

SUMMARIES OF UN GENERAL COMMENTS ON THE CONVENTION ON THE RIGHTS OF THE CHILD

By Noreen Ramsden

SUMMARY OF UN GENERAL COMMENT No. 1 (CRC/GC/2001/1) THE AIMS OF EDUCATION

"Education" includes the wide range of life experiences and learning processes which enable children, to develop their personalities, talents and abilities and to live a full and satisfying life within society.

In Article 29 (1) of the Convention on the Rights of the Child sets out the right of the child to an education that promotes, supports and protects the human dignity of every child and his or her equal and inalienable rights, while taking into account the special developmental needs and differing evolving capacities of each child. Education must enable the holistic development of the child to his or her full potential, including the development of respect for human rights, an enhanced sense of identity and affiliation, and his or her ability to socialise and interact with others and to interact responsibly with the environment.

Article 29 (1) also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.

Children's rights are not detached or isolated values devoid of context, but exist within a broader ethical framework which is partly described in article 29 (1) and in the preamble to the Convention.

States agree that education should be directed to a wide range of values so that there is a balanced approach that will reconcile - through dialogue and respect - the sometimes differing values in religion, nation and culture in the world,. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

Many of the criticisms that have been made of the Convention are specifically answered by Article 29. For example, this article underlines the importance of respect for parents, of the need to view rights within their broader ethical, moral, spiritual, cultural or social framework, and of the fact that most children's rights, far from being externally imposed, are embedded within the values of local communities.

Process.

Efforts to promote the enjoyment of other rights should be reinforced by the values imparted in the educational process and not be undermined. This includes not only the content of the curriculum but also the educational processes, the teaching methods and the environment within which education takes place, whether it be the home, school, or elsewhere.

Children do not lose their human rights by virtue of passing through the school gates.

Education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school.

The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child

The participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realisation of rights.

As the key goal of education is the development of the individual child's unique personality, talents and abilities, it must take full account of the child's evolving capacities. Teaching methods should be tailored to the different needs of different children.

Content and curriculum

Education must also be aimed at ensuring that essential life skills are learnt by every child. The curriculum content must be of direct relevance to the child's social, cultural, environmental and economic context and to his or her present and future needs. These basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.

Discrimination

Whether it is open or hidden, discrimination offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. For example, gender discrimination can be reinforced by a curriculum which shows gender bias or by unfair preference given to boys with regard to awards, or by unsafe or unfriendly environments which discourage girls' participation. Discrimination against children with disabilities or chronic illness is also pervasive in many formal educational systems - and in a great many informal educational settings, including in the home. All such discriminatory practices are in direct contradiction with the requirements in article 29 (1).

It is important to focus on the child's own community when teaching human and children's rights and the principle of non-discrimination. Such teaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance and unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences - an education that challenges all aspects of discrimination and prejudice.

Education should be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena.

Holistic approach to education

Education should reflect an appropriate balance between the physical, mental, spiritual and emotional needs of the child, and take into account both childhood and lifelong education. Education should be child-friendly, inspiring and motivating to the individual child. Schools should foster a humane atmosphere and allow children to develop according to their individual evolving capacities.

The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society.

Ethical values in education in school and at home

Education should be designed and provided in such a way that it promotes and reinforces the range of specific ethical values of the Convention, including education for peace, tolerance, and respect for the natural environment. This education must also address problems within the child's own community. Although children acquire ethical values largely within the family, schools and communities also play an important role.

Respect for the natural environment should encompass both national and international problems, and actively involve children in local, regional or global environmental projects.

A child's capacity to participate fully and responsibly in a free society can be impaired or undermined not only by outright denial of access to education but also by a failure to promote an understanding of the values recognised in Article 29 of the Convention.

HUMAN RIGHTS EDUCATION

Human rights education should provide information on the content of human rights treaties, but children can only learn about human rights by seeing human rights implemented in practice, whether at home, in school, or within the community.

IMPLEMENTATION, MONITORING AND REVIEW

The Committee calls upon all States to incorporate these principles into their education policies and legislation at all levels. Curricula and teaching materials should reflect human rights principles. Pre-service and in-service training schemes which promote the principles reflected in article 29 (1) are essential for teachers, educational administrators and others involved in child education. It is also important that the teaching methods used in schools reflect the spirit and educational philosophy of the Convention on the Rights of the Child and the aims of education laid down in article 29 (1). **What is needed, in addition to formal human rights education, is the promotion of values and policies conducive to human rights not only within schools and universities but also within the broader community.**

The Committee notes the importance of surveys to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. **In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.**

GENERAL COMMENT No. 3 (CRC/GC/2003/3) HIV/AIDS AND THE RIGHTS OF THE CHILD

Introduction

The HIV/AIDS epidemic impacts on the daily life of children, and increases the victimization and marginalization of children, especially those living in particularly difficult circumstances. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.

Children who are especially vulnerable are (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained by its consequences; and (c) children and adolescents who are most prone to be infected or affected.

The objectives of the present general comment

The objectives of the present General Comment are to identify further and strengthen understanding of all the human rights of children and to promote the realisation of the human rights of children in the context of HIV/AIDS. Also to identify measures and good practices related to the prevention of HIV/AIDS and the support, care and protection of infected children; and to promote child-oriented plans of action, strategies, laws, policies and programmes at the national and international levels.

The Convention's perspectives on HIV/AIDS: the holistic child rights-based approach

Although the right to health (article 24 of the Convention) is central, HIV/AIDS affects all children's rights - civil, political, economic, social and cultural. The general principles of the Convention should guide all interventions for prevention, treatment, care and support - **the right to non-discrimination** (art. 2), **best interests of the child** (art. 3), the right to **life, survival and development** (art. 6) and **participation** - the right to have his/her views respected (art. 12). Other relevant rights are the **right to access information** aimed at the promotion of their social, spiritual and moral well-being and physical and mental health (art. 17); the right to **preventive**

health care, sex education and family planning education and services (art. 24 (f)); the right to an **appropriate standard of living** (art. 27); the right to **privacy** (art. 16); the right **not to be separated from parents** (art. 9); the right to be **protected from violence** (art. 19); the right to **special protection** and assistance by the State (art. 20); the rights of **children with disabilities** (art. 23); the right to **health** (art. 24); the right to **social security**, including social insurance (art. 26); the right to **education and leisure** (arts. 28 and 31); the right to be **protected from economic and sexual exploitation and abuse**, and from **illicit use of narcotic drugs** (arts. 32, 33, 34 and 36); the right to be **protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment** (arts 35 and 37); and the right to **physical and psychological recovery and social reintegration** (art. 39).

