

LAW REFORM AND IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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The UNICEF Innocenti Research Centre

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

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The UNICEF Innocenti Research Centre (IRC) undertakes research on the implementation of the United Nations Convention on the Rights of the Child (CRC), with a particular focus on eight of the general measures of implementation identified by the Committee on the Rights of the Child. This publication presents the findings on the general measure 'law reform', and is the outcome of several years of research, collaboration and consultation.

The study has benefited greatly from the financial support of the Government of Sweden, and Swedish experts and senior officials have made substantive intellectual and practical contributions at every stage of the process. Likewise, participation in the study from members of the United Nations Committee on the Rights of the Child has been invaluable. In every respect – including study design, methodology and the content of the findings – the Committee's work and perspectives have been of critical relevance. They have helped to ground the study and the analysis, promising a 'life' for the findings in the workings and deliberations of this treaty body.

This law reform research has benefited from a rich exchange of ideas, reflections and lessons from initiatives in host countries where UNICEF-supported country programmes are under way. At the same time, the UNICEF network of National Committees has been

actively engaged, contributing ideas and experiences. There has been keen interest from governments, parliamentarians, independent human rights institutions, non-governmental organizations, academics and experts, as well as from UNICEF staff. The IRC is grateful to all those who took part in expert consultations, agreed to participate in interviews, responded to questionnaires and contributed information and analysis.

There has been a range of non-governmental contributors to the study and although they are too numerous to mention, their views and experiences have added a unique dimension to the study. In most cases, the organizations and individuals consulted have been 'frontliners' in promoting children's rights and the effective consideration of the enormous challenges that confront the implementation of the Convention on the Rights of the Child.

Within UNICEF, particular recognition needs to be given to colleagues in field offices who have taken an interest in the study and contributed to its development. Despite their daily demands, they were prompt in sharing relevant documentation and comments and completing questionnaires that were critical for the research. The study has benefited from consultation with many colleagues and their insights have been incorporated. The partnership and contribution of the UNICEF Division of Policy and Planning in New York has also been important for enabling an on-

going and mutually supportive coordination with the New York headquarters initiative on legislative reform. Moreover, the study has also benefited from the full participation of New York colleagues and experts, during consultations held in Florence.

Dan O'Donnell, a senior consultant to the Innocenti, has been the lead researcher on this study. As an early collaborator and ongoing supporter of the study, Peter Newell deserves special mention. A number of interns, among them: Clarice da Silva e Paula, Mamiko Terakado, Antonie Curtius and Clara Chapdelaine, all provided invaluable research assistance.

Vanessa Hasbun and Peggy Herrmann also made important contributions to the research. The study was managed by IRC's Chief of Implementation of International Standards Unit, Susan Bissell, under the overall guidance of the IRC Director, Marta Santos Pais. Editing support from David Pitt, and ultimately Allyson Alert, brought the text to its final form. Sandra Fanfani, Marie-Noelle Artero, Glyn Hopkins and Salvador Herencia, Chief of IRC's Communication and Partnership Unit, have also been integral to the production process.

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PREFACE

The Committee on the Rights of the Child, the body of independent experts established under the Convention on the Rights of the Child to monitor progress made by States parties in the implementation of the Convention, highlighted, since the start of its work, the instrumental role played by a set of cross-cutting measures whose impact is not limited to any specific right but extends to the rights contained in the Convention. These 'General Measures of Implementation' are, in a sense, the foundation on which efforts to protect specific rights can be built, and the framework that ensures that measures taken to protect specific rights form part of a broad, coherent effort to ensure that all children enjoy the Convention.

In its General Comment No. 5, the Committee, guided by a decade of experience in examining the experience of countries around the world in implementing the Convention, addresses 10 General Measures of Implementation. These are measures that the Committee considers to form part of the general obligation of States parties to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." This Innocenti study covers one of the General Measures – law reform.

In 2004, the Innocenti Research Centre decided to initiate a study of eight of the General Measures of Implementation, in some 60 countries around the world. The overall study

provides an overview of the extent to which countries in different parts of the world have acted on general measures of implementation.

Why did UNICEF's Innocenti Research Centre consider that it would be important to document and analyse the process of implementation of the Convention? Undoubtedly, the Convention has profound importance throughout the world. It has given greater visibility to issues concerning children, and has served as a reference for the development of new laws and public policies. But beyond capturing this process, it was necessary to reflect upon the extent to which children are given a priority attention in our societies. The overall study sets out to better understand:

- The extent to which commitments made by States parties to the Convention have led to the adoption of concrete measures to improve the rights of children
- The extent to which these measures have had a real impact on the lives of children
- Progress made so far
- The most important challenges we face and what our priorities should be in the years ahead, given our collective experience of 18 years of striving to implement the Convention and the social, economic, scientific and political changes that have occurred during this time.

This Innocenti study on law reform is based primarily on the reports of States parties to the Committee on the Rights of the Child and

other documents generated as part of the reporting process established under the Convention, supplemented by information received from UNICEF field offices, as well as analysis and reflections promoted in the context of expert consultations conducted by the Innocenti Research Centre. Because of the time lag inherent in the reporting process, information concerning some countries may not reflect the most recent developments.

The main purpose of the research with its focus on one specific general measure, is to make policymakers more aware of the importance of law reform, not as an end in itself, but as an integral part of a holistic approach to the promotion and protection of the rights of children. It cites examples of new laws that enhance recognition and protection of a broad range of rights and principles. Among these are the right to freedom from discrimination and the right to the respect of the child's views, the right to a nationality and to identity, and the equal rights and responsibilities of parents and the right to alternative care. There are also examples of new laws related to the right to health and education, child labour and juvenile justice. The right to protection against violence, exploitation, abuse and neglect is also an area where significant legislative changes have taken place and the study highlights these changes.

Identification of model legislation is not the aim of this report. Rather, the intent is to draw attention to the broad range of legislative processes and legal reform activities that have been undertaken the world over. The research also draws attention to areas where further efforts need to be done. In so doing, the study points out interesting examples of legislation that seem particularly innovative or suited to the needs and context of the country in question. The hope is that these examples might inspire lawmakers, governments, professionals and civil society in countries where such changes are still pending or in process.

An analysis of the advantages and limitations of different kinds of laws and techniques used to protect the rights of children in different

legal systems is also integral to the research. This analysis includes reflections on the 'direct incorporation' of the CRC into national law, the inclusion of articles on child rights into constitutions, the adoption of children's codes or comprehensive laws on the rights of the child, the amendment of ordinary legislation and the use of complementary regulations and decrees. One important conclusion of the study is that no single approach can be envisaged as a blueprint best suited to all countries, and no single method is sufficient to translate the breath of the Convention into the national legal framework.

Some of the advances identified are impressive: the Convention has been incorporated directly into the law of two thirds of the countries studied, and courts have adopted important decisions applying the provisions of this treaty. Since 1989, provisions on the rights of children have been incorporated into the constitutions of one third of the countries studied. Nearly all of the countries studied have made serious efforts to bring their legislation into greater conformity with the Convention, either by adopting children's codes, or the gradual, systematic reform of existing law or both.

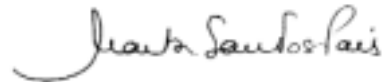
The impact of these changes in the lives of children is, of course, the ultimate question, and one that will continue to be addressed in the next phase of UNICEF Innocenti's work on General Measures of Implementation. This study has, nevertheless, turned up some examples of the important impact that changes in the law can have. In South Africa – to cite but one example – ratification of the Convention led to the inclusion of a strong article on child rights in the new post-apartheid constitution – an article that was influenced by consultation with children. On the basis of this article, the Supreme Court declared whipping of juvenile offenders – a sentence previously imposed some 35,000 times each year – unconstitutional.

The study documents the interrelatedness of the General Measures of Implementation, recognizing their complementarity and mutually supportive role. In this spirit, the study underscores the importance of professional training

and public awareness for proper implementation of new laws. It also recognizes a clear value in periodic monitoring, for identifying persisting gaps in the national legal framework and for evaluating the impact of such legislation once adopted. In addition, civil society participation in the process of law reform, including the involvement of young people themselves, is essential. Finally, the research also confirms the need for coordinating mechanisms, as well as the incorporation of law reform into national planning and strategies for children, and the critical importance of resource allocation for proper implementation of new laws.

The Innocenti study on law reform is being issued as the United Nations General Assembly

gathers to review progress in the follow-up to the 2002 Special Session on Children. It is therefore intended to support further efforts by governments, as well as by parliaments, independent child rights institutions, civil society actors and international development and human rights organizations “to put in place effective national legislation to fulfil and protect the rights and secure the well-being of children.” More widely, it is a contribution to build a world where all girls and boys can enjoy childhood without discrimination of any kind and develop in health, peace and dignity – a World Fit for Children.



Marta Santos Pais
Director
UNICEF Innocenti Research Centre

INTRODUCTION: THE AIM, SCOPE, SOURCES AND TERMINOLOGY OF THIS STUDY

This study on law reform concerning the rights of children is part of a larger initiative begun by the UNICEF Innocenti Research Centre in 2004 on General Measures of Implementation of the Convention on the Rights of the Child.¹ The study is designed to provide an overview of the extent to which States parties to the Convention have promoted the implementation of the 'general measures' whose importance was pointed out by the Committee on the Rights of the Child ('the Committee') in General Comment No. 5, adopted in 2005² (see *Annex II, page 123*).

General measures of implementation help implementation of the entire Convention and lay the foundation for procedures designed to realize specific rights. In addition to law reform, the other general measures identified by the Committee and covered by the Innocenti initiative include:

- comprehensive national plans and strategies
- coordinating mechanisms
- children's commissioners and ombudsmen
- allocation of resources
- awareness, education and training
- participation of civil society, including participation of children
- monitoring the situation of child rights

This study reviews the legislation concerning the rights of children adopted by 52 States parties since the adoption of the Convention on the Rights of the Child (CRC or 'the Convention'), as well as questions such as reservations and the status of the CRC in domestic law.

States covered in the study include 9 from Asia and the Pacific, 8 from Central and Eastern Europe, 11 Islamic States, 6 from sub-Saharan Africa, 14 from the Americas and 4 from western Europe (see *Annex I, page 121*). Since the main source of information used for the study was documentation generated by the process of reporting to the Committee on the Rights of the Child, the main criterion for selecting the States covered was that they had already presented their second report at the time the study began. On this basis, it was hoped that the 'process' of implementing the CRC would be visible in the dialogue with the Committee.

The category of Islamic States refers to those whose constitution identifies the State as Islamic or identifies Islam as the main source of law, and is considered relevant precisely for that reason. States whose population is predominantly Muslim but who do not meet that

criterion are included in the appropriate geographical group. The Central and Eastern Europe group consists of States in the process of 'transition' from communism; because of the influence that process has had on law reform, it includes some States that have that have acceded to the European Union.

Although the general measures study covers 14 western European countries, this report focuses on only 4. France and the United Kingdom were included as archetypes of two of the world's most important legal systems: common law and civil law; Sweden was selected an example of the Nordic countries and Italy as an example of countries in southern Europe. Canada is included as an example of a non-European, industrialized country, a second example (after the United Kingdom) of a country whose legal system is based largely on common law and a federal State. Although it is in the Americas, information concerning Canada is presented together with information on countries in western Europe.

Mainly, the study focuses on laws adopted or amended by the national legislature, although it includes a section on constitutional provisions and also mentions some executive decrees and provincial legislation. The Committee on the Rights of the Child has sometimes encouraged States to adopt children's codes or comprehensive laws, which raises the question of what these terms mean.³ 'Code' refers to a single piece of legislation intended to cover an entire subject or area of law. In principle, then, a children's code should cover all legal matters concerning children, or at least all those covered by the CRC. Among these are the following: civil rights, such as the right to nationality and freedom of thought and association; social rights, such as the right to education, health care and an adequate standard of living and working conditions; the relationship between children and their families; alternative family care; protection against abuse, neglect and exploitation; juvenile justice; standing and participation in legal and administrative proceedings; and general principles such as the 'best interests' principle and the right to development.

In fact, most 'juvenile codes' adopted prior to 1989 focused largely on juvenile justice and children in need of care and protection. Many of these older codes have now been replaced by new ones that incorporate some of the other areas covered by the CRC. The scope of these new codes varies, however, making it difficult to claim that there is a consensus on what a children's code is or should be. Consequently, in this study the term 'children's code' is not used in a technical sense, but simply to refer to the laws that are so titled.

Children's codes have been adopted by most of the countries in Latin America, but are less common in other regions. There are some exceptions, including Tunisia's 1995 Child Protection Code, and Egypt's 1996 Children's Code. These codes generally include a list of the rights of the child based on the CRC and regulate a number of areas in some details. These areas include, for example, juvenile justice, care and protection proceedings, adoption, child labour, access to education and health care and parental responsibilities. Many codes also establish mechanisms for protecting the rights of children, and some contain penal provisions defining crimes against children.

Similarly, there are no agreed criteria as to what a law should contain or cover in order to be considered comprehensive.⁴ The working definition used in the present study refers to laws that incorporate many or most of the principles and rights covered by the CRC into national law, and that provide additional indications as to the content of these rights, the measures for protecting them and the corresponding obligations of different actors (for example the state, local government, parents). A law should not be considered comprehensive unless it contains a list of the fundamental rights of children. Laws of this kind are more common and can be found throughout the world. Recent examples include the Law on Child Protection adopted by Indonesia in 2002, the Nigerian Child Rights Act of 2003 and the Law on the Protection and Promotion of the Rights of the Child adopted by Romania in 2004.

Another special type of law could be called a 'bill of children's rights'. These are laws that contain a comprehensive list of the fundamental rights of children, but do not provide in any detail how these rights are to be protected. Laws of this type are rare. Only two examples were identified during the preparation of this study: Rwanda's Law Relating to Rights and Protection of the Child against Violence and the Rights of the Child Act of Belarus. Most of the children's codes, comprehensive laws and children's bills of rights that have been adopted apply, in general, to all children under the age of 18.⁵ This is an important development, because in many countries older, existing legislation on child welfare and child protection applied only to younger age groups.

Except for the introductory sections, this paper reviews legislation adopted since 1989 thematically. Given the limits of a study of this kind, it has not been possible to cover each of the general principles and rights contained in the CRC. Eighteen areas are covered, ranging from general principles such as the best interests of the child and non-discrimination, to civil rights, and from the right to health and to education to the rights of children affected by armed conflict, child refugees and children belonging to minorities. The main objective has been to provide an overview of the scope and content of new legislation that has been adopted. This study concludes with some observations on three subjects that deserve further investigation: the process of law reform, the place of law reform as part of a broad child rights strategy, and the actual impact of legislation of this kind on children.

The main source of information, as indicated above, is documentation generated by the reporting process to the Committee on the Rights of the Child. These documents include the Initial and Periodic Reports of States parties, the Concluding Observations adopted by the Committee based on its dialogue with them, Summary Records of this dialogue and, to a lesser extent, the 'shadow reports' presented by non-governmental organizations (NGOs) and written answers submitted by States in response to the Committee's requests for additional information.⁶ Additional information was received from UNICEF offices, obtained through searches of online documentation centres and generated by three expert meetings that were hosted by the Innocenti Research Centre.

The UNICEF Innocenti Research Centre is in the process of setting up an online resource that will contain the text of available laws cited in this study and links to those that are available on other publicly accessible websites. In addition, the findings of the study have been incorporated into the revised *Implementation Handbook for the Convention on the Rights of the Child*; informed ongoing research in UNICEF on law reform; supported inter-governmental initiatives and regional reviews of advancements in children's rights, leading up to the five-year review of the UN General Assembly Special Session on Children. A number of universities have incorporated the study into their child rights curricula, and the Committee on the Rights of the Child has drawn from the study for its work, including the development of many of its General Comments.



The Convention on the Rights of the Child has been directly incorporated into national law in two thirds of the countries covered by this study.

1 THE STATUS OF THE CONVENTION IN NATIONAL LEGAL SYSTEMS

The Convention on the Rights of the Child (CRC) has been directly incorporated into national law in two thirds of the countries covered by this study. Direct incorporation means that the CRC itself forms part of national law, is binding on public agencies and can be applied by the courts. The position it occupies in the hierarchy of legal norms is a separate question; in most cases it is subordinate to the constitution but prevails over ordinary legislation. In some countries, however, the CRC has the same value as the constitution and in still others it has the same legal value as other legislation.

Direct incorporation is common in civil law countries but rare in common law countries. In the latter, the prevailing practice is not to make a treaty itself part of the national legal framework, but rather to amend existing legislation. In these cases new laws are adopted as needed in order to ensure that the rights, principles and obligations contained in the treaty

also form part of national law. The parliaments of common law countries can adopt laws that incorporate human rights treaties into national law – the Human Rights Act 1998 that makes the European Convention for the Protection of Human Rights and Fundamental Rights enforceable in the United Kingdom is a leading example – but such laws remain rare. There are also exceptions to the general rule that civil law countries tend to incorporate the CRC directly into their domestic law. In Africa, the Convention forms part of the national law of Burkina Faso and Togo, and prevails over national legislation. In Ethiopia and Rwanda, it forms part of domestic law, but does not prevail over ordinary legislation.

Treaties do not form part of the domestic law of Nigeria and South Africa unless incorporated into law by the National Assembly in the respective countries. Rather than incorporate the Convention directly into national law, the Government of Nigeria decided to

enact a comprehensive law on the rights of the child based on the rights and principles contained in the Convention and the African Charter on the Rights and Welfare of the Child. This law, the Child Rights Act, was adopted in 2003. In South Africa, the Convention has not been incorporated into domestic law, although some of its key rights and principles have been incorporated into the Constitution.⁷

The CRC forms part of the national law of most of the Asian countries studied, including Japan, Nepal, the Philippines, the Republic of Korea and Viet Nam. In Japan, Nepal and Viet Nam it prevails over national legislation, while in the Republic of Korea it has the same force as legislation. The Convention has not been incorporated directly into the domestic law of India or Sri Lanka, although it can be used to interpret legislation and legal principles concerning the rights of the child. In India, the courts have used the Convention in this way in a number of important decisions. Meanwhile, in Fiji the CRC has not been incorporated into domestic law, but has been cited in some judicial decisions to bolster conclusions based on national law.

In Lebanon, Morocco, the Syrian Arab Republic and Tunisia, the CRC (like other human rights treaties) forms part of national law and takes precedence over incompatible legislation. The Convention also forms part of the national law of Egypt, the Libyan Arab Jamahiriya and Sudan. Bangladesh reports that the Convention is considered part of national law, but is in a lower hierarchy than other legislation.⁸

The Convention forms part of national law in all of the Latin American countries studied. In Argentina, Chile, Costa Rica, Guatemala, Honduras, Mexico and Paraguay it prevails over other legislation; in Bolivia the Convention forms part of domestic law with the same legal status as other legislation. In Jamaica and the other Caribbean countries that apply common law, treaties do not form part of domestic law unless they have been expressly incorporated by legislation.

It is noteworthy that the Convention forms part of the domestic law of all the countries of

Central and Eastern Europe covered by this study, and in all of them it prevails over domestic legislation.⁹ The incorporation of international treaties into the national legal system is a new development that overturns the legal doctrine prevailing prior to 1990. In most of these countries, international treaties are incorporated into national law through provisions of the new constitutions.¹⁰ The incorporation of international norms into national law, combined with the trend towards greater independence and activism on the part of the judicial branch, has led to the adoption of important decisions regarding the rights of the child. In 1998, the Constitutional Court of Belarus found that provisions of the Marriage and Family Code concerning extrajudicial adoption of children without parental consent were incompatible with the Constitution and the Convention, and the Constitutional Court of the Czech Republic overturned part of the Family Code on the grounds that it was incompatible with the Charter of Fundamental Rights and Freedoms and the Convention. The Supreme Court of Romania has adopted decisions concerning adoption based on the 'best interests' principle and the CRC.

In 1995, the Supreme Court of the Russian Federation adopted guidelines for courts on application of the standards of international law in the examination of specific cases. This has increased the number of court decisions based on the Convention. For some countries, direct incorporation of the Convention into national law enabled administrative authorities to take decisions based on the Convention, even before the legislation was amended to fill gaps concerning the rights of the child. The Ministry of Interior of Slovenia, for example, recognized the right to nationality of stateless children residing in the country who did not meet the requirements of the legislation in force at the time, because obtaining Slovenian nationality was considered to be in their 'best interests'.¹¹

The status of the CRC varies considerably in the national law of the countries of western Europe that follow the civil law system.¹² In

Italy, the Convention forms part of domestic law and prevails over conflicting legislation. It has been applied by the Supreme Court and the Constitutional Court of Italy on several occasions. In France, the Council of State and Cour de cassation have agreed that the self-implementing provisions of the CRC can be applied directly by the courts.¹³ The CRC also forms part of the domestic legal order in Belgium, Cyprus, Finland, Norway, Portugal and Spain, but not in Germany, Iceland, the Netherlands or Sweden.

In Sweden, treaties do not form part of national law unless they have been incorporated by an act of parliament. This has not been done with the CRC. It is a general principle of Swedish law, however, that legislation is to be interpreted in light of international obligations. In Germany, ratified treaties normally form part of national law, but on ratifying the Convention, a declaration was made that it cannot be directly applied. In contrast, the United Kingdom does not have a written constitution; national law includes statutes and customary law, also referred to as common law. Here too, treaties do not form part of national law unless they are incorporated by an act of parliament, but they can be referred to by the courts to resolve ambiguities in national law. British courts have on occasion taken the CRC into account in interpreting statutory law and the lawfulness of administrative policy. In a 1997 decision of the House of Lords, Lord Browne-Wilkinson remarked "The Convention has not been incorporated into English law. But it is legitimate...to assume that Parliament has not maintained on the statute book a power capable of being exercised in a manner inconsistent with the treaty obligations of this country."¹⁴

The position in most other common law countries is similar. In some, the principles set forth in the CRC are recognized as relevant to the way in which government agencies exercise their discretion in cases affecting individual children, even though the CRC has not been incorporated into domestic law.

In a recent immigration case, for example, the Supreme Court of Canada stated "the principles of the Convention and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. They help show the values that are central in determining whether this decision was a reasonable exercise of the [agency's statutory] power."¹⁵

The position in Fiji differs from that of other common law jurisdictions, due to a constitutional provision that states "the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this chapter." The High Court of Fiji has declared that the CRC "could be used [by the courts] to support the decision making or to justify a decision."¹⁶

Some jurists consider customary international law to be part of common law and thus applicable by the courts, to the extent that it is not contrary to legislation.¹⁷ The High Court of Australia has recognized a slightly different principle, namely, that "the common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights."¹⁸



A significant number of reservations and declarations to the CRC have been withdrawn.

2 RESERVATIONS AND DECLARATIONS TO THE CONVENTION

The number and scope of reservations and declarations to the CRC made by States parties upon ratification varies considerably across regions.¹⁹ None of the sub-Saharan African countries studied has made any reservation to the Convention on the Rights of the Child, while Islamic States and western European countries have made more reservations than other countries in Asia, Europe and Latin America.²⁰ A significant number of reservations and declarations have been withdrawn, in some cases because new legislation complying with the CRC has been adopted, and in others because of a changed understanding of what the CRC actually requires.

Most Latin American countries have not filed reservations to the Convention, although Argentina made a reservation to article 21, indicating that it would not be possible to comply with certain provisions concerning international adoption until an effective mechanism for the prevention of trafficking

was in place. The country adopted new legislation on international adoption in 1997, but the reservation has yet to be withdrawn. Argentina, Ecuador, Guatemala and Uruguay have made declarations indicating that they intended to apply the Convention to children from conception, or that they intend to apply higher standards than those required by the Convention in relation to the prohibition on participation in armed conflict to all children under the age of 18, or both.

The majority of countries in Central and Eastern Europe have not made declarations or reservations to the Convention. The reservations that have been made are narrow. There was a reservation made by Yugoslavia that was withdrawn by most of the successor States after they became independent. Poland made reservations concerning article 7 of the Convention, limiting the right of adopted children to information about their birth parents, and a purported reservation to article 38

concerning the minimum age for recruitment and participation in armed conflict. It also made a declaration with regard to the rights of the child that stated “in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family.” In 1997, although Poland decided that the declaration was unnecessary in the light of the provisions on the rights of parents set forth in the new Polish Constitution, it has not yet been withdrawn. The Czech Republic made a declaration concerning article 7, para. 1 of the Convention, indicating that the right to identity does not include the right of adopted children or children conceived through artificial insemination to information about the name of their ‘natural parents’.

In Asia, India, Indonesia, Japan and the Republic of Korea have made reservations or declarations, or both, to the Convention. India made a declaration concerning child labour; Japan made a declaration concerning family unity and the right to residence, and a narrow reservation concerning the separation of juveniles and adults deprived of liberty. The Republic of Korea made reservations indicating it would not be bound by the provisions of the Convention concerning the right of children separated from their parents to maintain contact with them, by the basic standards regarding adoption or by the right of convicted juveniles to appeal. Indonesia made a broad reservation indicating that ratification did not imply the acceptance of any obligations “going beyond” the rights recognized in its Constitution. The Government has indicated that the adoption of the Child Act 2002 makes this reservation unnecessary, but it has not yet been withdrawn.

Some Islamic States, such as Pakistan, have made a general reservation to any provision of the CRC incompatible with Islamic law. In 1997, Pakistan withdrew its reservation. Other Islamic countries have made reservations to article 14, para.1, concerning the freedom of religion, and to articles 20 and 21, concerning alternative

family care and adoption. Jordan and the Syrian Arab Republic have made reservations to all three articles. Bangladesh has made reservation to articles 14, para. 1 (religion) and 21 (adoption). Egypt made reservations regarding articles 20 and 21 of the Convention concerning adoption, but they were withdrawn in 2003. Lebanon has made no reservations, and Tunisia made a reservation concerning juvenile justice, later withdrawn and unrelated to Islamic law.

Many European and other industrialized countries have made varying declarations or reservations. Canada made a declaration and a reservation concerning indigenous children. The former indicates that the obligations of Canada under the Convention will be implemented with regard to the cultures of indigenous groups, and the latter indicates the intent to respect indigenous forms of ‘alternative care’, even though they may not comply fully with article 21 of the Convention.

France has made two declarations and a reservation. One declaration states “this Convention, particularly article 6, cannot be interpreted as constituting any obstacle to the implementation of the provisions of French legislation relating to the voluntary interruption of pregnancy”; and the other, “in the light of article 2 of the Constitution of the French Republic, article 30 is not applicable so far as the Republic is concerned.” The latter refers to the government’s long-standing position that, since all French citizens are equal, there are no minorities who are entitled to any special status.²¹ The Committee on the Rights of the Child made no comments on the first declaration, but urged France to consider withdrawing the declaration concerning minorities.

The United Kingdom has made two interpretative declarations and several reservations. One declaration states “the United Kingdom interprets the Convention as applicable only following a live birth.” Meanwhile, the other indicates that the United Kingdom interprets references to ‘parents’ to mean only those persons recognized as parents under national law (which excludes, for example, sperm donors). The Government has indicated it considers these declarations to be permanent.²²

In addition, the United Kingdom has made reservations concerning the right to residence and nationality, child labour, the separation of child prisoners from adult prisoners and concerning legal proceedings in Scotland. Those reservations concerning child labour and legal proceedings in Scotland were withdrawn after the enactment of new legislation. While welcoming the withdrawal of those reservations, the Committee on the Rights of the Child expressed concern that, more than a decade after ratification of the Convention, the United Kingdom still detains children with adults because of financial constraints.²³

Canada and France have also made reservations regarding juvenile justice. The reservation

of Canada pertains to the separation of children from adults in detention, while that of France concerns the right to appeal. The Committee also expressed concern that these reservations have not yet been withdrawn. Some other western European countries have made declarations or reservations concerning the right to nationality or residence, or the rights of non-citizens.²⁴ The Committee has taken a strong position on the widest reservation of this kind, declaring that it considers the reservation concerning nationality and immigration made by the United Kingdom to be "against the object and purpose of the Convention."²⁵



Provisions on the rights of children have been incorporated into the constitutional order of one third of the counties reviewed for this study.

3 CONSTITUTIONAL RECOGNITION OF CHILD RIGHTS

One third of the counties covered by this study – including all of those in sub-Saharan Africa and Central and Eastern Europe – have adopted new constitutions since 1989.²⁶ Many of these new constitutions include important provisions on the rights of children. However, in some cases the opportunity to incorporate the rights of children into national law at the highest level was lost. Other countries have amended their constitutions to incorporate new provisions on the rights of children. Through various means, provisions on the rights of children have been incorporated into the constitutional order of one third of the counties covered by this study.

The constitutions of Ethiopia, Rwanda and South Africa contain relatively extensive chapters on fundamental rights, including provisions on the rights of the child. Article 36 of the Ethiopian Constitution of 1994 recognizes the child's right to life, to name and nationality, and to know and be cared for by

his or her parents. It also includes the right of the child to protection against exploitative practices, in particular employment prejudicial to the child's health, education or well-being, to protection from cruel and inhuman punishment and the right of children deprived of liberty to be separated from adults. Section 28 of the South African Constitution of 1994 contains an even more extensive list of the rights of children (*see box 1 page 14*).

The 1997 Constitution of Burkina Faso proclaims the State's commitment to the rights of the child and prohibits the ill-treatment of children (articles 24 and 2, respectively), and the 2002 Constitution of Togo declares "The State protects youth from all forms of exploitation or manipulation." Article 35 of the Nigerian Constitution of 1999 declares that the protection of children, young persons and the aged against "any exploitation whatsoever, and against moral and material neglect" shall be a fundamental objective of

State policy.²⁷ Article 3 (f) of Chapter IV on fundamental rights was not updated to reflect the development of international human rights standards since the adoption of earlier constitutions, however, and contains no provision specifically concerning the rights of children. In comparison, the preamble of the Rwandan Constitution of 2002 refers to the Convention, and article 28 states “Children have the right to the special measures of protection that their condition requires, on the part of their family, society and the State, in conformity with national and international law.”

Many countries in Central and Eastern Europe, including the Czech Republic, Georgia, the Russian Federation and Slovenia, became independent states since the adoption of the Convention in 1989. The remainder of those covered by this study – Belarus, Poland, Romania and Ukraine – also underwent a political transformation during the 1990s. Consequently, all of them have constitutions that are more recent than the Convention. Some of these new constitutions contain only brief references to the rights of children, often in an article dedicated primarily to the family. The 1993 Constitution of the Russian Federation provides simply that “Motherhood and childhood, and the family shall be under state protection.”²⁸ Similarly, the 1995 Constitution of Georgia states “The rights of mothers and children are protected by law.”

The 1994 Constitution of Belarus contains an article on the child and the family that recognizes the right of both to the protection of the State. This Constitution also notes “No child shall be subjected to cruel treatment or humiliation or used for work that may be harmful to

its physical, mental, or moral development.”²⁹ In the Czech Republic, the 1991 Charter of Fundamental Rights and Freedoms, which is part of the constitutional order, also contains an article on children and the family. Article 32 of the Charter recognizes the right of children and adolescents to ‘special protection’ and the right of children to be raised by their parents. It also prohibits discrimination on the basis of birth.

Box 1

South Africa: Constitutional recognition of child rights

- (1) 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 basic nutrition, shelter, basic health care services and social services;
 - d. to be protected from maltreatment, neglect, abuse or degradation;
 - e. to be protected from exploitative labour practices;
 - f. 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;
 - g. 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;
 - h. 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
 - i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

Source: Section 28 of the Constitution of the Republic of South Africa, 1996.

The Constitutions of Poland, Romania, Slovenia and Ukraine contain articles dedicated exclusively to the rights of children. The 1996 Constitution of Ukraine prohibits all violence and exploitation of children, as well as discrimination on the basis of birth.³⁰ It also recognizes the responsibility of the State to protect “the family, childhood, motherhood and fatherhood” and to care for orphans and children deprived of parental care.³¹ Article 45 of the 1995 Constitution of Romania states “Children and the young shall enjoy special protection and assistance in the pursuit of their rights.” It also recognizes the duty of the State to provide social protection, including “state allowances for children and benefits for the care of sick or disabled children,” and to ensure conditions that allow “the free participation of young people in the political, social, economic, cultural and sporting life of the country.” The employment of children under the age of 15 and the “exploitation of minors, their employment in activities that might be harmful to their health, or morals, or endanger their life and normal development [are] prohibited.”

Article 56 of the 1991 Constitution of Slovenia states “Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity.” It also recognizes their right to “special protection from economic, social, physical, mental or other exploitation and abuse” and the right of children who have no parents or who are without proper parental care to “the special protection of the state.” Article 72 of the Polish Constitution of 1997 recognizes the right of the child to be heard.³² It also recognizes the duty of the State to ensure protection of the rights of the child, and the corresponding right of every person “to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.”³³

By contrast, only two of the western European countries reviewed by the study have amended their constitutions to add new provisions on the rights of children. Article 22 bis of the Belgian

Constitution, adopted in 2000, recognizes the right “of every child to respect for his moral, physical, psychological and sexual integrity”; and article 76(3) of the Constitution of Iceland, adopted in 1995 as part of a new Bill of Rights, recognizes a general programmatic obligation of the State to protect the welfare of children.

In Asia and the Pacific, new constitutions were adopted by Nepal in 1990, by Viet Nam in 1992 and by Fiji in 1997. However, these constitutions contain only brief references to the rights of the child. The Nepalese Constitution recognizes the duty of the State “to safeguard the rights and interests of children and [to] ensure that they are not exploited” and the Vietnamese Constitution recognizes the duty of the State, society and family to provide children with protection, care and education. The latter also recognizes the duty of children and grandchildren to show respect to and look after their parents and grandparents. The Constitution of Fiji contains only a few provisions concerning the specific rights of children, such as the right to nationality and a qualified right not to be detained with adults. The Constitution of India was amended in 2003 to reinforce the right of children aged 6 to 14 to free and compulsory education.

Over the past decade and a half, several of the Islamic States included in this study have adopted new constitutions, made significant amendments to their constitutions or adopted human rights charters. In most cases, however, these changes have not included the adoption of new standards recognizing the rights of the child. The Constitution of Lebanon, amended in 1990 after 15 years of civil war, does not contain any reference to the rights of children. The Constitution of Yemen, adopted in 1991 after the unification of north and south Yemen and amended in 1994, contains only a general provision on the duty of the State to protect women and children.³⁴

In Jordan and Morocco, both constitutional monarchies, the period since 1990 has been one of reform that has strengthened the role of the political parties and parliaments.³⁵ In Jordan, the new political regime was consolidated in

Box 2

Colombia: Child rights in the Constitution

The fundamental rights of children are: the right to life, to physical integrity, to health and social security, to a balanced diet, to name and nationality, to have a family and to not be separated from it, to care and love, to education and culture, recreation and to the freedom to express one's opinion. They shall be protected against every form of abandonment, physical or moral violence, kidnapping, sale, sexual abuse, economic exploitation and work that is exploitative or dangerous. They also shall enjoy all the other rights set forth in the Constitution, laws and international treaties ratified by Colombia.

The family, society and State have the obligation to aid and protect the child to ensure his harmonious and integral development and the unfettered exercise of his rights. Any person may ask the competent authorities to fulfil their obligations [in that regard] and punish those who violate [such rights].

The rights of children prevail over the rights of others.

Source: Article 44 of the Constitution of Colombia, 1991.

the National Charter adopted in 1991 and in Morocco the Constitution was amended in 1992, 1996 and 1999. In both cases, however, the changes in the fundamental law concerned primarily the structure of government. The Constitution adopted by Sudan in 1998 – and suspended the following year – contained an article recognizing the duty of the State to protect children from “physical and spiritual exploitation and neglect.”³⁶ An Interim National Constitution adopted in 2005 contains an article providing that “The State shall adopt policies and provide for child and youth welfare and ensure that they develop morally and physically, and protect them from moral and physical

abuse and abandonment.” Another declares that “the State shall protect the rights of the child as provided by the international and regional conventions ratified by the Sudan.”³⁷

More than one third of the countries in Latin America studied have adopted new constitutional norms on the rights of children since 1989. The Constitution of Nicaragua was amended in 1995 to incorporate the Convention into the constitutional order. A new Constitution adopted by Colombia in 1991 also contains an article on the rights of the child that incorporates the Convention into domestic law. The Constitution of Paraguay, adopted in 1992, contains a

similar but less comprehensive article. In 1999, Mexico incorporated into its Constitution an article on the rights of the child that appears inspired by article 44 of the Constitution of Colombia (see Box 2, above), in 2001 a provision making pre-primary education compulsory was added and, in 2002, the provisions of the Constitution concerning discrimination were amended to take into account a recommendation made by the Committee on the Rights of the Child.³⁸ Ecuador adopted a new Constitution containing a bill of children's rights in 1998; and in 2003 Chile adopted a constitutional amendment recognizing the right to 12 years of schooling.



Nearly all of the countries studied have made substantial changes in their legislation to better protect the rights of children.

4 GLOBAL OVERVIEW OF LAW REFORM

Most African countries, including all those covered by this study, are parties to the African Charter on the Rights and Welfare of the Child as well as the CRC. The African Charter, which was adopted in 1990 and entered into force in 1999, is similar to the Convention in many respects. It grants greater protection to the rights of the child in some areas. For example, it specifically establishes age 18 as the minimum age for marriage. Efforts to incorporate child rights into national law in Africa are therefore unique in that they are based on a regional treaty on the rights of the child as well as the Convention.³⁹

Of the six sub-Saharan African countries included in this study, only Nigeria has adopted a comprehensive children's law. The Act to Provide and Protect the Rights of the Nigerian Child 2003 ('Nigerian Child Rights Act') has three main purposes: to incorporate the rights and principles contained in Convention and the African Charter into national

law; to spell out the corresponding obligations of the family and public agencies and authorities; and to consolidate legislation concerning children into one comprehensive law. It consists of 284 sections divided into 24 parts, which cover the basic rights of children (defined as all persons under the age of 18); it addresses issues concerning the relationship between the child and his or her family, care and protection proceedings, children's homes, juvenile justice and correctional services for children. It also establishes a system of Family Courts. However, given the nature of Nigeria's federal system, the law is directly applicable only the Federal Capital Territory and the Federal Courts. A concerted effort is now under way to encourage the state legislatures to adopt laws implementing the Act.

In Rwanda, an important law on the rights of children was adopted in 2001.⁴⁰ In Burkina Faso, the Government has not considered adoption of a comprehensive law on children,

notwithstanding the recommendation of the Committee on the Rights of the Child. It has, however, adopted some important new legislation that provides greater protection to certain rights of the child, including a new penal code and a new education law. In Ethiopia, the CRC has influenced the new Family Code adopted in 2000 and the amended Penal Codes adopted in 2004. In South Africa, the arrival in power in 1994 of the first post-apartheid government gave rise to a far-reaching process of law reform. Issues concerning children must compete with other areas for priority, however, and several important new bills that have been prepared have not yet been adopted.

