claims for damages due to arbitrary use of force by the police or the investigation of charges that a teacher has molested a student.

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## **The right to repatriation and social reinsertion**

The rehabilitation needs of trafficked children are often complex and long-term. Returned children may require long-term psychosocial or medical support and to be reintegrated into school or work life as well as into their families and communities. They may need immediate financial or material support, not least to avoid their being trafficked again. If the child's family is part of the problem, he or she may require alternative care. The child needs to be made safe and able to survive.



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## ➤ **International standards: The repatriation of victims of trafficking**

The Palermo Protocol contains guidelines concerning the repatriation of victims of trafficking, including that:

- The country of origin of the victim shall “facilitate and accept...the return of that person without undue or unreasonable delay”.
- The presumed state of origin of a victim must respond “without undue or unreasonable delay” to requests for confirmation that the victim is a national or was a permanent resident and provide victims without documentation with the necessary travel documents or authorization to enter the country.

While repatriation is pending, victims shall be provided with appropriate care and shelter, as well as protection against threats or retaliation, when necessary.

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## ➤ **The right to seek reparations**

The right of child victims to seek reparations for injuries suffered is important for several reasons. First, like any other victims, children have a right to be compensated for the moral, physical and psychological injuries caused by violation of their rights. Second, holding the perpetrators responsible economically can be an effective deterrent, especially where corporations or public or private agencies are involved in the violation. Third, compensation of the victims can help facilitate social reintegration.

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## ➤ **International standards: The right to seek reparations**

Article 8 of the Universal Declaration of Human Rights states that:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The Palermo Protocol provides that “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women recognizes the obligation of States Parties to “establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies”.

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## **The rights of victims under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

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

## *What can be done?*

### **Ratification of international/regional instruments**

In order to establish an appropriate framework for law reform and enhanced international cooperation in combating some of the most serious violations of the rights of children, countries that have not already done so should consider becoming parties to the international instruments mentioned above, in particular:

- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- The United Nations Convention Against Transnational Organized Crime
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

Member states of the Organization of American States and the South Asian Association for Regional Cooperation (SAARC) that have not already done so should consider ratification of:

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women
- The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

### **Law Reform**

Legislation should be reviewed to ensure that:

- Children involved in practices such as child prostitution, begging, international trafficking or illegal recruitment into armed groups are not subject to prosecution for participation in activities in which they are victims
- All children who have suffered physical or psychological injury or trauma as a result of any form of violence, neglect or exploitation have a legally recognized right to appropriate physical and psychological rehabilitation and assistance in social reintegration
- The right of child victims to privacy is fully recognized and sanctions for violations of this right, by the media or public servants such as social workers or police, are sufficient to effectively deter them
- The right to identity is legally recognized, and procedures for restoring the identity of children who have been deprived of one or more elements of this right are effective, rapid and inexpensive

Legislation concerning legal proceedings in which children are parties or witnesses should be reviewed to ensure that:

- The confidentiality of the identity of the child is adequately protected
- The child has a right to appropriate legal and social counselling and to information about the nature and course of the proceedings
- Children are protected, to the extent possible, from direct confrontation with persons accused of violating their rights and from hostile, insensitive or repetitive questioning or interrogation

Legislation concerning the right to a remedy should be reviewed with a view to:

- Ensuring that children whose rights have been violated have the right to pursue a remedy through procedures that are expeditious, fair, inexpensive and accessible
- Determining which type of legal or administrative procedure is most appropriate for ensuring this right, depending on the nature of the violation and the identity of the parties responsible
- Ensuring that procedural norms concerning the representation of children in such proceedings, and safeguards concerning the use and control of compensation awarded to children, protect the best interests of the child

## **Training and awareness**

Activities designed to increase awareness of the impact of violations of the rights of children on the victims, as well as the rights and psychosocial needs of the victims and appropriate procedures and practices for respecting and protecting their rights, should be organized for:

- Law enforcement officials, including customs and immigration officials and border police
- Judges and prosecutors
- Medical personnel
- Social workers
- Journalists

Such programmes should include, inter alia, interviewing and confidence-building techniques for communicating with child victims.

## Rehabilitation programmes

Specialized programmes should be developed or strengthened, as necessary, to provide medical and psychological rehabilitation to child victims of the most serious types of violence, neglect and exploitation.

The creation of health services specifically designed to meet the needs of adolescents is an important way of encouraging those who have been victims of violence, abuse and exploitation to seek assistance.

Peer-counselling is a valuable means of providing victim-friendly assistance to the child victims of certain types of violations, such as prostitution.

In countries where whole communities or large sectors of the population have suffered trauma, in particular due to armed conflict, programmes involving community-based paraprofessionals may be useful.

In many countries, national and international non-governmental organizations and international agencies such as the International Committee of the Red Cross can play a crucial role in providing technical and material support for rehabilitation programmes.

## Social reintegration

Programmes should be developed and implemented to provide child victims who have become separated from their families with such assistance as may be necessary in returning to their families, if possible, or to the community. They should include:

- Temporary shelter and assistance in reestablishing contact with the child's family, where necessary
- Reinsertion into the school system, where possible, or enrolment in other programmes designed to provide literacy and life skills and enhance self-esteem
- Alternative income-generating activities, apprenticeships or livelihood training

Programmes to change the attitudes of families and the public towards child victims should be designed and implemented, in particular for victims of sexual abuse and exploitation, "since the stigmatisation of [such] children...is a serious obstacle to their rehabilitation and reintegration".<sup>97</sup>

# END NOTES

- <sup>1</sup> The Impact of War on Children, Graca Machel (2001), UNICEF and UNIFEM, p.7 and 1
- <sup>2</sup> Cappelaere, G. and Annee Grandjean, *Enfants privés de liberté: droits et réalité*, Jeunesse et Droit, Liège, 2002
- <sup>3</sup> International Labour Organization, *A Future Without Child Labour*, ILO, 2002 p.1
- <sup>4</sup> International Labour Organization, *Every Child Counts, New Global Estimates on Child Labour*, ILO, April 2002
- <sup>5</sup> United Nations: Sale of children, child prostitution and child pornography. Note by the Secretary-General. A/50/456, September 1995
- <sup>6</sup> Submission from WHO to the Committee on the Rights of the Child, 28 September 2001
- <sup>7</sup> WHO Factsheet 241, 2001
- <sup>8</sup> United Nations Children's Fund, *The State of the World's Children 2002*, UNICEF
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## The United Nations Children's Fund (UNICEF)

UNICEF, the United Nations Children's Fund, is a global champion for children's rights which makes a lasting difference by working with communities and influencing governments.

The UN Convention on the Rights of the Child which sets out the right of all children to reach their full potential is the foundation of all its work. UNICEF's 7000 staff work in 157 countries and territories to fulfill children's rights to health and nutrition; education; emergency relief; protection; and water and sanitation.

By working in partnership with others, from governments and teachers to youth groups and mothers, UNICEF is a driving force for people throughout the world working to ensure a better future for children.

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- considers questions of international interest and expresses its views on such issues with the aim of bringing about by parliaments and their members;
- contributes to the defense and promotion of human rights, which are universal in scope and respect for which is an essential factor of parliamentary democracy and development;
- contributes to better knowledge of the working of representative institutions and to the strengthening and development of their means of action.

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Nelson Mandela