Children are confronted with serious challenges to the above-mentioned rights as a result of the epidemic. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

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

Article 2 of the Convention obliges States parties to ensure all the rights set forth in the Convention without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or **other status**". The Committee interprets "other status" under article 2 of the Convention to include HIV/AIDS status of the child or his/her parent(s).

Laws, policies, strategies and practices should address all forms of should promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS. As a result of discrimination, children are denied access to information, education, health or social care services or community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society.

Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. Gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limits their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation.

States parties must give careful consideration to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.

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

The child should be placed at the centre of the response to the pandemic, and policies and strategies should be adapted to children's rights and needs.

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

Children have the right to survival, and the right to benefit from economic and social policies that will allow them to survive into adulthood and develop in the broadest sense of the word. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.

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

Children have a right to participate, in accordance with their evolving capacities, in the development of HIV/AIDS policies and programmes and their implementation. Interventions have been found to benefit children most when they are actively involved in assessing needs, devising solutions, shaping strategies and carrying them out - rather than being seen as objects for whom decisions are made. Children living with HIV who participate in awareness-raising efforts should only do so voluntarily, after being counselled, and that they need both social support and legal protection to allow them to lead normal lives during and after their involvement.

E. Obstacles

Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial.

PREVENTION, CARE, TREATMENT AND SUPPORT

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

A. Information on HIV prevention and awareness-raising

Children require relevant, appropriate and timely information which recognises the differences in levels of understanding among them, is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality. Useful approaches have been found to be dialogue with the community, family and peer counsellors, and the provision of "life skills" education within schools (including skills in communicating on sexuality and healthy living). But different approaches may be necessary to reach different groups of children. Regular monitoring and evaluation of HIV/AIDS awareness campaigns is necessary to ascertain their effectiveness in providing information, reducing ignorance, stigmatisation and discrimination, as well as addressing fear and misconceptions concerning HIV among children, including adolescents.

B. The role of education

Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS. States parties must make every effort to ensure that schools are safe places for children, which offer them security and do not contribute to their vulnerability to HIV infection.

C. Child and adolescent sensitive health services

Children are more likely to use services that are friendly and supportive, provide a wide range of services and information, are geared to their needs, give them the opportunity to participate in decisions affecting their health, are accessible, affordable, confidential and non-judgemental, do not require parental consent and are not discriminatory. Health services need to employ trained personnel who fully respect the rights of children to privacy and non-discrimination in offering them access to HIV-related information, voluntary counselling and testing, knowledge of their HIV status, confidential sexual and reproductive health services, and free or low-cost contraceptive services -, as well as HIV-related care and treatment if and when needed, including for the prevention and treatment of health problems related to HIV/AIDS, like TB and opportunistic infections. HIV-related services must be accessible to children with disabilities, indigenous children, children belonging to minorities, children living in rural areas, children living in extreme poverty or children who are otherwise marginalized within the society. Services must be provided to the maximum extent possible to all children living within a country's borders, without discrimination, and that they must take into account differences in gender, age and the social, economic, cultural and political context in which children live.

D. HIV counselling and testing

The accessibility of voluntary, confidential HIV counselling and testing services, with due attention to the evolving capacities of the child, is fundamental to the rights and health of children. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, the risks and benefits of such testing must be sufficiently conveyed so that an informed decision can be made. The confidentiality of HIV test results, and the right to privacy of children, means that information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

E. Mother-to-child transmission

Strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children should be implemented. These include preventing HIV infection among parents-to-be; the prevention of unintended pregnancies To prevent MTCT of HIV, essential drugs should be provided such as anti-retroviral drugs, and also appropriate antenatal, delivery and post-partum care. HIV voluntary counselling and testing services should be available to all pregnant women and their partners. Ongoing support for mothers and children, including counselling on infant feeding options should be provided. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.

F. Treatment and care

Comprehensive treatment and care includes anti-retroviral and other drugs, diagnostics and related technologies for the care of HIV/AIDS and related opportunistic infections and other conditions. It also includes good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. States are requested to affirm, support and facilitate the involvement of communities in the provision of comprehensive HIV/AIDS treatment, care and support to all who need it.

G. Involvement of children in research

HIV/AIDS research programmes should include specific studies that contribute to effective prevention, care, treatment and impact reduction for children. But the rights of children who are being used in research must be protected. In particular, the informed consent of the child should be sought and consent may be sought from parents or guardians if necessary, based on full disclosure of the risks and benefits of research to the child. The privacy rights of children must not be violated. Children, according to their evolving capacities, and their parents and/or their guardians, should participate in decisions on research priorities and a supportive environment should be established for them.

VULNERABILITY AND CHILDREN NEEDING SPECIAL PROTECTION

Political, economic, social, cultural and other factors may increase the negative effects of HIV/AIDS on children. These effects are most acute for children living in refugee and displaced persons' camps, children in detention, children living in institutions, as well as children living in extreme poverty, children living in situations of armed conflict, child soldiers, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children.

A. Children affected and orphaned by HIV/AIDS

Legal, economic and social protection must be afforded to affected children to ensure their access to education, inheritance, shelter and health and social services.

The critical implications of proof of identity for children affected by HIV/AIDS must be emphasised, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS.

The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatisation and discrimination. In this respect, both law and practice should support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. The capacity of families and communities need to be strengthened so that they can provide vulnerable children with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.

Orphans are best protected and cared for when efforts are made to enable siblings to remain together, and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore the best way to care for orphans. Assistance must be provided so that, to the maximum extent possible, children can remain within existing family structures. This option may not be available due to the impact HIV/AIDS has on the extended family. In that case, States parties should provide, as far as possible, for family-type alternative care (e.g. foster care). States are encouraged to provide support, financial and otherwise, when necessary, to child-headed households. They must ensure that their strategies recognise that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to assist communities in determining how best to provide support to the orphans living there. Any form of institutionalised care for children should only serve as a measure of last resort. Measures must be fully in place to protect the rights of the child and guard against all forms of abuse and exploitation. In keeping with the right of children to special protection and assistance

When institutions are set up, strict measures are needed to ensure that they meet specific standards of care and comply with legal protection safeguards. Limits must be placed on the length of time children spend in these institutions, and programmes must be developed to help any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities.