Law reform has been extensive in the Asian countries studied. The Law on Child Protection, adopted by Indonesia in 2002 and applicable to all children under the age of 18, restates all the rights and principles contained in the CRC. It also establishes a Commission for the Protection of Indonesian Children and makes it a criminal offence to discriminate in such a way that the child suffers "material or psychological loss." The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, adopted by the Philippines in 1992, covers a broad range of issues including child abuse, sexual exploitation, child labour and armed conflict, but contains no generally applicable list of the rights of children. Two other important laws are the Family Court Act 1997, which provides for the establishment in every city and province of specialized courts having jurisdiction over custody, domestic violence and child abuse and juvenile justice, and the Juvenile Justice and Welfare Act of 2006.

Important new legislation concerning children has been adopted by Viet Nam. The centrepiece is the 1991 Law on the Care, Protection and Education of Children, which recognizes many of the rights contained in the Convention, but is applicable only to children under the age of 16. It also contains sections on the duties of children and parents. In Japan, the Government took the position that domestic law already protected the rights of children relatively well, in part because Japan adapted its legislation to

other human rights treaties long ago. The adoption of a comprehensive law on children has been considered unnecessary, but some important new laws have been adopted, in particular laws concerning child abuse, sexual exploitation of children and AIDS prevention. Most such laws have been adopted since consideration of Japan's Initial Report by the Committee on the Rights of the Child, on which occasion the Committee observed that Japanese law does not adequately reflect the general principles set forth in the Convention and suggested that the Government be more receptive to the participation of civil society in the law reform process.

For the Republic of Korea, too, the Government paid increased attention to law reform after the consideration of its Initial Report by the Committee on the Rights of the Child. Although no comprehensive law has been adopted, a considerable amount of new legislation has been enacted.

In India, which is made up of 28 states, state governments have a major role to play in most matters concerning child rights. Some new national legislation has been adopted, notably the Juvenile Justice (Care and Protection of Children) Bill 2000 and the National Commission for Children Bill 2006, but thus far the scope of law reform has been limited. Several Indian states have adopted laws on children, one of the most recent and complete being the Goa Children's Act of 2003, which declares the Convention to be legally enforceable in that state. Sri Lanka has made extensive amendments to legislation affecting children, including some laws that dated back to the colonial era. This occurred, for the most part, after the consideration of its Initial Report to the Committee on the Rights of the Child.

Nepal adopted a Children's Act in 1992, which is applicable to children under the age of 16. It contains a list of their rights and provisions on child labour and exploitation, alternative family care, the structure and functions of the child welfare system, legal remedies for the protection of the rights recognized and penalties for violations of the Act. In Fiji, a commission recommended in 1993 that the Juveniles Act

be replaced and more child-specific legislation be enacted. To date, however, only one minor amendment has been made to the Juveniles Act.

Several Asian countries have adopted solemn political commitments and policy declarations concerning the rights of the child, referred to as 'charters'. The first Children's Charters, which described the duties of society towards children, were adopted in Japan in 1951 and the Republic of Korea in 1957. The Republic of Korea also adopted a Charter on Youths in 1988, which was amended in 1998 with the addition of 11 articles on the rights of persons aged 9 to 24.

In Sri Lanka, a Children's Charter based on the Convention was adopted in 1992. Although it does not have force of law, it is used by the Human Rights Commission and the National Child Protection Authority as guidance for their own activities and the activities of other agencies they monitor. In India, a National Charter for Children came into effect in 2003. The Charter, which is binding on the federal government agencies, covers a broad range of issues, including health and nutrition, early childhood care, education, child labour, the family, children with disabilities, the protection of girls, affirmative action in favour of disadvantaged groups and the rights of victims.

Since 1990, at least three of the Islamic States covered by this report have adopted codes or comprehensive laws concerning children. Tunisia adopted a Child Protection Code in 1995.⁴¹ The Code, which applies to all persons under the age of 18, recognizes the general principles set forth in the Convention, as well as many of the fundamental rights of children, including some not recognized by the Convention, such as the right to legal representation in non-criminal proceedings. It contains standards and procedures concerning the protection of children against neglect, abuse and exploitation, and juvenile justice. Tunisia has also adopted important new legislation in areas such as education and the family.

Egypt adopted a Children's Code in 1996, and the Libyan Arab Jamahiriya adopted a Child Protection Act in 1997. The code in Egypt applies to all persons under the age of 18, and reg-

ulates the duties and functions of institutions providing juvenile justice services to children. Most matters concerning the family continue to be governed by the Personal Status Law. The Libyan Act consolidated and, in some cases, modified, the provisions of various laws concerning children already in force, including the Code of Criminal Procedure, the Social Security Act, the Civil Status Act, the Compulsory Education Act and the Labour Act. Yemen adopted a law on the rights of the child in 2002.⁴²

In 1988, the newly formed government in Morocco created a Ministry of Human Rights and an interministerial committee to harmonize legislation with international human rights conventions that the country had ratified. Since then, although a comprehensive code on the rights of the child has not been adopted, important new legislation has been enacted, including a new Code of Personal Status adopted in 2004, a law on abandoned children and a new Code of Criminal Procedure that entered into force in 2002. Jordan and the Syrian Arab Republic both adopted new basic laws on education and labour during the period under review. Lebanon adopted few new laws until the late 1990s, but subsequently adopted important new laws on child labour, health and juvenile justice.

Sudan has adopted a substantial body of new legislation since 1990, despite the ongoing civil war.⁴³ These include several laws of relevance to children, including the Criminal Law Act 1991, the National Council for Child Welfare Act 1991, the Personal Status of Muslims Act 1991, the Public Education Act 1992, the National Conscription Act 1992, the Sudanese Nationality Act 1993 and the Labour Act of 1997. With the exception of the National Council for Child Welfare Act and the National Conscription Act, however, the Convention does not appear to have been a major influence in the new legislation.

In Bangladesh, although most of the law in force concerning children predates the country's independence and there is a need for law reform in many areas, the efforts of the Government have focused on the adoption of policies and plans of action. Only one major

new law was adopted, concerning violence against women and children.⁴⁴ Pakistan thus far has adopted one major new national law since 1989, the Juvenile Justice System Ordinance 2000.

Most countries in Latin America have adopted new codes on children. The first such code, adopted by Colombia in 1989, incorporated many of the rights and principles contained in the Convention.⁴⁵ In most countries, the process of developing and adopting such codes took from 5 to 10 years. The Honduran code was adopted in 1996. The Costa Rican and Nicaraguan codes were adopted in 1998. In Mexico, a relatively broad child protection law was adopted in 2000.⁴⁶ Work on the new Paraguayan code began in 1991; it was presented to Congress in December 1995 and finally adopted in 2001.⁴⁷ In Guatemala, a code was adopted by the Congress in 1996, but did not enter into force.⁴⁸ A new code was adopted in 2003, and entered into force the same year.⁴⁹

Some of the codes or comprehensive laws adopted soon after the entry into force of the Convention have already been replaced. Bolivia, for example, adopted a new code in 1992. Two years later the process of law reform was resumed, and a new code was enacted in 1999.⁵⁰ The 1992 code of Ecuador was replaced by a new code in 2002.⁵¹ A few countries, including Argentina and Panama, have resisted the trend to enact children's codes. In Argentina, however, several provinces and the federal capital have done so.⁵² Similarly, in Mexico, where the federal child protection law is largely programmatic in nature, more than a third of the states have

enacted legislation designed to give effect to the rights and principles contained in the CRC.⁵³

This trend towards codification has not had the same influence on common law in the Caribbean.⁵⁴ Jamaica adopted a relatively comprehensive law in 2004.⁵⁵ The law covers care and protection proceedings, alternative care, child labour and juvenile justice and recognizes some of the basic principles contained in the Convention.

Many countries in Central and Eastern Europe have adopted comprehensive laws on children based on the Convention. The Rights of the Child Act adopted by Belarus in 2000, can be considered a precursor of the more comprehensive laws later adopted by other countries in the region. The Act recognizes the child as an independent subject of legal rights, and the right to special protection of children deprived of a family environment and other children with special needs. The Law on Childhood Protection adopted by Ukraine in 2001, and the Social and Legal Protection of the Children Act, adopted by the Czech Republic in 2002, recognize many of the rights and principles set forth in the Convention and define the corresponding responsibilities of public authorities and agencies.

The Law on the Protection and Promotion of the Rights of the Child adopted by Romania in 2004 is a comprehensive piece of legislation concerning the rights of the child. It lists the civil rights and liberties of children, and includes sections on the family and alternative care, education, leisure and cultural activities, refugee children and children affected by armed combat,

Box 3

Romania: Comprehensive legislation on child rights

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

Source: Article 1 (2) of the Romanian Law on the Protection and Promotion of the Rights of the Child, 2004.

child abuse, and the responsibilities of national agencies and local governments.

Some countries adopted a number of executive decrees during the first years after ratification of the Convention. During the 1990s, Romania, for example, adopted a large number of decrees, including some that were denominated emergency decrees. A comprehensive law adopted in 2004 to a large extent consolidated the rules and procedures outlined in the decrees adopted by Romania during the late 1990s that proved feasible and effective.

Reliance on decrees may be due to a number of factors, including the time required in order to reform the structure of the State and for new legislative bodies to be formed and become operative, and the need for an urgent response to address symptoms of the social and economic crises that characterized the region's process of transition. The increasing use of legislation rather than decrees undoubtedly reflects a maturing of the political processes, in particular the consolidation of the freely elected legislatures as independent branches of government and more transparent and participative processes of law-making.

The adoption of legislation has another advantage in that, although decrees are legally binding, they are mainly used to set standards for the functioning of public agencies and institutions. Legislation has broader legal effects, often including the recognition of the rights and duties of individuals and families vis-à-vis each other and the State. Moreover, since the judiciary plays a larger role in the enforcement of legislation than executive decrees, the use of legislation on the rights of children distributes responsibility for protection of the rights of children more widely within the State.

Comprehensive laws on children are not common in the western European countries covered in this study, although considerable new legislation covering specific issues concerning children has been adopted. The Organic Law on the Legal Protection of Children and Young People, adopted by Spain in 1996, appears to be the only example of a comprehensive law

adopted by any of the 14 western European countries covered by the General Measures of Implementation study.⁵⁶ It incorporates the CRC into national law, elaborates on the content of several of the civil rights of children, regulates the standing and rights of children in administrative proceedings and makes extensive changes in the child protection system. Some of the other legislation adopted has far-reaching implications, however. In France, a law adopted in 1993 established specialized family courts and amended numerous provisions of the Civil Code in order to incorporate principles set forth in the CRC.⁵⁷

In Italy, important legislation has been enacted at the regional and national level. Of particular importance is Law No. 285 of 1997, which established a fund for supporting regional projects designed to protect the rights and improve the living conditions of children, especially vulnerable children.⁵⁸ The law created a National Research Centre for Children and Adolescents to monitor implementation and provide technical support to regional and local governments. Another law adopted the same year established a special Parliamentary Commission on Children, as well as a National Observatory on Children.⁵⁹ The Parliamentary Commission, composed of 20 senators and an equal number of deputies, approves the national plan of action for children and proposes new legislation. The need for new legislation in certain areas has been identified and the law reform process is ongoing.

In Canada, as in most federal states, most matters concerning children come within the legislative competence of the provinces. The federal parliament has adopted some new legislation concerning juvenile justice and financial benefits for families with children.⁶⁰ Most provinces have made substantial legislative reforms designed to bring their legislation into conformity with the CRC, particularly in the areas of family law and social services.⁶¹ Sweden initially believed that no changes in legislation were required to comply with the Convention.⁶² Gradually, however, there was a growing recognition of the need to amend legislation in different areas in order to

better protect children's rights. However, no consideration has been given to the adoption of a comprehensive law on children or a bill of rights for children.

The United Kingdom considered that no further changes to its laws were required because the Children Act 1989 was considered to take into account the rights and principles contained in the then draft Convention.⁶³ The Act has been described as comprehensive because it "brings together in one statute both

the public and the private law," although its scope is largely limited to matters concerning the family and alternative care.⁶⁴ A considerable amount of legislation on other child rights issues was eventually enacted, especially after the first meeting of the United Kingdom with the Committee, and the Act itself has been amended repeatedly. The 1989 Act applies mainly to England and Wales; in 1995 the Children (Scotland) Act and Children (Northern Ireland) Order were adopted.⁶⁵



In all actions concerning children taken by legislative bodies, the best interests of the child shall be a primary consideration.

5 THE INCORPORATION OF GENERAL PRINCIPLES INTO NATIONAL LAW

The 'best interests' principle

Article 3, para. 1 of the CRC states "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The principle of the 'best interests' of the child has long been recognized by the civil and common law systems, in the context of family law and child welfare legislation.⁶⁶ Its transformation into a principle that applies to all actions concerning children, both individually and as a group, is one of the most significant accomplishments of the CRC.⁶⁷

For some countries, the concept employed is that of the 'welfare' of the child, rather than the 'best interests' of the child. Whether these terms are equivalent depends on the way they are defined, interpreted and applied by the legislation and competent authorities.

In general, however, the concept of welfare has overtones of physical safety, material well-being and the child as a passive beneficiary of protection, while the 'best interests' concept connotes the child as an active subject of rights whose interests have physical, mental, social, moral and spiritual dimensions.⁶⁸ In some countries, concern that the 'best interests' principle could open the door to subjective decision-making by administrative and judicial authorities has led to the adoption of legislative definitions. (*Examples are provided in Box 4, page 25*).

In Africa, the 'best interests' principle is recognized in the constitutions of Ethiopia and South Africa. The Child Rights Act of Nigeria also recognizes this principle, in strong terms: where article 3 of the Convention states that the best interests of the child shall be a primary consideration, and Section 1 of the Act states that they shall be the primary consideration in "every action concerning a child,

whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority.” The Rwandan law on the rights of the child also recognizes this principle.

In Asia, the Indonesian Law on Child Protection and the Philippines Special Protection of Children against Child Abuse, Exploitation and Discrimination Act recognize the ‘best interests’ principle in very broad terms, with express reference to the CRC.⁶⁹ The Juvenile Justice and Welfare Act of 2006 of the Philippines reaffirms this principle and defines the best interests of the child as “the totality of circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development.”⁷⁰ The Constitution of Sri Lanka contains a provision close to the spirit of the CRC, and the Children’s Charter substantially reproduces the language of article 3, para. 1.⁷¹ In some other countries, including Fiji, India, Japan and the Republic of Korea, this principle is recognized, especially in family and child welfare legislation.⁷²

For some Islamic States, there appears to be a tendency to equate the best interests of the child with the precepts of Islamic law.⁷³ The Committee on the Rights of the Child has pointed out the ‘best interests’ principle requires that decisions be based on the needs and circumstances of the individual child, and that it is a dynamic concept that must take into account the views and evolving capacities of the child.⁷⁴ Only a few of the Islamic States reviewed have incorporated the ‘best interests’ principle into their legislation thus far. For example, in Tunisia, the Child Protection Code recognizes this principle in terms that are substantially identical to article 3, para. 1 of the Convention.⁷⁵ The Egyptian Children’s Code also recognizes this principle in broad terms.⁷⁶

Many of the children’s codes adopted in Latin America give particular importance to the ‘best interests’ principle. The Colombian Code provides that the best interests of the child shall be the prevailing consideration, and not merely

“a primary consideration.” The Nicaraguan Code clarifies this concept, equating the best interests of the child with “all that favours the child’s physical, moral, cultural and social development, in keeping with the evolution of the child’s capacities.”⁷⁷ Some codes contain provisions designed to safeguard against the possible misinterpretation or misapplication of this principle. The Guatemalan Code, for example, declares that it shall never be applied so as to diminish or restrict any right recognized by the Constitution, by treaties such as the Convention or by the code itself.⁷⁸ The Ecuadorian Code provides that, in case of a conflict, the ‘best interests’ principle prevails over other principles, in particular that of respect for cultural diversity.

The ‘best interests’ principle was also incorporated into the new constitutions of Colombia and Paraguay. The latter states simply: “In case of conflict, the rights of the child shall prevail.”⁷⁹ The Mexican child protection law contains a similar provision stating “the exercise of the rights of adults may not, at any time or in any circumstances, condition the exercise of the rights of a child or adolescent.”

In Central and Eastern Europe progress has been made in incorporating the ‘best interests’ principle into the new civil and family codes and other laws concerning the family that many countries have adopted since 1990. The Civil Code adopted by Georgia in 1997, for example, calls on parents to give primary consideration to the best interests of their children and recognizes the importance of this principle in the context of custody care and protection proceedings. The Adoption Act adopted the same year also recognizes the primacy of this principle.

Legislation incorporating the ‘best interests’ principle in broad, general terms nevertheless remains rare in the region. One exception is the Romanian Law on the Protection and Promotion of the Rights of the Child, which uses language similar to article 3 of the Convention.⁸⁰ The ‘best interests’ principle has long been recognized in the legislation of many western European countries concerning the family. Although this principle may not

have been incorporated into national law in broad general terms similar to those of the Convention, recent legislation has incorporated it into new areas of law. For example, Italian legislation concerning immigration adopted in 1998 provides that the best interests of the child should be given priority in all decisions regarding family reunification of foreigners.⁸¹ In addition, the Constitutional Court of Italy has held that the 'best interests' principle is implicit in provisions of the Constitution concerning human rights and the protection of children.⁸²

Sweden initially took the position that its legislation concerning the family contained rules

intended to ensure respect for the best interests of the child.⁸³ In 1998, however, this legislation was amended to include provisions more closely resembling the 'best interests' principle as set forth in the CRC.⁸⁴ The same year, the Social Services Act was amended to recognize that the best interests of the child must be given "full consideration when adopting any measures affecting the child's life or status."⁸⁵ Sweden's Third Report to the Committee in 2002 also indicates that law reform intended to incorporate this principle into other areas of law was still pending.

The 1989 Children Act of the United Kingdom provides that the best interests of the child are

to be the paramount consideration in decisions about the upbringing of children taken by the courts, children's services and local authorities. The Act contains no statutory definition of the best interests of the child, although it recognizes some principles that can be seen as related to this concept. One provides that no court shall make any orders concerning a child unless it is satisfied that making an order would be better for the child than making no order; another is the principle that any delay is likely to be prejudicial to the child. The Children (Scotland) Act contains similar provisions, although it also establishes an exception to the principle for cases in which the interests of a child are outweighed by the interests of public safety. The Children (Northern Ireland) Order 1995 makes the welfare of the child the paramount consideration in any legal proceeding concerning the upbringing of a child. Similarly, in Canada, since no law specifically on the rights of the child has been adopted, there is no legislation incorporating the general principles recognized by the CRC into national law in terms

Box 4

Romania: Guiding principles concerning the rights of children

Observing and guaranteeing the rights of the child should be conducted in accordance with the following principles:

- (a) observing and primarily promoting the best interests of the child;
- (b) equal opportunities and non-discrimination
- (c) raising the awareness of the parents on the exercise of their rights and on the fulfilment of parental duties;
- (d) the primordial responsibility of the parents to observe and guarantee the rights of the child;
- (e) the decentralization of the child protection services, the multi-sectoral intervention and the partnership between the public institutions and the authorized private bodies;
- (f) providing individualized and personalized care for each child;
- (g) observing the dignity of the child;
- (h) hearing the opinion of the child and giving it due weight, in accordance with the age and maturity of the child;
- (i) providing stability and continuity in caring [for], raising and educating the child, taking into account the child's ethnic, religious, cultural and linguistic background, in the case of undertaking a protection measure;
- (j) celerity in making all decisions concerning the child;
- (k) providing protection against child abuse and neglect;
- (l) interpreting each legal act concerning the rights of the child in correlation with the entire collection of regulations in this field.

Source: Article 6 of the Romanian Law on the Protection and Promotion of the Rights of the Child, 2004.

as broad as those of the Convention. Nevertheless, much of the new legislation adopted by the provinces and territories since 1989 does incorporate the principles contained in the Convention into domestic law, especially into family law.

The Civil Code of Québec, Canada, for example, adopted in 1991, provides that all decisions concerning a child are to be taken in light of the rights and interests of the child.⁸⁶ This applies not only to judicial and administrative decisions but also to decisions made by parents. The Judicature Act of Nova Scotia was amended in 1991 to create specialized family courts that use mediation services, counselling and awareness programmes to ensure that the best interests of the child are paramount in custody and access disputes. The Child, Family and Community Service Act adopted by British Columbia, Canada, in 1996 not only provides that the best interests of the child must be taken into account in interpreting and applying the Act, but it also sets out guidelines as to how the best interests of the child shall be determined.

Equality and non-discrimination

The prohibition of discrimination contained in article 2 of the CRC is very broad. Indeed, the first paragraph declares “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.” The second paragraph adds that “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.”

Few African countries have adopted laws specifically recognizing the equality of children and their right to protection against discrimination. The constitutions of Burkina Faso and Ethiopia recognize the equality of children regardless of birth. Section 10 of the Nigerian law on child rights provides that children shall not be subjected to discrimination on the basis of birth, place of origin, ethnic origin, sex, religion or political opinion.

Box 5

British Columbia, Canada: Determining the best interests of the child

According to the Child, Family and Community Service Act of British Columbia, the following factors should be taken into account in order to determine a child’s best interests:

1. the child’s safety
2. the child’s physical and emotional needs and level of development
3. the importance of continuity in the child’s care
4. the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship
5. the child’s cultural, racial, linguistic and religious heritage
6. the child’s views
7. the effect on the child if there is a delay in making a decision.

Source: Part 1, para 4(1) of the Child, Family and Community Service Act of British Columbia, 1996.

Many of the Asian countries studied have adopted new legislation protecting children against discrimination. The Indonesian Law on Child Protection not only recognizes the principle of non-discrimination, but also recognizes the right of children to protection against discrimination in the family and makes it a criminal offence to discriminate in such a way that the child suffers “material or psychological loss.”⁸⁷

The Children Act 1992 of Nepal contains several provisions concerning discrimination: it prohibits parents from discriminating between boys and girls in the provision of food, education and health care, prohibits discrimination between children born in wedlock, children born out of wedlock and adopted children, and protects working children from discrimination on the

grounds of religion, race, sex, caste or ideology. The Vietnamese Law on the Protection, Care and Education of Children recognizes the right of children under the age of 16 to protection, care and education without discrimination on the basis of sex, ethnic origin, social class, birth or legal status in the family and political ideology of their parents. It also recognizes the principle of family unity, the right to be heard, the right to birth registration and nationality, to life, physical integrity, dignity and honour and the right to identity. The principle of non-discrimination applies to these rights as well. This law also establishes the general principle that "The rights of children shall be respected and implemented. All acts violating the rights of children or detrimental to their normal development shall be severely punished."

Elsewhere in Asia, progress has been made in prohibiting specific forms of discrimination. In the Philippines, the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act prohibits and provides penal sanctions for discrimination against indigenous children.⁸⁸ In Fiji, the 1997 Constitution eliminates previous discrimination with regard to the nationality of children born abroad to local mothers, but not retroactively. In Japan, the Basic Law for a Gender-Equal Society was enacted in 1999, but the Committee on the Rights of the Child has called for the amendment of certain legislation, such as the lower minimum age of marriage for girls.

The legislation of many Islamic States establishes an earlier minimum age for marriage for girls,⁸⁹ which the Committee on the Rights of the Child has considered discriminatory.⁹⁰ Discrimination on the basis of sex with regard to the right to nationality has also raised concerns.⁹¹ The Nationality Code of Tunisia was amended in 1993 to enable a Tunisian woman who is married to a non-Tunisian and lives abroad to pass her nationality on to her child.⁹²

The principle of non-discrimination is recognized by all the new Latin American codes. The codes all apply the definition of the child contained in the Convention, that is, they apply to all persons

under the age of 18; most protect the rights of the child as from conception, and make a distinction between children and adolescents. Their provisions on discrimination tend to be broad. Although some prohibit most of the types of discrimination mentioned in the Convention, none prohibits all of them. The Code of Ecuador prohibits a form of discrimination not expressly prohibited by the Convention itself; that based on sexual orientation.⁹³ The Mexican Code indicates that government policies should not discriminate, and should give special attention to the needs of children whose rights have been denied. Mexico also amended a provision of its Constitution concerning discrimination, in order to comply with a recommendation of the Committee.⁹⁴ Several countries, including Argentina, Chile and Costa Rica, have also adopted legislation prohibiting discrimination against persons with disabilities and recognizing their right to participate fully in society.

In Central and Eastern Europe, in most instances, discrimination on the basis of birth has been prohibited since before 1990. Many of the constitutions adopted since 1990 prohibit discrimination on most of the grounds mentioned in the CRC and, in some cases, on other grounds as well.⁹⁵ The Constitution of Georgia, for example, prohibits discrimination on the grounds of place of residence, and the Russian Constitution prohibits discrimination on the grounds of organizational membership.⁹⁶ There are gaps, however. Although the Law on Rights of the Child in Belarus recognizes the child's right to freedom, thought and opinion, it does not prohibit discrimination on the grounds of the child's opinion.⁹⁷ Similarly, the Romanian law on the rights of the child prohibits discrimination on any of the grounds mentioned by the Convention, except that of religion.⁹⁸

Italy has adopted new legislation against discrimination. A law against racism and xenophobia was enacted in 1993, and a law creating civil remedies for victims of discrimination was enacted in 1998.⁹⁹ In France, the different treatment of legitimate and adulterine children in matters relating to succession was abolished by the Act of 3 December 2001.¹⁰⁰ Several Canadian

provinces have amended legislation on discrimination to prohibit additional forms of discrimination. Alberta and New Brunswick, for example, amended the Human Rights Acts to prohibit discrimination on the grounds of family status, in order to prevent discrimination against families with young children in gaining access to housing.¹⁰¹ An amendment to the Alberta Act also expanded the concept of religious belief to include the spiritual beliefs of Native American communities. The Multiculturalism Act adopted by British Columbia in 1993, provides that racial, cultural, ethnic and religious diversity is a fundamental characteristic of the province that enriches the lives of all its citizens.¹⁰²

In the United Kingdom, the legislation in force prior to 1989 prohibited discrimination based on four grounds: colour, race, nationality and sex. Discrimination on the basis of birth was also prohibited in England and Wales, and the Children (Northern Ireland) Order 1995 eliminated discrimination on the basis of birth in that territory. The Children Act 1989 does not contain any additional prohibition of discrimination. However, the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits discrimination on most of the same grounds as the Convention on the Rights of the Child, including language, religion, political or other opinion, national or social origin, property and birth or other status. Consequently, the Human Rights Act of 1998, which incorporated the European Convention into national law of the United Kingdom, strengthens the protection of children against discrimination. The situation in Sweden is similar: only a few forms of discrimination are expressly prohibited by the Constitution, but the European Convention for the Protection of Human Rights and Fundamental Freedoms was incorporated into national law in 1995.¹⁰³

The right to be heard and have one's views taken into account

Article 12 of the Convention recognizes the children's right "to be heard in any judicial and administrative proceedings affecting the child,

either directly or through a representative." It also recognizes a much broader principle or an appropriate body: that all children have the right to express their views freely in all matters affecting them, and that their views must be "given due weight in accordance with the age and maturity of the child." This principle must be respected in matters affecting individual children, matters affecting specific groups of children and matters of concern to children generally as a part of the community or society.

Many African countries recognize that the right of children to be heard is a new concept, and that traditional values are an obstacle to recognition of that right.¹⁰⁴ The law on the rights of the child and protection of children adopted by Rwanda in 2001 is one of the first implemented by an African nation to recognize the right of the child to be heard in broad, general terms. The Child Rights Act of Nigeria provides that all proceedings in Family Courts "shall be conducive to the best interests of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings."¹⁰⁵

Such courts, established under this Act, have very broad jurisdiction over civil and criminal proceedings involving children.¹⁰⁶ The Act also recognizes the right to be heard in many specific situations, including some situations that are non-judicial (for example when a child is removed from the home on an emergency basis) and in all decisions taken by a children's home.¹⁰⁷ None of the provisions of the Nigerian Act that recognize the right to be heard establish any minimum age limit for the enjoyment of this right. The new Family Code of Ethiopia provides that children aged 14 or older must be consulted when any important decision concerning them is taken within the family, while children over the age of 10 have the right to be heard in legal or administrative proceedings.¹⁰⁸

In the Philippines, RA 7610 recognizes the standing of children to file complaints regarding any of the acts it prohibits.¹⁰⁹ The Law on Child Protection of Indonesia recognizes "respect for the opinions of children" as a basic principle, and a child's broad right to "speak

and have his opinions listened to.”¹¹⁰ The right to have one’s views taken into account is, however, not expressly recognized. In Fiji, the right of the child from the age of 12 to be heard is recognized with respect to legal proceedings, but is not recognized as a general principle applicable to all children old enough to form and express an opinion. In Japan, the Child Welfare Law was amended in 1997 to recognize the child’s right to be heard in certain care proceedings.

Box 6

Philippines: Juvenile justice and the right to be heard

Proceedings before any authority shall be conducted in the best interests of the child and in a manner which allows the child to participate and express himself/herself freely. The participation of children in the programme and policy formation and implementation regarding juvenile justice and welfare shall be ensured by the concerned government agency.

Source: Section 2(b) of the Philippines Juvenile Justice and Welfare Act RA 9344 of 2006.

Few of the Islamic States covered by this report have enacted legislation recognizing a broad, general right of the child to be heard. Legislation often provides that children acquire limited legal responsibility before reaching the age of majority, at an age ranging from 10 to 13. This rule is sometimes interpreted to mean that children younger than the ages specified do not have a right to be heard, an interpretation that raises concerns as to its compatibility with the broad scope of article 12, para. 1 of the Convention. The Child Protection Code adopted by Tunisia appears to be the only law in the region that recognizes the right to be heard in terms similar to article 12, para. 1 of the CRC.¹¹¹

The right to be heard has been incorporated into all the new Latin American codes, in one form or another. The Nicaraguan Code expressly provides that any legal proceeding in which this right is not respected is null. The Ecuadorian Code establishes a presumption that the views of the child of a certain age shall prevail in certain types of proceedings.

The new codes also invariably recognize the broader right of the child to be heard in other contexts, usually in the form of the ‘right to participate in the life of the family and the community.’ The entry into force of the Convention has prompted a review of the traditional legal precept that children can only enforce their rights through action by their legal representative.

The Supreme Court of Costa Rica issued an order to the effect that there is no minimum age for standing to seek a remedy for violations of constitutional rights. The new Ecuadorian code allows any child to make complaints before the administrative bodies responsible for protecting the rights of children. It also gives children aged 15 standing to initiate judicial proceedings for the protection of their rights.

Traditionally, the legislation of many countries of Central and Eastern Europe established the age of majority (i.e., full legal capacity) at 18, but also established a lower age at which children acquired limited legal capacity for certain purposes, such as changing one’s name. Older legislation also often established an age at which courts were obliged to hear the child’s point of view in legal proceedings affecting him or her, in particular in matters governed by family law. Typically, this was age 10. Since 1990, there has been a trend to further develop this approach to the child’s right to be heard and to have his or her views taken into account. The Family Code adopted by the Russian Federation in 1995 and the Civil Code adopted by Georgia in 1997 require the consent of children over the age of 10 in matters affecting their legal personality, such as adoption or change of name.¹¹²

Many of the new nationality laws specify an age at which a child whose parents’ nationality is changing can decide whether they wish to change their nationality as well. The Marriage and Family Relations Act of Slovenia was amended to recognize the right of children aged 15 or older to initiate proceedings under the Act, and to appear as parties in such proceedings. The amendments also recognize the right of younger children to be represented by a guardian for purposes of litigation, and the right

of children aged 10 to be heard in proceedings concerning their care or upbringing. The new Family Code of the Russian Federation allows children aged 14 and over to bring legal action when they believe their rights have been infringed by a parent or caretaker, and recognizes the right of younger children to bring such matters to the attention of child welfare authorities.

There are also examples of legislation that recognize the right of children to be heard in legal or administrative matters in broader terms, without specifying a specific age, or which give the competent authorities discretion to determine when the child is mature enough to be heard. The Civil Code adopted by Georgia in 1997 obliges courts to consider the views of children over the age of 7 in cases affecting them. In 2003, the Code was amended to provide children 14 years or older with legal standing in court proceedings.

The Law on the Rights of the Child in Belarus recognizes the child's right to be heard in legal and administrative proceedings in terms similar to those of the Convention.¹¹³ In addition, children have the right to make complaints concerning violations of their rights under the Convention or national law.¹¹⁴ Children aged 14 or older have standing to make such complaints before the competent court and to obtain legal aid for protection of their rights and freedoms. Younger children have the right to make complaints to the competent administrative authorities.

The Czech Law on Social and Legal Protection of Children recognizes the right of children to speak with social workers in private and to seek help from the competent authorities directly, without the knowledge of their parents or caretakers. The Romanian Law on the Protection and Promotion of the Rights of the Child provides that children aged 10 and over must be heard in legal and administrative proceedings, and gives courts the discretion to hear younger children. Any decision denying the request of a child to be heard must be justified in a written statement.¹¹⁵

Laws that expressly recognize the right of children to be heard in the context of the family

are rare. The Czech Law on Social and Legal Protection of Children recognizes the right of children old enough to form an opinion to have their views taken into account by their parents or other caretakers. This includes the right to be informed of the consequences of decisions that the parents might take regarding the child. The Romanian law of 2004 mandates a dialogue between parents and children: parents and other caretakers "must provide information, explanations and advice according to the children's age and understanding, as well as to allow them to express their own point of view, ideas and opinions."¹¹⁶

In western Europe, the right to be heard has long been recognized in certain kinds of legal and administrative proceedings, although it has often been restricted to children of a certain age. This right has not been recognized in new legislation in broad, general terms. In France, law reform has strengthened the right of children to be heard in proceedings concerning the family. The Act of 14 May 1998 gives all children capable of discernment the right to be heard by family councils and to request that a family council be convened.¹¹⁷ Previously, these rights were reserved for children aged 16 years or older. Legislation concerning legal aid was amended in 1993 in order to provide legal aid to children who wish to be heard in proceedings under the Civil Code concerning divorce, custody and similar matters.¹¹⁸ In 2002, the right of children to be heard in proceedings that may result in placement in institutions for the purpose of protection was recognized.

In Italian legislation, the right of children to have their views heard in certain types of proceedings has long been recognized. In addition, as in many other European countries, the consent of older adolescents is required for certain purposes.¹¹⁹ However, the government recognizes that legislation concerning this right is rife with inconsistencies and that new legislation incorporating this right more fully and consistently into national law is needed.¹²⁰ In Sweden, there is no legislation recognizing the right of the child to be heard in broad, general terms similar to those of article 12, para. 1

of the Convention. The law in force in 1990 did recognize the right of children to be heard in certain types of proceedings, subject to certain conditions such as the age of the child.¹²¹

Over the past decade, a number of changes tending to broaden the right to be heard have been made in Swedish legislation, especially in matters concerning the family. In 1996, the legislation concerning care and protection proceedings was amended to recognize the right of children under the age of 15 to independent legal representation in cases where the interests of the child may differ from those of his or her parent or guardian.¹²² In 1998, the Social Services Act was amended to provide that the child's attitude shall be ascertained with regard to any measure affecting a child, and taken into account having due regard to age and maturity of the child.

In the United Kingdom, the principle that the voice of the child must be heard is recognized throughout the Children Act 1989. Authorities are obliged to adopt a plan for every child in residential care, and to take the child's views into account in preparing and modifying the plan. They must also take the child's views into account in administrative hearings concerning child abuse. These rules apply to all children who are able to form and express their wishes and feelings.

The Children (Scotland) Act 1995 expressly recognizes the duty of parents to listen to the views of children before taking decisions that will affect them. Legislation on the right to legal representation was also adopted. The Age of Legal Capacity (Scotland) Act 1991 provides that children under age 16 have legal capacity to instruct a solicitor in connection with any civil matter, provided that they have a general understanding of what is involved; children over the age of 12 years are presumed to have such an understanding. The law also confirms the right of children to apply for legal aid. In Northern Ireland, both the Children (Northern Ireland) Order and the Family Homes and Domestic Violence (Northern Ireland) Order 1998 recognize the right of children to seek legal remedies themselves, if they are old enough to understand the nature of the proceeding.

In Canada, much of the legislation on different topics adopted since 1989 requires that the views of the child be taken into account. The Family Law Act adopted by Prince Edward Island in 1994, for example, requires the courts to consider the views and preferences of children in determining what is in the best interests of an individual child.



The CRC recognizes a number of 'civil' rights, such as the right to privacy, a name and nationality, and to freedom of expression, religion, association and assembly.

6 THE CIVIL RIGHTS OF CHILDREN

The CRC recognizes a number of rights traditionally classified as 'civil' rights, such as the right to privacy, a name and nationality, and to freedom of expression, religion, association and assembly.¹²³ The Convention also provides a new emphasis to the right to identity. This chapter summarizes information concerning the general recognition of civil rights in the 52 countries studied, and focuses on the right to nationality and identity.

Part II of the Nigerian Child Rights Act contains a list of the rights of children, additional to the fundamental rights recognized by the Constitution. They include the right to life and development, a name, freedom of association and assembly, freedom of thought, conscience and religion, privacy and personal dignity.¹²⁴ The Act further recognizes the right to freedom of movement and to bring legal action,¹²⁵ as well as the right to rest, leisure, play and participation in cultural and artistic activities. The South African Children's

Act of 2005, like the Nigerian Act, recognizes the right of access to courts.¹²⁶ The Rwandan law on the rights of the child also recognizes the child's right to freedom of expression, conscience and religion, rest and recreation, and the right of nationality for children born to Rwandan women.

Despite important advances such as these, the legislation in a number of countries still contains provisions that fail to envisage the child as a subject of rights. In these cases, further legal reform is required, to ensure that existing legislation complies fully with the rights and principles recognized by the CRC.

The Law on Child Protection of Indonesia recognizes most of the civil rights contained in the CRC, and stands as an important reference among Asian countries covered by this study.¹²⁷ In Nepal, the Child Act recognizes a few civil rights, including the right to identity and physical integrity. Meanwhile,

the Vietnamese Law on the Care, Protection and Education of Children recognizes the right to life, physical integrity, nationality, identity, dignity, honour and expression.¹²⁸

India and Sri Lanka, like some other countries, have pointed out to the Committee that the fundamental rights contained in their constitutions are, in principle, applicable to children, implying that new legislation recognizing their civil rights is unnecessary. At the same time, as the CRC implementation process confirms, the CRC contains new and innovative provisions. Careful comparison of the CRC and the fundamental rights sections of older constitutions invariably reveals numerous gaps. These are, in turn, confirmed by the existence of conflicts between the laws in force and the CRC. For this reason, the Committee on the Rights of the Child has consistently encouraged these countries to continue pursuing efforts to harmonize their law with the CRC.¹²⁹

The Latin American codes invariably recognize the basic principles of the CRC, and contain sections that list the fundamental rights of children. For example, the second chapter of the Colombian code contains 16 articles that recognize the right to life, survival and development, physical integrity, identity, and family unity. It also recognizes freedom of expression and religion, the right to be heard in legal or administrative proceedings, to due process, and to play and to freedom from discrimination. Furthermore, it refers to the right to health, education and protection against all forms of abuse, neglect and exploitation.