B. Victims of sexual and economic exploitation

States are under obligation to protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to prostitution networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development. States must also create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non-governmental entities engaged in these issues.

C. Victims of violence and abuse

States have the obligation to protect children from all forms of violence and abuse, whether at home, in school or other institutions, or in the community. Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected. There is also a risk of their being subjected to violence as a result of their being infected or affected by HIV/AIDS.

Programmes must be specifically adapted to the environment in which children live and their ability to recognize and report abuses and their individual capacity to obtain redress. In particular States must ensure that HIV/AIDS and child rights issues are addressed when supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. Active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, as part of national and community responses to HIV/AIDS.

D. Substance abuse

Policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention.

Programmes are needed that aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.

Recommendations - States are called upon:

(a) To adopt and implement **national and local HIV/AIDS-related policies**, including effective plans of action, strategies, and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention, the present General Comment and those of the United Nations General Assembly special session on children (2002);

(b) To **allocate financial, technical and human resources**, to the maximum extent possible, to supporting national and community-based action (art. 4)

(c) To review existing laws or enact new legislation with a view to **prohibit discrimination based on real or perceived HIV/AIDS status** so as to guarantee equal access for of all children to all relevant services, with particular attention to the child's right to privacy and confidentiality.

(d) To include HIV/AIDS plans of action, strategies, policies and programmes in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure, which responds specifically to complaints of neglect or violation of the rights of the child

(e) To reassess their **HIV-related data collection and evaluation** to ensure that they adequately cover children as defined under the Convention, are disaggregated by age and gender ideally in five-year age groups, and include, as far as possible, children belonging to vulnerable groups and those in need of special protection;

(f) To include, in their reporting process to the UN Committee on Children's Rights information on national

HIV/AIDS policies and programmes and **budgeting and resource allocations at the national, regional and local levels, as well as within these breakdowns the proportions allocated to prevention, care, research and impact reduction**. Specific attention must be given to how far these programmes and policies explicitly recognise children (in the light of their evolving capacities) and their rights, and the extent to which HIV-related rights of children are dealt with in laws, policies and practices. States should explain what they consider to be the most important priorities within their jurisdiction in relation to children and HIV/AIDS, and to outline the

programme of activities they intend to pursue over the coming five years in order to address the problems identified. This would allow activities to be progressively assessed over time.

(g) In order to promote **international cooperation**, the Committee calls upon UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and other relevant international bodies, organisations and agencies to contribute systematically, at the national level, to do efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to work with the Committee to improve the rights of the child in the context of HIV/AIDS.

States are also called upon to ensure an enabling environment for participation by **civil society groups**, which includes facilitating collaboration and coordination among the various players, and that these groups are given the support needed to enable them to operate effectively without impediment. In this regard, States are specifically encouraged to support the full involvement of **people living with HIV/AIDS**, with particular attention to the inclusion of children, in the provision of HIV/AIDS prevention, care, treatment and support services.

GENERAL COMMENT No. 4 Adolescent health and development in the context of the Convention on the Rights of the Child

Adolescents have their own specific health and developmental needs. General Comment 4 aims to identify the main human rights that need to be promoted and protected in order to ensure that adolescents enjoy the highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and in society at large. It aims to raise awareness and provide States parties with guidance and support in their efforts to uphold, protect and fulfil these rights of adolescents.

Countries that have signed the Convention on the Rights of the Child must notably fulfil the following obligations towards adolescents:

- (a) Create a safe and supportive environment for adolescents, including within their family, in schools, in all types of institutions in which they may live, within their workplace and/or in the society at large;
- (b) Ensure that adolescents have access to the information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health behaviour choices;
- (c) Ensure that health facilities, goods and services, including counselling and health services for mental and sexual and reproductive health, of appropriate quality and sensitive to adolescents' concerns are available to all adolescents;
- (d) Ensure that adolescent girls and boys have the opportunity to participate actively in planning and programming for their own health and development;
- (e) Protect adolescents from all forms of labour which may jeopardize the enjoyment of their rights.
- (f) Protect adolescents from all forms of intentional and unintentional injuries, including those resulting from violence and road traffic accidents;
- (g) Protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation;
- (h) Ensure that adolescents belonging to especially vulnerable groups are fully taken into account in the fulfilment of all aforementioned obligations;
- (i) Implement measures for the prevention of mental disorders and the promotion of mental health of adolescents.

Adolescent Friendly Health Services have the following characteristics:

Availability at a primary health care level with special attention given to sexual and reproductive health and mental health;

- *Accessibility*. Health facilities, goods and services should be known and easily accessible (economically, physically and socially) to all adolescents.
- *Confidentiality* should be guaranteed, when necessary;
- *Acceptability*. All health facilities, goods and services should respect cultural values, be gender sensitive, be respectful of medical ethics and be acceptable to both adolescents and the communities in which they live;

- *Quality.* Health services and goods should be scientifically and medically appropriate, which requires personnel trained to care for adolescents, adequate facilities and scientifically accepted methods.

Implementation

Countries should develop and implement policies and programmes to promote the health and development of adolescents by:

- **providing parents (or legal guardians) with appropriate assistance** through the development of institutions, facilities and services that adequately support the well-being of adolescents, including, when needed, the provision of assistance and support with regard to nutrition, clothing and housing (art. 27 (3));
- providing adequate information and parental support to facilitate the development of a **relationship of trust and confidence** in which issues regarding, for example, sexuality and sexual behaviour and risky lifestyles, can be openly discussed so that acceptable solutions can be found that respect the adolescent's rights (art. 27 (3));
- **providing support and guidance to adolescent mothers and fathers** for both their own and their children's well-being (art. 24 (f), 27 (2-3));
- giving **special attention, guidance and support** to adolescents and parents (or legal guardians), whose traditions and norms may differ from those in the society where they live - while respecting the values and norms of ethnic and other minorities,
- ensuring that **interventions in the family** to protect the adolescent are in accordance with laws and procedures that conform to the principles of the UN Convention.
- **Creating a safe and supportive environment** through addressing attitudes and actions of both the immediate environment of the adolescent - family, peers, schools and services - as well as the wider environment created by, inter alia, community and religious leaders, the media, national and local policies and legislation
- **Providing appropriate guidance to adolescents in the exercise of rights.** They need to be recognized as active rights holders who have the capacity to become full and responsible citizens, given the proper guidance and direction.
- **Respecting for the views of the child** - adolescents need to be given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities, and public authorities. Parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents' participating equally including in decision-making processes.
- **Upholding the right to non-discrimination** - adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.
- **Supporting quality education** - *"Education must also be aimed at ensuring that ... no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills should include ... the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle [and] good social relationships ..."*

"States parties should provide a safe and supportive environment for adolescents that ensures the opportunity to participate in decisions affecting their health, to build life skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-sensitive health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services."

General Comment on Health (GC 14) endorsed by GC 4.

SUMMARY OF GENERAL COMMENT No. 6 (CRC/GC/2005/6)

TREATMENT OF UNACCOMPANIED & SEPARATED CHILDREN OUTSIDE THEIR COUNTRY OF ORIGIN

This general comment draws attention to the particularly vulnerable situation of unaccompanied and separated children; outlines the challenges to their rights faced by such children; and provides guidelines on the special protection, care and proper treatment of these children based principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.

Challenges facing unaccompanied and separated children

This Comment is needed because of an increasing number of such children and the issues they face of sexual exploitation and abuse, military recruitment, child labour and detention. They are also often denied access to food, shelter, housing, health services and education. There is a need for proper identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice.

In many countries, these children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures - or their asylum claims are not handled in an age and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose such conditions as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.

Structure and scope of the general comment

This general comment applies to unaccompanied and separated children who find themselves outside their country of nationality (consistent with article 7) or, if stateless, outside their country of habitual residence. It is acknowledged that all human rights, including those contained in the Convention, are indivisible and interdependent.

Definitions

“Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

“Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

A “child as defined in article 1 of the Convention”, means “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.

“Country of origin” is the country of nationality or, in the case of a stateless child, the country of habitual residence.

Applicable principles

(a) Rights apply to all children. State obligations under the Convention apply to each child within the State’s territory and to all children subject to its jurisdiction (art. 2). Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

The obligations of the State include passing laws and regulations, setting up administrative structures and conducting the necessary research, information, data compilation and comprehensive training activities to support such measures.

The particular vulnerability of unaccompanied and separated children, explicitly recognized in article 20 of the Convention, must be taken into account and will result in making the assignment of available resources to such children a priority.

(b) Non-discrimination (art. 2) prohibits any unfair discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society.

(c) Best interests of the child as a primary consideration in the search for short and long-term solutions (art. 3). This requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques. A competent guardian should be appointed as soon as possible and if they are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

(d) The right to life, survival and development (art. 6) obliges the State to protect children from violence and exploitation and includes protection from such risks as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Practical measures could include priority procedures for child victims of trafficking, the prompt appointment of guardians, the provision of information to children about the risks they may encounter, and measures to provide follow-up to children particularly at risk, and regular evaluation on their effectiveness.

(e) Right of the child to express his or her views freely (art. 12) and for these to be taken into account. Children's opinions should be sought, and children are to be provided with all relevant information concerning their situation and the services available to them. Children's views should also be taken into account with regard to decisions on guardianship, care and accommodation arrangements, and legal representation. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. Where necessary, interpreters should be made available at all stages of the procedure.

(f) Respect for the principle of non-refoulement (non-return) when it is against human rights

States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.

(g) Confidentiality - States must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (art. 16).

The General Comment adds detailed guidelines on child-friendly procedures for:

- (a) Initial assessment and measures
- (b) Appointment of a guardian or adviser and legal representative (arts. 18 (2) and 20 (1))
- (c) Care and accommodation arrangements (arts. 20 and 22)
- (d) Full access to education (arts. 28, 29 (1) (c), 30 and 32)
- (e) Right to an adequate standard of living (art. 27)
- (f) Right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (arts. 23, 24 and 39)
- (g) Prevention of trafficking and of sexual and other forms of exploitation, abuse and violence (arts. 34, 35 and 36)
- (h) Prevention of military recruitment and protection against effects of war (arts. 38 and 39)
- (i) Child-specific forms and manifestations of persecution
- (j) Rehabilitation and recovery
- (k) Prevention of deprivation of liberty and treatment in cases thereof be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

Access to the asylum procedure, legal safeguards and rights in asylum

(a) General – States have the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights.

(b) Access to asylum procedures, regardless of age .

(c) Procedural safeguards and support measures (art. 3 (3)) - An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests. Such child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.

Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.

Minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. The interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the history, culture and background of the child, and the child's personal, family and cultural background.

(d) Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature - Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status.

Staff involved in status-determination procedures of children should receive training on adopting an application of international and national refugee law that is child, cultural, and gender-sensitive. Information on the situation of children, including those belonging to minorities or marginalized groups, should be included in government efforts to collect country-of-origin information.

(e) Full enjoyment of all international refugee and human rights by children granted refugee status (art. 22) - Unaccompanied or separated children recognised as refugees and granted asylum do not only enjoy rights under the 1951 Refugee Convention, but are also entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

(f) Children to benefit from complementary forms of protection - children who are neither granted refugee status nor benefiting from complementary forms of protection, will still enjoy protection under all norms of the Convention as long as they remain de facto within the States' territories and/or subject to its jurisdiction.

Family reunification, return and other forms of durable solutions

(a) General. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification. Tracing is an essential component of any and should be prioritised except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardise fundamental rights of those being traced.

For all children who remain in the territory of the host State a durable solution must be sought.

(b) Family reunification. All efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views. While the considerations explicitly listed in article 9, paragraph 1, sentence 2, namely, cases involving abuse or neglect of the child by the parents, may prohibit reunification at any location, other best-interests considerations can provide an obstacle to reunification at specific locations only. These considerations may include

a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented in the granting of refugee status and the granting

of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower level risks, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

States are particularly reminded that "applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10 (1)). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10 (2)).

(c) Return to the country of origin

Return to the country of origin is not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. In principle such return should only be considered if it is in the best interests of the child, taking into account:

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

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

(d) Local integration

Once it has been decided that a child will remain in the community, the relevant authorities should conduct an assessment of the child's situation and then, in consultation with the child and his or her guardian, determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate such integration. At this stage, institutional care should, wherever possible, serve only as a last resort. The child should have the same access to rights (including to education, training, employment and health care) as enjoyed by national children. In ensuring that these rights are fully enjoyed by the child a host country may need to pay special attention to any extra measures required including, for example, extra language training.