In Central and Eastern Europe, progress has been made in recognizing the civil rights of children. Belarus adopted a bill of rights for children in 2000 for the purpose of incorporating into national law the rights and principles set forth in the Convention. The Law on the Rights of Children is applicable to children under the age of 18 and recognizes a broad range of rights. Among these: the right to life, to the inviolability of the child's personality; to privacy, honour and dignity; freedom of religion, association, information and expression.¹³⁰ The Law on the Protection and Promotion of the Rights of the

Child adopted by Romania in 2004 also contains important provisions on a wide range of rights, including freedom of thought, conscience, religion, expression and association; and privacy, an adequate standard of living, social security, and rest and leisure.

The process of taking into account the views of children on matters of public interests is traditionally seen as linked to the role of children's associations in this region. As a result, some countries have broadened the right of children to participate in such organizations and the right of such organizations to contribute to the formation of public policy. The Children's and Youth Associations (State Support) Act adopted by Georgia in 1999 recognizes the right of children's organizations to submit reports on the status of child rights to government agencies, to participate in the formulation of programmes concerning children and submit suggestions to those entitled to initiate legislation or propose amendments to laws or regulations. In the Russian Federation, the law on associations was amended in 1995 to lower to 8 years the age at which children can join children's organizations.

Box 7

Russian Federation: A new approach to freedom of association for children

In recent years there has been a radical shift in the approach of children's organizations to implementation of the principle of the best interests of the child: they have switched from a dictatorial and unitary approach, monopolism and uniformity to a democratic approach and have given the children the opportunity of choosing not only the kind of activity, but also the organization (association) that is in keeping with the personal interest of each child.

Source: Paragraph 129 of the Second Report of the Russian Federation to the Committee on the Rights of the Child, 1998.

The right to a nationality

Article 7 of the CRC recognizes the right of children “to acquire a nationality” and article 8 indicates that nationality is part of the right to an identity. The Committee on the Rights of the Child has drawn attention to the duty of States to register births. This is intended to facilitate the acquisition of nationality. It is also supposed to eliminate discriminatory aspects of legislation on nationality. In most regions, few countries have modified their legislation on nationality in order to bring it into greater conformity with the CRC, judging by the information contained in reports to the Committee.

Togo adopted a new nationality law in 1998. Although the Constitution provides that the children of Togolese mothers or fathers have Togolese nationality, the law only recognizes the right to nationality of children of Togolese fathers. The law does recognize the right to nationality of foundlings under age 5 found in the national territory.

Most Asian legislation concerning nationality is based on the nationality of the parents (*jus sanguinis*) rather than the place of birth (*jus soli*). Discrimination on the basis of birth and sex was common in older legislation. The Republic of Korea amended its legislation in 1997 to protect the right to nationality of the children of local mothers and foreign fathers, and to allow children who have dual nationality to retain their nationality of the Republic of Korea until age 18. The law also eliminates the automatic naturalization of children whose parents acquire nationality. In 1998, Viet Nam adopted new legislation on nationality that made it easier for children having one Vietnamese parent and one foreign or stateless parent to obtain Vietnamese nationality, regardless of the child’s place of birth. This legislation does not discriminate on the grounds of the sex or marital status of the parents.

Swedish nationality law is based primarily on descent (*jus sanguinis*). Under the law in force in 1990, all children of a Swedish mother acquire Swedish citizenship, but the children of Swedish fathers are entitled to citizenship through the father only if he is married to the child’s mother.

In 2001, the Citizenship Act was amended to recognize the citizenship of children born to Swedish fathers not married to the mother of the child, provided that the child is born in Sweden. Children born abroad to a Swedish father not married to the child’s mother may also obtain citizenship if the father requests it before the child reaches the age of majority.

French law is also based mainly on descent. It has been amended several times since 1989 to facilitate the acquisition of nationality by children adopted by French citizens, and children born in France to foreign parents. The United Kingdom does not recognize the right of all children born in the territory to nationality, or the right of all children having a British parent to British nationality. Children born in the territory have a right to nationality if one parent is a citizen of the United Kingdom or is ‘settled’ in the United Kingdom, or if the child continues residing in the United Kingdom until age 10. Birth in the United Kingdom does not entitle a child to citizenship if only the mother is a citizen and if the parents are not married. A British citizen who fathers a child with a foreign woman to whom he is not married cannot pass his nationality to the child. The Government defended this situation, stressing “the Convention provides that a child shall have the right to acquire nationality; it does not require that there shall be a right to transmit nationality from father to child.” The Committee on the Rights of the Child recommended that this legislation be amended “to allow transmission of nationality through unmarried as well as married fathers.”¹³¹ The Nationality, Immigration and Asylum Act, adopted the following month, eliminated such discrimination.¹³²

The right to identity

The Convention provides that every child has the right to identity, including “the right to know and be cared for by his or her parents.”¹³³ This right, like all those contained in the Convention, must be respected without discrimination, including on the basis of birth.¹³⁴ Few changes in the legislation concerning the right to identity are reported in the information available concerning

Africa and Asia. Ethiopia adopted a new Family Code intended to bring the law into conformity with the new Constitution and the Convention. The Code makes birth registration obligatory. The Indonesian Law on Child Protection also contains several provisions on the right to identity that, *inter alia*, make birth registration free and obligatory.¹³⁵

The law of some Islamic States prohibits registering the identity of a child's parents in certain circumstances. Legislation in Jordan and Yemen, for example, prohibit registration of the names of the parents of a child conceived of an incestuous or adulterous relationship. Jordanian legislation also provides that the parents of any child born out of wedlock can request that their names be omitted from the birth registration.¹³⁶ Such norms are designed to protect the interests of the parents and compromise the protection of the child's right to identity.

In 1998, Tunisia adopted a law that allows the mother or father of a child born out of wedlock to initiate legal action seeking recognition of paternity. Such actions can also be taken by the public prosecutor or the child himself or herself, upon reaching the age of majority.¹³⁷ The law also recognizes the right of children not raised by their birth parents to information concerning their parentage, upon reaching the age of 13. The Personal Status of Muslims Act adopted by Sudan in 1991 allows proceedings to determine paternity or maternity, and establishes flexible rules of evidence in that regard.¹³⁸ Traditionally, a person's name includes a given name and patronymic, which has tended to stigmatize those whose father, or both parents, are unknown. Since 1990, several countries, including Morocco and Tunisia, have adopted legislation allowing such children to be given names to which no stigma is attached.

The right to identity has been a high profile issue in Latin America including as a result of the widespread practice of illegal adoption of babies taken from political prisoners by several repressive regimes during the 1970s and 1980s, and allegations of trafficking for the purposes of adoption during the 1990s. Many of

the new codes not only recognize the right to identity, but define it in broad terms. Many also establish specific safeguards designed to protect this right, such as the requirement that hospitals and clinics take the footprints of newborn children together with the fingerprints of their mothers. Argentina, for example, adopted a law in 1995 requiring hospitals and clinics to create genetic records of all mothers and their newborn children.

Some countries, such as Chile and Costa Rica, have adopted legislation designed to facilitate proof of paternity. Birth registration, a key measure for the effective protection of the right to identity, is made mandatory by most of the new codes. Other countries, such as Argentina and Bolivia have adopted temporary laws to facilitate birth registration as part of campaigns to reduce the number of undocumented children.

In France, a number of laws have been adopted or amended in order to strengthen the child's right to identity. In 1993, legislation was amended to protect the right of a child one of whose parents is deceased, and whose remaining parent remarries, to maintain contact with the grandparents.¹³⁹ New legislation also recognizes the principle that siblings removed from parental care should not be separated from each other, and their right to maintain contact with each other, should separation be unavoidable. A law on access to the origins of adopted persons and children in care, enacted on 22 January 2002, maintains the right of women to give birth anonymously, but establishes a new system for preserving information on the identity of such children and encouraging the waiver of confidentiality. Any woman who wishes to give birth anonymously will be invited to leave information on her identity, the child's origins and the circumstances of the birth in a sealed envelope. A national council on access to personal origins receives the information, and is responsible for determining in what circumstances all of the information, or parts of it, will be released to the children concerned. The Committee on the Rights of the Child has expressed the view that, because it allows the mother to decide what information

her child will have access to, this legislation does not adequately protect with the child's right to identity.¹⁴⁰ The Family Name Act of 4 March 2002 allows parents to decide whether children will be known by the family name of the father, the mother, or both. Another law enacted in 1993 requires the consent of children aged 13 or over for changes in their family name.

In Canada the Province of Alberta and the Yukon Territory have also adopted legislation

recognizing the right of grandparents and grandchildren to maintain contact despite the death or divorce of the children's parents. In Alberta, the law specifies that children have standing to seek enforcement of this right. Some provinces also have adopted legislation designed to provide greater protection to the right of adopted children to know the identity of their birth parents.¹⁴¹



Every child has the right to enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

7 THE RIGHT TO HEALTH CARE

Article 24 of the CRC recognizes the right of every child to enjoy “the highest attainable standard of health” adding that the corresponding duty of the State is to “strive to ensure that no child is deprived of his or her right of access to...health care services.” A number of specific obligations are also recognized, including maternal health, health education, primary health care and family planning, among others. Other articles of the CRC also touch on related issues, including article 23 on children with disabilities, article 25 on children in health-care facilities, and article 39, on the right to physical and psychological rehabilitation.

In sub-Saharan Africa, efforts to implement the provisions of the Convention concerning health care have focused on infrastructure and services, but some new legislation has also been adopted. The Nigerian Child Rights Act proclaims that “every child is entitled to enjoy the best attainable state of physical,

mental and spiritual health.”¹⁴² This Act obliges parents to ensure that children under the age of 2 are fully immunized, and lists the obligations of the federal and state governments with regard to health care, nutrition and sanitation.¹⁴³ The Rwandan law on child rights and protection against violence recognizes the right of the child to health and medical care. Primary responsibility for ensuring effective enjoyment of this right is attributed to the child’s parents, but the law also recognizes the co-responsibility of the State, especially with regard to children whose parents do not have the means of providing health care.

The new South African Constitution, cited above, recognizes the right of all children under the age of 18 to basic health-care services, as well as to nutrition, shelter and social services. The Children’s Act recognizes the right of every child to information about his or her health, to information about health-care

services and to confidentiality, and the right of children aged 12 or older to contraceptives and to consent to medical treatment.¹⁴⁴

Most of the Asian countries studied have adopted new legislation in this area. The right to health care is recognized in Viet Nam by the Law on the Protection, Care and Education of Children, which specifies that children under the age of 6 are entitled to free primary health care, medical examinations and treatment. In the Philippines, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act defines denial of emergency medical treatment to an injured child as a form of child abuse, if death or serious impairment of growth and development results. The Indonesian Law on Child Protection contains several generous articles on the right to health and health care.¹⁴⁵ Japan enacted a law on the prevention of AIDS in 1998. In 1999 it was replaced by a law on the prevention and treatment of four major infectious diseases, which classified AIDS as one of the four. The law provides that special attention shall be given to measures to protect especially vulnerable groups, including juveniles.

In India, the Goa Children's Act 2003 contains several provisions concerning the right to health. The immunization of children is required, as is the birth screening of children, the immunization of pregnant women against measles and the provision of sexual and reproductive health information and education to girls. In Nepal, two laws concerning the health of children were adopted in 1992: the Breastmilk Substitutes (Marketing Control) Act, which encourages breastfeeding and sets rigorous standards for breastmilk substitutes; and labour legislation that requires employers to provide women employees with childcare facilities and time for breastfeeding. In India, the Infant Milk Substitutes, Feeding Bottle and Infant Foods Act was enacted in 1992 and amended in 2003 to strengthen the provisions on breastfeeding. A law promoting breastfeeding and baby-friendly maternity facilities was adopted by the Philippines in 1992.

The efforts of Islamic States to improve the health of children have focused mainly on the

strengthening of programmes concerning health services, but several countries have also adopted new laws concerning the right to health. The 1996 Child Code in Egypt contains a chapter on health. It requires birth attendants to be trained and licensed, makes vaccination against communicable disease obligatory; it requires health records to be maintained for all children; regulates the use of additives in children's food; and recognizes the right of children with disabilities to special health services.

The Libyan Arab Jamahiriya adopted a Child Protection Act in 1997, which introduced compulsory medical examinations prior to marriage in order to detect hereditary diseases that could affect children's physical or mental health. It also mandates screening of newborn children to detect hereditary illnesses and congenital disabilities, and recognizes the right to free vaccination against communicable diseases. In 1993, Jordan adopted the Welfare of the Disabled Act confirming the right of disabled children and adults to preventive health care and medical treatment, as well as their right to a suitable environment and to take part in decision-making.¹⁴⁶ In 1996, Lebanon adopted a law that specified that every child should be provided with a free health-care record at birth. In 1999 and 2000, Lebanon adopted decrees requiring public and private hospitals to establish specialized paediatric units.¹⁴⁷

The right to health is recognized by all of the new codes in Latin America. Several set out the corresponding duty of the State to "ensure universal and equal access to preventive and remedial health services."¹⁴⁸ The code adopted by Ecuador specifies that this includes the right to medication and mental health services. Codes adopted by several other countries, including Colombia and Ecuador, recognize the duty of private as well as public medical facilities to provide emergency care free of charge.

Other codes either make vaccination obligatory or recognize it as a right of every child. Some make growth monitoring or testing for genetic illnesses obligatory, and some incorporate provisions that require maternity facilities to provide rooms where the mother and

newborn can remain together, reflecting the concept of the baby-friendly hospital. The codes also invariably recognize certain rights of the future mother and the new mother, including the right to prenatal care and, in some cases, the right of working mothers to maternity leave and breastfeeding facilities.

Box 8

Chile: Law and the right to health care

An in-depth reform of the health system is now underway pursuant to Law 19,966, which was passed in 2004. The law guarantees everyone – regardless of their income or health insurance – access to quality, financial protection and prompt attention with respect to a defined set of illnesses and health conditions. Out of the initial set of 25 diseases and illnesses covered...20...directly affect children under 18 years of age. The law also guarantees treatment for children with HIV/AIDS.

Source: Adapted from *The Situation of Children in Chile Fifteen Years after Ratification of the Convention on the Rights of the Child [Situación de los Niños y Niñas en Chile]*, UNICEF, Santiago, 2005.

The codes of most of the Andean countries recognize the right of drug-afflicted children to rehabilitation services. Chile – which has not adopted a children’s code – nonetheless adopted an important 2004 law concerning the right to health care (*see Box 8, above*).

Recognition of social rights was a key dimension of the socialist legal system developed in Central and Eastern Europe during the 20th century, and the influence of this tradition has been evident in the legislation adopted since 1990 concerning children. The right to health is part of the constitutional order in most countries of the region.¹⁴⁹ Moreover, the right of children to health care figures in a wide variety of legislation, including on health, education, children and the environment. In Belarus, for example, the right of children to health care is recognized by the Health Care Act of 1993, the Law on the Rights of the Child and decrees concerning the special rights of children living in areas contaminated by the Chernobyl nuclear disaster. The Polish Education Law of 1991 recognizes the

right of children under the age of 18 enrolled in schools to receive a broad range of free medical benefits from public health-care institutions, including medical examinations, treatment, medication and rehabilitation services, and the Education Act adopted by Georgia in 1997 requires schools to provide certain health services to students.

Legislation recognizing the right of children to receive health education is less common. One example is the Romanian law on the rights of the child, which stresses the duty of health services to participate in educational outreach in schools, including “programmes aimed at the sexual education of children, in order to prevent sexually transmitted infections and unwanted pregnancies in minor girls.”¹⁵⁰

Some countries, such as Poland, have adopted special legislation concerning the entitlements of persons with disabilities based on article 23 of the CRC and other international standards concerning the social integration of persons with disabilities. Legislation promoting breastfeeding has also been adopted by some countries in the region during the period under review.¹⁵¹ Modest steps have been made in some countries of the region towards recognizing the right of adolescents to receive medical services without parental consent. Under new Russian and Slovenian legislation, children aged 15 and over can consult a doctor without parental consent. Polish legislation adopted in 1996 establishes 16 as the minimum age for independent access to medical tests or other health services.

Since adoption of the Convention, France, Italy and Sweden have adopted important new legislation concerning the right to health. In France, the law of 27 July 1999 on universal health coverage guarantees access to health care through a national health insurance system. Maternal and child health care is covered by the Act of 18 December 1989, which requires women to have medical examinations during pregnancy and after giving birth. The number of these examinations, which are given free of charge in specialized public health centres, has increased since the entry into force of the Convention.¹⁵²

In Italy, an important new law on the rights of persons with disabilities was adopted in 1992.¹⁵³ The law contains a number of provisions regarding the prevention and early detection of birth defects. The new law on immigration recognizes the right of foreigners, including illegal immigrants, to health-care services. One

Box 9

Belarus: The child's right to health

Every child shall have an inalienable right to protection and strengthening of health.

The state shall provide adequate conditions to ensure appropriate pre and postnatal health care for mothers, provide for healthy development of the child, provide children with free medical aid, including medical diagnosis, preventive treatment aid, rehabilitation and sanatorium and resort treatment. Children shall be provided with drugs and medicaments on prescription of treating doctors free of charge according to the procedure stipulated by the legislation of the Republic of Belarus.

Source: Article 5 of the Law on the Rights of the Child, Belarus.

regional council has adopted a Charter on the Rights of Hospitalized Children.¹⁵⁴ In Sweden, the Medical and Health Services Act was amended in 1997 to recognize the principle that access to care and the provision of care shall be guided by the "equal value of all human beings and for the dignity of the individual."¹⁵⁵ The minimum age for purchase of tobacco products was raised to 18 the same year, and in 1992 legislation was adopted requiring all toys sold commercially to meet health and safety standards.¹⁵⁶

Several Canadian provinces have adopted legislation allowing children to consent to medical treatment, if they are old enough to understand the implications.¹⁵⁷ The Medical Consent of Minors Act of Québec, for example, provides that a child below the age of 16 may consent to medical treatment if two medical practitioners agree that the child is capable of understanding the nature and consequences of medical treatment. The legislation also mentions that the medical treatment must be in the best interests of the child. In the United Kingdom there has been a dearth of health-care legislation since 1989. One significant innovation is the Education Act 1993, which requires secondary schools in England and Wales to provide sex education, including education about HIV/AIDS and other sexually transmitted infections.¹⁵⁸



Children have the right to education that is directed to the development of their personality, talents and mental and physical abilities to their fullest potential.

8 THE RIGHT TO EDUCATION

Article 28 of the CRC recognizes the right to education, and provides that primary education must be free and compulsory. The duty to provide access to secondary education is recognized, in general programmatic terms, but no mention is made of pre-primary education. Article 29 of the CRC addresses in a precise manner the aims of education, which is designed to ensure the fullest possible development of the child's personality, talents and abilities, as well as the promotion of human rights and respect for the child's parents, country, cultural identity and language. All of this, the article notes, is part of a child's preparation for "responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin." Article 28 specifies that disciplinary measures used in schools must be consistent with the child's human dignity. The Committee on the Rights

of the Child has interpreted this to mean the prohibition in the school system of corporal punishment, as well as other forms of degrading and humiliating treatment.¹⁵⁹ Other sections of the CRC that refer to the right to education include article 23 on children with disabilities; and article 32 on child labour.

Several countries in Africa have adopted new legislation or amended existing laws concerning education, as a means of ensuring greater compliance with their obligations under the Convention and African Charter. In 1995, Togo adopted legislation raising the age of compulsory schooling to 15. This norm was later incorporated into the Constitution of 2002. The Constitution of Rwanda makes primary education free and compulsory, and the Education Act adopted by Burkina Faso in 1996 made education compulsory from ages 6 through 16.

The Rwandan law on child rights and protection against violence also recognizes the

right of the child to education in general terms, and legislation on education adopted in 1991 provides that six years of primary education shall be free and obligatory for all, without discrimination. The Nigerian Child Rights Act states “Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.”¹⁶⁰ It also sets forth the duty of parents and guardians to ensure that their children attend primary and junior secondary education, and recognizes the right of pregnant students to continue their education after their children are born.¹⁶¹

Progress has also been made in bringing education into compliance with article 29 on the aims of education. In 1998, Togo adopted a decree introducing the teaching of human rights in secondary schools, and in South Africa, the Schools Act 1996 recognizes the right of students to participate in school governing bodies and outlaws the use of corporal punishment in schools.

In Indonesia, where compulsory education was introduced in 1994, the 2002 Law on Child Protection raised the number of years of compulsory education from six to nine.¹⁶² Other articles on the right to education concern the education of children with disabilities and gifted children, the aims of education and the right of students to protection against violence on the part of teachers and other students.¹⁶³ In the Republic of Korea, the Framework Act on Education adopted in 1997 sets forth the right of elementary school graduates to receive a middle-school education, and provides that education should recognize and develop the personality of the student, and prepare him or her to earn a living and participate actively in a democratic society. In Sri Lanka, the Education Ordinance of 1998 makes education compulsory for children between the ages of 5 and 14. The Vietnamese Law on the Protection, Care and Education of Children proclaims the right to free primary education, the duty of children to complete the primary education programme, and the duty of their parents to provide “good conditions” for study. The Law on the Universalization of Primary Education, adopted in 1991, specifies

that education is obligatory for children between the ages of 5 and 14, and the 1998 Law on Education recognizes the rights of students, prohibiting corporal punishment and discrimination. In India, the Goa Children’s Act 2003 bans corporal punishment, and requires that 48 hours of instruction be devoted annually to the subject of child rights and “gender justice.” It also says “the State shall endeavour to promote holistic education,” adding “Universal application of joyful learning processes should be ensured.”

Many Islamic States have adopted legislation concerning the right to education. Three of them have for the first time enacted legislation making education free and compulsory. In 1990, Bangladesh adopted a Compulsory Primary Education Act that requires children between the ages of 6 and 10 to attend school. In Lebanon in 1998, the right to free and compulsory primary education was recognized for the first time;¹⁶⁴ the school-leaving age is presently 12 years under this legislation. In Pakistan, the right to free and compulsory education is part of the Constitution, but responsibility for implementation of this right lies with the provinces; in 1994 the Province of Punjab adopted legislation making education compulsory for children between the ages of 5 and 10, and two other provinces subsequently adopted laws on the subject.¹⁶⁵

Legislation adopted in 2002 by the Syrian Arab Republic increased the number of years of free and compulsory education from six to nine years, raising the school-leaving age from 12 to 15.¹⁶⁶ Yemen also increased the duration of compulsory primary education from six to nine years and made education up to ninth grade free. The Public Education Act adopted by Sudan in 1991, and regulations adopted under the Act, raised the number of years of compulsory education from six to eight.¹⁶⁷ The school-leaving age is now between ages 14 and 16, depending on the age at which a pupil enters school.

Legislation adopted by Tunisia in 1991 makes education compulsory from ages 6 to 16, and the Education Act adopted by Jordan in 1994 raised the school-leaving age to 17 years. The

Tunisian law also addresses education in terms very similar to article 29 of the CRC, stating that the aim of the educational system is to “prepare young people for a life which has no room for any kind of discrimination or segregation based on sex, social origin, race or religion” and to “offer pupils the right to develop their own personalities and assist them to accede to maturity in the spirit of tolerance and moderation.”¹⁶⁸

Preparation for life in a free society based on peace, tolerance and equality is more than an idea to be added to the curriculum, it is a conviction that needs to be nurtured through constant exposure to values that are implicit in the way schools operate. In this regard, according to the Tunisian Act, each year in every school students are elected to represent the interests and point of view of students to the school administration and to the teaching body, and in each class one teacher is designated to listen to students with difficulties and gather the views of students on issues having a bearing on the functioning of the establishment and the teaching provided.

Two other Tunisian laws are also worthy of mention: an Act concerning guidance for vocational training, adopted in 1993, which states “vocational guidance is aimed at assisting young people of both sexes...to choose...a profession in accordance with their aspirations, their aptitudes and their interests,” and a law establishing children’s computer centres open to children of both sexes aged 3 to 15.¹⁶⁹ The Education Act of Tunisia expressly sets forth the right of education for children with disabilities and for children who are behind in their studies.

Jordan and Morocco have also adopted legislation on the rights of persons with disabilities that contain provisions on the right to education. The Moroccan legislation, adopted in 1992, provides that children with special needs should be educated in ordinary schools, to the extent possible. There has been some progress in outlawing the practice of corporal punishment in schools. Tunisia has banned corporal punishment in schools,¹⁷⁰ and the practice has been prohibited in Lebanon since 2001 (*see following box*).

Box 10

Lebanon: A student’s right to dignity

Employees in the education sector are prohibited to inflict any physical punishment on pupils, nor to address verbal retribution that is humiliating and is against the principle of education and personal dignity.

Source: Article 41 of Decision No. 1130/2001 of 10 Sept. 2001, Ministry of Education, Lebanon.

The right to education is recognized by all of the new Latin American codes. The codes of some countries, such as Ecuador and Nicaragua, make secondary education compulsory, or free, or both. The Constitution of Chile was amended in 2003 to make secondary education free and compulsory.¹⁷¹ Some constitutions also recognize the right to pre-primary education. The Constitution of Colombia, adopted in 1991, makes education free and obligatory from the age of 5 to 15, including one year of pre-school education.¹⁷²

In many developing countries, the hidden costs of education prevent many poor children from taking advantage of nominally free education. Some of the new codes, such as that of Bolivia, address this problem by obliging the government to provide free school materials and transportation, and creating incentives for school attendance, such as free meals and health care. Some also contain provisions intended to redress imbalances in access to education. The Bolivian and Guatemalan codes provide that priority shall be given to the expansion of education in rural areas, and a number of codes recognize the right to bilingual education.

Most of the new codes also contain provisions intended to make the educational experience more compatible with other basic rights of the child, reflecting the holistic approach to implementation promoted by the Convention. For example, many provide that teachers have an obligation to respect the values, beliefs and opinions of students. Some recognize the right

of students to present petitions or complaints, to form student organizations, and to defend themselves in disciplinary proceedings.

Some countries have also adopted new laws specifically on education, or amended existing laws. Argentina has adopted legislation prohibiting discrimination against HIV-positive children in access to education. The new General Education Act adopted by Mexico in 1993 recognizes the right of children with disabilities to special education and integration into regular schools when possible. In 1994, Bolivia adopted a new law that increased access to bilingual education, introduced policies aimed at eliminating discrimination against girls and established community councils to participate in the management of schools. The new children's code adopted in 1999 prohibits the expulsion of pregnant students and recognizes the right of students to participate in community councils. Panama has also adopted legislation prohibiting the expulsion of pregnant students.¹⁷³

In Central and Eastern Europe, the right to education has traditionally been accorded great importance in legal systems, and most countries of the region recognize the right to education in a significant manner. The Constitution of Poland, for example, provides that education is compulsory until the age of 18. In the Russian Federation, both the Constitution and the Education Act guarantee free secondary education and basic vocational training, as well as nine years of free and compulsory basic education. The Education Act also provides that at least 10 per cent of national income should be set aside annually for educational needs.

The social, political and economic transformations that have marked Central and Eastern Europe since 1989 have obliged most countries to adopt new basic laws on education. In many instances, such laws were chiefly aimed at regulating the establishment of private schools, fulfilling the expectations of national minorities, and redefining the roles and responsibilities of local authorities. However, many of these new laws also address concerns regarding the rights of children, such as the values underlying the educational process

Box 11

Russian Federation: The rights-based approach to education

Educational policy is based on principles ensuring the *de jure* accessibility of all levels of education to all citizens of the Russian Federation....

The right to education is one of the basic and inalienable constitutional rights of citizens of the Russian Federation.

Source: Paragraphs 294 and 308 of the Second Report of the Russian Federation to the Committee on the Rights of the Child.

and the right of children with disabilities to participate in society as fully as possible.

The new Russian Education Act, for example, abolishes competitive exams for admission to certain levels of education and recognizes the right of students to respect for their human dignity and to freely express their personal views and opinions. The Czech Republic adopted legislation establishing community education boards in 1995, and legislation recognizing the right of deaf children to free education in sign language went into effect in 1998.

Three laws adopted by Slovenia in 2000 also illustrate the way education systems are being reoriented to incorporate values and principles derived from the Convention. The Guidance for Children with Special Educational Needs Act, adopted in 2000, is designed to integrate children with special needs into the regular education system. Slovenia's Vocational and Professional Education and Training Act was amended to offer greater choice to students completing primary education and increase the number of children receiving a secondary education. And the Music Schools Act was adopted to provide musically gifted children with an education that permits them to develop their special talents. Many of the countries of the region have also adopted legislation recognising the right of children belonging to minorities to receive education in their own language. The Belarusian Law on the Rights of the Child, for example, states "Every child shall enjoy the right to get free of charge education, including education in native language."¹⁷⁴

Box 12

Poland: The aims of education

Education in the Republic of Poland constitutes the common good of the whole of society, and is guided by the principles laid down in the Constitution of the Republic of Poland as well as in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Rights of the Child. Education and child-rearing – while respecting the Christian system of values – are based on universal ethical principles. The aim of teaching and child-rearing is to develop in young people a sense of responsibility, a love of their country, a respect for the Polish cultural heritage and, at the same time, openness to the cultural values of Europe and the world.

Source: Law on the Education System, Poland, 1991.

Most of the countries in western Europe reviewed in this study have made changes in their legislation concerning education. In Sweden, schools are operated mainly by local authorities within a legal framework approved by the parliament. Ratification of the Convention coincided with extensive reforms of this framework, and few additional changes in the legislation have been made since 1990. However, in 1997, a law was adopted providing for greater financial support to approved independent schools. In France, legislation addressing education was codified in 1989, and subsequent changes have been limited. Legislation making the ‘hazing’ of students an offence was adopted in 1998. In the United Kingdom, the Education Act 1981 was replaced by a new Education Act in 1993.¹⁷⁵

The changes in Italian law have been significant: the number of years of compulsory education has been increased from 8 to 10, and children may not leave school until they are 16.¹⁷⁶ A statute recognizing the rights of secondary school students was also adopted in 1998.¹⁷⁷ The rights set forth include freedom of expression, thought, conscience and religion, the right to make requests and formulate proposals,

and to be heard in disciplinary proceedings. Italy’s 1998 law on immigration states “the school community embraces the linguistic and cultural differences as a valuable and fundamental starting point for debate, based on reciprocal respect, on the exchange between cultures and on tolerance.”¹⁷⁸

Several Canadian provinces have adopted legislation designed to bring public education systems into greater conformity with the rights recognized by the CRC. In the Province of Alberta, the Freedom of Information Act was amended in 1997 to allow requests for information in school records. On Prince Edward Island, the School Act 1993 prohibits corporal punishment in schools. The Education Act 1996 of Nova Scotia recognizes the duty of schools to prepare individual programmes for students with special needs. Newfoundland’s Schools Act of 1997 provides that secondary school students should be represented on the elected community councils that oversee public schools. Similarly, regulation adopted under the Education Act of Ontario in 1997 provides that every school board shall have at least one student member.

Box 13

Italy: The school as a democratic community

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

Source: Presidential Decree of 1998, Italy.



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.

9 THE RIGHT TO A FAMILY ENVIRONMENT

The Convention contains many important provisions concerning the family and its leading role in the development of the child. Article 5 describes on one hand the delicate balance between the child's capacity to exercise his or her rights and the responsibilities of parents to provide guidance and protection; and, on the other hand, the duty of the State to respect the privacy of the family and to protect the rights of children. Article 18 provides that parents have primary responsibility for raising children, and article 27 adds that they have primary responsibility for providing them with conditions favourable for their development. Both recognize the duty of the State to provide assistance in meeting these responsibilities. Article 18 also promulgates the principle that "both parents have common responsibilities for the upbringing and development of the child," while article 27 recognizes the State's duty to help custodial parents obtain child

maintenance from absent parents. Other relevant provisions of the Convention include articles 7 through 10, which recognize different aspects of the principle of family unity, including the imperative that children shall not be removed from their families except as a last resort, and children's right to maintain regular and personal contact with their parents in case of separation.

Most African constitutions recognize the right of the family to protection as a basic human right. The 1994 Constitution of Ethiopia recognizes the right of the family to protection by society and the State, as well as the principle of the equality of men and women with regard to marriage.¹⁷⁹ The constitutions of Burkina Faso, Rwanda and Togo proclaim the family as the basic unit of society, and recognize the duty of the State to protect families, as well as the right and duty of parents to raise and educate their children. The Constitution of South Africa recognizes the

right of children to be cared for by their parents or families, and the right to alternative care when necessary (see *Box 1, page 14*).

Legislation adopted by South Africa in 1998 recognizes traditional marriages, provided that they are based on the free consent of both parties and that both parties are over the age of 18. This initiative was considered as insufficient, however, and the Children's Act 2005 makes far-reaching changes to the childcare system.¹⁸⁰ The concept of paternal authority over children (*patria potestad*) has been replaced by that of parental rights and responsibilities, and the access to children has been reformulated as "contact."¹⁸¹ The Act also contains a broader concept of 'family' based on African social norms.¹⁸²

The Nigerian Child Rights Act contains the following article regarding family unity:

Every child has a right to parental care and protection and accordingly, no child shall be separated from his parents against the wish of the child except – (a) for the purpose of his education and welfare; or (b) in the exercise of a judicial determination in accordance with the provisions of this Act, in the best interests of the child.¹⁸³

This approach acknowledges the instrumental role of the child's wishes.¹⁸⁴

In Asia, the Constitution of Viet Nam recognizes the duty of the State to protect the family as the "cell" of society. In the Republic of Korea, the Framework Act on Juveniles, adopted in 1993, establishes the legal basis for constructing social environments where all youths grow to be intellectually, morally and physically balanced. Japanese legislation concerning the family was amended to recognize the right of residence of foreign mothers of children born out of wedlock to Japanese fathers, and to allow parents to choose the most appropriate form of day care for their children.

In most Islamic States, legislation concerning the family is based primarily or exclusively on

Islamic law. However, in some countries the law allows different communities to be governed by their own law and, often, their own religious courts. In Bangladesh, personal status is governed by four types of religious law; and in Lebanon, no less than 15 different bodies of personal law are recognized.¹⁸⁵

The Committee on the Rights of the Child has raised concerns about situations in which different bodies of law are applicable to different sectors of the population, since they deprive some children of the protection under the Convention, on grounds of age, sex or religious affiliation.¹⁸⁶ Although some characteristics are common to most systems of family law based on Islamic law, variations exist in the way Islamic law is interpreted and applied in different countries. With regard to the vital question of when an individual becomes an adult, for example, one report indicates:

The maturity which signals the end of childhood is attained when an individual becomes fully rational and discerning... and acquires intellectual, mental and physical maturity. In the view of jurists [sic], maturity is marked in two ways: the first is the appearance of the usual outward "signs of maturity," such as puberty.... The second is the attainment of full legal age, a subject on which jurists hold differing views and on which other positive laws are also at variance.¹⁸⁷

Some countries have been receptive to the incorporation of legal principles and institutions, provided that they are not incompatible with Islamic principles.

In Latin America, ratification of the Convention has led to a strengthening of legal provisions concerning the rights of the family in many countries. The new Paraguayan Constitution declares that "the family is the foundation of society" and that "its integral protection shall be encouraged and ensured." The new codes also recognize this principle in some form, as well as the right of the child to live with his or her family. Some of the newer codes, such as

those of Ecuador and Guatemala, recognize the duty of the State to take steps to restore the unity of the family when it has been damaged.

The Jamaican Child Care and Protection Act 2004 contains several important principles concerning the family. It recognizes, for example, that the family is the preferred environment for raising children; that kinship ties shall be preserved whenever possible; that assistance intended to preserve the integrity and self-sufficiency of families should be provided on a consensual basis whenever possible; and that decisions concerning children should be taken and implemented in a timely manner.

One of the changes in social values that marked the period of transition in Central and Eastern Europe has been the shift towards greater recognition of the importance of the family as the essential component of society. Many of the new constitutions reflect this trend in provisions concerning the duties of parents to care, provide for and educate their children. The Charter of Fundamental Rights and Freedoms of the Czech Republic, for example, declares that "parenthood and the family are under protection of the law...children are entitled to parental upbringing care... and that "parents who are raising children are entitled to assistance from the State."¹⁸⁸

Throughout the region, new legislation was found to recognize the principle set forth in articles 18 and 27 of the Convention, namely: that parents have primary responsibility for raising children and providing them with living conditions adequate for their development, and that the primary duty of the State is to assist parents in meeting this obligation. The Romanian law on the rights of the child, for example, declares that "the parents' main responsibility is to raise and ensure the proper development of the child," while "the local public administration authorities have the duty to support the parents" in this regard, and "The intervention of the State is complementary."¹⁸⁹ It further states "The child's parents have the right to receive information and specialized assistance that are necessary for upbringing, caring [for] and raising the child."¹⁹⁰

Support for the family

The Convention stipulates that the family has primary responsibility for raising children and providing them with living conditions suitable for healthy development. It also recognizes the duty of the State and society to provide the family with such support as may be needed in order to fulfil these obligations. Several Asian countries have adopted legislation concerning access to childcare facilities, a form of support specifically mentioned by article 18, para. 3 of the Convention. The Republic of Korea adopted an Infant Care Act in 1991, in order to provide assistance to working mothers of young children. The Philippines adopted legislation in 1990 providing that every village should provide day care facilities for working mothers, and Japan adopted legislation that provides parents with a greater choice of day care facilities.

Recognition of the importance of the family and the responsibilities of the family towards children is a fundamental characteristic of Islamic law. There are substantial differences in the extent to which the legislation of Islamic States recognize the responsibility of the State to support the family. In some, this responsibility is left largely to social and religious institutions, while in others public agencies have been established to oversee this function.

A number of countries have taken steps to strengthen support for families. In the Libyan Arab Jamahiriya, the Child Protection and Welfare Ordinance of 1991 strengthened support for families with numerous children and children with special needs. The Child Protection Code adopted by Tunisia in 1995 states "in all measures taken concerning children, preventive action with regard to the family must be a primary consideration with a view to safeguarding the family's role...in educating and schooling the child and ensuring the protection necessary for his or her normal development."¹⁹¹

Most countries of Central and Eastern Europe have traditionally had well-developed social security systems. The process of transition of the last decade and the economic transformations that occurred have reduced the capacity of

most governments in the region to maintain, in real terms, the levels of benefits that existed prior to 1990, while unemployment and deteriorating social conditions have multiplied the demand for social services. Nevertheless, most States in the region have maintained a commitment to providing income support to needy families. This is evident in the enactment of several laws regulating benefits for children or families with children, many of which target children with special needs.

The provisions of the Convention concerning the family as the ideal setting for satisfying the needs of children has struck a responsive chord, encouraging a shift away from reliance on State institutions to social programmes that provide benefits to children through their families. The Child Benefit Act 2001 of Slovenia, for example, entitles the parents of seriously ill or disabled children to receive special benefits until such children reach the age of 18. Another important innovation introduced by Slovenia in 1999 is the Guarantee and Maintenance Fund Act, which recognizes the right of needy single parents who do not receive court-ordered maintenance payments to benefit from payments from a public fund.

France has adopted several laws strengthening the rights of working parents. An allowance for the employment of caregivers of children was introduced in 1990, and was reinforced in 1994 and again in 2001. Legislation to improve the quality of care provided in the homes of private caregivers was adopted in 1992, and legislation strengthening the right of working parents to take leave on the birth or illness of a child, or to reduce the number of hours they work, was enacted in 1994.¹⁹²

For Canada, federal legislation adopted in 1993 and 1998 reformed the system of allowances to low- and middle-income families with children, resulting in a very substantial increase in the allowances received by many families.¹⁹³ Many provincial governments have also taken important steps to enhance the support provided to families with children. In 1997, Québec merged the Secretariat for Family Affairs and the Office of Childcare Services into the Ministry for the Family and the Child, reflecting the holistic approach to the rights of children and the family that underlies the CRC.

In Sweden, primary responsibility for providing social services lies with municipal authorities, which must comply with legislation enacted by the Parliament. A process of reviewing the Social Services Act began in 1991, shortly after ratification of the Convention. In 1995, legislation was enacted to strengthen the obligation of local authorities to provide childcare to all children under the age of 12 in need of such services, and responsibility for coordinating and supervising childcare was shifted from the Ministry of Health and Social Entitlement to the Ministry of Education. Entitlement to family counselling was strengthened in 1996, and minimum standards for material assistance to families in need were reinforced in 1998.

The Italian 1992 Framework Law for the Assistance, Social Integration and Rights of Persons with Disabilities reinforced assistance to the families of children with disabilities, with a view to reducing the institutionalization of such children. Legislation providing allowances to families with more than three children was adopted in 1998 and reinforced in 2001. Other measures recognizing the right of

Box 14

Poland: Constitutional entrenchment of the right of families to support and assistance

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

Source: Article 71.1 of the Constitution of Poland.

fathers to leave to care for children were adopted in 2002, and support for nurseries was expanded by a law adopted in 2001.¹⁹⁴

In the United Kingdom, emphasis has been placed on the development of plans and programmes for providing services to children and their families. The Children Act 1989 provides that primary responsibility for the upbringing of children rests with parents, and recognizes the responsibility of local authorities in England and Wales to provide assistance to parents who experience difficulties in this task. The Children (Scotland) Act 1995 and Children (Northern Ireland) Order 1995 do not recognize entitlements to services, but place an obligation on local authorities to draw up comprehensive plans for the provision of services to children.

The common responsibility of parents

Several of the African countries studied have adopted new legal standards concerning the responsibilities of mothers and fathers in the spirit of article 18.2 of the African Charter on the Rights and Welfare of the Child, which recognizes the equal, and not merely 'common', responsibilities of spouses regarding their children. The 1994 Constitution of Ethiopia recognized the principle of the equality of men and women regarding marriage. The Child Rights Act of Nigeria affirms the right of joint custody.¹⁹⁵ In 1997, South Africa adopted legislation designed to implement the principle of equal rights and responsibilities of parents by recognizing certain rights of the fathers of children born out of wedlock with regards to their children.¹⁹⁶

The 1992, Constitution of Viet Nam recognized the equality of husband and wife. In countries under Islamic law, the law clearly recognizes the duties of parents regarding the care and raising of children, although the responsibilities of mothers and fathers are often defined in complementary, gender-specific terms. In some countries, though, there is greater recognition that the duties of parents are not only shared, but are equal. This trend appears to

have been encouraged by the Convention on the Elimination of All Forms of Discrimination Against Women and the African Charter on the Rights and Welfare of the Child, as well as the CRC. The Personal Status Code of Tunisia, for example, was amended in 1993 to recognize the principle of joint responsibility of spouses and the joint responsibility of parents in caring for and exercising guardianship rights over their children.¹⁹⁷ Libyan legislation adopted in 1992 also provides that both parents have legal guardianship.¹⁹⁸

In Latin America, most of the new children's codes recognize the equal rights and responsibilities of parents with regard to their children. The Nicaraguan Code, for example, provides that:

Family relationships are based on [mutual] respect, solidarity and the absolute equality of the rights and responsibilities of mothers and fathers. Mothers and fathers have the...duty to care for the upkeep of the home and all aspects of raising children through shared efforts, with equal rights and responsibilities.¹⁹⁹

In western Europe, some countries have also made changes in their law to bring it into greater conformity with this principle. In France, the Act of 8 January 1993 provides that parental authority should be exercised jointly, whether the parents of a child are married, separated or divorced, and encourages parents to reach an amicable agreement about the exercise of parental authority. It also provides that the parents of children born out of wedlock should exercise parental authority jointly, if they both acknowledge the child before he or she reaches one year of age and are living together at the time of acknowledgement, or if they subsequently make a statement before a court indicating that they wish to exercise joint authority. The requirement of parental cohabitation was eliminated in 2002.²⁰⁰ Legislation adopted in 1995 established a procedure for the mediation and conciliation of parental or conjugal disputes.²⁰¹

Swedish law provides that parents who are married have joint responsibility for their children, and there is a presumption that joint

responsibility shall continue in the event of divorce. Mothers have responsibility for children born out of marriage, however. In the United Kingdom, fathers were recognized as the natural guardians of their children under common law. The Children Act 1989 recognizes the principle of joint parental responsibility for children. Both parents automatically have joint responsibility for raising children born in wedlock. The father of a child born out of wedlock can acquire responsibility by agreement with the mother, or by subsequent marriage to her or by court order. The responsibility of parents for their children is not terminated by placement of a child in care, nor is it assigned to one parent upon divorce or separation. It continues to be shared, and is lost only in adoption.

The Children (Northern Ireland) Order introduces the principle of equal responsibility to the law of the territory, and also allows the unwed father to recognize his paternal responsibility by simple agreement, without a court order. The Children (Scotland) Act is the first law in the United Kingdom to define in detail the responsibilities of parents towards their children, including the duty of a parent not living with a child to maintain personal relations and direct contact with the child on a regular basis until the age of 16.

Several Canadian provinces have also adopted legislation concerning the common responsibilities of parents. The Civil Code adopted by Québec in 1991 provides that the father and mother exercise joint parental authority.²⁰² The Province of Alberta adopted legislation requiring parents in the process of divorce to attend a parenting education programme that encourages them to work together to lessen the impact of separation or divorce on their children, and focus on the best interests of their children.

Custody and child support

The CRC provides that decisions concerning the custody of children whose parents do not live together shall be based on the best interests of the child, and that such children have a right to regular contact with both parents, unless such

contact would be contrary to their best interests.²⁰³ It also provides that States have an obligation to “take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child.”²⁰⁴

Islamic law contains specific rules concerning the custody of children whose parents are separated or divorced, and maintenance. The legislation of some countries incorporates the ‘best interests’ principle or similar criteria. Moroccan legislation on custody, for example, has been described in these terms:

The prescribed conditions for custody (*hadana*) give express priority to the interests of the child. The guardian must be an adult of sound mind and character, who must have the ability to bring up the child and maintain him or her physically and morally. He or she must be free from any communicable disease and from all limitations that inhibit his or her ability to provide adequate care of the child.

The judge decides on the matter of custody (*hadana*) when a marriage is dissolved. Where both parties are eligible, the judge decides on the party that is best suited to undertake the responsibility, in the light of the provisions of article 101 of the Code on Personal Status.²⁰⁵

The duty of the father who is separated or divorced from the mother of his children to provide maintenance is clearly recognized by Islamic law. If the father is unable to support such children, the responsibility for providing support passes to other relatives, including the mother, according to prescribed rules. In 1993, Tunisia took the significant step of establishing a Maintenance and Alimony Guarantee Fund to provide compensatory income to parents who do not receive the payments to which they are entitled.

Other countries in Africa and Asia have also adopted new legislation on maintenance. In South Africa, legislation and regulations reinforcing the right to maintenance were adopted in 1998, 1999 and 2005. In Japan, legislation

concerning the family was amended to reinforce the right of single mothers to maintenance and in Sri Lanka, the Maintenance Law of 1889 was replaced in 1999 by legislation that eliminated discriminatory provisions in the older law.

Migrant labour is a growing phenomenon across regions. Since becoming parties to the Convention, some countries have reinforced their efforts to enter into agreements concerning custody and maintenance of families whose members live in different countries. Morocco, for example, has entered into agreements with Bahrain, Belgium, Spain and the Syrian Arab Republic since 1991.

In Latin America, although most of the new children's codes recognize the equal rights and duties of parents, some perpetuate the presumption that, when parents separate, the mother shall have custody. The right of children whose parents are separated to maintain

contact with both parents is recognized in some of the newest codes.

In Canada, a package of federal legislation was adopted in 1997 to raise the age below which children are entitled to support from 16 to the age of majority. The legislation aims to ensure that children receive appropriate levels of support, encourage voluntary compliance, facilitate access to information that can be used to locate non-compliant parents and reduce the legal costs involved.²⁰⁶ During the 1990s most Canadian provinces have adopted legislation strengthening mechanisms for collecting maintenance payments.²⁰⁷

In 1991, France and the United Kingdom both adopted legislation to improve the systems for collection of maintenance from parents not living with their children.²⁰⁸ In Scotland, the new Child Support Act allows children aged 12 and older to seek a support order in their own name.



A child deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

10 ALTERNATIVE CARE

Article 20 of the CRC sets forth the right of children who have no family, who have been abandoned or who cannot be cared for by their parents, to “special protection and assistance” and “alternative care.” Four particular forms of alternative care are mentioned: foster care, adoption, institutional care and *kafala*. Article 20 emphasizes that the obligation to ensure that such children receive appropriate care lies with the State, and indicates that continuity of upbringing and environment should be taken into account in choosing the appropriate placement, and that placement in an orphanage or similar institution should be the last resort.

Many of the countries studied have taken steps to bring their law into conformity with these principles. In 1996, South Africa amended the Child Care Act to bring provisions concerning care and protection proceedings, adoption and residential care into greater compatibility with the Convention.

These amendments give children a qualified right to representation in a broad range of legal proceedings, prohibit the use of corporal punishment in foster homes and childcare facilities, restrict informal placement arrangements and redefine the grounds for removal of children from their home (see *Box 15, page 58*). The Children’s Act of 2005 and proposed amendments to the Act not yet adopted provide for more far-reaching changes in the childcare system, including recognition of new forms of alternative care.²⁰⁹

The Nigerian Child Rights Act provides that institutionalization of children in need shall be the last resort, and obliges state governments to assist such children to return to their families.²¹⁰ It also recognizes that placement in care does not imply permanent separation of a child from his or her family. Sections 55 and 56 provide that the authorities shall allow contact between the child and his or her family, and specify that placement does not

entitle any person to change the child's name or consent to the child's adoption.

In Asia, the Law on the Protection, Care and Education of Children in Viet Nam recognizes the right to assistance of all children without support. The Constitution of Nepal outlines the duty of the State to adopt programmes for the care and protection of orphans, while the Children's Act 1992 recognizes the duty of the State to make necessary arrangements for the maintenance of the "helpless" child, defined as children lacking parents or family, or who have been rejected by their parents or family members, or have no means of livelihood. The custody of children whose parents have separated or divorced is governed by rigid traditional rules, however, rather than the 'best interests' principle, and informal adoption remains common.

The Juvenile Justice Act adopted by India in 2000 establishes a new model for dealing with children in need of care and protection. One key feature is the creation of district Child Welfare Committees to handle care and protection proceedings. The system of care envisaged by the Act includes temporary care facilities and after-care programmes for children who have been released from residential facilities, in addition to long-term residential facilities. It emphasizes the rehabilitation of the child and recognizes restoration of the child to his or her family as one possible objective of the care provided. The provisions concerning adoption recognize the right of the child to be heard, and provide that parents who consent to the adoption of their children shall have a period of two months to reconsider. This is a valuable safeguard to ensure that the consent is informed and voluntary.

In Islamic States, the principal forms of alternative care are the extended family (sometimes referred to as guardianship), *kafala* and institutional care. Some countries also recognize foster care. Of the Islamic countries surveyed in

Box 15

South Africa: A child-centred approach to care and protection proceedings

In terms of the Child Care Amendment Act 96 of 1996, the primary ground for compulsory removal has been changed to the child being 'in need of care', rather than the previous ground which required that the parents be found 'unfit' or 'unable' to care for the child. With this amendment, the legislature moved care proceedings from a predominantly fault or parent-based approach to a predominantly child-centred approach....

However, the Commission wishes to point out that finding a child to be in need of care should not necessarily constitute a ground for removal of that child – indeed, under the new children's statute the aim should rather be to support that child and his or her family in order to ensure that that child remains with its family.

Source: Discussion Paper 103, South African Law Commission, 2002.

the report, only Tunisia recognizes adoption. *Kafala* is an institution of Islamic law that has been described as follows:

Islam advocates the system of *kafalah* (a form of tutorship) in accordance with the provisions of the Shariah. Islam also advocates charity and aid for the needy. In this way, children deprived of a family environment can be reared, maintained, sheltered and cared for, enjoying the status of natural children without being adopted and subject to the condition that they must retain their original lineage without being linked to that of their tutor so that, by law, they are not entitled to the inheritance or maintenance-related rights that his natural children would enjoy.²¹¹

The Libyan Arab Jamahiriya adopted legislation regulating the provision of alternative care by the family of a child whose parents are not able to care for the child. Law No. 17 of 1992 provides that child's female relatives should normally provide alternative care on the basis of their order of inheritance and closeness. Where two or more female relatives have the same relationship to the child, a court will appoint as guardian the relative who is the most suitable, and if no female relative is able to assume guardianship, the court shall appoint a male relative or an unrelated person.²¹² This

approach can be seen as a compromise between traditional rules and the 'best interests' principle recognized by the Convention.

Morocco adopted legislation on *kafala* in 1993, which was replaced by a new law in 2003.²¹³ The law provides that placement shall be made by a court on the basis of a study carried out by a competent authority, and may be revoked if necessary, on the recommendation of the social services agency, to protect the best interests of the child. The law also allows the child to be given the name of the family in which he or she is placed, and recognizes the family's entitlement to allowances and other social benefits for the child.

In Latin America, most of the new codes provide that protection of the child is the only valid reason for removal of a child from his or her family; moreover, removal shall only be authorized in exceptional cases. Many also expressly provide that the inability of the family to provide children with appropriate living conditions due to poverty is not a valid reason for the removal of a child from his or her family, and some codes identify alternatives to removal, such as warnings, counselling or participation in substance abuse programmes.

The Jamaican Child Care and Protection Act 2004 recognizes some of the important principles concerning alternative care contained in the Convention. For example, the provisions concerning the selection of the appropriate placement for children in need of alternative care indicate that the decision should be based on the best interests of the child, and preference should be given to placement within the extended family and remaining in the same community.

In Central and Eastern Europe, a critical issue has been the lack of effective programmes to prevent the abandonment of children by their parents. The legislation adopted by most countries of the region since 1989 recognizes that the separation of children from their parents shall be a last resort, that separation should be made by a court or subject to judicial review, and that all parties should have the right to be heard.

The 1996 Constitution of Belarus was amended to provide that children may not be removed from their parents except by court order.²¹⁴ In fact, the Belarusian Law on the Rights of the Child, states "Every child shall have the right to live in the family, to know his or her both parents, the right to be cared for by his or her parents, to live together with them, except when such separation from one or both parents is necessary for the best interests of the child."²¹⁵ The Romanian law on the rights of the child not only provides that children shall not be separated from their parents except in "special and limited cases stipulated by the law...and only if this is required by the best interests of the child," but also provides that children shall not be separated from their families unless an effort has been made to solve the underlying problem through counselling, therapy and mediation or other services designed to meet the particular needs of child and his or her family.²¹⁶

Some western European countries have also modified their legislation to bring it into greater conformity with the CRC. In the United Kingdom, the Adoption and Children Act of 2002 introduced a new special guardianship in order to provide permanent placement in a family for children for whom adoption is not appropriate, such as muslim children. In France, legislation adopted in 1998 provides that when a child is placed into care, arrangements must be made to facilitate visits by his or her parents.²¹⁷ Legislation adopted in 2004 emphasizes that all such decisions must be strictly based on the best interests of the child.²¹⁸

In Sweden, the policy concerning children in need of protection is to try to convince the parents and child of the need for alternative care. When a child is placed in care, the presumption is that placement is temporary and that the child is to be returned to his or her family. Involuntary placement is governed by the Care of Young Persons (Special Provisions) Act. In 1998, legislation was amended to recognize the right of the concerned parties to be informed of the opening of an investigation on the need for placement.

Institutional placement

In most of Central and Eastern Europe, the post-war period was characterized by the development of extensive networks of residential care facilities for children and over-reliance on institutionalization.²¹⁹ Different ministries operated facilities for different types of children – children with disabilities, abandoned, neglected and abused children and orphans, juvenile offenders and children with behavioural problems – belonging to different age groups. The principle that the State is responsible for ensuring the welfare of the population became distorted so as to encourage abandonment of children – who came to be known as ‘social orphans’ – by parents in difficult economic or social circumstances. Only 4 per cent to 5 per cent of institutionalized children were actual orphans, and massive use of institutionalization generally resulted in poor standards of care.²²⁰ Slovenia is a notable exception to this rule. Most children unable to live with their birth families are placed in foster care, and institutional care is largely limited to children with special needs who are placed in residential schools providing special education.

Most countries of the region have adopted measures designed to encourage fostering, in order to reduce over-reliance on institutional care, and much of the new legislation adopted since 1989 recognizes the principle that institutionalization shall be a last resort. The Belarusian Law on the Rights of the Child, for example, states “The care and guardianship authorities shall take all the necessary measures to place a child, left without parental care, to a new family (for adoption or foster care, guardianship or adoptive family). The state shall give financial support to such families.”²²¹ Children may be placed in an institution only when placement in a family is “impossible.”²²² The Romanian law on the rights of the child prohibits the placement of children under the age of 2 years in institutions.²²³

Another feature of some new legislation is the recognition of the utility of temporary placement and programmes designed to help families recover the ability to provide children with

adequate care. The Russian Family Code of 1996 provides that, when children are removed from their family because of the behaviour of their parents, permanent separation shall not be considered until after a period of six months during which the parent(s) are provided with assistance in overcoming the problems that led to the removal of the child. The Family Law of the Czech Republic was amended in 1998 to introduce temporary suspension of parental custody. The Romanian law on the rights of the child charges the competent authorities to provide assistance to parents whose children have been removed for care and protection so as to restore their capacity to care for the children, and recognizes the right to legal assistance of parents who seek to recover custody of their children.²²⁴

The legislation of some countries also recognizes a practice not mentioned by the CRC that might be considered a form of ‘alternative care’ – the emancipation of adolescents. The Belarusian Law on the Rights of the Child states “on reaching 14 years of age, the child shall have the right to live independently as long as proper living conditions, financial support of the state or supervision by guardianship or care authorities are available.”²²⁵ Slovenia has also adopted legislation that recognizes the right of children aged 15 and older to initiate procedures to become independent of their parents.

Some of the legislation adopted in the region since the adoption of the Convention sets standards concerning the consideration of institutional care solutions. The Romanian law on the right of the child, approved in 2004, provides that measures taken with regard to every child deprived of parental protection must be based on an “individualized protection plan.” Plans concerning children over age 14 require the child’s consent.²²⁶ The Czech legislation was amended in 1998 to require a semi-annual review of conditions in institutions.

Countries in other parts of the world have also amended their legislation to prevent unwarranted removal of children from their families and to reduce resort to institutional placement.

In England and Wales, for instance, the Children Act of 1989 recognizes that children are usually best brought up within their families, and, to promote this, requires local authorities to provide family support services to children in need and their families. The Act also provides that, except for emergency removal, children may not be removed from their homes without a judicial order. The decision to remove a child from the home is a last resort after all efforts to support the family in staying together have been exhausted. Both the child and parents have the right to be heard. The parents have a right to legal assistance, and the child has the right to be represented by a guardian *ad litem*. When removal of a child from his or her home is necessary, placement with a relative is the preferred solution. If this is not possible, the child should be placed near to home and kept together with any siblings. Adoption of this Act and its emphasis on support for the family has led to a substantial decrease in the number of children removed from their homes.

Box 16

Belarus: Humanizing institutional care

In order to ensure the wholesome physical, intellectual and spiritual development of children placed in boarding-type institutions of any type, they shall be given all required conditions similar to the family environment and conditions necessary to ensure that the children retain their native language, culture, national traditions and customs.

Source: Article 30 of the Law on the Rights of the Child, Belarus, 2000.

Adoption

Adoption, as indicated above, is one of the four types of alternative care expressly recognized by the Convention. Article 21 contains a series of standards specifically designed to ensure that adoptions are clearly guided by the best interests of the child. These include the requirement that all adoptions be authorized by the competent authorities, and that all concerned

persons, including the birth parents, give informed consent (unless consent is impossible or is not required).

In Africa, legislation concerning adoption has not been given a high prominence. In Ethiopia, however, the CRC was taken into account in the drafting of the Family Code, with the result that the 'best interests' principle is now the overriding criteria in adoption proceedings, and the right of the child to be heard is recognized.²²⁷ The new Code allows adoption to be revoked if the child is exploited by his or her adoptive parents, and the adopted child has standing to request revocation.²²⁸ In Asia, most new legislation on the subject concerns international adoption. Most Islamic States do not recognize adoption, although it is allowed in some. In Lebanon, where adoption is lawful for the Christian community, criminal law was amended in 1993 to prohibit profiteering from adoption.

In Latin America, most of the new codes contain chapters on adoption and other forms of alternative care designed to bring national law and practice into compliance with the principles and safeguards contained in article 21 of the Convention. For example, the codes contain new safeguards designed to ensure that birth parents who give their children for adoption fully understand and freely accept the consequences of the decision, and provisions that ensure that children temporarily entrusted to the care of relatives or others, such as the children of migrant workers, cannot be declared adoptable. Many codes also recognize the right of children to have their views acknowledged in hearings concerning placement in alternative care; establish new rules concerning the type of placement that is most appropriate for different circumstances; and require periodic review of all forms of placement. The right of the adopted child to obtain information about his or her origins is recognized by several codes in Latin America. Some countries whose children's codes do not contain detailed provisions on adoption have also amended their legislation on adoption. Costa Rica adopted a new law on adoption in 1995, Mexico amended its

legislation in 1998 and Panama adopted new legislation in 2001.

Prior to 1989, procedures concerning adoption were poorly regulated in many countries of Central and Eastern Europe. In Poland, for example, the first public agencies having responsibility for adoption were established in 1993; previously, this function was left to private social agencies, law offices and religious organizations. In the Russian Federation, the courts were not given jurisdiction over adoption until 1996. In 1998, the Constitutional Court of Belarus ruled that the provisions of the Marriage and Family Code allowing children to be adopted by an extrajudicial procedure without the consent of their parents were inconsistent with the Constitution and the CRC.

Initial attempts to regulate adoption were not always based on a full appreciation of the role adoption should play in the overall scheme of alternative care, or of the safeguards required by articles 20 and 21 of the Convention. However, most of the more recent legislation in the Central and Eastern Europe now incorporates the principles and safeguards set out in the Convention.

In France and Italy, legislation concerning adoption has been amended to strengthen the right of abandoned children to a family. In France, a provision of the Civil Code that precluded the adoption of a child abandoned by adoptive parents was eliminated.²²⁹ In Italy, the conditions for qualifying as adoptive parents have been made more flexible, and the financial support provided to couples who adopt children for whom it is difficult to find families (for example older children) has been increased.²³⁰ In the United Kingdom, new legislation was adopted in 2002 to “put children at the centre of the adoption process.”²³¹ The Adoption and Children Act makes the welfare of the child the paramount consideration in all decisions concerning adoption, requires local governments to establish adoption services, allows single persons and unmarried couples to adopt, restricts advertising and regulates the fees that may be charged for services. In Canada, several provinces and territories have amended the

legislation related to adoption since 1989, or adopted new legislation, to ensure compatibility with the requirements of the CRC.²³²

Inter-country adoption

The Convention also contains a series of requirements specifically concerning inter-country adoption. These include the principle that inter-country adoption is permitted only as a last resort, that children adopted by parents from another country enjoy at least the same rights they would in their country of origin, and that “improper financial or other gain” be prohibited.

In 1993, guided by the CRC, the Hague Conference of International Private Law adopted a new convention to address the specific reality of inter-country adoption, the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption the Hague Convention.

In South Africa, the Constitutional Court declared older legislation that did not allow inter-country adoption to be incompatible with the ‘best interests’ principle, as set forth in the 1996 Constitution. The Law Reform Commission recommended the enactment of legislation regulating inter-country adoption based on the Hague Convention, but such legislation has not yet been enacted.

Several countries in Asia have adopted new legislation concerning inter-country adoption. The Adoption Ordinance of Sri Lanka was amended in 1992. The amended law provides that inter-country adoption shall be a last resort, restricts the role of private children’s homes, regulates the fees that may be charged and establishes stricter requirements for the monitoring of adoptions. In Viet Nam, a law regulating inter-country adoption was adopted in 1994. Inter-country adoption is a last resort, when placement with a Vietnamese family is not possible; the adopted child retains Vietnamese nationality and the adoption is monitored until the adopted child reaches the age of 18. In the Republic of Korea, legislation was adopted in 1999 to increase the penalty for illegal adoption.

Inter-country adoption is allowed in most countries of Latin America, but they have adopted new laws or stricter regulations to prevent abuse and ensure compliance with the Convention. Law reform on international adoption was considered a priority, and several countries adopted new legislation regulating it before the enactment of children's codes. The Ecuadorian code contains an interesting provision to the effect that children may not be adopted by persons from another country unless the laws of that country recognize all the rights contained in the Convention.

Inter-country adoption is allowed by all of the countries of Central and Eastern Europe included in this study. Although regulation was weak during the early 1990s, most countries have now adopted legislation based on the CRC that recognizes the principle of subsidiarity of international adoption, prohibits profiteering and requires the consent of older children.²³³ Several laws recognize the right of children adopted by foreigners to retain their nationality.²³⁴

Romania is a critical example of how law and practice concerning international adoption has evolved since the advent of the CRC. The child-care system was in a critical state when the Ceausescu regime collapsed in December 1989 after more than two decades in power. At that time, in a country of 22 million people, there were an estimated 100,000 children confined in orphanages and institutions²³⁵ in very dire conditions. The plight of institutionalized children was publicized internationally, leading to a surge of inter-country adoption; the economic crisis and weakness of institutional constraints during this period of transition led to widespread corruption in the adoption process.

In 1991, the legislation on adoption was amended and a central agency established to restore order and prevent profiteering from adoption. In 1997 and 1998, a series of emergency ordinances and executive decrees were passed, recognizing certain principles derived from the Convention and other international standards, including the principle that institutionalization should be the last resort and the right of families

receiving children in placement to financial support. The decrees also devolved responsibility for alternative care to local governments and re-defined the responsibility of national authorities to emphasize policy-setting, coordination and monitoring functions.

Most countries in Western Europe, as well as North America, Australia and New Zealand are receiving countries for inter-country adoption. The reason for this situation was highlighted in a recent report by one of these countries:

“Many people who have difficulty in conceiving consider life without a child to be intolerable. As in similar European countries, there is a growing gap between the number of families wishing to adopt a child and the number of children available for adoption. At the same time, the number of children who can be adopted because they have lost all links with their biological families has fallen sharply.”²³⁶

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption was adopted in 1993. With the exception of Belgium, all the European and other industrialized countries covered by this study have become Parties to this treaty. In Italy, regulations on international adoption were rewritten extensively after ratification of the Hague Convention. The new regulations provide that a foreign child may not be adopted unless family placement in his or her own country is impossible, and recognize the right of adopted children to receive Italian citizenship immediately. Swedish adoption procedures were amended in 1997 to ensure compatibility with the Hague Convention and, in particular, to limit the scope for private adoptions. The Social Services Act was also amended to recognize the special needs that adopted children and adoptive parents may have for social services.

France adopted legislation designed to bring its legal framework into conformity with the CRC and the Hague Convention in 1996.²³⁷ The law establishes a national authority on inter-country adoption, requires adoption agencies working

with foreign countries to be accredited and requires prospective parents to obtain authorization before fostering a foreign child. Another law adopted in 2001 made further amendments to national law concerning inter-country adoption, including stricter requirements regarding the consent of the birth parents, which were designed to comply with the Hague Convention.²³⁸ Canadian immigration

regulations were amended to comply with the Hague Convention in 1997. Most provinces have adopted new legislation or amended existing laws to ensure that adoption procedures comply with that Convention.²³⁹ In British Columbia, Canada, the Adoption Act 1997 incorporates the Hague Convention into the law of the province.²⁴⁰



States parties shall take all appropriate legislative measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

11 VIOLENCE, ABUSE AND NEGLECT

The right of children to be protected against violence, abuse and neglect is recognized by various articles of the CRC, including articles 19, 28, para. 2 and 37 (a). Article 19 obliges States to protect children 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 parents, guardians or other persons responsible for their care.²⁴¹ Article 39 recognizes the right of children to rehabilitation following neglect, exploitation or abuse.

In many countries in Africa, the problem of child abuse is primarily addressed by criminal law, or by criminal law and legislation concerning the removal of children from abusive parents. The Child Rights Act of Nigeria is an important exception and contains extensive provisions on care and protection proceedings. Two features worth noting are the powers of specialized police units to remove children from their home on an emergency

basis, without court order, for up to 72 hours, and flexible standards of evidence applicable in court proceedings concerning child abuse.²⁴²

The South African Law Reform Commission has pointed out that legislation concerning care and protection proceedings traditionally focuses exclusively on ‘tertiary protection’, that is, interventions intended to respond to abuse once it has occurred and prevent its recurrence. Proposed amendments to the Children’s Act adopt a more balanced approach that includes secondary prevention, that is, activities that provide support to families in which there is a foreseeable risk of mistreatment.²⁴³ Responsibility for organizing such activities would lie largely with provincial governments. Few countries in the region have adopted legislation on domestic violence, but the South African legislature adopted a Domestic Violence Act in 1998. The Act obliges police officers to provide prompt assistance in reported cases of

domestic violence – which includes physical, sexual, emotional, verbal or psychological abuse of a partner or a child – allows abused children to apply for protection orders, and permits the arrest of suspected perpetrators without a warrant.

The protection of children against violence is one of the main objectives of the Law on Child Protection adopted by Indonesia in 2002.²⁴⁴ It contains very broad provisions recognizing, for example, the right to protection against “harsh treatment, violence and abuse [and] injustice” in the family; the right to “protection from abuse, torture or inhuman punishment under the law”; and the general right to protection against “involvement in an[y] event that involves violence.”²⁴⁵

Nepal’s Children Act of 1992 prohibits cruel treatment of children under the age of 16 by parents, guardians and teachers, but allows “light” physical punishment. Viet Nam’s Criminal Code, adopted in 1992, provides for sentences of imprisonment for the crime of “serious ill-treatment or persecution” of a spouse or child. In 1997 the Republic of Korea adopted a Special Act for the Punishment of Domestic Violence that contains a number of provisions on the protection and treatment of child victims and the rehabilitation of offenders. The Juvenile Protection Act of 1997 recognizes the duty of parents to provide children with an environment conducive to healthy development, and protect them from exposure to sexually explicit materials, alcohol and drug use.

The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, adopted by the Philippines in 1992, defines and establishes sentences of imprisonment for physical, sexual, psychological and emotional abuse of any child under the age of 18, and requires the Departments of Justice and of Social Welfare and Development to adopt a plan of action for the elimination of such abuse, as well as sexual exploitation and child labour. In 1997, legislation was adopted establishing specialized family courts in every city and province, with jurisdiction over child abuse. In Sri Lanka, the Penal Code was amended in

1995 to strengthen provisions concerning cruelty to children. In 1998, the Code of Criminal Procedure was amended to increase the amount of time a person suspected of child abuse can be detained for investigation, and require that the investigation of such cases receive priority. The Law of Evidence was amended in 1999 to allow the use of videotaped evidence of the preliminary interview of a child victim or witness during trials of persons accused of child abuse. The National Child Protection Authority, established in 1999, has a broad mandate concerning all forms of child abuse that includes monitoring the implementation of laws on child abuse, monitoring the progress of investigations and criminal proceedings relating to child abuse, securing the safety and protection of children involved in such investigations and proceedings, the referral of complaints of child abuse to the appropriate authorities, and the maintenance of a national database. It has broad powers to search, question and seize documents or other evidence of child abuse.

In India, the Goa Children’s Act requires the State to establish a Children’s Court with jurisdiction over offences against children and offences committed by children. The Act contains a list of principles and requirements designed to minimize the risk of revictimization and ensure that court procedures are child-friendly.

In most Islamic States the neglect of children, and some forms of child abuse, are criminal offences. Some countries have strengthened their legislation since ratification of the CRC. Such legislation often provides little protection to older children, however, and provisions concerning abuse sometimes focus narrowly on physical abuse, and in some cases only on abuse that results in physical injury. In 1995, Bangladesh adopted the Control of Oppression of Women and Children (Special Provision) Act. In 2000, it was replaced by the Suppression of Violence against Women and Children Act. The Act, which benefited from a broad process of consultation, increases penalties for violent offences against children and women, including rape, sexual harassment, acid throwing, kidnapping, trafficking

and maiming a child for the purpose of begging. The provisions concerning children apply only to those under the age of 14, however.

Provisions of the Criminal Code of Tunisia concerning children were amended in 1995. While some of the amendments simply increased the penalties for existing offences, in some cases new offences were created. These include using a child for the purpose of begging or committing crimes against persons or property, abandonment, kidnapping, abduction, or removal of a child.²⁴⁶ These provisions protect all children under the age of 18. The Child Protection Act adopted by Tunisia the same year also contains a broad definition of child abuse that includes “any act of brutality likely to affect the emotional or psychological balance of a child” under the age of 18.²⁴⁷ Most new legislation concerning abuse and neglect focuses on increasing the applicable sentences with less attention given thus far to prevention or the treatment of victims. The law of Bangladesh does make some progress in this regard. It provides that fines imposed on offenders may be given to the victim as compensation, and that victims may be sheltered in special facilities for their protection during investigation and trial.

Many of the most recent Latin American codes contain a broad provision recognizing the right of every child to protection against any form of “neglect, discrimination, exploitation, violence, cruelty and oppression.”²⁴⁸ The Bolivian code provides that any act or omission that infringes upon this right can be prosecuted as a violation of the constitutional rights of the victim. Ecuador’s code contains special provisions on “institutional abuse,” that is, practices constituting child abuse that are allowed or tolerated by the administrators of educational or other facilities for children. In general, these codes prohibit psychological abuse and neglect as well as physical abuse. In Guatemala, the code contains a simple definition of emotional abuse as any conduct that “damages the self-esteem or developmental potential of a child.”²⁴⁹ The Bolivian code lists specific forms of psychological abuse and neg-

lect, such as the use of a child to pressure, blackmail or harass another person in a domestic conflict, treating a child with indifference, prolonged lack of communication and using ridicule or employing degrading treatment as a means of discipline.²⁵⁰

Obligatory reporting of child abuse is established by most of the recent Latin American codes. The rights of the victim are generally protected by provisions that allow testimony obtained during the investigation to be admitted as evidence at trial, in order to avoid the trauma of repeated interrogation. The code of Ecuador expressly forbids submitting a child victim of any form of abuse to the same medical examination more than once, unless re-examination is necessary for the victim’s treatment and recovery.²⁵¹ Many codes adopt a balanced approach that includes prevention, temporary protective measures, the rehabilitation of victims and offenders (especially family members) and penal sanctions. Most of the countries of Latin America have also adopted legislation concerning domestic violence during the last decade. This trend has been encouraged by the adoption in 1994 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, which has been ratified by most countries of the region.

The Jamaican Child Care and Protection Act 2004 extends protection against abuse to all children under age 18. Cruelty to children, an offence involving violence or neglect likely to cause death or serious injury, is punishable by five years’ imprisonment. The courts also have broader jurisdiction to examine cases of ill-treatment or neglect “likely to cause the child unnecessary suffering.” The Act provides a range of measures that can be imposed in such cases, including some designed to rehabilitate the offender, and provides that the best interests of the child shall be taken into account in determining what sentence to impose. However, the ‘best interests’ principle is not mentioned in connection with decisions as to what measures should be taken in such cases while adjudication is pending (for example, removal of the victim or of the accused offender from the home).

Some countries of Central and Eastern Europe have enacted new laws or amended existing legislation in order to criminalize forms of child abuse not covered by older legislation, or to increase the penalties for such crimes. In 1990, the Czech Republic adopted a law criminalizing actions that pose a danger to the development of children but do not meet the definition of previously recognized offences, such as cruelty to children. The Act on Social and Legal Protection of Children adopted by the Czech Republic in 2002 further strengthens the protection of children against violence, as well as exposure to drugs, alcohol, gambling and pornography. Romania adopted an ordinance in 1997 allowing children to be removed from their homes and placed in a shelter on an emergency basis. The law on the rights of the child adopted by Romania in 2004 appears to be the first in the region to prohibit all physical punishment of children.²⁵² Ukraine adopted a Domestic Violence Act in 2001 and in 2004 a new Family Code prohibited all physical punishment and other humiliating treatment.²⁵³

Slovenia is one of the few countries in the region that has enacted new legislation designed to protect the rights of victims. The Criminal Procedure Act of 1998 recognizes the right of child victims to be represented throughout proceedings by someone responsible for ensuring that the rights of the victim are respected. Victims under the age of 15 may not testify during trial; their testimony is presented in the form of a deposition made prior to trial. Questions by the defence can only be presented through the investigating judge. These provisions are applicable to child victims of sexual crimes, as well as victims of abuse.

Most of the western European countries studied have adopted new legislation on this subject. Some amendments have been made to Swedish legislation concerning the abuse and neglect of children. In 1998, the duty to report facts that appear to indicate that a child is in need of protection was extended from professionals to the general public, and a four-month time limit for the investigation of such cases was established. In France, a law consolidating the framework for dealing with child

abuse and neglect, in which the Departments play the main role, was adopted in 1989.²⁵⁴ Most initiatives taken since then have been programmatic, not legislative.

Italy has not reformed its legislation concerning child abuse and neglect, but its most recent Report to the Committee on the Rights of the Child, prepared in 2000, indicates that there is an awareness of the need to introduce changes in this area.²⁵⁵ In the United Kingdom, the Children Act of 1989 introduced some important new measures concerning the abuse and neglect of children. For the first time, all residential facilities for children were made subject to regulation (private homes were previously not regulated). The Children (Scotland) Act gave courts the power to adopt exclusion orders that, instead of removing an at-risk child from his or her home, require the person who represents a danger to a child to leave or cease visiting the home. Courts in Northern Ireland were given the power to adopt exclusion orders by the Family Homes and Domestic Violence (Northern Ireland) Order 1998. The Criminal Justice Act 1991 allows the use of pre-recorded video evidence in cases of violence and sexual abuse involving child victims and witnesses in England and Wales. It also removed the presumption that children were not competent witnesses, so that the testimony of a child is now as admissible as that of an adult.

Several Canadian provinces have adopted new legislation concerning abuse and neglect. Prince Edward Island adopted the Victims of Family Violence Act in 1996 and the Yukon adopted a Family Violence Prevention Act in 1999. The definition of neglect in the Children and Family Services Act of Nova Scotia was amended, so that it is no longer necessary to show actual harm to the child, which may take years of neglect to become obvious, but a "substantial risk of harm."