(e) Intercountry adoption (art. 21)

States must have full respect for the preconditions in the Convention as well as other relevant documents such as the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption and its 1994 Recommendation Concerning the Application to Refugee and other Internationally Displaced Children, States should, in particular, observe the following:

- Adoption should only be considered once it has been established that the child is in a position to be adopted – for example that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption.
- The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed;
- unaccompanied or separated children must not be adopted in haste at the height of an emergency;
- any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary law;
- the views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption. Such consent must have been given freely and not induced by payment or compensation of any kind.

- Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture;

Adoption should not be considered where there is reasonable hope of successful tracing and family reunification is in the child's best interests, nor if it is contrary to the expressed wishes of the child or the parents. A reasonable time must have passed during which all feasible steps to trace the parents or other surviving family members have been carried out. Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future.

(f) Resettlement in a third country may offer a durable solution for an accompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly called for if such is the only means to effectively and sustainably protect a child against *refoulement* or against persecution or other serious human rights violations in the country of stay. Resettlement is also in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.

The best-interests assessment determination, prior to a decision to resettle, needs also to take into account other factors such as:

- the envisaged duration of legal or other obstacles to a child's return to his or her home country; the child's right to preserve his or her identity, including nationality and name (art. 8);
- the child's age, sex, emotional state, educational and family background;
- continuity or discontinuity of care in the host country;
- the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20);
- the right of the child to preserve his or her family relations (art. 8) and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country.

Unaccompanied or separated children should never be resettled to a third country if this would undermine or seriously hamper future reunion with their family.

States are encouraged to provide resettlement opportunities in order to meet all the resettlement needs related to unaccompanied and separated children.

Training, data and statistics

Specialised training is important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.

The development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.

GENERAL COMMENT NO 7 (2005): IMPLEMENTING CHILD RIGHTS IN EARLY CHILDHOOD

Young children are holders of all the human rights enshrined in the Convention and in the South African Constitution. This follows from taking into account of the principle of the universality, indivisibility and interdependence of all human rights

The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. They are

entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights.

The basis for all the rights of the child is the principle of 'best interests' of that child. These best interests take into account the following factors:

- (a) **Rapid growth and change:** young children experience the most rapid period of growth and change during the human lifespan, in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities, and rapid shifts in their interests and abilities;
- (b) **Young children need strong emotional attachments to their parents or other caregivers,** from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing: young children establish their own important relationships with children of the same age, as well as with younger and older children. Through these relationships they learn to negotiate and coordinate shared activities, resolve conflicts, keep agreements and accept responsibility for others.
The Committee notes the growing body of theory and research which confirms that young children are best understood as social actors whose survival, well-being and development are dependent on and built around close relationships
- (d) **Learning progressively from their activities and their interactions with others,** young children actively make sense of the physical, social and cultural dimensions of the world they inhabit;
- (f) **Varied experiences:** young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems;
- (g) **Cultural beliefs are powerful:** young children's experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community. Traditional values should be respected, provided these are not discriminatory, (article 2 of the Convention) nor prejudicial to children's health and well-being (art. 24.3), nor against their best interests (art. 3)

Young children's earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity, and developing competencies.

Research has highlighted the particular risks to young children from malnutrition, disease, poverty, neglect, social exclusion and a range of other adversities. It shows that proper prevention and intervention strategies during early childhood have the potential to impact positively on young children's current well-being and future prospects. Implementing child rights in early childhood is thus an effective way to help prevent personal, social and educational difficulties during middle childhood and adolescence

Right to life, survival and development. Article 6 refers to the child's inherent right to life and States parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. **States parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives.**

A young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. **Young children growing up in especially difficult circumstances require particular attention**

- **young children in general must not be discriminated against**
- **particular groups of young children must not be discriminated against.**
- Young children may also suffer the consequences of **discrimination against their parents,**

The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights:

14. **Respect for the views and feelings of the young child.** Article 12 states that the child has a right to express his or her views freely in all matters affecting the child, and to have them taken into account. This right reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. **Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity.** In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12.1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. **They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language.**
In this regard:

To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child's interests, levels of understanding and preferred ways of communicating.

A crucial role for parents and other primary caregivers.

The preamble to the Convention refers to **the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.**

Parents/primary caregivers and children's best interests. The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in "the exercise by the child of the rights in the ... Convention". This applies equally to younger as to older children. **Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights.**

Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer "direction and guidance" in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).¹

Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent,

involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations), or where they are provided with low-quality institutional care.

The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where young children's well-being may be at risk. States parties' overall goals should include reducing the number of young children abandoned or orphaned, as well as minimizing the numbers requiring institutional or other forms of long-term care, except where this is judged to be in a young child's best interests (see also section VI below).

The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children. **These trends are especially significant for young children, whose physical, personal and psychological development is best provided for within a small number of consistent, caring relationships.**

Early childhood is the period of most extensive (and intensive) parental responsibilities related to all aspects of children's well-being covered by the Convention: their survival, health, physical safety and emotional security, standards of living and care, opportunities for play and learning, and freedom of expression. Accordingly, realizing children's rights is in large measure dependent on the well-being and resources available to those with responsibility for their care. Recognizing these interdependencies is a sound starting point for planning assistance and services to parents, legal guardians and other caregivers. For example:

(a) **An integrated approach** would include interventions that impact indirectly on parents' ability to promote the best interests of children (e.g. taxation and benefits, adequate housing, working hours) as well as those that have more immediate consequences (e.g. perinatal health services for mother and baby, parent education, home visitors);

(b) Providing **adequate assistance** should take account of the new roles and skills required of parents, as well as the ways that demands and pressures shift during early childhood - for example, as children become more mobile, more verbally communicative, more socially competent, and as they begin to participate in programmes of care and education;

(c) Assistance to parents will **include provision of parenting education**, parent counselling and other quality services for mothers, fathers, siblings, grandparents and others who from time to time may be responsible for promoting the child's best interests;

(d) Assistance also includes offering support to parents and other family members in ways that **encourage positive and sensitive relationships with young children and enhance understanding of children's rights and best interests.**

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

States parties are urged to develop rights-based, coordinated, multisectoral strategies in order to ensure that children's best interests are always the starting point for service planning and provision. These should be based around a systematic and integrated approach to law and policy development in relation to all children up to 8 years old. A comprehensive framework for early childhood services, provisions and facilities is required, backed up by information and monitoring systems. Comprehensive services will be coordinated with the assistance provided to parents and will fully respect their responsibilities, as well as their circumstances and requirements (as in articles 5 and 18 of the Convention; see section IV above). Parents should also be consulted and involved in the planning of comprehensive services.