Harmful practices

The CRC prohibits traditional practices that are harmful to the health of children.²⁵⁶ The African Charter on the Rights and Welfare of the Child contains a broader prohibition of "harmful social

and cultural practices affecting the welfare, dignity, normal growth and development of the child," including all customs and practices that perpetuate discrimination on the grounds of sex or other status. UN bodies count as harmful traditional practices female genital mutilation/cutting, forced feeding of young women, virginity testing of brides, nutritional taboos during pregnancy, ritual sacrifices of children, the abandonment or neglect of children with birth defects, the gifting of virgin girls to shrines or priests, 'honour killings' and child marriage.²⁵⁷

Unlike the African Charter, which establishes 18 as the minimum age for marriage, the CRC does not explicitly establish a specific minimum age. Nevertheless, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women interpret international standards to mean that 18 years of age should be the minimum age of marriage for men and women.²⁵⁸ Both Committees categorically reject the arguments that allowing girls to marry at an early age is reasonable because it reflects social realities, and that it is not discriminatory because it serves to protect girls.²⁵⁹ Early marriage is incompatible with the principle that all marriage must be based on the freely given consent of both partners, especially in societies where the right of children to be heard is not recognized. Moreover, early pregnancy entails substantial risks to the health of the young mother and her child.

Many countries in Asia, Africa and the Middle East have adopted new legislation against harmful traditional practices. In Burkina Faso, the Penal Code adopted in 1996 contains a number of new provisions designed to protect the rights of women and children, including provisions on physical abuse of women, forced marriage and female genital mutilation/cutting. Togo adopted legislation prohibiting female genital mutilation/cutting in 1998.

The new Ethiopian Constitution recognizes the duty of the State to protect women against harmful traditional practices in general, and the new Family Code of Ethiopia raises the

minimum age for marriage from 15 to 18 years.²⁶⁰ The South African Constitution establishes 18 as the minimum age for marriage, and the Children's Act 2005 prohibits female genital mutilation/cutting, the betrothal of children under the minimum age for marriage and "virginity testing" of girls under the age of 16.²⁶¹ The Nigerian Child Rights Act provides that no marriage of any person under the age of 18 is valid, nor is any betrothal of a person under the age of 18.²⁶² Sentences of up to five years' imprisonment are established for any person who marries or becomes betrothed to a child under the age of 18, or betroths or promotes the marriage of a child. The Act also prohibits tattooing or making skin marks (ritual scarring) on a child.²⁶³ In explaining this provision, the Special Rapporteur on the Rights of the Child of the National Human Rights Commission commented that the practice of marking children to show their tribal affiliation was a throwback to times when tribal warfare and slavery were commonplace.²⁶⁴

In Asia, frequently reported harmful traditional practices include child marriages, son preference and the offering of children to priests or temples. The Children Act 1992 of Nepal expressly prohibits son preference in feeding and access to health care, and "offering a child to a deity for religious purposes." In 1994, the Republic of Korea amended its legislation to increase the sanctions for foetal sex screening and selective induced abortion. Medical practitioners who engage in these practices now face a three-year prison sentence, in addition to a fine and the loss of their license to practice medicine. India adopted legislation prohibiting this practice in 1994 and strengthened it by an amendment in 2003.²⁶⁵ In India, the Goa Children's Act 2003 establishes sentences of imprisonment for abetting the dedication of girls to the service of a god, temple or religious institution, and obliges the State to take measures to eliminate prenatal sex selection, female foeticide and infanticide and sexual harassment of girls ('Eve bashing').

In Sri Lanka, the minimum age of marriage at the time of the adoption of the Convention

was 12 for girls and 16 for boys. In 1995, it was raised to 18 years for both sexes. The personal law applicable to the Muslim community does not specify a minimum age of marriage, however. In Viet Nam, arranging the marriage of a girl under the age of 18 is punishable by a term of imprisonment, under the Criminal Code adopted in 1992.

The legislation of most Islamic States covered by this study allows children to be married at an early age, and in most cases girls are allowed to be married at an earlier age than boys.²⁶⁶ The exception is the Libyan Arab Jamahiriya, which set the minimum age for marriage at 20 years for men and women in 1984. In practice, the extent to which early marriage occurs varies greatly. In Yemen, a study revealed that girls aged 11 to 15 account for 65 per cent of marriages nationwide and 70 per cent of marriages in rural areas, while in Lebanon the average age of marriage is 31 for men and 28 for women.²⁶⁷ Jordan and Morocco have raised the minimum age for marriage to 18 since becoming parties to the CRC. In contrast, in 1991 Sudan adopted a law allowing boys and girls to be married at age 10.²⁶⁸

Female genital mutilation/cutting is a widespread practice in a number of countries, such as Egypt, Sudan and Yemen. In Egypt, it has been prohibited since 1959 and new measures have been taken since adoption of the Convention. In 1994, a Ministerial Decree banned non-medical practitioners from performing female genital mutilation/cutting anywhere other than a public or central hospital. This decree was controversial

because it implicitly allowed this practice to be carried out by medical practitioners in government hospitals and clinics. In 1996, another decree was issued banning the practice except in cases where there were medical reasons. This decree was declared invalid by a court, and the practice now remains prohibited.²⁶⁹

Another practice known as 'honour killing' has been documented in Pakistan and some countries in the Middle East. The term refers to the murder of a person who is perceived to have brought shame on his or her family, usually by actual or presumed sexual relations outside of marriage. Other causes of honour killing can include refusal of an arranged marriage, or persistence in maintaining a friendship with a person of the opposite sex who does not meet with the approval of the victim's family. The victims of honour killings are almost always women or adolescent girls, and the perpetrators are normally male family members, including the father or elder brother. These acts are invariably recognized as crimes, but law enforcement is lenient and the motive of the crime may be legally recognized as a mitigating factor. In 1999, Lebanon amended its legislation to provide that the relationship of the victim and the murderer is a mitigating factor but not a defence.²⁷⁰ Jordan also amended its criminal legislation to take a stronger position against this practice. Legislation that prohibits acid throwing in Bangladesh has already proven to be effective. Acid throwing has been a violent practice and an act of vengeance meted out, for the most part, against girls and women.



States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

12 SEXUAL EXPLOITATION

Article 19 of the CRC recognizes the right of children to protection against sexual abuse and exploitation while in the home or in the care of other persons having responsibility for the child. This is complemented by the article 34, which prohibits all sexual exploitation and abuse, and specifically obliges States to prevent child prostitution and pornography. Older legislation concerning sexual offences in various parts of the world often contains significant gaps in the way offences concerning children are defined, as well as provisions that discriminate on the basis of sex. A study published by the South African Law Commission in 1997 observed “Several of the relevant provisions of the [Sexual Offences] Act are formulated in archaic terms unsuited to the present context, and or discriminate unfairly between male and female victims.”²⁷¹

In South Africa, the age of consent is 16 for girls and 18 for boys, but for some offences, the presumption that children under these

ages cannot or did not consent is not absolute.²⁷² The exploitation of child prostitution is not a specific offence, except when the perpetrators are parents or guardians of the victims. Gaps in the substantive law on sexual offences are compounded by challenges in law enforcement. The study by the South African Law Commission indicates that, although the number of sexual offences against children is “appalling,” successful prosecutions are rare, and even those prosecutions that do lead to conviction have little deterrent effect.²⁷³ Obstacles to effective prosecution include legal ambiguity as to the right and duty of medical personnel to examine child victims without the consent of their parents, the fear of revictimization during legal proceedings and fear of reprisals by the perpetrator. New laws designed to close the gaps in the legislation on sexual offences and create more child-friendly procedures are being drafted. New legislation adopted in

1996, criminalizes the use of children under the age of 16 in pornography.²⁷⁴

The Child Rights Act of Nigeria prohibits the use of any child under the age of 18 for purposes of prostitution, sexual labour, the production of pornography and any other “unlawful or immoral purpose.”²⁷⁵ It also provides that sexual intercourse with any person under the age of 18 is punishable as rape, and eliminates the defence of mistake of age for this offence.²⁷⁶ Other forms of sexual abuse and exploitation are prohibited in general terms.²⁷⁷ The Rwandan law on child rights and the protection of children against violence establishes penal sanctions for the exploitation of child prostitution, for the production of child pornography and for cohabitation with children below the minimum age for marriage.

All of the Asian countries covered by this study have adopted new legislation concerning sexual exploitation of children since 1990. The Children’s Act 1992 of Nepal prohibits “involving a child in immoral professions” and child pornography. However, this law protects only children who are under the age of 16. The Social Welfare Act 1992 provides for rehabilitation of the victims of crimes against children, but rehabilitation homes have yet to be established. The 1992 Vietnamese Law on the Protection, Care and Education of Children provides that the exploitation of children under age 16 for purposes of prostitution is strictly prohibited. Under the Criminal Code adopted in 1992, any sexual intercourse with a child under age 13 became punishable as rape, which bears a sentence of 7 years to 15 years, and intercourse with a child aged 13 to 16 without the use of force became punishable by a maximum sentence of three years imprisonment. The provisions of the Criminal Code concerning sexual offences involving children were amended in 1997. New crimes were recognized and the sentences for some pre-existing offences were increased.

The 1992 Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act of the Philippines contains a comprehensive list of offences involving the sexual exploitation of children, including pornography and sex tourism,

that protect both boys and girls. In addition to establishing strict sentences for these crimes, the Act obliges the competent government agencies to adopt a plan of action to combat these practices. In 1997, the Republic of Korea adopted a Youth Protection Act that prohibits various forms of sexual exploitation of children, and in the same year a section prohibiting child pornography was added to the Juveniles Act of Fiji. Japan has adopted several new laws or amendments to existing laws designed to improve protection against sexual abuse. In 1999, the Law on Punishing Acts related to Child Prostitution and Child Pornography and on Protecting Children was adopted. The law – which defines a ‘child’ as anyone under 18 years of age – criminalizes the import or export of child pornography for the purpose of distribution and the trafficking in children for the purpose of child prostitution or pornography. It also recognizes the jurisdiction of Japanese courts over sexual offences against children committed outside Japan. The Criminal Procedure Code was amended in 2000 to introduce protective measures for child witnesses, allowing them to testify behind a screen or by video link, with the assistance of a person who offers moral and psychological support.

Sri Lanka’s 100-year-old Penal Code was amended in 1995, pursuant to the recommendations of the Presidential Task Force on the Prevention and Control of Child Abuse, to enhance the protection of children against sexual harassment, procurement for prostitution, pornography and other forms of sexual exploitation and abuse. Some amendments recognized new offences, such as trafficking, while others broadened the definition of certain offences to protect victims of both sexes, and increased the applicable sentences. The age of consent was raised from 12 to 16, and rules of evidence were modified to eliminate the requirement of physical injury to prove lack of consent. The Judicature Act was amended in 1998 to eliminate the need for a victim of statutory rape to testify in a pre-trial hearing. In 1999, the law on evidence was amended to permit the use at trial of videotaped evidence from the preliminary interview of a child victim or witness.

These changes in the law and legal procedures are part of a comprehensive plan of action that also includes prevention, new methods for detecting cases of abuse, the creation of specialized police units, training, counselling of victims and cooperation with the law enforcement agencies of other countries in obtaining evidence for the prosecution of persons involved in sex tourism.

In India, the Goa Children's Act of 2002 contains broad definitions that enhance the protection of children against diverse forms of sexual exploitation and abuse, including pornography. These include the mandatory use of filters in Internet stations accessible to children, the mandatory reporting of children cohabiting with unrelated adults or travelling with adults in suspicious circumstances, and mandatory reporting by commercial film developers of photos or films depicting children in sexually suggestive situations. The Act also requires the State to establish Victim Assistance Centres to provide assistance to children who have been victims of abuse and support them in criminal investigations and proceedings.

Under Islamic law all sexual relations outside of marriage are prohibited. As a result, the legislation of some countries contains few offences specifically concerning those committed against children, although the age of the victim of a sexual offence may be considered an aggravating factor that increases the sentence. Since all sexual activity outside marriage is a crime and since the evidence required for proving rape is difficult to meet, women who become pregnant as a result of rape may themselves be prosecuted if they are unable to prove that they were the victim of a crime.²⁷⁸ In addition, a man who has committed rape or abduction has no criminal responsibility if the victim marries him, under the law of many Islamic countries.

The Penal Code of Tunisia was amended in 1995 to include recognition of indecent assault committed on children under the age of 18 as an offence,²⁷⁹ and the Suppression of Violence against Women and Children Act of Bangladesh contains some provisions for the protection of victims. Several countries have argued that the problem of sexual abuse is almost non-existent

as a result of Islamic teaching and prevailing social mores. Others have highlighted the challenges concerning the lack of visibility for these issues. The situation may have been described accurately in a report by Lebanon that states:

In addition, sexual matters themselves are as much shrouded in secrecy as they are a forbidden subject of discussion. In the cases of violence and sexual exploitation (which is also a form of both physical and moral violence), it is not surprising that children should be the prime victims twice over: first of all, victims of the assault itself and secondly, victims of the repression and silence about the subject.²⁸⁰

Many Latin American countries, including Argentina, Chile, Costa Rica, the Dominican Republic and Mexico, have adopted legislation protecting the rights of children who have been victims of sexual abuse or exploitation and filling legal gaps that allowed certain forms of abuse and exploitation to go unpunished.²⁸¹ In the civil law system, prosecution for certain offences often requires the filing of a complaint by the victim or, when the victim is a child, by his or her legal representative. This requirement facilitates the impunity of perpetrators of offences against children, particularly sexual offences, especially when the victims are poor. Since the entry into force of the Convention, some Latin American countries, such as Honduras, have amended their criminal law to dispense with the requirement of a complaint and place responsibility for the prosecution of such offences squarely with the law enforcement authorities.

Another provision that contributed to the impunity for sexual offences against women common in earlier legislation is the rule that the subsequent marriage of the victim and perpetrator is a bar to prosecution. A few countries have yet to eliminate this anachronistic defence. The provisions of children's codes concerning sexual abuse or exploitation generally complement the provisions of the penal code on sexual offences. Guatemalan code uses the concept of 'power relationship' as part of the definition of sexual abuse. A power relationship exists when there is a difference in

the strength, age, knowledge or authority of the victim and perpetrator.

Most of the codes adopted since 1990 contain some provisions concerning the prevention of sexual abuse and exploitation, in particular the prohibition of the presence of children unaccompanied by parents in hotels and similar facilities. The provisions on child labour also generally prohibit their employment in hotels, bars and places where gambling occurs or adult entertainment is offered. Costa Rica adopted a law on sexual harassment that, *inter alia*, requires all schools to adopt policies against sexual harassment of students. Some of the newer codes also contain provisions on the sexual harassment of students.

The Jamaican Child Care and Protection Act gives judges discretion to conduct trials in which the victim is a child in his or her absence, if the presence of the victim is not considered essential. The testimony of the child can be presented in written form, if the participation of the child in the trial would involve serious danger to life or health. These provisions apply to all trials for offences against children, whether sexual offences or not.

Many countries of Central and Eastern Europe have adopted legislation since 1990 aimed at closing the gaps in the pre-existing law on sexual offences or extending the special protection afforded by criminal law regarding sexual offences to adolescent children. The new Criminal Code of Georgia, for example, criminalizes sexual relations with persons under the age of 16; earlier legislation criminalized relations with persons under the age of "puberty." The Penal Code of Slovenia was amended in 1999 to raise the age limit used in the definition of sexual abuse of juveniles from 14 to 15. In this, the law reflects a general trend in the region. It also contains an unusual provision that adds another element to the offence, that is, the existence of "a marked discrepancy between the maturity of the perpetrator and that of the victim." The intent is to decriminalize consensual conduct between adolescents who "participate in an equal, loving or peer relationship."²⁸²

Conversely, the Penal Code establishes sexual offences in which the key element is abuse of position in order to induce a person under the age of 15 to have intercourse or engage in any other lewd behaviour. The sentence for this crime is increased when the perpetrator had a duty to teach, protect or care for the victim. The Polish Penal Code of 1997 also recognizes the crime of engaging in sexual relations or other sexual activity by abusing a relationship of dependence, regardless of the victim's age.²⁸³ The amendments to the Penal Code of Slovenia also criminalize the use of children for purposes of pornographic productions, and increase the sentences for procuring a child for the purposes of prostitution. Similarly, the Polish Penal Code criminalizes inducing, facilitating or profiting from the prostitution of children, and the exploitation of children under the age of 15 for the production of pornographic material. Relatively few countries have adopted legislation designed to protect the rights of victims. The Criminal Procedure Act of 1998 of Slovenia, described above, is one exception.

Canada, France, Italy, Sweden and the United Kingdom have all made substantial changes in their legislation concerning the sexual exploitation of children. In 1994, France adopted legislation increasing the sentences for violent sexual offences against children under the age of 15, and restricting the possibility of early release.²⁸⁴ Legislation adopted in 2000 criminalizes the prostitution of any child under the age of 18, and expands the scope of offences involving child pornography.²⁸⁵ Italian legislation concerning sexual offences against children was thoroughly revised in 1996. The new legislation recognizes some new offences, and eliminates the previous distinction between crimes involving penetration and other forms of sexual abuse of children, in order to avoid the need for explicit testimony by the victim on that issue. A distinction is drawn, in the new law, between sexual activities involving children or adolescents and adults, or between children and adolescents, and consensual sexual activities in which both parties are adolescents. In the latter situation, there is no prosecution unless a complaint is made.

Sweden has also adopted new legislation concerning sexual offences against children. Sentences for rape and sexual abuse of children were increased in 1992. In 1995, legislation was revised to ensure that all sexual intercourse with a person under the age of 15 is regarded as a crime, regardless of the relationship between the victim and the perpetrator. Legislation concerning child pornography was revised in 1999. Tougher sentences were mandated, and the requirements concerning the knowledge and intent of those involved in the possession and distribution of child pornography were modified to facilitate prosecution for these crimes.

In the United Kingdom, the Crime (Sentences) Act 1997 provides for a mandatory life sentence for a second serious sexual or violent offence, including offences against children, and increases the maximum penalty for indecent conduct towards a child under 14 from 2 years to 10 years. In Scotland, similar legislation increased the maximum penalty for sexual offences against girls under the age of 16. The Criminal Justice and Public Order Act 1994 expanded the definition of child pornography to include digital images, including "pseudo-photographs." The United Kingdom has also adopted several laws intended to protect children against sex offenders who have served their sentences. The Offenders Act 1997 obliges persons convicted of sex offences against children to notify the police of their name and address. The Crime and Disorder Act of 1998 enables the courts to adopt orders for the supervision sex offenders and restrictions on their activities, and the Protection of Children Act of 1999 requires organizations providing services to children to vet candidates for employment and prohibits the employment of convicted offenders in positions involving substantial contact with children.

The provisions of the Canadian Criminal Code concerning child pornography and child prostitution were strengthened in 1993 and 1997. Additional legislation was later enacted allowing courts to adopt orders prohibiting convicted sex offenders from frequenting areas such as public parks, schools, playgrounds and

swimming pools. One territory adopted legislation eliminating the time limits for bringing civil actions based on sexual abuse.²⁸⁶ Legislation protecting the rights of child victims has been adopted by many European countries. In France, legislation adopted in 1998 allows video or audio recording of the victim's testimony to be made prior to trial in order to limit the need for repetition of the testimony.²⁸⁷ It also allows for the appointment of a guardian to represent children in the event of a conflict of interest with his or her parents, and recognizes the right of the victim to reimbursement of all medical expenses. Legislation enacted in 2000 increases the right of confidentiality of children who are victims of crimes.²⁸⁸ Legislation adopted by Italy in 1996 likewise allows the testimony of child victims to be taken before trial, in the child's home or a therapeutic setting. In the United Kingdom, the Criminal Justice Act 1991 allows the use of pre-recorded video evidence in cases of sexual abuse involving children. Legislation enacted in 1992 strengthens the right of victims to confidentiality.²⁸⁹

Many European countries have also adopted legislation giving their courts jurisdiction over offences committed by nationals abroad. In France, the Act of 1 February 1994 gives French courts jurisdiction over sexual offences against children committed by its nationals or residents while abroad.

The Sexual Offences (Conspiracy and Incitement) Act 1996, makes it an offence in Scotland to conspire in or incite the commission of a sexual offence abroad, and the Sex Offenders Act 1997 also gives courts in England and Wales jurisdiction over sexual offences committed against children outside their territory. The Canadian Criminal Code was amended in 1997 to give Canadian courts jurisdiction over sex offences against children committed by nationals or residents regardless of where they occur.²⁹⁰ In Italy, a new law on child prostitution, child pornography and sex tourism was adopted in 1998.²⁹¹ It protects all children under the age of 18 from exploitation in prostitution and pornography,

establishes jurisdiction over these crimes committed by Italians abroad and created a fund that finances programmes for the rehabilitation of victims. These laws still leave certain gaps in the protection of older adolescents, however: they do not, for example, criminalize

the use of the services of prostitutes over age 16, nor incest with a child over age 16. The 1998 law on immigration allows residence permits to be granted to foreign children who have been victims of organized prostitution, in the event of risks to their safety.



Children have the right to be protected from economic exploitation and from performing work that may be hazardous, harmful to their development, or interfere with their education.

13 CHILD LABOUR

The CRC provides that children have a right to protection against work that interferes with education, is dangerous or potentially harmful to their health and normal development.²⁹² The Committee on the Rights of the Child has indicated that these standards should be interpreted in the light of International Labour Organization (ILO) Convention concerning Minimum Age for Admission to Employment (Convention No. 138), which provides that the minimum age for light work that does not interfere with schooling should be 13, and that the minimum age for full-time work outside the family that is not dangerous should be 15, provided that the minimum age that a child may leave school is not higher than 15.²⁹³ The ILO Convention allows countries whose economies and educational systems “are insufficiently developed” to set such age limits at 12 and 14 years, respectively, until such time as social conditions improve.

Since 1990, many African countries have ratified the two main international instruments concerning child labour; ILO Conventions No. 138 and No. 182 (Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour). All the sub-Saharan countries covered by this study are now parties to both, and some countries have enacted legislation intended to bring their domestic law into conformity with them. Ethiopia, for example, adopted a new labour proclamation in 1993, which prohibits the employment of children under the age of 14, and prohibits the employment of workers aged 14 to 18 in dangerous or unhealthy jobs or night work. In South Africa, the Basic Conditions of Employment Act, 1997 prohibits the employment of children under 15 years and the employment of any child under the age of 18 in work that is prejudicial to his or her “well-being, education, physical or mental health,

or spiritual, moral or social development.” The Child Rights Act of Nigeria prohibits the employment of any person under the age of 18, except for light employment within the family.²⁹⁴

In 1993, Rwanda adopted labour legislation that prohibits the employment of persons under 18 in dangerous work, establishes 16 as the general minimum age for employment and allows the Ministry of Labour to regulate the employment of children aged 12 to 16. In 1999, the new Government ratified ILO Convention No. 182, but announced that a new labour code will lower the minimum age for unhealthy, harmful and dangerous work from 18 to 16. The rationale for this is that the 1994 genocide has forced many adolescents to assume the responsibilities that should be reserved for adults.

Ratification of the CRC has also led many Asian countries to become parties to ILO Convention Nos. 138 and 182. Fiji, Japan, Nepal, the Philippines, the Republic of Korea, Sri Lanka and Viet Nam have all ratified both instruments since 1990. Many of these countries have also strengthened national standards concerning child labour. The 1990 Constitution of Nepal states that no minor shall be employed in a factory, mine or dangerous work, and the Labour Act 1992 establishes 14 as the minimum age for full-time employment, and prohibits the employment of persons under the age of 18 in work that is unhealthy or dangerous.

Viet Nam’s 1992 Law on the Protection, Care and Education of Children prohibits the employment of children in work that is detrimental to their normal development. The Labour Code adopted in 1994 establishes 15 as the generally applicable minimum age for employment, which is consistent with the law that makes education compulsory until the age of 14. The minimum age for employment in work that is hazardous or unhealthy is 18. In the Republic of Korea, the Labour Standards Act was amended in 1997 to raise the minimum legal age for work from 13 to 15, and another law was amended to prevent the employment of persons under 18 in places where alcohol is served or prostitution takes place. Violations of these norms are punishable by three years’ imprisonment.

In Sri Lanka, the minimum age of employment of children as domestic labour was raised from 12 to 14 years in 1999. In India, the Goa Children’s Act 2003 prohibits the employment of children under the age of 14 as domestics. The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act of the Philippines was amended in 1993 to provide that children under age 15 can only work for their parents in small family businesses, and only if the work is not dangerous or unhealthy and does not interfere with the child’s education. The amendment also regulates the work of children under age 15 in the entertainment sector, such as models and actors. In 2003, the provisions of the Act concerning the employment of children were amended again, to limit the employment of children under age of 15 in family businesses to 20 hours per week and prohibit the employment of children aged 15 to 18 in dangerous or unhealthy work. Later, a provision was added recognizing the right of working children to free legal, medical and psychosocial services.

Many Islamic States have ratified ILO Convention No.138 since becoming parties to the CRC. It was ratified by Tunisia in 1995, Jordan in 1998, Egypt in 1999, Morocco and Yemen in 2000, the Syrian Arab Republic in 2001 and Lebanon in 2003.²⁹⁵ Since 1990, several countries have raised the minimum age for employment. In Lebanon, the minimum age was raised from 8 to 13 years in 1996, and raised again to 16 in 1999.²⁹⁶ The new legislation also provided greater protection to children between ages 16 and 18. The Child Code adopted in Egypt in 1996 establishes the minimum age for employment at 14 years, and provides criminal penalties for employers who prevent children from attending school. Morocco raised the minimum age to 15 in 2003; in 1996, Tunisia raised the minimum age to 16, which corresponds to the end of compulsory schooling.²⁹⁷ The Labour Code was also amended to establish 18 as the minimum age for dangerous or unhealthy work.

Other states have adopted legislation intended to protect children from employment that is inappropriate, or to protect working children

against exploitation. Pakistan's Employment of Children Act, 1991 prohibits the employment of children under the age of 14 in work that is dangerous or unhealthy, and regulates working conditions and hours for children. According to the ILO Committee of Experts on the Application of Conventions and Recommendations, however, this does not represent an advance in protecting the rights of children since colonial legislation had established a higher age limit for dangerous work.²⁹⁸ The Bonded Labour System (Abolition) Act, adopted in 1992 increased penalties for this violation of the rights of children.

The Syrian Arab Republic adopted two laws concerning child labour in 2000. The Labour Code was amended to raise the general minimum age of employment to 15 years, and raise the minimum age for night work to 16 years.²⁹⁹ The Agricultural Relations Act was amended to prohibit the employment of children under the age of 13 in herding or in other light work.³⁰⁰ The amendments also establish 16 as the minimum age for difficult agricultural work, and 18 as the minimum age for seasonal work.

Sudan and Yemen have adopted legislation on child labour that falls far short of international standards in some important respects. In 1997, Sudan adopted a Labour Act that prohibits the employment of children under the age of 16 in night work and work that is hazardous, physically demanding or harmful to health or morals. The Act also prohibits the employment of children under age 12, but makes exceptions for those employed in family businesses and training programmes, and for juvenile offenders.³⁰¹ Moreover, the Act does not apply to sectors in which children are often employed, in particular domestic labour and agriculture. Yemen adopted a Labour Act in 1995, which regulated the employment of children under the age of 15 outside the family and prohibits their employment in heavy, hazardous or socially dangerous work, or in remote and undeveloped locations.³⁰² However, this Act was weakened by an amendment adopted in 1997, which eliminated restrictions on the working hours of children under the age of 15.³⁰³ They now may be employed full-time – 48 hours a week.

In Latin America, most of the children's codes, including those of Ecuador, Guatemala, Honduras and Nicaragua, establish 14 as the age limit for a child to engage in full-time work and allow children aged 12 to 14 to work part-time. Most of the codes surveyed also prohibit the employment of any child under the age of 18 in dangerous work, and many list the types of work considered dangerous.³⁰⁴ Employment that interferes with education is prohibited by all these codes. Most of them require working children to obtain work permits, which in turn requires a medical examination. Some require the government to provide special forms of education adapted to the needs of working children, or require employers to take steps to facilitate school attendance by employees who are children.

There are two competing schools of thought regarding children and work in Latin America. One holds that work is by nature an activity proper to the adult stage of the life cycle, and that the ultimate goal is to eliminate most employment of children so that childhood can be devoted to education, sports, recreation and other social and cultural activities. The other holds that, given the poverty in which most families live, participation by older children in legitimate income-generating activities is a positive form of socialization, provided that their rights as workers are respected. This difference in approach is reflected in some of the codes adopted since 1990. The Honduran code, for example, provides that the elimination of child labour is the ultimate goal, while the Colombian and Ecuadorian codes recognize the duty of the government to facilitate and encourage the self-employment of children aged 12 to 18. Most children's codes stipulate that working children are entitled to labour and social rights. However, since such rights normally depend on the existence of an employment relationship and most working children work in the informal sector, some codes provide that self-employed children have the right to special benefits provided by the national or local government. These include free education and medical check-ups. As a rule, violations of these standards are punishable by fines; only one code provides for sentences of imprisonment.

The Child Care and Protection Act in Jamaica prohibits the employment of any child under the age of 18 in work that interferes with education or is harmful or dangerous, and raises the minimum age for employment outside the family to 15. However, it retains a provision that allows children of any age in correctional facilities to work, provided that the work is not dangerous and does not interfere with their schooling. It does not contain any provisions on the rights of working children.

Legislation in Central and Eastern Europe concerning the employment of children was largely in compliance with international standards when the Convention entered into force in 1990. Most of the countries in the region, including Belarus, Poland, Romania, the Russian Federation and Ukraine, became parties to ILO Convention No. 138 long before the CRC came into force. Slovenia became a party to Convention No. 138 in 1992, and Georgia in 1996, but ratification did not require raising the minimum age for employment in either country. The Russian Federation lowered the minimum age for employment from 16 to 15 in 1995, to bring this age into conformity with the school-leaving age.

Although ILO Convention No.138, adopted in 1973, is the main international instrument

concerning the minimum age for employment, many western European countries did not become parties to it until after the adoption of the CRC. France and Sweden ratified it in 1990, Cyprus and Denmark in 1997, Iceland in 1999 and the United Kingdom in 2000.³⁰⁵ After becoming party to Convention No.138, Sweden adopted legislation establishing the minimum age of 13 for light employment and the minimum age of 16 for full-time employment. The United Kingdom amended its legislation concerning the employment of children under school-leaving age (16 years) to comply with European Community standards on the subject. The most recent legislation prohibits the employment of children under the age of 13, restricts the hours of children aged 13 to 16 to ensure that they do not conflict with schooling and prohibits the employment of children under the age of 16 in industrial work and other work that is likely to be harmful to their health or well-being. Canada is still not a party to Convention No.138, but some provinces have nevertheless adopted new standards concerning child labour. Newfoundland, for example, adopted new regulations in 1996 establishing age limits for employment in dangerous occupations.



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.

14 JUVENILE JUSTICE

Juvenile justice is one of the child rights issues most closely linked to law reform. The prevention of delinquency depends mainly on social policies, and prompt and effective administration of justice and rehabilitation of offenders depend largely on investments in infrastructure and personnel. Nevertheless, the question of what problems concerning children are seen as legal rather than social problems and the way society responds to them is essentially a legal issue. Juvenile justice is also one of the areas where law reform was most needed when the Convention entered into force – and it remains so. Much of the legislation enacted since 1990 falls short of international standards. At the same time, important advances have been made in many countries around the world.

Some African countries have no juvenile justice system as such, but their criminal law simply provides that the sentence imposed on younger criminals shall be less than those

imposed on adults. In Rwanda, where the age of criminal majority is 14, convicted criminals under the age of 18 receive lighter sentences.³⁰⁶ Instead of the death penalty or life imprisonment, for example, an offender between the age of 14 and 18 would receive a sentence of 15 to 20 years' imprisonment. Where some elements of a juvenile justice system do exist, the institutional and administrative frameworks are often antiquated and barely functional. In Togo, for example, the Government has recognized that detention prior to trial is obligatory; that lengthy delays in adjudication are commonplace; that specialized judges are lacking in many regions; that legal aid services have not been funded for many years; that there are no correctional facilities for girls, and that conditions in facilities for boys are seriously deficient.³⁰⁷ In Ethiopia, where the minimum age for adjudication is 9, only one juvenile court exists. Children aged 9 to 15 are often

tried by ordinary courts, but may only be sentenced to special facilities for juveniles; children between the age of 15 to 18 are treated as adults, except that they are not subject to the death penalty and their age may be considered a mitigating factor in determining the length of a sentence of imprisonment. In prison they are supposed to be separated from adult prisoners, but the Government has recognized that this rule is not applied in practice. Throughout Africa, correctional facilities are overcrowded, rehabilitation programmes non-existent, corporal punishment widespread, and many offences are handled by traditional authorities. Numerous countries in the region have sought to improve the treatment afforded to accused and convicted juveniles, often through programmes in which NGOs play an active role.

In South Africa, some legislation humanizing the juvenile justice system has been adopted, notably the Abolition of Corporal Punishment Act 1997, which prohibits the imposition of corporal punishment by any authority, including traditional tribunals, and the Criminal Law Amendment Act of 1997, which abolished the death penalty. However, few countries in Africa have undertaken comprehensive legal reform. This may be due to the recognition that, without extensive structural and institutional reform, legal reforms would have no chance of being implemented.

The Child Act adopted by Nigeria in 2003 is one of the few laws to envisage a juvenile justice system based on the CRC and related international instruments that is applicable to all persons under the age of 18. Prosecution is the last resort, and the police and prosecutors have discretion to dispose of cases without trial, if the offence is not a serious one and reconciliation appears to be appropriate, or if the family or another institution appears likely to

respond to the needs of the accused child in an appropriate and constructive manner.³⁰⁸ Children under investigation or accused of an offence enjoy the presumption of innocence, the right to remain silent and the right to legal assistance, including free legal assistance if needed.³⁰⁹ Parents are to be informed immediately upon the apprehension of a child, and detention prior to trial “shall be used only as a last resort and for the shortest possible period of time.”³¹⁰ Specialized family courts have jurisdiction over all offences committed by juveniles.³¹¹ The ‘last resort’ principle also applies to sentencing, and a wide range of non-custodial sentences are provided for.³¹² The minimum age for imposition of the death penalty is raised from 17 to 18 years, and sentences of

Box 17

Nigeria: Objectives of institutional treatment under the Child Rights Act

- 1) The objective of training and treatment of a child offender placed in an institution shall be to provide care, protection, education and vocational skill with a view to assisting the child to assume socially constructive and productive roles in the society.
- (2) A child offender in an institution shall be given care, protection and all necessary assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require, having regard to his age, sex, personality and in the interests of his development.
- (3) A female child offender placed in an institution shall—
 - (a) be treated fairly;
 - (b) receive no less care, protection, assistance, treatment and training than a male child, and
 - (c) be given special attention as to her personal needs and problems.
- (4) The parents and guardian of a child offender placed in an institution shall have the right to access to the child in the interests and well-being of the child.
- (5) Inter-Ministerial and Inter-Departmental co-operation shall be encouraged for the purpose of providing adequate academic or vocational training for any child offender placed in an institution or ensure that the child does not leave the institution at an educational disadvantage.

Source: Section 236 of the 2003 Child Rights Act, Nigeria.

corporal punishment are banned.³¹³ Surprisingly, the Act does not establish a minimum age for adjudication as a juvenile offender.³¹⁴

In Asia, the juvenile justice systems of most countries were not compatible with the CRC when it was adopted. The most common problems included legislation that permitted children as young as 7 or 8 to be tried for offences; legislation that allowed children under the age of 18 to be prosecuted as adults, and legislation that allowed harsh sentences to be imposed, or required the imposition of custodial sentences for certain offences, regardless of the child's motivation and personal circumstances. The Children's Act adopted by Nepal in 1992 establishes age 10 as the minimum age for prosecution as a juvenile offender. Children over age 16 are tried as adults, and children aged 14 and 15 convicted of an offence are sentenced to half the sentence that would be imposed on an adult. The Committee on the Rights of the Child urged Nepal to revise the part of the Children's Act concerning juvenile justice, especially the minimum age for adjudication. The Act does contain some positive provisions, including Section 19, which provides that a court shall not entertain or decide a criminal charge against the child unless there is a legal practitioner available to defend him or her.

In Viet Nam, the cases of children aged 12 to 14 accused of an offence or anti-social behaviour are handled by local committees that may send children to reform schools for a period of six months to two years. Cases of children aged 14 to 16 are governed by a special chapter of the Criminal Code of 1992. Diversion is recognized, and the emphasis is placed on non-custodial measures and sentences to reform schools. If the crime is a serious one, however, children aged 14 to 16 may be sentenced to up to 15 years in prison. The Committee on the Rights of the Child has recommended that legislation concerning juvenile justice be reviewed, and, in its second report to the Committee, Viet Nam indicated that it intended to review its legislation on juvenile justice in the light of the Convention, the 'Beijing Rules' and related international standards.

In 2000, citing an increase in serious crimes committed by juveniles, Japan amended legislation

to give the courts discretion to impose sentences of life imprisonment on offenders aged 14 to 18 convicted of offences involving the death of the victim. The amendments also extended the maximum period of pre-trial detention of accused juveniles. In India, a Juvenile Justice Act was approved in 2000. The new Act prohibits the application of the death penalty to persons under age 18; outlaws the imprisonment of children for non-payment of fines; requires that any child who is arrested must immediately be placed in the care of a specialized police unit or officer; establishes a presumption that juveniles accused of an offence shall not be detained while awaiting trial; and prohibits the publication of the identity of accused and convicted juveniles. It also foresees the establishment of specialized tribunals for the adjudication of juveniles accused of an offence that would be empowered to impose a wide range of non-custodial sentences.

Numerous provisions of the law are not self-executing, however, but only authorize states to establish the tribunals, detention facilities and sentences described by the Act. Three years after the Act entered into force, the Committee on the Rights of the Child expressed concern that "the mechanisms to enforce [implement] the Act have not been set up in most states."³¹⁵ The Act makes no mention of the due process rights set forth in the CRC, such as the presumption of innocence or the principle that any deprivation of liberty shall be a last resort. Nor does it address two of the most important concerns identified by the Committee on the Rights of the Child on examination of the Initial Report of India: the low minimum age for adjudication (7 years) and the discretion that courts have to sentence boys aged 16 and 17 to prison. The Goa Children's Act 2003 makes more far-reaching changes in the juvenile justice system of that state: it requires authorities to establish a Children's Court and provides that the procedures concerning juveniles accused of an offence must respect the presumption of innocence, the right to free legal assistance and the general principles set forth in the Convention and related instruments concerning juvenile justice.

The Indonesian Law on Child Protection recognizes the right to due process, legal assistance

and humane treatment in general terms.³¹⁶ In 1997, the Law Commission of Sri Lanka examined in detail all matters relating to the administration of juvenile justice. The legislation has not yet been amended, however. In Fiji, a Commission of Inquiry into the Courts System presented a report in 1994 that recommended far-reaching changes in the juvenile justice system, but implementation of this recommendation is still pending. Of the Asian countries covered by this study, the Philippines is the only one to have radically redesigned the juvenile justice system in light of the CRC and related international standards. In 1997, the Philippines enacted a law that shifts jurisdiction over accused juveniles from ordinary courts to specialized Family Courts, which were to be established in every city and province.

More far-reaching changes were instituted in the Philippines by the Juvenile Justice and Welfare Act of 2006, which is designed to create a system based on restorative justice.³¹⁷ The Act raises the minimum age for the adjudication of juveniles to 15 and provides that all persons aged 15 to 18 charged with an offence punishable by sentences of less than six years shall be offered the possibility of some form of community service instead of trial and possible imprisonment. Juveniles charged with offences punishable by sentences of 6 to 12 years may also be offered this alternative. The Act further provides that adolescents convicted of an offence shall normally be entitled to a suspended sentence if they participate in community-based rehabilitation programmes. It also eliminates status offences; exempts children from prosecution for prostitution and vagrancy; requires local governments to establish delinquency prevention programmes; sets out detailed provisions on the due process rights of accused adolescents; prohibits various forms of cruel and humiliating treatment, and recognizes the Beijing Rules for the Administration of Juvenile Justice, the Riyadh Guidelines on the Prevention of Juvenile Delinquency and the UN Guidelines on the Protection of Juveniles Deprived of Liberty.

Traditionally, laws in Islamic countries concerning juvenile justice reflect shortcomings similar

to those found in laws in other parts of the world. These include criminalization of social or behavioural problems; a low minimum age for the prosecution of juveniles; prosecution of some adolescents as adults; and confinement in correctional institutions that have substandard physical conditions.³¹⁸ Several of the Islamic States covered by this report have special courts and correctional facilities for juveniles, but, in practice, many accused juveniles are detained in ordinary jails, are tried in adult courts, and, if convicted, end up serving their sentences in an ordinary prison. In a few countries, such as Bangladesh, most matters concerning offences committed by juveniles are handled by traditional community tribunals where harsh punishments may be imposed in the absence of due process.

Several Islamic States have begun to address the problem of juvenile justice. The Child Protection Code adopted by Tunisia in 1995 is designed to consolidate a juvenile justice system based on international standards. Article 13 provides that the approach to juvenile justice is based on prevention, humanitarian principles and fairness, and recognizes the principle that any deprivation of liberty, before or after trial, should be a last resort. Article 14 recognizes the principle that the choice of measures taken by the authorities should be based on the best interests of the child. The minimum age for prosecution as a juvenile offender is 13, and there is a presumption that children below the age of 15 should not be prosecuted.³¹⁹ In addition, a mediation procedure has been established to promote reconciliation between juveniles accused of minor offences and the victims.³²⁰

Further, children deprived of liberty or sentenced to institutions for the rehabilitation of offenders have the right to protection of their health and their physical and moral well-being, and to social and educational assistance and support that takes into account their age, sex, personality and potential. The maximum sentence applicable to persons under the age of 18 convicted of serious crimes is 10 years. A Decree adopted the same year as the Code

establishes a national system of centres for the rehabilitation of juvenile offenders that includes closed, semi-open and open facilities. The staff includes multidisciplinary teams composed of child psychiatrists, psychologists, social workers, legal advisers and educational experts.

Morocco has also instituted a series of far-reaching reforms. In 2000, the country adopted a new Code of Criminal Procedure that mandates the establishment of a system of juvenile justice based on international standards.³²¹ The code, which entered into force in 2003, establishes a system of specialized juvenile courts with jurisdiction over offences committed by children between ages 12 and 18. Under the Moroccan code, accused juveniles have the right to an attorney. Moreover, children between the ages of 12 and 16 who are convicted of an offence are ordinarily given non-custodial sentences. Juveniles convicted of serious crimes may be given custodial sentences as long as 10 years to 20 years, however.

Morocco also adopted a new Prisons Code in 1999 that establishes a separate category of rehabilitation facilities for offenders under age 20. It recognizes the right of juvenile prisoners to education; exempts those who study from prison labour; prohibits the detention of juveniles in disciplinary cells, and recognizes the right of imprisoned pregnant women or girls to prenatal care. The Child Code adopted by Egypt in 1996 includes a chapter on juvenile justice, which recognizes the right of children under age 18 to be tried by specialized courts, unless they are over the age of 15 and are accused jointly with an adult co-defendant of committing a serious crime. The law also prohibits the pre-trial detention of children under age 15, and recognizes the right of juveniles accused of a serious offence to legal representation. The minimum age for prosecution remains 7, however, and children can still be charged with status offences such as begging and truancy. Convicted offenders between the ages of 7 and 15 may be sentenced to probation or special schools for juvenile offenders, but those aged 15 to 18 who are convicted of serious crimes may be sentenced to

prison terms. The Committee on the Rights of the Child welcomed the adoption of the code, but expressed concern over the low minimum age for prosecution and the failure to eliminate status offences."³²² In the Syrian Arab Republic, the minimum age for prosecution as a juvenile was raised from 7 to 10 years of age. In Lebanon, a law reforming the juvenile justice system was adopted in 2002, after years of preparation and debate, but the government considers that it has serious flaws and that further reform is needed.³²³

Pakistan eliminated corporal punishment in 1996 with the Abolition of the Punishment of Whipping Act, and the country's first national law on juvenile justice, the Juvenile Justice System Ordinance, was adopted in 2000. The ordinance makes some important advances: in addition to banning the imposition of death sentences and sentences of corporal punishment on offenders under age 18, it prohibits the use of handcuffs and fetters for juvenile offenders, and recognizes the right of every accused juvenile to legal representation, including free legal representation when needed. However, the law did not raise the minimum age for prosecution of juveniles, which remains at 7 years. The ordinance only establishes certain parameters to be respected by the provinces; each province still has the authority to determine what types of sentences (other than those prohibited by the ordinance) are applicable to juveniles, such as the offences they may be charged with, the courts that will hear their cases, and the kinds of rehabilitation programmes that will be made available.³²⁴ Further steps are required to bring the juvenile justice systems of the provinces into compliance with the CRC. The situation is especially serious in territories where traditional justice is applied and where the minimum standards contained in the 2000 ordinance are not always respected in practice.

Yemen adopted legislation concerning juvenile justice in 1992. The Juvenile Welfare Act makes some important improvements, including the establishment of specialized juvenile courts. However, the act applies only to children under age 15, and falls short of the requirements of the

Convention in some important respects. Behaviours such as habitual truancy, depravity or moral corruption and “associating with delinquents or rogues” is criminalized, for example, and children can be confined to institutions for juvenile offenders for one year on grounds of “potential delinquency.” The Criminal Law Act adopted by Sudan in 1991 contains provisions that fail to comply with the CRC. Offenders between ages 7 and 18 may be sentenced to 20 lashes of the whip – and may be sentenced to death for crimes of *hadd* (doctrinal punishment) or *qasas* (retribution). They may also face life imprisonment if convicted of brigandry.

During most of the 20th century, legislation on juvenile justice in Latin America, like that of most of the world, suffered from three main challenges: the minimum age for adjudication was too low; some children could be tried as adults, and children could be punished for being found in situations in which they were actually victims. Since the entry into force of the CRC, nearly every country in the region has amended its juvenile justice laws. In most cases the new codes include chapters on juvenile justice – although some countries, such as Costa Rica and Panama, have adopted separate laws on this issue.

With the support of UNICEF, a movement developed that was devoted to the elimination of laws and policies that in effect resulted in the “criminalization of poverty.” Most of the new codes indicate that adolescents cannot be charged with any offences other than those defined in the penal code. Most new legislation provides that all persons under the age of 18 are entitled to be tried as juveniles. The minimum age for adjudication as a juvenile is 12 in Bolivia, Colombia, Costa Rica, Ecuador and Honduras, 13 in Guatemala and Nicaragua, and 14 in Panama and Paraguay. Some codes and laws establish distinctions between juvenile offenders in different age groups. The Nicaraguan code, for example, provides that offenders between ages 13 and 14 may only receive non-custodial sentences.

The due process safeguards of adolescents accused of an offence are defined in detail in the new codes and laws. These recognize the

right of an accused adolescent to legal assistance, and in many instances indicate that this right is in effect as soon as the child is questioned in connection with the crime he or she is suspected of committing. Some codes establish public defender’s offices or units for adolescents. In cases where the offence is of limited gravity, most also establish diversion procedures that allow a trial to be avoided, such as conciliation between the victim and the accused. Many also establish or expand the network of specialized juvenile courts. The Nicaraguan Code established 18 juvenile courts throughout the national territory as well as a Public Defender’s Office. Detention of children in unsuitable conditions remains a serious problem throughout the region, however. Recent legislation generally establishes strict guidelines defining the circumstances in which children suspected of an offence may be deprived of liberty, and the length of time they may be detained before notification of the competent judicial authority or transfer to the child protection agency.

One of the key principles set forth in the CRC is that custodial sentences shall be a last resort, and must be for the shortest appropriate period of time. The new legislation establishes a wide range of non-custodial sentences, such as warnings, probation, community service and reparation, as well as part-time custodial sentences (weekends or nights), and often contains detailed guidelines for determining the most appropriate sentence. The maximum custodial sentence allowed by some codes is relatively low, for example, three years according to the Colombian code and five years according to the code in Guatemala. Some laws still provide for relatively long sentences, however; the Costa Rican law, for example, allows sentences of 15 years. Many of the new laws provide that the need for continued institutional treatment shall be reviewed periodically. The codes also often contain detailed guidelines concerning the treatment of adolescents confined in correctional facilities.

The Child Care and Protection Act in Jamaica raises the minimum age for adjudication as a juvenile offender to 12, and provides that those

persons under the age of 18 accused of an offence shall normally be tried as juveniles. It also contains provisions intended to prevent the detention of juveniles by the police while awaiting trial, it recognizes the right of all accused juveniles to be defended by a counsel, and establishes a new independent children's rights institution, the Children's Advocate, that is responsible for providing legal representation. However, the Act retains several provisions of older legislation that give the authorities broad discretion to treat some juveniles as adults and to treat younger children as offenders. For example, children aged 14 to 18 can be imprisoned while awaiting trial if a court concludes that they are "unruly" or "depraved." Children charged jointly with an adult are tried in ordinary courts, and an ordinary court that discovers that the accused is a child has discretion to continue hearing the case. Children in juvenile facilities can be transferred to adult prisons, and courts have broad discretion to order children under age 12 to be confined in facilities for juvenile offenders.

In Central and Eastern Europe, separate systems of justice for juvenile offenders are rare. The prevailing approach has been to have administrative authorities handle cases involving younger children, with little distinction made between cases involving offences and those involving 'anti-social' or 'deviant' behaviour. Cases involving older adolescents are – or were – handled in much the same way as criminal prosecutions of adults, except for the duration of sentence.³²⁵ Specialized courts for juvenile offenders did not exist, and the applicable laws and procedures are generally contained in the penal code and code of criminal procedure. Correctional facilities for juveniles are generally separate from those for adults, but offer little in the way of programmes, policies or infrastructure designed to meet the special needs of adolescents.

Legislation adopted since 1990 has introduced new guarantees and occasionally modified some age limits, but falls short of establishing new systems of justice specifically for adolescents based on the Convention and related

international standards.³²⁶ One country in the region rejected the recommendation of the Committee on the Rights of the Child that specialized courts for juvenile offenders be established, on the ground that special courts are contrary to the right of every person to be tried by an ordinary court.³²⁷ While such frank rejection of the Committee's recommendations is unusual, it highlights the novelty of the idea of a separate system for juvenile offenders and illustrates the important steps required to bring the administration of juvenile justice into conformity with the CRC.

Indeed, the concepts that have traditionally shaped the approach to anti-social and criminal behaviour by children and adolescents in this region sometimes make it difficult for the authorities to appreciate how international standards should be applied to national law and practice, and how the approach to juvenile justice in the region needs to be thoroughly reevaluated in the light of the CRC and related instruments.

Slovenia is an exception. As in other countries, there are no special courts for juveniles, and the prosecution of juveniles is governed by the ordinary penal laws. It is unique, however, in that prevention policies are so successful that the number of persons under age 18 convicted of serious crimes is one of the lowest in the world. The number of persons under 18 serving custodial sentences at any given time from 1996 to 2000 averaged less than 30.³²⁸ Statistics appear to confirm that the 'last resort' principle is applied with regard to pre-trial detention as well as sentencing.³²⁹ Where prevention is this successful and where ordinary courts do in fact apply internationally recognized principles governing the treatment of juvenile offenders, the creation of a separate system of juvenile justice may be not be necessary in order to ensure compliance with the Convention. In most countries of the region, however, juvenile delinquency is a large and growing problem and the potential for achieving compliance with the rights of juvenile offenders without the creation of a specialized system seems remote.

While much remains to be done, some improvements have been made. The Russian

Code of Criminal Procedure was amended in 1996 to introduce due process guarantees into procedures that may lead to confinement in schools for juvenile offenders. This is a particularly significant improvement because it addresses one of the essential flaws of the traditional model for dealing with juvenile offenders. The Criminal Code adopted by Georgia in 1999 raised the age of majority for purposes of penal law from 16 to 18, in order to comply with the recommendations of the Committee on the Rights of the Child. The Czech Republic raised the minimum age for prosecution as a juvenile to 15.

The Criminal Procedure Law of Slovenia was amended in 1998 to introduce a new form of diversion, called settlement. With the agreement of the victim, the accused and the prosecutor, the case of an accused juvenile can be referred to an independent mediator who explores the possibility of reaching a settlement satisfactory to the accused and the victim without proceeding to trial. The amendments also recognize the principle that juveniles should not be detained with adults. In Romania, the Penal Code was amended in 1996 to introduce sentences to community service for juveniles. In Belarus, the Law on the Rights of the Child recognizes the right of children in correctional facilities to “be treated with humanity, as well as the right to health care, basic education, vocational training, maintaining contacts with his or her parents, relatives and other persons, the right for leave and correspondence.”³³⁰ The right of children accused of an offence to legal assistance is widely recognized by the new legislation. The Criminal Procedure Act of Slovenia was amended in 1998 to recognize the right of juveniles in pre-trial detention to legal assistance at all times. If the juvenile does not select a lawyer, one must be appointed to represent him or her. Convicted juveniles serving custodial sentences also have the right to free legal assistance to defend their rights under legislation adopted in 2000. The Code of Criminal Procedure adopted by Georgia in 1997 also requires the presence of a lawyer during any interrogation of a child suspect, as well as during trial. Under new legislation in

the Russian Federation the right of a juvenile to legal assistance applies as soon as detention is ordered.

The social dislocation that has affected most of the countries in transition has led to a marked rise in crime, including crimes committed by juveniles. This, in turn, has generated pressure to impose stricter sentences on children convicted of serious crimes – and to lower the age at which accused persons can be tried as adults. The Penal Code adopted by Poland in 1997 lowers the age at which adolescents who commit serious offences can be tried as adults from 16 to 15, and the new Russian Penal Code increased the number of offences for which 14- and 15-year-olds can be sentenced to correctional facilities.

The Swedish approach to juvenile justice is somewhat unique. Offences committed by a child under the age of 15 are handled exclusively by the social welfare system. Children between ages 15 and 18 may be prosecuted for an offence, but in many cases, if the crime is not serious, the authorities may decide not to prosecute if the child agrees to receive assistance from social welfare authorities. Custodial sentences are imposed in only a small number of cases, and in most situations the sentences are short. Consequently, the number of children aged 15 to 18 who receive custodial sentences is so small that the establishment of a separate correctional system for offenders of this age group has been considered not only impractical but contrary to the best interests of the child.³³¹ The total population of persons between 15 and 18 years of age serving custodial sentences at any given time is around 10, and the average time served is between two and three months.³³² Few changes have been made in this system since 1990. In 1995, the Young Offenders (Special Provisions) Act was amended to establish time limits intended to avoid delays in the adjudication of juveniles. In Italy, legislation designed to strengthen community-based programmes for delinquency prevention and for non-custodial rehabilitation of offenders was adopted in 1991.³³³

France and the United Kingdom have made substantial changes in legislation concerning ju-

juveniles accused of crimes since 1989, although not all laws have increased the protection of the rights of children accused or convicted of an offence. In France, legislation adopted in 1995 and 1996 was aimed at bringing about prompt resolution of cases involving juveniles.³³⁴ In 2000, legislation was adopted enhancing the right of accused juveniles to due process. The Act of 15 June 2000 recognizes their right to be informed of the right to remain silent as soon as they are taken into custody; the right to a preliminary hearing before being charged; the right to a decision by an independent judge on the need for detention prior to trial; and the right to appeal. It also provides that all interrogations of juveniles must be recorded. However, the Committee on the Rights of the Child has expressed concern that this new legislation also allows juveniles to be detained in police custody for up to four days, and tends to “favour repressive over educational measures.”³³⁵ It also expressed concern that some recommendations made after its consideration of the Initial Report of France had not been acted upon, most notably one that called for incorporating into the law a minimum age for the prosecution of juveniles.³³⁶

In England and Wales, the minimum age for adjudication was 10 years when the CRC was

ratified, and there was a presumption that children under the age of 14 did not possess the maturity required for prosecution.³³⁷ The Criminal Justice Act 1991, which came into force in 1992, raised the minimum age at which a custodial sentence can be imposed from 14 to 15 years. It also raised the upper age limit of the competence of juvenile court from 17 to 18. However, the Crime and Disorder Act 1998 abolished the presumption that children between ages 10 and 14 are incapable of the knowledge or intent required for prosecution, and again allows custodial sentences to be imposed on persistent offenders under age 15. This Act also allows courts to “draw inferences” from the silence of an accused juvenile, a practice that most lawyers consider incompatible with the right not to be obliged to give testimony.³³⁸

After reviewing the Second Report of the United Kingdom in 2002, the Committee on the Rights of the Child expressed “serious concern that the situation of children in conflict with the law has worsened since the consideration of the initial report.”³³⁹ Children may be detained for up to 72 hours without a court order under the Children Act 1989. Some of the legislation adopted since 1990 tends to limit the circumstances in which custodial sentences may be imposed, but does not go

Box 18

Canada: Government rejects a proposal to lower the minimum age for the prosecution of juvenile offenders

The Standing Committee had recommended that, in exceptional circumstances, 10- and 11-year-old youth suspected of committing extremely violent offences should be subject to the youth justice system....

However, the federal government, after careful consideration of the recommendation, concluded that referral to the appropriate provincial/territorial social and mental health services would provide a better response to the needs of these youth. The Government of Canada believes that these services are more age-appropriate, family-oriented and therapeutic than those available through the criminal justice system for children of this age.

In Canada, very few children under the age of 12 are involved in serious, violent behaviour. Recent experience indicates that if the juvenile justice legislation had been extended to children 10 to 12 years old, fewer than 3 or 4 children within that age group would be charged with a presumptive offence in Canada each year.

Source: Paragraphs 485-487 of Canada's Second Report to the Committee on the Rights of the Child. CRC/C/83/Add. 6 dated 12 March 2003.

so far as to incorporate the 'last resort' principle. The Committee on the Rights of the Child also expressed concern that "deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37 (b) of the Convention."³⁴⁰

The juvenile justice system of Northern Ireland underwent substantial reform as a result of the Criminal Justice (Northern Ireland) Order of 1996 and the Criminal Justice (Children) (Northern Ireland) Order of 1998. The new legislation establishes a presumption that children accused of offences should not be detained prior to trial, and obliges a court that requires an accused juvenile to be detained while awaiting trial to state the reason why this measure is necessary. Custodial sentences must be justified by "the seriousness of the offence" and the "protection of the public," and a court that imposes one must state the reasons it considers these criteria to be met. The maximum sentence to a custodial facility was reduced to 12 months.³⁴¹

When the CRC was ratified by Canada, the minimum age for the prosecution of children accused of an offence was 12. The general age of majority for purposes of criminal law was 18, but children aged 14 and over accused of serious offences could be tried and sentenced as adults in special circumstances. The Youth Criminal Justice Act adopted in 2002 did not change these age limits, despite a proposal that the minimum age for prosecution as a young offender be lowered.³⁴² However, it does provide that all persons under 18 must be tried as young offenders, even though the court may decide to sentence those 14 or older as adults; and that convicted juveniles must normally serve their sentence in a facility for juvenile offenders until reaching the age of 18 (the maximum sentence for those sentenced as juveniles is three years.) The new law also places greater emphasis on non-custodial sentences and community participation in delinquency prevention and the rehabilitation of young offenders.



States parties shall take all feasible measures to ensure protection and care of children affected by armed conflict.

15 CHILDREN AND ARMED CONFLICT

Article 38 of the Convention prohibits the recruitment of children under the age of 15 into the armed forces, and obliges States to protect and care for children affected by armed conflict. Children who are victims of armed conflict also have a right to physical, psychological and social assistance under article 39 of the CRC. Moreover, an Optional Protocol to the Convention obliges States to abstain from compulsory recruitment of any persons under age 18; to establish a minimum age for voluntary recruitment higher than 15 years of age, and to prevent the participation of persons under age 18 in armed conflict.³⁴³

Many African countries have experienced armed conflict in recent years. Nevertheless, the adoption of legislation concerning children and armed conflict has received relatively little attention since 1990. The Constitution of South Africa prohibits the use of children under age 18 in armed conflict and recognizes the right of children to protection in times of

armed conflict. Rwanda has adopted legislation raising the minimum age for recruitment from 16 to 18. The Nigerian Child Rights Act prohibits the recruitment into the armed forces of any person under age 18, and imposes on all public authorities and institutions an obligation to prevent the direct participation of children in any hostilities.³⁴⁴

In Asia, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act adopted by the Philippines is a rare example of a law concerning children that addresses the rights of children affected by armed conflict. The Act provides that children shall be given priority during evacuation; that measures shall be taken to ensure that evacuated children are accompanied by persons responsible for their safety and well-being; that expectant and nursing mothers and children in camps for the displaced shall be given additional food; and that the camps shall provide children with opportunities for

physical exercise, sports and games. It also stipulates that any person under age 18 arrested for reasons relating to an armed conflict is entitled to special protection, including immediate free legal assistance and release pending trial. If a court finds that the child has committed the acts for which he or she is being charged, proceedings shall be suspended and the child placed in the custody of the Department of Social Welfare and Development until age 18.

The Indonesian Law on Child Protection contains an article that, in addition to recognizing the right to children to protection against war and armed conflict, also recognizes the right to protection against “misuse for political activities” and “involvement in social unrest.”³⁴⁵ Another provision prohibits recruiting or equipping children for military or similar purposes.³⁴⁶ Violation of these provisions is punishable by a sentence of five years’ imprisonment, and the right of child victims of armed conflict or social disturbances to various forms of assistance is recognized.³⁴⁷ In Sri Lanka, the National Child Protection Authority of 1999 has a mandate to monitor the situation of children affected by armed conflict and make recommendations concerning the protection of such children, including steps to promote their mental and physical well-being and their reintegration into society.

Despite the number of Latin American countries that have experienced armed conflict in recent decades, only a few of the children’s codes adopted since 1990 contain provisions on the rights of children and armed conflict. The Nicaraguan code contains a reference to the duty of the government to pay “special attention” to children caught up in armed conflict, including refugee children. The Guatemalan code reaffirms the obligation to respect the provisions of international humanitarian law, and to prevent the direct participation of any person under the age of 18 in an armed conflict. The Ecuadorian code also prohibits the recruitment and participation in armed conflict of any person under age 18, and provides that children have a right to priority in assistance provided in times of emergency, including armed conflict,

Box 19

Philippines: Legislation on the protection of children during armed conflict

Children as Zones of Peace. Children are hereby declared as Zones of Peace. It shall be the responsibility of the State and all other sectors concerned to resolve armed conflicts in order to promote the goal of children as zones of peace. To attain this objective, the following policies shall be observed:

- (a) Children shall not be the object of attack and shall be entitled to special respect. They shall be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment;
- (b) Children shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting, or used as guides, couriers or spies;
- (c) Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered;
- (d) The safety and protection of those who provide services including those involved in fact-finding missions from both government and nongovernmental institutions shall be ensured. They shall not be subjected to undue harassment in the performance of their work;
- (e) Public infrastructure such as schools, hospitals and rural-health units shall not be utilized for military purposes such as command posts, barracks, detachments, and supply depots; and
- (f) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated due to armed conflict.

Source: Section 22 of the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, RA No. 7610.

and the right to assistance in social reintegration. In Colombia, a special law adopted in 1999 raised the minimum age for recruitment to 18 years.³⁴⁸

Some countries in Central and Eastern Europe have raised the minimum age for recruitment

since becoming States parties to the Convention. The Belarusian Law on the Rights of the Child establishes 18 as the minimum age for this purpose.³⁴⁹ The Czech Republic adopted legislation in 1999 that prohibits compulsory recruitment of persons under age 18. Some new legislation also addresses other aspects of this issue. The Belarusian law mentioned above prohibits directing propaganda for war to children. The new Romanian law on the rights of the child provides that, in the event of an armed conflict, infrastructure used for the

protection of children shall not be used for military purposes, and children shall be given priority in any evacuation.³⁵⁰

Although armed conflict has been almost non-existent in western Europe since 1990, many European and other countries have participated in armed conflict elsewhere, either as a part of international peacekeeping operations or as part of multilateral military actions such as those in Afghanistan, Iraq and Kosovo. Little new legislation concerning children has been reported, however.



A child seeking refugee status or who is considered a refugee shall receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the CRC.

16 CHILD REFUGEES AND ASYLUM SEEKERS

Article 22 of the CRC incorporates by reference international law concerning refugees, and confirms that children are entitled to the rights to which every refugee or asylum seeker is entitled, whether or not they are accompanied by a parent or adult guardian. In 1998, the United Nations High Commissioner for Refugees (UNHCR), which participated actively in the drafting of the CRC, adopted guidelines on the treatment of child refugees and asylum seekers, including the handling and evaluation of claims made by unaccompanied children.³⁵¹

Many African countries, among them Ethiopia, Rwanda and South Africa, are host to large populations of refugees. The adoption of legislation concerning them has not been a priority, however. In 1998, South Africa enacted a law setting up procedures for evaluating eligibility for refugee status, in conformity with the 1951 Convention relating to the Status of Refugees. The law provides that unac-

companied children who appear to be possible refugees shall receive assistance in presenting a claim for refugee status. Burkina Faso and Togo adopted decrees on refugee status in 1994 and 2000, respectively, but they do not contain any provisions specifically concerning refugee children.

In Asia, the Republic of Korea amended its Immigration Control Law in 1993, in order to give greater protection to the rights of refugees. The amended law includes a provision on family reunification and a special procedure for applications by child asylum seekers. Viet Nam, which has a large population of stateless refugees of Vietnamese origin, adopted legislation in 1998 that facilitates the acquisition of Vietnamese nationality by children born in Viet Nam whose parents are stateless. In Indonesia, the Law on Child Protection adopted in 2002 recognizes the right of refugee children and those affected by natural disasters to various forms

of material and psychological assistance, and incorporates relevant international standards into national law.³⁵²

Some Latin American countries have also adopted new legislation that provides greater protection to child refugees and asylum seekers. The Ecuadorian code contains a broad general provision on the rights of refugee children.³⁵³ The Guatemalan code contains a broader provision that recognizes the right of refugee children, displaced children and returnee children to protection and assistance, and to enjoy all the rights recognized by relevant national and international law.³⁵⁴ The Honduran code obliges the authorities to notify the appropriate international agency (UNHCR) when a child refugee is arrested.

Most countries of Central and Eastern Europe have adopted legislation concerning refugees since 1990, in some cases for the first time. This trend has been encouraged by the greater openness to cooperation with the international community and acceptance of international human rights standards resulting from the end of the Cold War, as well as the outbreak in the region of several armed conflicts. The extent to which the new legislation complies with international refugee law and the rights of the child varies considerably, however. Legislation adopted by Romania in 1996 recognizes the right of children aged 14 and over to apply for refugee status independently; applications on behalf of younger children can be made by a legal guardian. These provisions were later incorporated into the Law on the Protection and Promotion of the Rights of the Child, 2004, which also provides that children whose applications for refugee status are denied shall be provided with “special protection” until arrangements can be made to send the child to a country where there are relatives willing to receive him or her.³⁵⁵ Children with refugee status have the same right to education as Romanian children.

In Slovenia, the Asylum Act adopted in 2000 recognizes the principle of family unity. Under the Act, the parents of child refugees and caretakers of unaccompanied children are entitled to the same status as the child, and the rights

that such status entails. Child asylum seekers also have the right to legal assistance in presenting their claim. Moreover, the claims of unaccompanied child asylum seekers are to be assigned the highest priority – and those whose applications are denied cannot be returned to their country (or a third country) until suitable arrangements have been made. In the Russian Federation, recent legislation facilitates the acquisition of Russian nationality by refugees, reducing the residence requirement by one half the usual period.³⁵⁶

During the 1990s, many Western European and other industrialized countries experienced large increases in the number of persons seeking asylum, including children. The CRC and the UNHCR guidelines (as discussed above), combined with the increased flow of asylum seekers, have led most of these countries to adopt new legislation or regulations concerning child asylum seekers and child refugees. In some, however, the Committee on the Rights of the Child considers that the reforms do not go far enough in protecting the rights of child asylum seekers. The United Kingdom adopted legislation concerning applications for refugee status in 1993 and 1996. The rules adopted under the recent legislation include special provisions on the treatment of the children of asylum seekers and unaccompanied child asylum seekers. Applications from unaccompanied children shall be given priority and interviews should be dispensed with unless strictly necessary. Children who obtain refugee status are entitled to request reunification with close family members. However, the Committee on the Rights of the Child has called for further reform, especially measures to ensure that child asylum seekers are not detained except as a last resort; that guardians are appointed for such children; that evaluation of their immigration status is expedited; and that their right to basic services such as health and education are guaranteed.³⁵⁷

In France, legislation adopted in 2002 provides for the appointment of an “ad hoc administrator” for each foreign child who arrives in France unaccompanied by a parent or guardian.³⁵⁸ The administrator is responsible for representing

such children in all procedures related to their immigration status, including applications for refugee status, and helping them obtain access to any services needed while such proceedings are pending. The Committee on the Rights of the Child, while welcoming the adoption of this law, has expressed concern about certain practices, including the detention of unaccompanied foreign children with adults, the effectiveness of the process used to determine the age of young arrivals, and the repatriation of unaccompanied children before they have access to the assistance provided for in the new legislation.³⁵⁹

In Italy, the immigration law adopted in 1998 allows humanitarian visas to be issued, in certain circumstances, to child asylum seekers whose application for refugee status is rejected. In effect, this law provides that foreign children cannot be expelled unless such measure is necessary to protect national security or public order, or to maintain the unity of the family. The 1998 law also allows temporary visas to be issued to child victims of armed conflict in need of medical treatment, and establishes a Committee for the Protection of Foreign Children that coordinates programmes for unaccompanied foreign children, including asylum seekers.

Sweden has instituted a number of changes to legislation concerning child asylum seekers in response to concerns expressed by the Committee on the Rights of the Child. In 1993, the rules concerning the detention of child asylum seekers were amended so that chil-

dren may not be deprived of liberty unless the authorities determine that other forms of supervision are likely to be inadequate. The reforms also recognized the principle that family members shall not be separated in the event that detention is considered necessary. In 1997, Sweden's Aliens Act was amended to incorporate the principle that, in cases involving a child, special consideration must be given to the child's health and development, and to the best interests of the child generally. The amendments also make clear that children affected by an application for refugee status have a right to be heard and that the information they provide shall be taken into account as far as is justified by the child's age and maturity. Child asylum seekers may only be detained in special facilities, not police facilities, prison or facilities for juvenile offenders, and have a right to legal counsel if detention is being considered. Furthermore, the amendments extend to all children under age 18 the protection that had previously been limited to children under age 16.

Canada's Immigration Act was amended in 1993 to allow refugees to apply for resident status for dependent spouses and children at the same time that they apply for permanent resident status for themselves. The Guidelines on Child Refugee Claimants adopted in 1996 establish special procedures and standards of evidence for children, and in particular unaccompanied children, and indicate that all decisions concerning children should be guided by article 3 of the CRC.



Children belonging to ethnic, religious or linguistic minorities or of indigenous origin shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

17 CHILDREN BELONGING TO MINORITIES

Article 30 of the Convention recognizes the right of indigenous children and children of ethnic, religious or linguistic minorities to enjoy their own culture, use their own language and practice their own religion. States in different parts of the world have adopted legislation to protect the rights of minority children. Progress has been uneven, however, and additional countries need to address this issue in a more coherent and systematic fashion.

In Asia, for example, the Law on Child Protection of Indonesia recognizes the right of minority children to the cultural, linguistic and religious rights set forth in article 30 of the CRC. The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act of the Philippines is one of the few laws on children in Asia that addresses the rights of indigenous children in a holistic fashion (see *Box 20, page 100*).

Most countries of Latin America have significant populations of indigenous children, and many of the new codes recognize not only the rights alluded to in article 30 of the CRC, but also recognize additional rights.³⁶⁰ The Guatemalan Code of 2003, for example, recognizes the right of indigenous children to “all the rights and guarantees that are inherent in their vision of the universe.”³⁶¹ Some codes establish a general principle, not limited to indigenous children, that any authority called upon to take a decision concerning a child “shall take into account the customs, usages and traditions of the social and cultural environment in which the child has been raised, provided that they are not incompatible with the best interests of the child.”³⁶² Where indigenous children are concerned, several codes (for example those in Colombia, Ecuador, Honduras) require that the traditional authorities of the community be consulted, whenever possible, before taking decisions

Box 20

Philippines: Legislation on the rights of indigenous children

Section 17. *Survival, Protection and Development.* In addition to the rights guaranteed to children under this Act and other existing laws, children of indigenous cultural communities shall be entitled to protection, survival and development consistent with the customs and traditions of their respective communities.

Section 18. *System of and Access to Education.* The Department of Education, Culture and Sports shall develop and institute an alternative system of education for children of indigenous cultural communities which is culture-specific and relevant to the needs and the existing situation in their communities. The Department of Education, Culture and Sports shall also accredit and support non-formal but functional indigenous educational programs conducted by non-governmental organizations in said communities.

Section 19. *Health and Nutrition.* The delivery of basic social services in health and nutrition to children of indigenous cultural communities shall be given priority by all government agencies concerned. Hospitals and other health institutions shall ensure that children of indigenous cultural communities are given equal attention. In the provision of health and nutrition services to children of indigenous cultural communities, indigenous health practices shall be respected and recognized.

Section 20. *Discrimination.* Children of indigenous cultural communities shall not be subjected to any and all forms of discrimination. ...

Section 21. *Participation.* Indigenous cultural communities, through their duly-designated or appointed representatives shall be involved in planning, decision-making, implementation, and evaluation of all government programs affecting children of indigenous cultural communities. Indigenous institutions shall also be recognized and respected.

Source: Part IX Children of Indigenous Cultural Communities of the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act in the Philippines, RA No. 7610.

affecting children of that community. Some codes expressly preclude adoption of indigenous children by non-indigenous persons, except as a last resort, and one requires the approval of traditional authorities before granting a work permit to indigenous adolescents.

Legislation recognizing the rights of children belonging to linguistic or indigenous minorities has also been adopted in some European and other industrialized countries. In the United Kingdom, for example, new legislation has been adopted recognizing the rights of Welsh and Irish speakers. The Welsh Language Act 1993 established the principle that the Welsh language should be treated on the basis of equality with English in the conduct of public business and the administration of justice in

Wales. The Education (Northern Ireland) Order 1998 obliges the Department of Education to encourage and facilitate the development of education in the Irish language in Northern Ireland. The Education Department also has adopted policies recognizing the right of students in Scotland and Wales to classes in Gaelic and Welsh. In France, legislation adopted during the 1990s recognizes the use and teaching of indigenous languages in its overseas territories.³⁶³ Legislation was adopted in 2000, recognizing that the regional languages in use in overseas departments form part of the linguistic heritage of the nation.³⁶⁴

In 1995, the Federal Government of Canada adopted a policy recognizing that indigenous communities “have a right to govern themselves

in relation to matters internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions.”³⁶⁵ This has coincided with increased recognition of the importance of encouraging such communities to develop their own social services programmes. In some provinces, this is reflected in legislation adopted during the last decade. In Nova Scotia, for example, the Children and Family Services Act was amended to require that the Mi’kmaq Family and Children’s Services be given notice of any proceedings involving a child who may be an Indian. The Northwest Territories enacted a law on the recognition of adoptions conducted under traditional law in 1995.³⁶⁶

During the 1990s, provinces such as Alberta and Nova Scotia developed programmes that give indigenous communities a greater role in the prevention of juvenile offences, informal dispute resolution and the rehabilitation of juvenile offenders. The most recent federal law on juvenile justice, adopted in 2002, appears to back this approach, encouraging community participation in juvenile justice and recognizing that the provincial juvenile justice systems should “respond to the needs of aboriginal young persons.”

CONCLUSIONS

Approaches to law reform and their complementarity

Nearly all of the countries studied have made substantial changes in their legislation to better protect the rights of children. These changes have been adopted in varying ways. Some countries have enacted new 'comprehensive laws' or children's codes. The adoption of children's codes has been widespread in Latin America, but rare in other parts of the world. The adoption of comprehensive laws is more common, and has occurred in all parts of the world. However, the prevailing trend has been what can be called the 'sectoral approach' to law reform, that is, gradually examining legislation concerning different areas in order to identify and make the changes needed to bring existing legislation into conformity with the CRC. Many of the countries that have pursued this approach have made extensive and substantial changes in their laws concerning children. A few countries have emphasized the adoption of decrees rather than legislation, and one or two others have focused on the design and implementation of programmes, to the neglect of legislative reform.

Each of these approaches – except those that neglect law reform – has its merits. None is sufficient in and of itself. The gradual reform of existing legislation tends to focus on specific areas, such as child protection,

the family and juvenile justice. Accordingly, some of the rights recognized by the CRC are omitted from the law reform process. Civil rights such as the right of the child to privacy or freedom of thought, association and religion are often overlooked when law reform is approached sectorally. Principles such as the obligation to respect the views of the child and to ensure protection from discrimination tend to be recognized only in specific circumstances or contexts. On the other hand, the adoption of codes without an effort to identify and modify conflicting provisions of ordinary legislation, and without the adoption of regulations that provide public servants with guidance as to how the law should be applied in practice, can undermine the effectiveness of a new code.

The creation of new programmes can have a major impact on the effective enjoyment of the right to health and education, or universal access to quality social services. This is important, given that the adoption of laws that recognize entitlements without creating corresponding programmes may breed cynicism and lack of respect for legislation. At the same time, the creation of programmes without a legal framework has many disadvantages. For instance, the continued existence of a programme may be dependant on the priorities of the government of the day. With no legal obligation to implement the programme in a way that respects the prin-

ciples and provisions contained in the CRC, judicial control of programme implementation will be minimal.

Reliance on decrees may be useful or necessary in certain circumstances, for example when there are serious situations that need to be urgently resolved, or when the ordinary legislative processes are in crisis. Excessive reliance on them has disadvantages, however. Although decrees are legally binding on public agencies, unless backed by legislation, they normally do not create justiciable rights that can be claimed by private persons and enforced by the courts. Moreover, since they circumvent the legislative process, decrees lack the degree of legitimacy and public support that only the adoption of laws by an elected legislature can produce. The process of legislative reform has been the catalyst for profound cultural changes concerning the role of children in the family and society in virtually every part of the world. Excessive reliance on either decrees or programmes, without law enactment, implies reliance on a single branch of the State. A more balanced approach involving law reform, regulations and programmes involves the entire State: the legislative, executive and judiciary powers.