States parties must ensure that the institutions, services and facilities responsible for early childhood conform to quality standards, particularly in the areas of health and safety, and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained. Provision of services appropriate to the circumstances, age and individuality of young children requires that all staff be trained to work with this age group. Work with young children should be socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women. It is essential that they have sound, up-to-date theoretical and practical understanding about children's rights and development (see also paragraph 41); that they adopt appropriate child-centred care practices, curricula and pedagogies; and that they have access to specialist professional resources and support, including a supervisory and monitoring system for public and private programmes, institutions and services.

Standard of living and social security. Young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development (art. 27). The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation.

Growing up in relative poverty undermines children's well-being, social inclusion and self-esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life.

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

(a) States parties have a responsibility to **ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment.**

Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential. The same applies to obesity and unhealthy lifestyles;

(b) States parties have a responsibility to implement children's right to health by encouraging **education in child health and development**, including about the advantages of breastfeeding, nutrition, hygiene and sanitation.

Priority should also be given to the provision of appropriate prenatal and post-natal health care for mothers and infants in order to foster healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver) (art. 24.2). Young children are themselves able to contribute to ensuring their personal health and encouraging healthy lifestyles among their peers, for example through participation in appropriate, child-centred health education programmes;

(c) The Committee wishes to draw States parties' attention to the particular **challenges of HIV/AIDS for early childhood**. All necessary steps should be taken to:

(i) prevent infection of parents and young children, especially by intervening in chains of transmission, especially between father and mother and from mother to baby;

(ii) provide accurate diagnoses, effective treatment and other forms of support for both parents and young children who are infected by the virus (including antiretroviral therapies); and

(iii) ensure adequate alternative care for children who have lost parents or other primary caregivers due to HIV/AIDS, including healthy and infected orphans. (See also general comment No. 3 (2003) on HIV/AIDS and the rights of the child.)

30. The Committee calls on States parties to ensure that all young children receive education in the broadest sense (as outlined in paragraph 28 above), which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions.

Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term social adjustment.

31. **Community-based programmes.** The Committee recommends that States parties support early childhood development programmes, including home- and community-based preschool programmes, in which the empowerment and education of parents (and other caregivers) are main

features. **States parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school.**

They are encouraged to construct high-quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather than by imposing a standardized approach to early childhood care and education.

The Committee also recommends that States parties pay greater attention to, and actively support, a rights-based approach to early childhood programmes, including initiatives surrounding transition to primary school that ensure continuity and progression, in order to build children's confidence, communication skills and enthusiasm for learning through their active involvement in, among others, planning activities.

Early childhood professionals - in both the State and non-State sectors - should be provided with thorough preparation, ongoing training and adequate remuneration. In this context, States parties are responsible for service provision for early childhood development. The role of civil society should be complementary to - not a substitute for - the role of the State. **Where non-State services play a major role, the Committee reminds States parties that they have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served.**

Right to rest, leisure and play. The Committee notes that insufficient attention has been given by States parties and others to the implementation of the provisions of article 31 of the Convention, which guarantees "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts". **Play is one of the most distinctive features of early childhood.** Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is often hindered by a shortage of opportunities for young children to meet, play and interact in child-centred, secure, supportive, stimulating and stress-free environments.

Children's right-to-play space is especially at risk in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children.

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

GENERAL COMMENT No. 9 (2006)

The rights of children with disabilities

I. Introduction

A. Why a General Comment on children with disabilities?

Most of the causes of disabilities, such as war, illness and poverty, are preventable and there is a need also, to prevent and/or reduce the secondary impacts of disabilities, often caused by the lack of early/timely intervention.

The problems identified and addressed have varied from exclusion from decision-making processes to severe discrimination and actual killing of children with disabilities. Poverty being both a cause and a consequence of disability, the Committee has repeatedly stressed that children with disabilities and their families have the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of their living conditions. The problem of children with disabilities living in poverty should be addressed by allocating adequate budgetary resources as well as by ensuring that children with disabilities have access to social protection and poverty reduction programmes.

The real problem is not the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers.

B. Definition

7. According to article 1, paragraph 2, of the draft convention on the rights of persons with disabilities, "Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

Discrimination

Article 2 requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. This obligation requires States to take appropriate measures to prevent all forms of discrimination, including on the ground of disability.

Discrimination takes place in various aspects of the life and development of children with disabilities. As an example, social discrimination and stigmatization leads to their marginalization and exclusion, and may even threaten their survival and development if it goes as far as physical or mental violence against children with disabilities. Discrimination in service provision excludes them from education and denies them access to quality health and social services. The lack of appropriate education and vocational training discriminates against them by denying them job opportunities in the future. Social stigma, fears, overprotection, negative attitudes, misbeliefs and prevailing prejudices against children with disabilities remain strong in many communities and lead to the marginalization and alienation of children with disabilities.

Actions to take against discrimination

In general, States parties in their efforts to prevent and eliminate all forms of discrimination against children with disabilities should take the following measures:

- (a) Include explicitly disability as a forbidden ground for discrimination in constitutional provisions such as a Bill of Rights.
- (b) Provide for effective remedies in case of violations of the rights of children with disabilities, and ensure that those remedies are easily accessible to children with disabilities and their parents and/or others caring for the child.
- (c) Conduct awareness-raising and educational campaigns targeting the public at large and specific groups of professionals with a view to preventing and eliminating discrimination against children with disabilities.

10. Girls with disabilities are often even more vulnerable and States parties are requested to take the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.

B. Article 23

The leading principle with respect to children with disabilities is their right to enjoy a full and decent life in conditions that ensure dignity, promote self reliance and facilitate active participation in the community

The core message of this paragraph is including children with disabilities in the society. Measures taken for the implementation of the rights contained in the Convention regarding children with disabilities, for example in the areas of education and health, should explicitly aim at the maximum inclusion of those children in society.