Regional trends and the influence of legal traditions

Where children's codes have been adopted, law reform tends to cover nearly all the rights and principles contained in the CRC. Where the sectoral approach has prevailed, regional trends can sometimes be perceived. In Asia, much of the new legislation adopted covers areas such as child abuse and neglect, sexual exploitation of children and child labour. Most of the Islamic States studied have enacted new legislation or amended existing legislation concerning the right to education. Legislation concerning child labour has also received priority among these states, while less attention has been given to law reform designed to bring family law into conformity with the CRC. In Central and Eastern Europe, the number of newly independent states and proliferation of armed conflicts has made the adoption of new

legislation concerning the right to nationality and refugees a priority. New legislation concerning the family, alternative care, adoption and trafficking in persons has also received priority in many countries of this region. In Latin America, the emphasis has been on the adoption of codes; other areas that have received priority include adoption, child labour and juvenile justice.

In many countries of western Europe, law reform has been relatively far-reaching, even though comprehensive laws have not been adopted. Areas where considerable law reform has been undertaken include legislation concerning the family and adoption, discrimination, nationality and the right to identity, the right to health, and sexual exploitation and abuse. None of the western European countries studied have incorporated a children's bill of rights into their legislation, however.

Civil law countries, as indicated above, are more likely than common law countries to incorporate the CRC directly into national law. Another tendency that appears to be related to the influence of these two legal systems concerns the recognition of social rights. Countries that belong to the common law tradition, whether wealthy industrialized countries or poor developing ones, are less likely to specifically recognize rights such as the right to health, education, food and shelter as fundamental human rights. Countries that belong to the civil law tradition are more likely to entrench social rights in their laws. It is interesting to note that the tendency to protect social rights through legislation has been preserved in those states that have abandoned the 'socialist' political and economic model during the past 15 years, in particular in Central and Eastern Europe.

The process of law reform

The process of law reform has various stages: the pertinent authorities acknowledging that law reform is necessary; drafting new legislation; steering the draft laws through the legislative procedures and ensuring that, once a law is adopted, it is promulgated. If draft legislation is controversial and arouses concerns and

opposition, it may also be necessary to make efforts to combat misinformation and win public support, or to contain the efforts of groups that oppose the legislation. In some countries, it has been necessary to mobilize support for new legislation after it has come into force, in order to prevent campaigns aimed at repealing it. The preparation and promulgation of regulations and guidelines on the practical implications of implementation of the new laws might also be considered part of the process of law reform, in the broad sense of the term.

In Latin America, the process of law reform has been documented in a valuable book that contains, in addition to the texts of the most relevant laws, commentaries on the process of law reform in 17 countries.³⁶⁷ No comparable efforts have been made to document the processes of law reform concerning children in other regions and, while lessons can and should be learned from the experience of Latin America, the context is different in some significant ways from that of other regions.

Some reports of States parties to the Committee contain a limited amount of information about the processes of law reform. Additional information has been gleaned from meetings of experts and the involvement of UNICEF country offices that have all been part of the General Measures of Implementation Study. While this information may be insufficient to support a comparative analysis of experiences in different parts of the world and thus draw lessons for the future, it provides a strong basis upon which to identify a number of issues that require further study.

The role of parliaments, political leaders and political parties

In some countries, primary responsibility for developing draft legislation and presenting it to the parliament lies with the executive branch. In others, parliamentary committees, political groups in parliament or individual parliamentarians present bills. The structure of the law-making process has major implications for a law reform strategy. In some countries, differences between the executive and

the legislature have led to bills that have been prepared and presented to the legislature but not adopted, or laws enacted by the legislature but not promulgated by the executive.³⁶⁸ Conflicts of this kind are sensitive to electoral politics. It would be useful to analyse such experiences with a view to better understanding the extent to which such developments can be foreseen and what can be done to prepare for or circumvent them.

Parliamentary committees on children have been established in some countries, including France, Honduras, Italy and Lebanon. They appear to have at least two advantages. One is that, by bringing together a number of parliamentarians who have interests in children's issues and child rights they can create a 'critical mass' of commitment that helps keep the law reform process moving forward. In addition, by incorporating parliamentarians from different political factions, the risk of partisan political debate can be reduced. These advantages can help reduce the risk of stagnation of the process of law reform, which appears to be a common and significant problem around the world.

In some countries, child rights NGOs have lobbied political parties and candidates for public office to make commitments to child rights during electoral campaigns. It would be worthwhile to document and analyse the results of such efforts and the social and political circumstances in which they appear to have positive results for law reform, as well as other governmental commitments and investments in the promotion of children's rights. The lobbying of influential political figures, such as Heads of State, high-profile parliamentarians, ministers, prominent statesmen and first ladies, has been a key part of the strategy for promoting law reform in some countries. This too is a strategy whose results, and advantages and disadvantages in different political contexts, should be evaluated objectively.

The role of the courts

In a number of countries, supreme courts or constitutional courts have held provisions of the legislation in force to be invalid because of their

incompatibility with the CRC, or with principles such as the best interests of the child interpreted in the light of the CRC. The courts have then obliged the legislature to amend or replace the law in question. This appears to have occurred most often in civil law countries; in common law countries, courts tend to focus on the lawfulness of administrative policy and practice. In addition, rules adopted by a supreme court have had important consequences for the way legislation concerning children is applied in at least three countries: Costa Rica (*see Box 21, page 109*), the Philippines and the Russian Federation. The various dimensions of the interrelationship between law reform and the functions of the highest courts of States parties is a significant dimension that deserves to be further documented and analysed.

The role of ombudsmen, human rights commissions and similar bodies

Statutory human rights commissions, ombudsmen and child rights commissioners often have a mandate to make recommendations regarding law reform. In Guatemala, the ombudsman coordinated the process of drafting the first children's code.³⁶⁹ A recent report of the French Children's Ombudsman indicates that "The Ombudsperson for Children is regularly consulted by ad hoc parliamentary committees responsible for examining proposed legislation that might affect children and their rights."³⁷⁰ Investigations carried out by such bodies can also lead to changes in legislation. In Costa Rica, for example, an investigation of adoption practices carried out by the ombudsman led to changes in the Family Code.³⁷¹ The development of ombudsman programmes for children and, in general, independent national human rights institutions, can have a positive impact on law reform concerning children. This is one important reason to support their establishment and effective mandate, and explains why the Committee on the Rights of the Child and the Plan of Action agreed upon by Heads of State and Government at the UN General Assembly Special Session on Children in 2002 call on the development of these institutions.

Drafting and related issues

In some countries, autonomous law reform commissions are responsible for preparing draft legislation. The Law Reform Commission of South Africa is one example. Where they exist, the actual preparation of draft legislation should not pose a problem. A strong law reform commission can also carry out studies of the problems that the legislation is intended to address, a comparative analysis of the legislation of other countries and consultations with the public on the appropriateness of alternative solutions. All this is invaluable as a guarantee of the quality of the law, although it does not guarantee that the bills prepared by the commission will be approved in timely fashion by the legislature.

In some countries, national governments do not possess, or believe that they do not possess, the technical expertise needed to draft legislation on the rights of the child. In such circumstances, they often turn to foreign experts. The results, judging from the limited evidence available, are uneven. Viewing the drafting of legislation mainly as a technical exercise can lead to a failure to undertake the research needed to ensure that norms and procedures incorporated into a draft law are adapted to the social, cultural, institutional, economic and historic context.

Similarly, viewing the drafting of legislation primarily as a technical exercise can limit the process of consultation with concerned professional and social groups. Experience suggests this process of consultation during the drafting of a law can have a positive influence on implementation of the law once it is in force. This is not to suggest that the use of foreign technical assistance in drafting new legislation is not relevant or required, but that positive and negative experiences need to be reviewed systematically and objectively to identify the circumstances in which it may be appropriate and the steps that can be taken to minimize the risks involved.

Law reform in federal states

Federalism is another factor that has an impact on law reform concerning the rights of

the child. In theory, federalism could be a neutral factor: in countries where the central government is slow to make the legislative changes needed to incorporate the rights and principles contained in the CRC into national law, provincial or state legislatures could take the lead in enacting appropriate legislation. Or, when the national legislature has enacted laws on the rights of children, state legislatures might decide to enact legislation that recognizes additional rights, or defines the rights of children more broadly, or establishes mechanisms for the protection of those rights that are better suited to regional realities. There are examples of federal States in which one or more state or provincial government has adopted legislation on the rights of the child that is more far-reaching than the legislation adopted by the national legislature. Among the countries studied, however, there are more examples of federal States in which national law and policy on child rights has limited effect because of the inability of provincial or state authorities to implement it. In many federal States, the problem is the limited power of the federal or central government to legislate over matters such as criminal or family law. In such States, the central government may be faced with a choice between amending constitutional law – a daunting prospect – or resorting to methods such as advocacy, training and capacity-building, and placing conditions on financial transfers to induce provincial or state governments to enact legislation that complies with obligations contained in the CRC.

In others, federal law that in principle is binding on states or provinces remains a ‘dead letter’, because provincial or state authorities simply do not create the infrastructure or programmes – whether juvenile courts, schools or health services – needed in order to put the law into effect. Some federal States have been more successful than others in ensuring the compatibility of domestic legislation with the CRC. The question of what methods can be used to minimize or overcome the potential difficulties of ensuring that all legislation in federal States is compatible with the CRC and is effectively applied throughout the national territory deserves further study.

International support and assistance

International bodies of different kinds have encouraged governments to pursue law reform concerning the rights of children, and have offered assistance intended to support this process. The Committee on the Rights of the Child is one such body. Its recommendations to States often address the need for law reform and many States, when reporting to the Committee, have indicated that their adoption of new legislation has been in response to the Committee’s views.

There are also examples of countries that have amended laws or adopted new laws as a result of judgements or decisions of international human rights courts or commissions.³⁷² Advocacy efforts among governments to reform laws concerning children have also been promoted by UNICEF, other UN agencies, the European Union, bilateral development agencies and international NGOs, which contribute their important capacity and experience.

Different international actors often act in concert, making complementary contributions to the process of law reform. There is, however, a risk that international organizations pursuing different agendas work at cross-purposes and may take different positions on the way certain legislation should be modified, thus postponing badly needed reform.³⁷³ This is another area in which experiences from different countries need to be documented and analysed, so that the inherent lessons can be learned.

The role of civil society

Reports to the Committee on the Rights of the Child provide ample evidence that, in many societies, civil society has made an important contribution to the various stages of the law reform process. There also seems to be a positive correlation between democracy and the participation of civil society in law reform. The ways in which civil society participates are as numerous as the kinds of organizations that form part of civil society. National child rights organizations, and to a lesser extent human

rights and women's rights organizations, have often lobbied for new legislation on the rights of the child. In some societies they have been joined by other actors, such as religious groups, trade unions, groups advocating for the rights of racial or ethnic minorities, persons with disabilities, or poverty eradication and the promotion of social inclusion.

Civil society often plays a role in drafting legislation. In some countries, this is done by a process of publishing drafts or papers on the issues to be addressed by new legislation and inviting public comment. In others, interested organizations and individual experts are invited to participate in parliamentary hearings. In still others, national councils or commissions on children composed in part of representatives of civil society play a large role in the development of new laws. Finally, in some countries NGOs, professional associations, parent groups, academic institutions and other interested organizations have been invited to participate in the development of new laws through ad hoc arrangements.

Of course civil society does not speak with a single voice. Groups dedicated to the rights of children sometimes have diverging opinions about the best way to realize them. There are also reported instances in which civil society groups with vested interests in preserving the status quo³⁷⁴ have opposed law reform designed to bring national law into conformity with the CRC.

The media seems to be a particularly influential sector. While the media can and sometimes does play a positive role in promoting the need for law reform, the sensationalized treatment of issues relating to children can be a major obstacle to law reform, or trigger a reaction against legislation on child rights once it has come into force (see, for example, the situation in Panama, described below). On balance, however, the available evidence seems to suggest that the active participation of civil society in law reform tends to favour the adoption of laws that enhance the recognition and protection of the rights of children and, especially, public acceptance of and the adequate implementation of new child rights legislation.

Law reform and other general measures of implementation: The need for a holistic approach

Law reform is not an end in itself, and the extent to which new legislation has the desired effect on the lives of children depends on many variables. Law reform must be part of a broader, holistic strategy for promoting and protecting child rights. While some of the difficulties that States have encountered in putting new legislation into effect have to do with defects in the laws themselves or conflicts between new laws and older ones, most of the obstacles and difficulties reported point to the need for better planning and coordination, more awareness, training and education activities, allocation of sufficient resources and participation of civil society. They highlight the need to monitor the impact of new laws. This confirms one of the most important findings of the study on General Measures of Implementation: the interrelationship of the various general measures and the extent to which they are mutually reinforcing.

The difficulties encountered by one State in implementing new legal standards were summarized in these terms: "The Convention on the Rights of the Child has been incorporated into Panamanian law.... However, in spite of the progress that has been made, the Convention is not fully enforced in practice by the various administrative, political and judicial bodies, owing to an unwillingness to change traditional attitudes, a lack of information and resources and the absence of a real national movement for the rights of the child."³⁷⁵ This description of the difficulties encountered highlights the importance of training and awareness-raising, as well as the participation of civil society.

Reports of other countries confirm the importance of training those responsible for applying and enforcing new legislation. One State pointed out to the Committee that "there are still some professionals, such as judges in the interior of the country, lawyers and police officers, who are unaware that the Convention is

part of positive law; as a result very little use is made of it in the defence of cases.”³⁷⁶ Sometimes the problem may not be ignorance of the law, but passive resistance to laws that require far-reaching changes in the way things have always been done. In describing the limited effect of the Prevention of Family Violence Act, South Africa recognized that “police officers remain reluctant to involve themselves in issues of family violence; there are bureaucratic delays and further serious stumbling blocks.”³⁷⁷ Observations such as these confirm that education, capacity-building and training mean more than providing information, and must include activities designed to change attitudes concerning the rights of children.

Box 21

Costa Rica: The relationship between law reform and other general measures

Costa Rica has unquestionably made major strides in the protection and promotion of human rights, as is apparent from the far-reaching legal reform process that has been instituted, especially during the 1990s, with its strong emphasis on recognition of the rights of women, children and adolescents. At the same time, it has become apparent that reform has its limitations, in the sense that legislative change is not sufficient in itself: it must be accompanied by institutional change, changes in attitude, and a focus on human development in national planning, which in turn must be backed by the allocation of adequate resources if it is to be effective.

Source: Paragraph 46 of Costa Rica’s Third Report to the Committee on the Rights of the Child, 2003.

Social values and traditions are often a major obstacle to implementation of new child rights laws. The importance of activities designed to make the public aware of child rights and change traditional attitudes that are incompatible with children’s human rights is recognized by many reports, including one that asserted “people are unaware of (or more often, ignore) existing laws” against child marriages.³⁷⁸ Another report identifies child labourer’s ignorance of their rights as a factor that has limited efforts to combat child labour, a valuable reminder of the need for efforts to make children aware of their own rights.

Implementation of the Goa Child Act in India, which is the most innovative and ambitious law enacted thus far in South Asia, has also met with many obstacles.³⁷⁹ The financial implications of implementation were not calculated in advance, and the available funds have not been adequate, particularly with regard to the provisions regarding education and health. Some provisions, such as those that authorize the head of the Goa Department of Women and Child Development to impose fines, have given rise to concerns regarding due process, and some observers consider that the failure to define certain terms and concepts, including the ‘best interests’ of the child, create a degree of uncertainty as to how the law will be applied. Law enforcement agencies have had difficulty accepting or adjusting to provisions requiring changes in the way crimes against children are investigated and evidence collected. Questions concerning the respective roles of state agencies and NGOs are not addressed clearly, and certain provisions of the act appear out of harmony with federal legislation. These challenges underline the importance of allocating the resources needed to enforce legislation as well as the need for aggressive training, education and awareness among the relevant professional groups and, possibly, the utility of participation of concerned sectors in the drafting process.

The enactment of legislation that presumes the existence of certain infrastructure and services is of little use – and may even be counterproductive – when the requisite services do not exist. One area where the existence of infrastructure, services and human resources is particularly important is juvenile justice. The absence of the resources needed to successfully implement new approaches can cause a public backlash that may have negative consequences for law reform. One country reported

that budgetary difficulties and the inability to appoint specialized judges and prosecutors “led to a situation that was widely perceived as reflecting impunity” for juvenile offenders, which in turn led to public pressure that resulted in the amendment of newly adopted legislation in order to extend the maximum period of pre-trial detention and restore heavier sentences for juvenile offenders.³⁸⁰

Fragmentary law reform – the adoption of new legislation without making the necessary changes in related laws – not only limits the effectiveness of new legislation, but can also throw existing systems into chaos. One report contains the following description of the results of enactment of an ambitious code on child rights without making the corresponding changes in criminal law:

As legislation, the Code is a step forward in that it institutes a process that affords full legal safeguards.... However, the system is not functioning properly and amendments to the Penal Code are necessary.... There are doctrinal and procedural difficulties with the Code itself, which have led to confusion and paralysis in the system, to the point where the courts are currently considering no such cases. The introduction of the Code raised many hopes, but has produced no results. It requires four bodies to work together: the police, the...procurator’s office, the justice system and the departmental social services. However, owing to gaps in the law none of these bodies does what it is supposed to and the system is brought to a standstill.³⁸¹

This experience highlights the need for a careful, thorough approach to law reform, and the danger of expecting a single law, no matter how clear and comprehensive, to transform the way complex systems work. In addition, it points to the importance of coordination mechanisms that have the authority needed to ensure that the various agencies and services responsible for implementing a new law cooperate in overcoming any difficulties and problems that may arise.

Civil society can play a vital role in supporting the implementation of laws. One of the countries that adopted a children’s code shortly after ratification later found it necessary to adopt a new code, in part because the first code lacked mechanisms “in which children and communities could participate in the defence of their rights.”³⁸² Implementation of systems for the protection of child rights that are based on the cooperation of State agencies and civil society can be a lengthy and complicated process, however. An observation contained in another report recognizes not only the importance of civil society participation, but also the need for coordination mechanisms to incorporate civil society. It states:

It must be stressed that the process of implementing the Code began only two years ago and is expected to evolve over time. A number of NGOs and church-related organizations work in the field and provide support for State-run programmes under inter-institutional agreements. This has resulted in a proliferation of programmes that are not always well coordinated, partly owing to a lack of clear government policies.³⁸³

Monitoring the impact of new legislation on the issue it is intended to address is vitally important. Examples have been reported of laws that have had little impact, or have had unanticipated negative consequences for the rights of children. One country, for example, reported that “Although the severe penalties imposed by the Act...are intended to have a deterrent effect, it seems that this may not be serving the best interests of children. Reports from members of the judiciary suggest that there are few cases in which available evidence supports a guilty verdict and the imposition of the draconian sentences laid down by statute.”³⁸⁴

Systematic monitoring of the impact of new legislation helps detect such problems in a timely fashion and may yield data that can help identify the reasons the law is not having the desired effect. This particular example points to another question that merits further investigation, namely, the effectiveness of

criminal sanctions as deterrents for violations of the rights of the child, as compared to other forms of prevention.

The impact of child rights legislation on the rights of children

The Study on General Measures of Implementation is a contribution to the evaluation of the actual impact of law reform, or the other general measures, on the rights of children. Research of this kind is greatly needed to help identify the kinds of laws that have the greatest positive impact on the rights of children, the circumstances that appear to favour this outcome and, if possible, good practices regarding the ways in which law reform can be integrated into strategic approaches to advancing the realization of the rights of the child.

Reports to the Committee on the Rights of the Child tend to contain little quantifiable data on the actual impact of laws on the lives of children. It may nevertheless be worthwhile to mention a few select examples where law reform appears to have had a measurable positive impact on violations of the rights of children.

There are examples of the positive impact of new laws concerning the treatment of juvenile offenders. This may, in part, be due to the fact that more countries have statistical information on the workings of the criminal justice system than other violations of the rights of children, or because the impact of juvenile justice on children depends on law to a greater extent than many other issues. Legislation adopted by the Russian Federation in 1997 doubled the percentage of adolescents accused of an offence who were referred the social welfare system instead of being prosecuted.³⁸⁵ In Canada, the adoption of the Youth Criminal Justice Act in 2002 led to an almost 18 per cent decrease in the number of children prosecuted and a 32 per cent decrease in the number given custodial sentences.³⁸⁶ Nicaragua reported that the number of juvenile offenders in prison fell from 449 in 1998 to 80 in 2004, a reduction of more than 80 per cent,³⁸⁷ while Honduras reported that the percentage of accused juveniles detained

while awaiting trial fell from 90 per cent to 30 per cent after adoption of its children's code.³⁸⁸

The provision on the rights of the child included in the 1994 Constitution of South Africa led to a 1996 decision of the Supreme Court declaring the corporal punishment of juvenile offenders to be illegal. Whipping had been the sentence most frequently imposed on convicted juveniles, in 35,000 cases each year.³⁸⁹ States parties' reports to the Committee on the Rights of the Child also contain some evidence of the positive impact of legislation in other areas. Egypt reported that the practice of excisions has been reduced by 20 per cent since the adoption of the law against female genital mutilation/cutting.³⁹⁰ Nigeria reported that "hundreds" of children abducted as quarry and plantation workers were rescued in the first 12 months after a national anti-trafficking agency was established by legislative decree.³⁹¹ In Paraguay, between 4,000 and 5,000 children were adopted by foreigners during the first half of the 1990s, many of them in dubious circumstances. Inter-country adoptions were suspended by a decision of the supreme court in 1995, and new legislation giving priority to national adoption was adopted in 1997. Since then, all children declared adoptable have been adopted nationally.³⁹²

India reported that adoption had become more socially acceptable since ratification of the Hague convention on intercountry adoption. The number of formal adoptions has increased and more older children are being adopted.³⁹³ And in 2004 Nepal reported that the availability of iodized salt increased significantly after the adoption of new legislation in 1999, and 63 per cent of households were using it.³⁹⁴

This evidence of the impact of child rights legislation in the lives of children is, to be sure, fragmentary. Serious efforts to monitor the impact of new legislation more systematically and in a wider variety of areas are urgently needed. On the national level, monitoring would make a valuable contribution to protecting the rights of children by identifying the legislative measures that have the desired effect, and the steps necessary to enhance their effectiveness. On the global level, studies on the impact of legislation

and the requirements for effective implementation in different types of societies would help put efforts to promote law reform on a more solid footing.

The way forward

Most legislation concerning children adopted since 1989, although not as comprehensive or adequately implemented as it should be, does expand the rights of the child. New legislation concerning children that is contrary to the letter and spirit of the Convention on the Rights of the Child is rare.

Globally, however, the main problems tend to be gaps in law reform and difficulties in implementing new legislation designed to protect

the rights and principles contained in the Convention. The former requires a continued and concerted effort to review the legislation in force and amend or replace it, as necessary, to ensure that it adequately protects all the rights of all children. The latter requires a long-term effort to develop, finance and implement programmes to protect the rights of children; to train or retrain public servants whose activities affect children; to make the public aware of the rights of children and change attitudes and values that foster violations of their rights; to develop independent mechanisms for promoting and protecting the rights of children; and to document and monitor the actual situation of children and the impact of laws and programmes designed to protect their rights.

NOTES

INTRODUCTION

- 1 The complete study covers eight general measures of implementation. These general measures are interdependent and should be implemented concurrently.
 - 2 CRC/C/GC/5. The Committee on the Rights of the Child is an independent body of experts created by the Convention itself, whose members are elected by the States parties. Its responsibility is to monitor implementation of the Convention by States parties, and from time to time it adopts General Comments based on its dialogue with them.
 - 3 See, for example, the Concluding Observations of the Committee on the Initial and Second Reports of Burkina Faso to the Committee, CRC/C/15/Add.19, 1994, para. 15 and CRC/C/15/Add.193, 2002, para. 8(b), and on the Initial Report of India to the Committee, CRC/C/15/Add.115, 2000, para.11.
 - 4 Ibid.
 - 5 Exceptions include the Child Protection Law of Nepal and the Vietnamese Law on the Care, Protection and Education of Children, which apply only to children under the age of 16. More generally, many laws of this kind also contain provisions concerning the offences committed by older adolescents that allow them to be deprived of the right to be treated as children.
 - 6 Initial and Periodic Reports and Concluding Observations, as well as some Summary Records and supplementary information submitted by States, are available at the website of the UN High Commissioner for Human Rights, which acts as secretariat of the Committee, <www.ohchr.org>. The 'shadow reports' are available on the website of the Child Rights Information Network, <www.crin.org>.
- ## CHAPTER 1
- 7 The Children's Act 2005 will incorporate three treaties: the Hague Convention on Intercountry Adoption, the Hague Convention on International Child Abduction and the Palermo Protocol on Trafficking of Persons, into South African law, when Sections 256, 275 and 282 of the Act come into force.
 - 8 Second Report of Bangladesh to the Committee, CRC/C/65/Add.22, 2001, para.18 (This statement probably is another way of stating that has the same relevance as in the other Common Law countries of South Asia).
 - 9 In Georgia, it prevails over ordinary legislation provided that the relevant provision of the Convention is compatible with the Basic Law.
 - 10 In Belarus, incorporation was effected by the International Treaties Act 1998.
 - 11 Second Report of Slovenia to the Committee, CRC/C/70/Add.19, 2001, para. 93-94 (the legislation on citizenship was amended in 1994 to recognize nationality on grounds other than parentage).
 - 12 The CRC forms part of the national law of Belgium, Cyprus, Finland, Norway (since 2003), Portugal and Spain, but is not part of national law in Austria, Denmark, Germany, Iceland or the Netherlands.
 - 13 See, for example, the Arrêt Chloé X of 15 May 2005 (Court of Cassation) and arrêt of 29 July 1994 in the case of the Prefet de la Seine-Maritime (Conseil d'Etat).
 - 14 Secretary of State for the Home Department ex parte Venables and Thompson, R v. [1997] UKHL 25; The CRC has also been cited by the House of Lords in at least two other, more recent decisions: Regina v. Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others, decision of 24 February 2005, speech of Baroness Hale of Richmond, para. 80 (upholding legislation prohibiting corporal punishment in private schools against the argument that it violated freedom of religion) and Regina v. Durham Constabulary and another (Appellants) ex parte R (FC) (Respondent) decision of 17 March 2005, [2005] UKHL 21, speech of Lord Bingham of Cornhill, para. 19 (finding that certain aspects of the cautioning scheme for juveniles established by the Crime and Disorder Act 1998 does not violate Article 40 of the CRC) and speech of Baroness Hale of Richmond, para. 26 (stating that the CRC "must be taken into account in the interpretation and application of those rights" protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been incorporated into the domestic law of the United Kingdom).
 - 15 Baker v. Canada [1999] 2 SCR 817, para. 71 available at <<http://scc.lexum.umontreal.ca/en/1999/1999rcs2-817/1999rcs2-817.html>>; The High Court of Australia came to a similar conclusion in Minister of Immigration and Ethnic Affairs v. Teoh (1995) 183 CLR 273, para. 34 of the opinion of Mason, CJ and Deane, J.
 - 16 State v Mutch [1999] FJHC 149; Hac0008.1998 (15 November 1999), available at <www.paclii.org/fj/cases/FJHC/1999/149.html>.
 - 17 See Browlie, The Doctrine of Incorporation in British and Commonwealth Courts, in Principles of International Law, Sixth Edition, Oxford University Press, Oxford, 2003, pp. 41-45.
 - 18 Brennan, J. in Mabo and others v. Queensland (No. 2) [1992] HCA 23; (1992) 175 CLR 1 F.C. 92/014 (3 June 1992) High Court of Australia, para. 42, available at <[www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1992/23.html?query=title\(mabo%20%20near%20%20queensland\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1992/23.html?query=title(mabo%20%20near%20%20queensland))>

CHAPTER 2

- 19 A reservation is a formal statement made when becoming a Party to a treaty, indicating that the State does not intend to be bound by certain obligations, at least for the time being; a declaration is, in principle and in general, a statement indicating how the State considers a certain provision or provisions should be interpreted and how it intends to apply them.
- 20 The term 'Islamic States' is used here to refer to those whose constitution defines the State as an Islamic State or identifies Islam as the principal source of law.
- 21 Second Report of France to the Committee, CRC/C/65/Add.26, 2002, para. 4.
- 22 Second Report of the United Kingdom to the Committee, CRC/C/83/Add.3, 1999, para. 1.8.2.
- 23 Concluding Observations of the Committee on the Second Report of the United Kingdom, CRC/C/15/Add.188, 2002, para. 6.
- 24 Germany, for example, made the following reservation: "Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens." Similarly, New Zealand reserved the right to "continue to distinguish as it considers appropriate in its law and practice between persons according to the nature of their authority to be in New Zealand."
- 25 According to the Vienna Convention on the Law of Treaties, reservations that are contrary to the object and purposes of a treaty are not permitted. Article 19(c).

CHAPTER 3

- 26 Those from other regions include Colombia (1991), Fiji (1997), Finland (1999), Nepal (1990), Paraguay, Viet Nam (1992) and Yemen (1991).
- 27 Article 3 (f).
- 28 Article 38 (i).
- 29 1994 Constitution of Belarus.
- 30 Article 52, paras. 1 and 2.
- 31 Article 52 and 51, respectively, third paragraphs.
- 32 Article 72.1.
- 33 Article 72.3. Some other articles of the Constitution also contain provisions concerning children.
- 34 Article 30.
- 35 In both countries, rulers that had reigned for more than four decades were succeeded by their sons in 1999.
- 36 Article 14.
- 37 Article 14(1) and 32(5).
- 38 Third Report of Colombia to the Committee, CRC/C/129/Add.6, 2004, paras. 45 and 220.

CHAPTER 4

- 39 The European Convention on the Exercise of Children's Rights is much more limited in scope.
- 40 Law No. 27/2001 of 28 April 2001.
- 41 Act No. 95-92 of 9 November 1995. The Act entered into force on 11 January 1996.
- 42 Rights of the Child Act No. 45 of 2002 (No further comments are made on this law because, unfortunately, it has not been translated).
- 43 A peace agreement signed in 1997 brought an end to a conflict in southern Sudan that had continued for over a decade but in Darfur armed conflict reached unprecedented levels in 2003, leading to the displacement of more than 1 million persons.
- 44 The 1995 Control of Oppression of Women and Children (Special Provision) Act, later replaced by the Suppression of Violence against Women and Children Act 2000.

- 45 Código del Menor, Decree No. 2737 of 27 Nov. 1989.
- 46 Ley para la Protección de los Derechos de Niños, Niñas y Adolescentes of 28 April 2000.
- 47 Ley N° 1680/01, Código de la Niñez y la Adolescencia.
- 48 CRC/C/SR.707, paras. 28 and 30.
- 49 Decreto No. 27-2003. Ley de Protección Integral de la Niñez y Adolescencia.
- 50 Código del Niño, Niña y Adolescente of 14 October 1999.
- 51 One of the main purposes of this new Code was to strengthen the administrative system for implementing national policies concerning children and the specialized system of children's courts.
- 52 Concluding Observations of the Committee on the Second Report of Argentina to the Committee, CRC/C/15/Add.187, 2002, para. 3.
- 53 Third Report of Mexico to the Committee, CRC/C/125/Add.7, 2004, para. 10.
- 54 O'Donnell, 'The Convention on the Rights of the Child Fifteen Years Later: The Caribbean', UNICEFTACRO, Panama, 2005.
- 55 The Child Care and Protection Act, 2004.
- 56 Law 1/1996 of 15 January 1996.
- 57 Law of 8 January 1993.
- 58 The law is titled Provisions on the Promotion of Rights and Opportunities of Children and Adolescents.
- 59 Law 451 of 1997. The Observatory is a monitoring and coordinating mechanism involving the relevant ministries, regional and local governments and civil society. It also prepares reports on the rights of the child, including the report to the Committee.
- 60 The Youth Criminal Justice Act 2003 and the Child Tax Benefit.
- 61 Most have also made substantial changes in policies concerning education and health that reflect the influence of the CRC, although these changes have often been accomplished without law reform.
- 62 See the Initial and Second Reports of Sweden to the Committee, CRC/C/3/Add.1, 1992, para. 11, and CRC/C/125/Add.1, 2002, para. 50, respectively.
- 63 Ibid.
- 64 Initial Report of the United Kingdom to the Committee, CRC/C/11/Add.1, 1994, para. 7.
- 65 Some sectoral legislation was amended or adopted in Scotland and Northern Ireland prior to 1995.

CHAPTER 5

- 66 See, for example, the Second Report of France to the Committee, op. cit., para. 115.
- 67 One of the areas where this principle has had significant impact during the last 15 years is immigration and nationality law. See, for example, the decisions of the Supreme Courts of Canada and Australia in the cases cited in Note 15, op. cit.
- 68 In Pakistan, for example, the wishes of deceased parents – but not those of the child him or herself – are a factor to be taken into account in determining what arrangements are most suitable for the welfare of an orphaned child, according to legislation adopted in the 19th century and still in force. Second Report of Pakistan to the Committee, CRC/C/65/Add.21, 2001, para. 91.
- 69 Article 2.a. of the Indonesian Law and Section 2 of Republic Act 7610, 1992.
- 70 RA 9344, Sections 2(b) and 4(b), respectively.
- 71 Article 27 (13) of the Constitution declares "The State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination."
- 72 In the Indian State of Goa, however, the Children's Act

- 2003 incorporates the best interests principle into state law in terms even stronger than the language used in the Convention itself.
- 73 See, for example, the Second Report of the Libyan Arab Jamahiriya to the Committee, which, referring to a law that provides that guardianship, trusteeship and custodianship, are governed by "the most appropriate principles of Islamic law", concludes "The Act therefore implements the most appropriate principles of Islamic law in the best interests of the child." CRC/C/93/Add.1, 2002, para. 60. The Second Report of Pakistan to the Committee takes a similar position, *op. cit.*, para. 87 and 88. Morocco tried to use the principle to justify (inter alia) legislation on the minimum age for marriage that discriminates on the basis of sex, an interpretation that was rejected by the Committee. Second Report of Morocco to the Committee, 2000, para.164; Concluding Observations, 2003, paras. 23-24.
- 74 See, for example, General Comment No.1, Aims of education, 2001, para. 9; General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 2005, para. 20 and General Comment No. 7, Implementing child rights in early childhood, 2006, para. 13(a).
- 75 Article 4 of the Tunisian Code implies that the best interests of the child require consideration of his or her "moral, emotional and physical needs, age, health, family environment, and certain aspects of the circumstances of his or her birth and nationality." («Doivent être pris en considération, avec les besoins moraux affectifs et physiques de l'enfant, son âge, son état de santé, son milieu familial et les différents aspects relatifs à sa situation de naissance et de la nationalité»).
- 76 Article 3.
- 77 Article 10.
- 78 Article 5.
- 79 Article 54; see also Article 4 of the 1991 Constitution of Colombia.
- 80 Article 2 (3), for example, declares "In all actions and decisions concerning children, whether undertaken by public authorities and authorized private institutions, as well as courts of law, the best interests of the child shall be a primary consideration."
- 81 Law No. 40 of 6 March 1998, Article 26 (3).
- 82 Decisions 341 of 20 July 1990 and 303 of 24 July 1996, referring to articles 2 and 31 of the Constitution. Second Report of Italy to the Committee, CRC/C/70/Add.13, 2000, para. 104.
- 83 First Report of Sweden to the Committee, *op. cit.*, para. 52.
- 84 Third Report of Sweden to the Committee, CRC/C/125/Add. 1, 2002, section 4.2.
- 85 *Ibid.*
- 86 Article 33.
- 87 Articles 2.a, 13.1.a and 77.a.
- 88 RA 7610, Section 20 (Such discrimination is not defined, however).
- 89 This form of discrimination is fairly common in other countries, too, including some industrialized countries.
- 90 See, for example, the Committee of the Rights of the Child's Concluding Observations on the Second Report of Egypt, CRC/C/15/Add.145, 2001, paras. 25 and 29(a) and of the Syrian Arab Republic, CRC/C/93/Add.2, 2000, para. 23.
- 91 Second Report of Jordan to the Committee, CRC/C/70/Add.4, 1998, para. 64.
- 92 Act No. 93-62 of 23 December 1993, Article 12.
- 93 The Committee has stated that discrimination on grounds of sexual orientation is 'of concern' and suggested that it may violate the CRC. General Comment No 3 HIV/AIDS and the rights of the child, 2003, paras. 8 and 9.
- 94 Third Report of Mexico to the Committee, CRC/C/125/Add.7, 2004, para. 45.
- 95 See, for example, Constitution of Romania, Article 4; Constitution of Slovenia, Article 14. (The exception is that most of these constitutions, although they prohibit discrimination on the grounds of race, do not expressly prohibit discrimination on grounds of colour).
- 96 Article 14 of the Constitution of Georgia, and Article 19.2 of the Constitution of the Russian Federation. The Penal Code of Georgia also prohibits discrimination on the grounds of organizational membership.
- 97 Article 11.
- 98 Article 7.
- 99 Law No. 205/1993 and Law 40 of 6 March 1998. Second Report of Italy to the Committee, CRC/C/70/Add.13, 2000, para. 96 and 98.
- 100 Second Report of France to the Committee, *op. cit.*, para. 113.
- 101 These laws were amended in 1996 and 1991, respectively.
- 102 The Human Rights, Citizenship and Multiculturalism Act.
- 103 The Committee on the Rights of the Child had expressed concern about this in its Concluding observations on the Initial Report of Sweden, CRC/C/15/Add.2, 1993, para. 7.
- 104 See, for example, the Third Report of Ethiopia to the Committee, CRC/C/129/Add.8, 2005, para. 100 and the Second Report of Nigeria to the Committee, CRC/C/70/Add.24, 2003, para. 86
- 105 Section 158
- 106 Section 151.
- 107 Sections 44(2)(d) and 196(2).
- 108 Articles 291.1 and 113.1, cited in the Third Report of Ethiopia, paras. 80 and 110.
- 109 Section 27 (It also provides that the courts shall give priority to cases involving violations of it.)
- 110 Article 2.d and 10. See also Article 24, and Article 56 (1) which recognize the right 'to participate'.
- 111 Article 10.
- 112 In Poland, consent of children aged 13 is required for such purposes.
- 113 Article 11.
- 114 Article 13.
- 115 Article 24.
- 116 Article 23(2); see also Article 3 (c).
- 117 Family councils have responsibility over children in guardianship, and are usually composed of the guardian and other relatives of the child.
- 118 Act No. 93-22 of 8 January 1993.
- 119 Second Report of Italy to the Committee, CRC/C/70/Add.13, 2000, para. 113-114.
- 120 *Ibid.*, paras. 111, 112 and 115.
- 121 Indeed, the consent of older children was and is required for various purposes, such as adoption, change of name or nationality, or change of religion.
- 122 Care of Young Persons (Special Provisions) Act. (Children over 15 enjoyed this right previously.)

CHAPTER 6

- 123 Compare the CRC with the International Covenant on Civil and Political Rights. The CRC does not recognize a small number of civil rights, such as freedom of movement and the right to marry. Other civil rights, such as the right of accused persons to due process and the right to seek asylum, are the subject of other chapters of this study. It should be noted, parenthetically, that the traditional categories of rights – civil, political, social, cultural and economic – are not clearly delimited and many rights – e.g. freedom of information or the right to identity – have dimensions that correspond to various categories.
- 124 Sections 4 to 8.

- 125 Sections 9 and 17.
- 126 Sections 14-15.
- 127 Article 3, right to life; Articles 5, 7 and 27, the right to identity; Articles 6 and 42, the right to religion; Article 10, freedom of thought and expression. The right to due process is recognized in very general terms in article 17, in the context of deprivation of liberty.
- 128 Articles 5, 7 and 8.1.
- 129 See, for example, the Concluding Observations on the Second Report of India to the Committee, CRC/C/15/Add.228, 2004, paras. 9 and 10, and of Sri Lanka, CRC/C/15/Add.207, 2002, paras. 11-12.
- 130 The Law also recognizes a number of social and economic rights. In addition to those mentioned below, they include the right to leisure, property, the right to adequate living conditions and the right of children under the age of 7 to free use of public transportation.
- 131 Concluding Observations on the Second Report of the United Kingdom to the Committee, op. cit., para. 22-23.
- 132 Sect.9. The Act is available at <www.opsi.gov.uk/ACTS/acts2002/20020041.htm>.
- 133 Article 7.1.
- 134 Article 2.1.
- 135 Articles 27 and 28.
- 136 Civil Status Act, Article 23.
- 137 Act of 28 October 1998 regarding the granting of a patronymic family name to children of unknown parentage or abandoned children.
- 138 Articles 97, 102 and 103.
- 139 Act of 8 January 1993, amended by the Act of 5 July 1996. (Under earlier legislation, the adoption of such children by the surviving parent's new spouse severed the legal ties of the children to the family of the deceased parent/spouse).
- 140 Concluding Observations on the Second Report of France to the Committee, CRC/C/15/Add.240, 2004, para. 23. Italy also adopted legislation recognizing a limited right of adopted persons to information about their birth parents, upon reaching the age of 25. Law No.149 of 28 March 2001.
- 141 The Vital Statistics Act adopted by Prince Edward Island in 1996, for example, requires more information to be recorded on the identity of the parents of children who are given for adoption.

CHAPTER 7

- 142 Section 13(1).
- 143 Sections 13(4) and 13(3), respectively.
- 144 Sections 11 and 129-133.
- 145 Articles 44-47.
- 146 No. 12 of 1993.
- 147 Law on the Health Register for newborns No. 550 /1996 and Decrees No. 1692 and No. 4265, respectively.
- 148 See, for example, the Code of Nicaragua, Articles 33 and 40.
- 149 See, for example, article 33 of the Czech Charter of Fundamental Rights and Freedoms of the Czech Republic, Article 37(1) of the Constitution of Georgia (health insurance), Article 68 of the Polish Constitution, Article 33 of the Constitution of Romania, Article 41 of the Constitution of the Russian Federation and Article 49 of the Constitution of the Ukraine.
- 150 Article 43 (3)(i).
- 151 For example, the Law on the Protection and Encouragement of the Natural Feedings of Children adopted by Georgia in 1999.
- 152 The most recent legislation on this subject is Law No. 2004-806 of 9 August 2004.
- 153 Framework Law for the Assistance, Social Integration and Rights of Persons with Disabilities, No. 104 of 5 February 1992.
- 154 Law of 4 May 1998 of Friuli Venezia Giulia.
- 155 Second Report of Sweden to the Committee, CRC/C/65/Add.3, 1997, para. 418.
- 156 The Toys Safety Act (1992:1327).
- 157 The Health Consent Act 1996, Ontario; Amendments made to the Infants Act, British Columbia, in 1996. In Alberta, the age of consent to treatment in mental health facilities was lowered from the age of majority to the age of 16.
- 158 Parents may remove their children from such courses, however.

CHAPTER 8

- 159 General Principles on Violence against children within the family and schools, 2001, paras. 3 and 6. The Committee has also pointed out that this obligation extends to disciplinary methods used in public and other schools, including those operated by religious institutions or organizations schools. See, for example, Concluding Observations on the Second Report of Pakistan to the Committee, CRC/C/15/Add.217, 2003, para. 61.
- 160 Section 15(1).
- 161 Section 15(3) and 15(5).
- 162 Article 48.
- 163 Articles 49-54.
- 164 Decree No. 686 of 16 March 1998.
- 165 Communication from the UNICEF Country Office.
- 166 Law No. 32 of 2002.
- 167 The Act was promulgated in 1992.
- 168 Act No. 91-65 of 29 July 1991, Article 1(3).
- 169 Act concerning guidance for vocational training of 17 February 1993 and Act No. 73-96 of 29 January 1996.
- 170 See Tunisian Ministerial Circular No. 101 of 16 December 1997.
- 171 Law 19.867 of 22 May 2003.
- 172 Article 67.
- 173 Law 29 of 2002.
- 174 Article 23.
- 175 One example of a modest improvement is recognition of the right of a student's parents – but not the student – to be heard before a student is expelled.
- 176 Law No. 9 of 20 January 1999.
- 177 Presidential Decree of 29 May 1998.
- 178 Law No. 40 of 1998, Article 36 (3).

CHAPTER 9

- 179 This principle also has been recognized by Article 50 of the new Family Code. In addition, Article 219 of the Family Code provides that the father and mother are, during their marriage, joint guardians of their minor children.
- 180 The Children's Act No. 38 of 2005 was adopted in 2005 and signed by the President on 8 June 2006. Some sections – including all those cited in this paragraph – came into force on 1 July 2007, and others are not yet in force.
- 181 Chapter 3, esp. Section 18; Section 1.
- 182 See the definition of 'family member' in Section 1.
- 183 Section 14 (1).
- 184 See article 9.1 of the Convention.
- 185 Second Report of Lebanon to the Committee, CRC/C/70/Add.8, 2000, para. 79.
- 186 In its Concluding observations on the Second Report of the Syrian Arab Republic to the Committee warned that "the application of different laws...governing different religious communities...and consequently recourse to the different court systems...may lead to discrimination in the enjoyment of children's rights." CRC/C/15/Add.212, 2003, para. 9. See also the Concluding Observations of the Committee regarding Lebanon, CRC/C/15/Add.169, 2002, paras. 9-10.

- 187 Initial Report of Sudan to the Committee, CRC/C/65/Add.17, 1999, para. 30.
- 188 Article 32 (1), (4) and (5). (The Charter is part of the constitutional order of the Czech Republic). See also the Constitutions of Belarus, Article 32 (2); Romania, Article 44(1); the Russian Federation, Article 38(1); Slovenia, Article 54 and Ukraine, Article 51.
- 189 Articles 5 (2), (3) and (4).
- 190 Article 30 (3).
- 191 Article 7.
- 192 Act of 25 July 1994.
- 193 The Child Tax Benefit. In 2003, a representative of Canada stated that the amount of assistance received by a low-income family with two children had doubled since 1998. Summary Records of the Committee on the Rights of the Child, CRC/C/SR.895, para. 25.
- 194 Law No. 448 of 23 December 1998; Law No. 53 of 8 March 2000 and Law No. 448 of 28 December 2001.
- 195 Section 68.
- 196 See also Section 21 of the Children's Act of 2005.
- 197 Act No. 93-74 of 12 July 1993, see the Second Report of Tunisia to the Committee.
- 198 Article 32 of Act No. 17 of 1992.
- 199 Article 27.
- 200 The Parental Authority Act of 4 March 2002.
- 201 Act of 8 February 1995 and implementing decree of 22 July 1996.
- 202 Article 600.
- 203 Article 9.1 and 9.3.
- 204 Article 27.4.
- 205 Second Report of Morocco to the Committee, CRC/C/93/Add.3, 2000, paras. 171-172.
- 206 The package included the Federal Child Support Guidelines and amendments to the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnisheed, Attachment and Pension Diversion Act.
- 207 In Alberta, the Maintenance Act was amended in 1994; in Ontario a Family Responsibility and Support Arrears Enforcement Act was adopted in 1996; in Nova Scotia, a new Maintenance Enforcement Act was adopted in 1996 and amended in 1997; in Quebec, the relevant provisions of the Civil Code and the Code of Civil Procedure were amended in 1997; in the Yukon, Maintenance and Custody Enforcement Orders Act and the Family and Property and Support Act were amended effective 1999; The Family Maintenance Act of Manitoba was amended during the 1990s.
- 208 In France, the relevant legislation is the Civil Enforcement Procedures (Reform) Act of 9 July 1991.
- CHAPTER 10**
- 209 Children's Act, Section 23, 32; see also Children's Amendment Bill, Chapters 5 and 14.
- 210 Section 50(3) and Schedule 7, para.10.
- 211 Second Report of Jordan to the Committee, op. cit., para. 64.
- 212 Act No. 17 of 1992.
- 213 Dahir No 1-02-172 of 13 June 2002 on the promulgation of Law No. 15-01 concerning the placement (*kafala*) of abandoned children.
- 214 Article 32 (3).
- 215 Article 15.
- 216 Article 34(2).
- 217 Framework Act to combat exclusion of 29 July 1998.
- 218 Law of 2 January 2004, amending the Civil Code.
- 219 See Innocenti Research Centre, 'A Decade of Transition', esp. Chapter 5, 'Children Deprived of Family Upbringing', Regional Monitoring Report No. 8, UNICEF Innocenti Research Centre, Florence, 2001.
- 220 Burke, M., 'Child Institutionalization and Child Protection in Central and Eastern Europe', Innocenti Occasional Papers No. 52, UNICEF Innocenti Research Centre, 1995.
- 221 Article 29.
- 222 Article 30.
- 223 Article 60 (an exception is made for children with disabilities requiring special care).
- 224 Article 37. See also Article 54, which provides that when children have been removed from their family "special priority" shall be given, whenever possible, to the development of a plan for reintegration into the family.
- 225 Article 29.
- 226 Article 53 (1) and (3) If the child refuses consent, a court must determine whether the child's reservations are justified.
- 227 Article 194, as summarized in the Third Report of Ethiopia to the Committee, op. cit., para. 123.
- 228 Article 195 and 196.1, as summarized in paras.127-128 of the Third Report of Ethiopia to the Committee, op. cit.
- 229 Act of 5 July 1996, amending the Civil Code.
- 230 Law No. 149, 28 March 2001.
- 231 Explanatory Notes to Adoption and Children Act 2002, Department of Health, para. 3.
- 232 The Adoption Act, Newfoundland, 1990; 1997 amendments to the Child Welfare Act of Alberta; The Adoption Act, Manitoba, 1999.
- 233 See, for example, Article 29 of the Belarusian Law on the Rights of the Child; Article 114 of the Family and Guardianship Code of Poland as amended in 1995.
- 234 See, for example, Article 29 of the Belarusian Law on the Rights of the Child.
- 235 Micklewright, John and Kitty Stewart, 'Child Well-Being in the EU – and Enlargement to the East', UNICEF Innocenti Working Paper, Florence, February 2000.
- 236 Second Report of France to the Committee, op. cit., para. 213.
- 237 Act of 5 July 1996.
- 238 Act No. 2001-111 of 6 February 2001. For a summary of other provisions of the law, see the Second Report of France to the Committee, op. cit., paras. 237-239.
- 239 The Intercountry Adoption (Hague Convention) Implementation Act, Saskatchewan, 1997; 1997 amendments to the Child Welfare Act of Alberta; Inter Country Adoption (Hague Convention) Act, Manitoba, 1997; the Intercountry Adoption (Hague Convention) Act, Yukon, 1997.
- 240 Section 51.
- CHAPTER 11**
- 241 Provisions of the CRC concerning abuse and exploitation in other contexts, such as corporal punishment in schools, torture and inhumane treatment of prisoners, are mentioned in other Chapters.
- 242 Sections 44 and 43(7).
- 243 Children's Amendment Bill presented by the Ministry of Social Development on 30 June 2006, and published in Government Gazette No. 290030 on 14 July 2006, Chapter 8.
- 244 Article 3.
- 245 Articles 13(1) d and e, 16(1) and 15.d, respectively.
- 246 Articles 132, 171 ter, 212, 213, 237 and 238.
- 247 Article 24.
- 248 Article 5 of the Brazilian Child and Adolescent Statute of 1990 was the prototype for this disposition.
- 249 Guatemala, Article 54(d).
- 250 Bolivian Code, 1999, Article 109.
- 251 Article 80.
- 252 Article 28.
- 253 Article 150.

- 254 Act of 10 July 1989.
- 255 Paras. 302-307.
- 256 Article 24.3.
- 257 See, for example, the Committee on the Rights of the Child, CRC/C/38 (1995); UN General Assembly Resolution on the Elimination of All Forms of Violence Against Women A/55/69 (2001), UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 22, 2000; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24 on Women and Health, para. 18; Report of the UN Special Rapporteur on traditional practices affecting the health of women and the girl child, E/CN.4/Sub.2/2002/32, paras. 23, 30, 32; Report of the Secretary General on Traditional or Customary Practices Affecting Women and Girls, A/56/316; Study by the UN Special Rapporteur on religious intolerance on freedom of religion or conviction and the status of women with regard to religions and traditions, E/CN.4/2002/73/Add.2, 2002 and Children and Violence, Innocenti Digest No. 2, 1997. In their reports to the Committee, States refer to many other traditional practices considered harmful to children, including abduction, scarification, the refusal of immunization and blood transfusions and others.
- 258 CRC. General Comment No. 4 on Adolescent Health and Development, 2003, para. 20, CEDAW, General Recommendation No. 21, 1994, para. 36.
- 259 See, for example, the Summary of the CRC Committee's general discussion on the girl child, 1995, CRC/C/38, reproduced in Compilation of Reports of General Discussion Days, CRC/C/DOD/1 para. 294.
- 260 Article 35.4 of the Constitution; Article of the Family Code. Ethiopia's Third Report to the Committee indicates that the decision to raise the minimum age for marriage was taken in response to a recommendation of the Committee.
- 261 Sections 12 (this section also prohibits the circumcision of boys under the age of 16, subject to rather broad exceptions) and 305.1(a).
- 262 Sections 21 and 22.
- 263 Section 24.
- 264 Uwais, Maryam, 'A Summary of the Contentious Issues in the Children's Bill', UNICEF, Nairobi, undated mimeo.
- 265 The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.
- 266 Ibid., Table 4.
- 267 Ibid., p.42; Second Report of Lebanon to the Committee, CRC/C/70/Add.8, para. 85.
- 268 Personal Status of Muslims Act of 1991, Article 34.
- 269 See 'Children in the Arab World: Understanding the Present, Shaping the Future', UNICEF, 2004, p. 45.
- 270 Law No. 7 of 20 Feb. 1999.

CHAPTER 12

- 271 Sexual Offences Against Children, Issue Paper No. 10, Project 108, Pretoria, 31 May 1997. Examples cited by the paper include the following: the offences of rape and incest require penetration of the vagina by a penis; sodomy can only be committed between males, and an adolescent boy who has intercourse with an older adolescent girl commits an offence even if the girl took the initiative.
- 272 For example, the presumption that a girl aged 12 or older did not consent to rape, or the presumption that a child over the age of 7 did not consent to incest, are rebuttable.
- 273 Para. 3.4.3.
- 274 The Films and Publications Act 1996. Interim Report, 1997, para. 56.1.
- 275 Section 30-(2)(a) and (e).
- 276 Section 31. One Nigerian judge observed "This will be a bitter pill for Nigerian men to swallow in a country where girls are known to be sexually active from the age of 15 or so." Justice Amina Augie of the Court of Appeals of Benin, in State of Nigerian Children: Issues, Challenges, and Way Forward, mimeo, 2003.

- 277 Section 32.
- 278 In Yemen, for example, the law was amended in 1996 to provide that the testimony of four adult male witnesses is required for a conviction for adultery. Evidence Law No. 20/1996.
- 279 Articles 228 and 228 bis.
- 280 Second Report of Lebanon to the Committee, op. cit., paras. 457-458.
- 281 See, for example, the Law against the Commercial Exploitation of Minors, Costa Rica, 1999 and Law 136-03 on the Prohibition of the commercialization, prostitution and pornography of children and adolescents of the Dominican Republic.
- 282 Second Report of Slovenia to the Committee, CRC/C/70/Add.19, 2001, para. 312. This may reflect the influence on legislators of the 10th children's parliament, in which the participants "warned that they were already able to fall in love and think about sexuality." (Para. 100)
- 283 Article 99.
- 284 Act No. 94-89 of 1 February 1994.
- 285 Parental Authority Act of 4 March 2002.
- 286 The Limitation of Actions Act of the Yukon, 1998.
- 287 Act No. 98-468 of 17 June 1998 on the prevention and punishment of sexual offences.
- 288 Act of 15 June 2000 (The Act also protects juvenile offenders, runaway children, abandoned children and child victims of suicide).
- 289 See, for example, Sexual Offences (Amendment) Act 1992.
- 290 Bill C-27.
- 291 Law Against the Exploitation of Prostitution, Pornography and Sexual Tourism to the Detriment of Minors: New Forms of Slavery, No. 269 of 3 August 1998.

CHAPTER 13

- 292 Article 32.
- 293 General Comment No. 4, Adolescent Health and Development, 2003, para. 18.
- 294 Section 28-(1).
- 295 The Libyan Arab Jamahiriya has been a Party to ILO Convention No. 138 since 1975; Bangladesh and Pakistan are not yet Parties.
- 296 Labour Act No. 536 of 24 July 1996 and Decree No. 700 of 25 May 1999.
- 297 Act No. 96-62 of 15 July 1996.
- 298 ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), Individual Observation concerning Convention No. 59, Minimum Age (Industry) (Revised), 1937, Pakistan (ratification: 1955) 1997, 1999.
- 299 Act No. 24 of 10 December 2000. The age of compulsory school attendance was also raised from age 12 to 15.
- 300 Law No. 34 of 2000.
- 301 Section 21(4).
- 302 Labour Act No. 5 of 1995.
- 303 Act No. 25 of 1997.
- 304 See, for example, the codes of Bolivia, Colombia, Ecuador, Honduras and Nicaragua.
- 305 Belgium, Finland, Germany, Italy, the Netherlands, Norway and Spain had long been Parties to ILO Convention No. 138.

CHAPTER 14

- 306 The terminology used to refer to the age limits relevant to juvenile justice varies from country to country and legal system to legal system, which can lead to misunderstandings. In this publication, the term "age of penal majority" is used to refer to the age at which a person

- accused of an offence is, as a rule, tried and sentenced as an adult. The Committee on the Rights of the Child maintains that this age should not be less than 18. General Comment No. 10, CRC/C/GC/10 paras. 36-38; the term "minimum age for adjudication" is used in these pages to refer to the earliest age at which a child may be prosecuted for an offence. The Committee refers to this as the "minimum age of criminal responsibility" and states that it should be no lower than 12 years. General Comment, No. 10, CRC/C/GC/10, op. cit., paras. 30-34.
- 307 Second Report of Togo to the Committee, CRC/C/65/Add.27, 2003, paras. 74-78.
- 308 Section 209 (3) and (2), respectively.
- 309 Section 210.
- 310 Section 211-(1) and 212-(1).
- 311 Section 151-(1)(b).
- 312 Section 223.
- 313 Section 221.
- 314 Presumably Section 50 of the Penal Code, which establishes an absolute presumption that children under the age of 7 do not possess sufficient understanding to judge the nature and consequence of criminal acts, and a rebuttable presumption that children under the age of 12 do not have such capacity, remains in force.
- 315 Concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add.228, 2004, para. 78.
- 316 Articles 16-18.
- 317 Republic Act 9344, available at <www.lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html>.
- 318 Some Islamic States also impose corporal punishment on juvenile offenders, which the Committee considers incompatible with the CRC, but some common law countries also have yet to abolish the use of judicially imposed corporal punishment.
- 319 Article 68 of the Code.
- 320 Articles 113-117.
- 321 Second Report of Morocco to the Committee, op. cit., para. 3(e).
- 322 Concluding Observations of the Committee, CRC/C/15/Add.145, 2001, paras. 23 and 53.
- 323 The Protection of Juveniles in Conflict with the Law or at Risk, No. 422/2002, as described in the Third Report of Lebanon to the Committee, CRC/C/129/Add.7, 2005, para. 11.
- 324 The Punjab Youthful Offenders Ordinance of 1983, which provides for specialized juvenile courts to try children under the age of 15, was finally put into effect in 1994.
- 325 Typically the maximum sentence for an offender aged 16 to 18, and offenders aged 14 to 18 convicted of serious offences, is 10 years.
- 326 Such standards include the UN Rules on the Administration of Juvenile Justice or 'Beijing Rules', adopted in 1985 and mentioned in the Preamble to the Convention, and two instruments intended to complement the Beijing Rules adopted in 1990: the Guiding Principles on the Prevention of Juvenile Delinquency (Riyadh Guidelines) and the UN Rules on the Protection of Juveniles Deprived of Liberty.
- 327 Second Report of Georgia to the Committee, CRC/C/104/Add.1, 2003, para. 268.
- 328 Second Report of Slovenia to the Committee, op. cit., para. 275.
- 329 Ibid, Table 27. In 1999, for example, only 1 per cent of children brought before a court were detained prior to adjudication.
- 330 Article 36.
- 331 The consequences might be confinement of children in a centralized facility far from the homes of some of them, or the confinement of very small groups of juvenile offenders in conditions approaching isolation.
- 332 See the First and Second Reports of Sweden to the Committee, op. cit., paras. 224 and 715, respectively.
- 333 Law No. 216 of 19 July 1991.
- 334 The Act of 8 February 1995 and Act of 1 July 1996.
- 335 Concluding Observations on the Second Report of France to the Committee, CRC/C/15/Add.240, 2004, para. 58.
- 336 Ibid., paras. 4 and 16.
- 337 Lawyers in common law jurisdictions know this as the *doli incapax* rule.
- 338 This right is recognized in article 40.2(b)(iv) of the CRC.
- 339 Concluding Observations of the Committee, CRC/C/15/Add.188, 2002, para. 59.
- 340 Ibid.
- 341 The maximum sentence is 24 months, of which half will be served in the community under supervision.
- 342 C.1, assented to 19 February 2002.
- CHAPTER 15**
- 343 There are 114 Parties to this Protocol, including all of the States covered by this study except Burkina Faso, Ethiopia, Fiji, Georgia, Indonesia, Jordan, Lebanon, Nigeria, Pakistan and South Africa.
- 344 Section 34 (Nigeria).
- 345 Article 15.
- 346 Article 63.
- 347 Articles 87 and 60, respectively.
- 348 Law No. 49-99.
- 349 Article 33.
- 350 Article 79.
- CHAPTER 16**
- 351 Executive Committee Conclusion No. 47; 'Guidelines on Refugee Children', UNHCR, Geneva, 1988 (a second edition was published in 1994.) The Committee on the Rights of the Child has encouraged States to take the UNHCR Guidelines into account in complying with their obligations under the Convention. General Comment No. 6, C/CRC/GC/2005/6, para. 15.
- 352 Articles 60-61. (This English translation the law provides literally "The special protection to be afforded refugee children as referred to in Article 60 shall be in accordance with humanitarian law," but this presumably refers to international refugee law.) Article 60, the right of children who are victims of natural disasters to similar assistance is also recognized by Article 60.c.
- 353 Article 58.
- 354 Article 58.
- 355 Articles 72, 73 and 75.
- 356 Second Report to the Committee, CRC/C/65/Add.5, 1998, para. 341.
- 357 Concluding observations on the Second Report of the United Kingdom to the Committee, op. cit., para. 49-50.
- 358 The Parental Authority Act, cited in the Second Report of France to the Committee, op. cit., para. 377-378.
- 359 Concluding observations on the Second Report of France to the Committee, para. 50.
- CHAPTER 17**
- 360 This may be due in part to the fact that 12 countries of the region, including Argentina, Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico and Paraguay, are Parties to International Labour Convention No. 169 on Indigenous and Tribal Peoples, which recognizes rights that go beyond those contained in the CRC.
- 361 Article 10, available at <www.iin.oea.org/badaj/badaj.htm>.

- 362 Código del Menor, Colombia, 1989, para. 21.
- 363 The Organisation Act No. 96-312 of 12 April 1996 regarding the use of Tahitian and other Polynesian languages in French Polynesia; Organisation Act No. 99-209 of 19 March 1999, regarding the teaching of Kanak in New Caledonia; the Agreement on the Concession of Primary Education of 10 February 2000, concerning the teaching of Wallisian and Futunian in the Wallis and Futuna islands.
- 364 The Framework Act No. 2000-1207 on overseas departments of 14 December 2000.
- 365 The Inherent Right Policy, as described in the Second Report of Canada to the Committee, para. 21 (the indigenous population of Inuits, North American Indians and Métis was approximately 1 million, or 4 per cent of the population of Canada, at the time the CRC was ratified).
- 366 Aboriginal Custom Adoption Recognition Act, S.N.W.T. 1994 c.26.
- 375 Second Report of Panama to the Committee, CRC/C/70/Add.20, 2002, para. 21.
- 376 Second Report of Paraguay to the Committee, CRC/C/65/Add.12, 1998, para. 79.
- 377 Initial Report to the Committee, CRC/C/51/Add.2, 1997, para. 560.
- 378 Second Report of Nepal to the Committee, CRC/C/65/Add.30, 2004, para. 235.
- 379 This paragraph is based on information provided by the UNICEF country office.
- 380 Panama, Summary Record, CRC/C/SR.952, 2004, para. 73; see also the Committee's Concluding Observations on the Second Report of El Salvador to the Committee, CRC/C/15/Add.232, 2004, para. 67.
- 381 Third Report of Bolivia to the Committee, CRC/C/125/Add.2, 2002, para. 330.
- 382 Second and Third Reports of Ecuador to the Committee, CRC/C/65/Add.28, 2004, para. 104; see also para. 107.
- 383 Third Report of Bolivia to the Committee, op. cit., para. 34 (referring to the second code).
- 384 Second Report of Bangladesh to the Committee, CRC/C/65/Add.22, 2001, para. 389.
- 385 Second Report of the Russian Federation presented to the Committee, CRC/C/65/Add.5, 1998, para.405
- 386 The Use of Custody under the Youth Criminal Justice Act, A. Doob and J. Sprott, 2005, website of the Ministry of Justice, <www.canada.justice.gc.ca/en/ps/yj/research/doob-sprott/section1.html>.
- 387 Third Report of Nicaragua to the Committee, CRC/C/125/Add.3, 2003, para. 420; and Written Reply to question 10(e), 2005.
- 388 Summary Record 541, 1999, para. 26.
- 389 South African Law Commission, Issue Paper 9, Project 106, Juvenile Justice, 1997, para. 9.3.
- 390 Summary Record 679, 2002, para. 44.
- 391 Summary Record 1022, 2005, para. 38.
- 392 Second Report of Paraguay to the Committee, op. cit., paras. 506, 508 and 566.
- 393 Summary Record 932, 2004, para. 5.
- 394 Second Report of Nepal to the Committee, op. cit., para. 222.

CONCLUSIONS

- 367 Garcia-Méndez, E., and M. Beloff, editors, 'Infancia, Ley y Democracia en America Latina, 3rd Edition, Temis, Bogota and Depalma, Buenos Aires', 2005.
- 368 See, for example, CRC/C/SR.707, paras. 28 and 30 (Guatemala).
- 369 Initial Report of Guatemala to the Committee, CRC/C/3/Add.33, 1995, para. 11, and Second Report, para. 24 (this Code, as indicated above, was approved by the Congress but never entered into force).
- 370 Annual Report of the Défenseur des Enfants, Sept. 2004, p.1, available on the website of the European Network of Ombudsmen for Children <www.ombudsnet.org/enoc>.
- 371 Third Report of Costa Rica to the Committee, CRC/C/125/Add.4, 2003, para. 340.
- 372 The Parliament of the United Kingdom, for example, adopted legislation limiting (and later banning) the use of corporal punishment in private schools as a result of the decision of the European Court of Human Rights in *Costello-Roberts v. United Kingdom* (1993) 19 EHRR 112.
- 373 In Lebanon, differences between UNICEF and the UN Centre for International Crime Prevention contributed to the delay in adopting new legislation on juvenile justice.
- 374 See, for example, the Second Report of Bolivia to the Committee, CRC/C/65/Add.1, paras. 30-32 (teachers).

ANNEX I

Countries reviewed for this study

Asia and the Pacific

Fiji
India
Indonesia
Japan
Nepal
Philippines
Republic of Korea
Sri Lanka
Viet Nam

Central and Eastern Europe

Belarus
Czech Republic
Georgia
Poland
Romania
Russian Federation
Slovenia
Ukraine

Islamic States*

Bangladesh
Egypt
Jordan
Lebanon
Libyan Arab Jamahiriya
Morocco
Pakistan
Sudan
Syrian Arab Republic
Tunisia
Yemen

Sub-Saharan Africa

Burkina Faso
Ethiopia
Nigeria
Rwanda
South Africa
Togo

The Americas

Argentina
Bolivia
Canada
Chile
Colombia
Costa Rica
Ecuador
Guatemala
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay

Western Europe

France
Italy
Sweden
United Kingdom

* The category of Islamic States refers to those countries whose constitution identifies the State as Islamic or identifies Islam as the main source of law, and is considered relevant precisely for that reason. States whose population is predominantly Muslim but who do not meet that criterion are included in the appropriate geographical group. (Also see pages 1-2 of the report.)

ANNEX II

General Comment No. 5

General Measures of Implementation (CRC/GC/2003/5)

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

FOREWORD

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

Article 4

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

INTRODUCTION

1. When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.¹ Article 4 requires States parties to take "all appropriate legislative, administrative and other measures" for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality of the human rights of children - needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.²
2. In its periodic examination of States parties' reports under the Convention, the Committee pays particular attention to what it has termed "general measures of implementation". In its concluding observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State party to describe action taken in response to these recommendations in its subsequent periodic report. The Committee's reporting guidelines arrange the Convention's articles in clusters,³ the first being on "general measures of implementation" and groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see, paragraph 66 below) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see paragraph 71 below).
3. In addition to these provisions, other general implementation obligations are set out in article 2: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind ..."
4. Also under article 3, paragraph 2, "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

5. In international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the present general comment and which are referred to below.⁴
6. Article 4, while reflecting States parties' overall implementation obligation, suggests a distinction between civil and political rights and economic, social and cultural rights in its second sentence: "With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee's reporting guidelines group articles 7, 8, 13-17 and 37 (a) under the heading "Civil rights and freedoms", but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted in paragraph 25 below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.
7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of "progressive realization" of such rights: States need to be able to demonstrate that they have implemented "to the maximum extent of their available resources" and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).
8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that "even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ..."⁵ Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.
9. The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children's rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children's budgets and "state of children's rights" reports, NGO coalitions on children's rights, children's ombudspersons and children's rights commissioners and so on.
10. While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child's place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.
11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.
12. The development of a children's rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

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

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

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

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

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

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

REVIEW OF RESERVATIONS

13. In its reporting guidelines on general measures of implementation, the Committee starts by inviting the State party to indicate whether it considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.⁷ States parties to the Convention are entitled to make reservations at the time of their ratification of or accession to it (art. 51). The Committee’s aim of ensuring full and unqualified respect for the human rights of children can be achieved only if States withdraw their reservations. It consistently recommends during its examination of reports that reservations be reviewed and withdrawn. Where a State, after review, decides to maintain a reservation, the Committee requests that a full explanation be included in the next periodic report. The Committee draws the attention of States parties to the encouragement given by the World Conference on Human Rights to the review and withdrawal of reservations.⁸

14. Article 2 of the Vienna Convention on the Law of Treaties defines “reservation” as a “unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State.” The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is “incompatible with the object and purpose of the treaty” (art. 19).
15. Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted.” The Committee is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State’s existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.
16. The Committee notes that, in some cases, States parties have lodged formal objections to such wide-ranging reservations made by other States parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States parties.

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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

LEGISLATIVE MEASURES

18. The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others.
19. States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of “self-execution” applies and others where it is claimed that the Convention “has constitutional status” or has been incorporated into domestic law.
20. The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation (see also paragraphs 40 et seq. below).
21. Some States have suggested to the Committee that the inclusion in their Constitution of guarantees of rights for “everyone” is adequate to ensure respect for these rights for children. The test must be whether

the applicable rights are truly realized for children and can be directly invoked before the courts. The Committee welcomes the inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the Convention, which helps to underline the key message of the Convention - that children alongside adults are holders of human rights. But this inclusion does not automatically ensure respect for the rights of children. In order to promote the full implementation of these rights, including, where appropriate, the exercise of rights by children themselves, additional legislative and other measures may be necessary.

22. The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children's rights statutes, which can highlight and emphasize the Convention's principles. But the Committee emphasizes that it is crucial in addition that all relevant "sectoral" laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.
23. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41. The Committee emphasizes that the other international human rights instruments apply to all persons below the age of 18 years.

JUSTICIABILITY OF RIGHTS

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

ADMINISTRATIVE AND OTHER MEASURES

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

A. Developing a comprehensive national strategy rooted in the Convention

28. If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.
29. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situ-

ation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (para. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.

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

B. Coordination of implementation of children's rights

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

so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.

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

C. Decentralization, federalization and delegation

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

D. Privatization

42. The process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 day of general discussion to the theme "The private sector as service provider and its role in implementing child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit. Following that day of general discussion, the Committee adopted detailed recommendations to which it draws the attention of States parties.¹³
43. The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.
44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health,

and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

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

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

F. Data collection and analysis and development of indicators

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

G. Making children visible in budgets

51. In its reporting guidelines and in the consideration of States parties' reports, the Committee has paid much attention to the identification and analysis of resources for children in national and other budgets.¹⁴ No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources"; as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly. Some States have claimed it is not possible to analyse national budgets in this way. But others have done it and publish annual "children's budgets". The Committee needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and

budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

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

H. Training and capacity-building

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

I. Cooperation with civil society

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

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

J. International cooperation

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

K. Independent human rights institutions

65. In its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child", the Committee notes that it "considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights". Independent human rights institutions are complementary to effective government structures for children; the essential

element is independence: “The role of national human rights institutions is to monitor independently the State’s compliance and progress towards implementation and to do all it can to ensure full respect for children’s rights. While this may require the institution to develop projects to enhance the promotion and protection of children’s rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities.”¹⁸ General comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children.

Article 42: Making the Convention known to adults and children

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

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

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

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

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

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

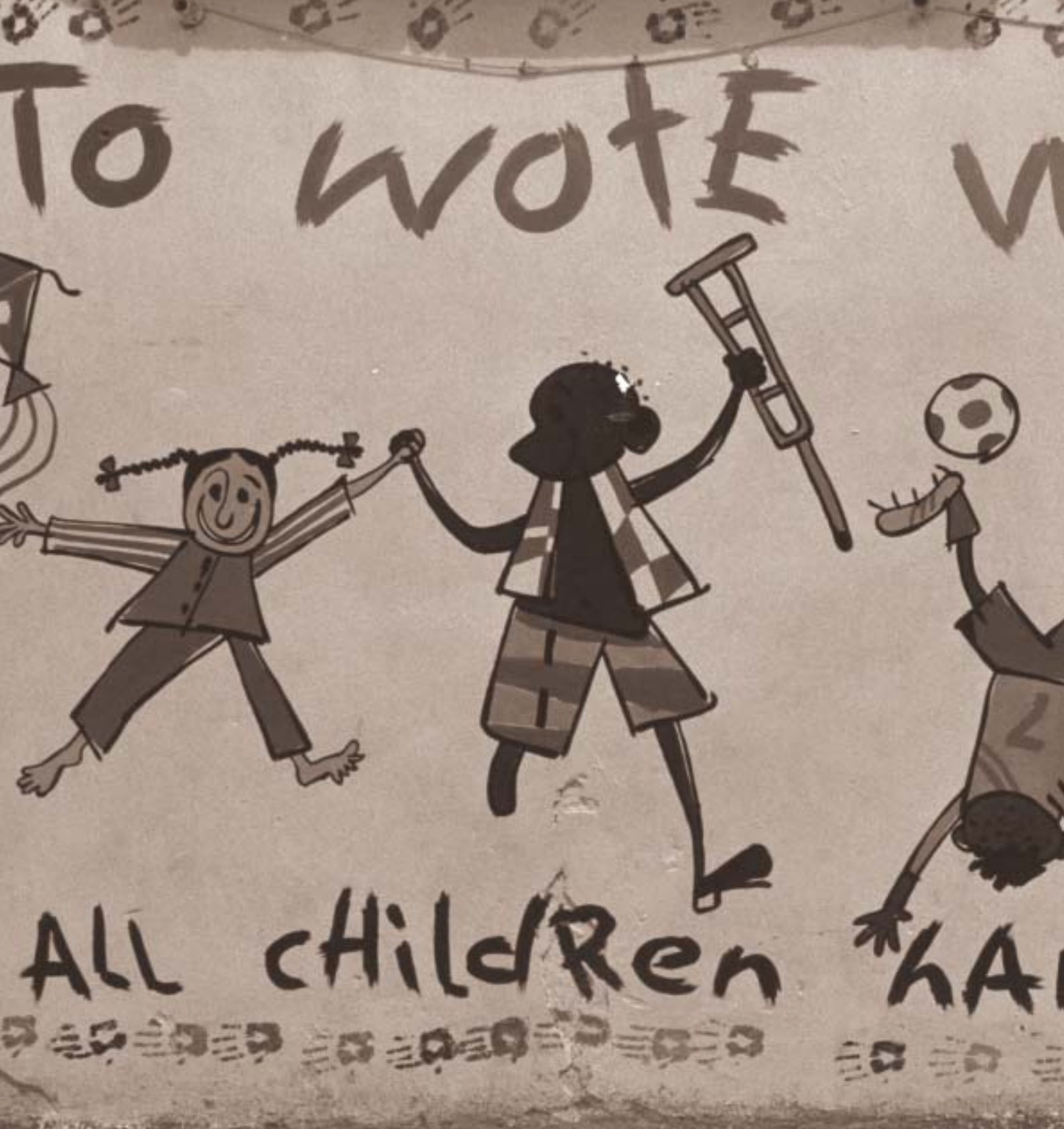
As noted in paragraph 17 of the present general comment, the Committee on the Rights of the Child, as part of its consideration of general measures of implementation, and in the light of the principles of indivisibility and interdependence of human rights, consistently urges States parties, if they have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

- Optional Protocol to the International Covenant on Civil and Political Rights;
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention against Discrimination in Education;
- ILO Forced Labour Convention No. 29, 1930;
- ILO Convention No. 105 on Abolition of Forced Labour, 1957;
- ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, 1973;
- ILO Convention No. 182 on Worst Forms of Child Labour, 1999;
- ILO Convention No. 183 on Maternity Protection, 2000;
- Convention relating to the Status of Refugees of 1951, as amended by the Protocol relating to the Status of Refugees of 1967;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);
- Slavery Convention (1926);

- Protocol amending the Slavery Convention (1953);
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000;
- Geneva Convention relative to the Protection of Civilians in Time of War;
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I);
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and of Their Destruction;
- Statute of the International Criminal Court;
- Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption;
- Hague Convention on the Civil Aspects of International Child Abduction;
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children of 1996.

Notes

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



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