12. According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care.

(a) The provision of special care and assistance is subject to available resources and free of charge whenever possible. The Committee urges States parties to make special care and assistance to children with disabilities a matter of high priority and to invest to the maximum extent of available resources in the elimination of discrimination against children with disabilities and towards their maximum inclusion in society.

(b) Care and assistance shall be designed to ensure that children with disabilities have effective access to and benefit from education, training, health care services, recovery services, preparation for employment and recreation opportunities. The Committee when dealing with specific articles of the Convention will elaborate on the measures necessary to achieve this.

III. General measures of implementation

A. Legislation

States parties undertake a comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate.

B. National plans of action and policies

"to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes" (A/AC.265/2006/4, annex II). It is also essential that all programmes be adequately supplied with financial and human resources and equipped with built-in monitoring mechanisms, for example, indicators allowing accurate outcome measurements. Another factor that should not be overlooked is the importance of including all children with disabilities in policies and programmes.

C. Data and statistics

19. In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflect the actual situation of children with disabilities.

D. Budget

20. Allocation of budget: in the light of article 4 "...States parties shall undertake such measures to the maximum extent of their available resources...".

Resources allocated to children with disabilities should be sufficient --and earmarked so that they are not used for other purposes-- to cover all their needs, including programmes established for training professionals working with children with disabilities such as teachers, physiotherapists and policymakers; education campaigns; financial support for families; income maintenance; social security; assistive devices; and related services. Furthermore, funding must also be ensured for other programmes aimed at including children with disabilities into mainstream education, inter alia by renovating schools to render them physically accessible to children with disabilities.

E. Coordination body: "Focal point for disabilities"

21. Services for children with disabilities are often delivered by various governmental and non-governmental institutions, and more often than not, these services are fragmented and not coordinated which result in overlapping of functions and gaps in provisions

F. International cooperation and technical assistance

Particular attention should be paid to developing countries that need assistance in setting up and/or funding programmes that protect and promote the rights of children with disabilities. The process of knowledge exchange is also valuable in sharing updated medical knowledge and good practices, such as early identification and community-based approaches to early intervention and support to families, and addressing common challenges.

G. Independent monitoring

National human rights institutions can take many shapes or forms such as an Ombudsman or a Commissioner and may be broad-based or specific. Whatever mechanism is chosen, it must be:

- (a) Independent and provided with adequate human and financial resources;
- (b) Well known to children with disabilities and their caregivers;

- (c) Accessible not only in the physical sense but also in a way that allows children with disabilities to send in their complaints or issues easily and confidentially; and
(d) It must have the appropriate legal authority to receive, investigate and address the complaints of children with disabilities in a manner sensitive to both their childhood and to their disabilities.

H. Civil society

25. Although caring for children with disabilities is an obligation of the State, NGOs often carry out these responsibilities without the appropriate support, funding or recognition from Governments. States parties are therefore encouraged to support and cooperate with NGOs enabling them to participate in the provision of services for children with disabilities and to ensure that they operate in full compliance with the provisions and principles of the Convention

I. Dissemination of knowledge and training of professionals

26. Knowledge of the Convention and its specific provisions devoted to children with disabilities is a necessary and powerful tool to ensure the realization of these rights.

As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification. These professionals include but are not limited to policymakers, judges, lawyers, law enforcement officers, educators, health workers, social workers and media staff among others.

IV. General principles

Best interests:

It addresses legislators who are entrusted with setting the legal framework for protecting the rights of children with disabilities as well as the decisions-making processes concerning children with disabilities. Article 3 should be the basis on which programmes and policies are set and it should be duly taken into account in every service provided for children with disabilities and any other action affecting them.

30. The best interests of the child is of particular relevance in institutions and other facilities that provide services for children with disabilities as they are expected to conform to standards and regulations and should have the safety, protection and care of children as their primary consideration, and this consideration should outweigh any other and under all circumstances, for example, when allocating budgets.

Article 6 - Right to life, survival and development

31. The inherent right to life, survival and development is a right that warrants particular attention where children with disabilities are concerned. In many countries of the world children with disabilities are subject to a variety of practices that completely or partially compromise this right.

Article 12 - Respect for the views of the child

32. More often than not, adults with and without disabilities make policies and decisions related to children with disabilities while the children themselves are left out of the process. It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities. In order for this principle to be respected, children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically.

Children should be provided with whatever mode of communication they need to facilitate expressing their views. Furthermore, States parties should support the training for families and professionals on promoting and respecting the evolving capacities of children to take increasing responsibilities for decision-making in their own lives.

However it should be noted that spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities catering to these essential aspects of any child's life is either totally lacking or minimal.

Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.

V. Civil rights and freedoms

A. Birth registration

35. Children with disabilities are disproportionately vulnerable to non-registration at birth.

B. Access to appropriate information and mass media

This knowledge is extremely valuable as it does not only enable them to adjust and live better with their disabilities, but also allows them to be more involved in and to make informed decisions

about their own care. Children with disabilities should also be provided with the appropriate technology and other services

C. Accessibility to public transportation and facilities

39. The physical inaccessibility of public transportation and other facilities, including governmental buildings, shopping areas, recreational facilities among others, is a major factor in the marginalization and exclusion of children with disabilities and markedly compromises their access to services, including health and education. Although this provision may be mostly realized in developed countries, it remains largely un-addressed in the developing world. All States parties are urged to set out appropriate policies and procedures to make public transportation safe, easily accessible to children with disabilities, and free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child.

40. All new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, governmental buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.

VI. Family environment and alternative care (arts. 5, 18 (1-2), 9-11, 19-21, 25, 27 (4), and 39)

A. Family support and parental responsibilities

41. Children with disabilities are best cared for and nurtured within their own family environment provided that the family is adequately provided for in all aspects. Such support to families includes education of parent/s and siblings, not only on the disability and its causes but also on each child's unique physical and mental requirements; psychological support that is sensitive to the stress and difficulties imposed on families of children with disabilities; education on the family's common language, for example sign language, so that parents and siblings can communicate with family members with disabilities; material support in the form of special allowances as well as consumable supplies and necessary equipment, such as special furniture and mobility devices that is deemed necessary for the child with a disability to live a dignified, self-reliant lifestyle, and be fully included in the family and community. In this context, **support should also be extended to children who are affected by the disabilities of their caregivers.** For example, a child living with a parent or other caregiver with disabilities should receive the support that would protect fully his or her rights and allow him or her to continue to live with this parent whenever it is in his or her best interests. Support services should also include different forms of respite care, such as care assistance in the home and day-care facilities directly accessible at community level. Such services enable parents to work, as well as relieve stress and maintain healthy family environments.

B. Violence, abuse and neglect

42. Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, inter alia alternative care, work environment and community at large.

Their particular vulnerability may be explained inter alia by the following main reasons:

- (a) Their inability to hear, move, and dress, toilet, and bath independently increases their vulnerability to intrusive personal care or abuse;
- (b) Living in isolation from parents, siblings, extended family and friends increases the likelihood of abuse;
- (c) Should they have communication or intellectual impairments, they may be ignored, disbelieved or misunderstood should they complain about abuse;
- (d) Parents or others taking care of the child may be under considerable pressure or stress because of physical, financial and emotional issues in caring for their child. Studies indicate that those under stress may be more likely to commit abuse;
- (e) Children with disabilities are often wrongly perceived as being non-sexual and not having an understanding of their own bodies and, therefore, they can be targets of abusive people, particularly those who base abuse on sexuality.

43. In addressing the issue of violence and abuse, States parties are urged to take all necessary measures for the prevention of abuse of and violence against children with disabilities, such as:

- (a) Train and educate parents or others caring for the child to understand the risks and detect the signs of abuse of the child;
- (b) Ensure that parents are vigilant about choosing caregivers and facilities for their children and improve their ability to detect abuse;
- (c) Provide and encourage support groups for parents, siblings and others taking care of the child to assist them in caring for their children and coping with their disabilities;

- (d) Ensure that children and caregivers know that the child is entitled as a matter of right to be treated with dignity and respect and they have the right to complain to appropriate authorities if those rights are breached;
- (e) Ensure that schools take all measures to combat school bullying and pay particular attention to children with disabilities providing them with the necessary protection while maintaining their inclusion into the mainstream education system;
- (f) Ensure that institutions providing care for children with disabilities are staffed with specially trained personnel, subject to appropriate standards, regularly monitored and evaluated, and have accessible and sensitive complaint mechanisms;
- (g) Establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles (see paragraph 24 above);
- (h) Take all necessary legislative measures required to punish and remove perpetrators from the home ensuring that the child is not deprived of his or her family and continue to live in a safe and healthy environment;
- (i) Ensure the treatment and re-integration of victims of abuse and violence with a special focus on their overall recovery programmes.

44. In this context the Committee would also like to draw States parties' attention to the report of the independent expert for the United Nations study on violence against children (A/61/299) which refers to children with disabilities as a group of children especially vulnerable to violence.

C. Family-type alternative care

45. The role of the extended family, which is still a main pillar of childcare in many communities and is considered one of the best alternatives for childcare, should be strengthened and empowered to support the child and his or her parents or others taking care of the child. Organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with disability.

D. Institutions

47. The Committee has often expressed its concern at the high number of children with disabilities placed in institutions and that institutionalization is the preferred placement option in many countries. The quality of care provided, whether educational, medical or rehabilitative, is often much inferior to the standards necessary for the care of children with disabilities either because of lack of identified standards or lack of implementation and monitoring of these standards

48. The Committee is concerned at the fact that children with disabilities are not often heard in separation and placement processes. In general, decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child's life and future. Therefore, the Committee recommends that States parties continue and strengthen their efforts to take into consideration the views of children with disabilities and facilitate their participation in all matters affecting them within the evaluation, separation and placement process in out-of-home care, and during the transition process. The Committee also emphasizes that children should be heard throughout the protection measure process, before making the decision as well as during and after its implementation

VII. Basic health and welfare

(arts. 6, 18 (3), 23, 24, 26, and 27 (1-3))

A. Right to health

51. Attainment of the highest possible standard of health as well as access and affordability of quality healthcare is an inherent right for all children. Children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities. Another factor is the absence of targeted health care programmes that address the specific needs of children with disabilities. Health policies should be comprehensive and address early detection of disabilities, early intervention, including psychological and physical treatment, rehabilitation including physical aids, for example limb prosthesis, mobility devices, hearing aids and visual aids.

The importance of community-based assistance and rehabilitation strategies should be emphasized when providing health services for children with disabilities. States parties must ensure that health professionals working with children with disabilities are trained to the highest possible standard and practice based on a child-centred approach

B. Prevention

53. Causes of disabilities are multiple and, therefore, the quality and level of prevention vary. Inherited diseases that often cause disabilities can be prevented in some societies that practice consanguineous marriages and under such circumstances public awareness and appropriate pre-conception testing would be recommended. Communicable diseases are still the cause of many disabilities around the world and immunization programmes need to be stepped up aiming to achieve universal immunization against all preventable communicable diseases. Poor nutrition has a long-term impact upon children's development and it can lead to disabilities, such as blindness caused by Vitamin A deficiency. The Committee recommends that States parties introduce and strengthen prenatal care for children and ensure adequate quality of the assistance given during the delivery. It also recommends that States parties provide adequate post-natal health-care services

54. Domestic and road traffic accidents are a major cause of disability in some countries and policies of prevention need to be established and implemented such as the laws on seat belts and traffic safety. Lifestyle issues, such as alcohol and drug abuse during pregnancy, are also preventable causes of disabilities and in some countries the fetal alcohol syndrome presents a major cause for concern. Public education, identification and support for pregnant mothers who may be abusing such substances are just some of the measures that may be taken to prevent such causes of disability among children. Hazardous environment toxins

55. Armed conflicts and their aftermath, including availability and accessibility of small arms and light weapons, are also major causes of disabilities.

C. Early identification

56. Very often, disabilities are detected quite late in the child's life, which deprives him or her of effective treatment and rehabilitation. Early identification requires high awareness among health professionals, parents, teachers as well as other professionals working with children. They should be able to identify the earliest signs of disability and make the appropriate referrals for diagnosis and management. Therefore, the Committee recommends that States parties establish systems of early identification and early intervention as part of their health services, together with birth registration and procedures for following the progress of children identified with disabilities at an early age. Services should be both community- and home-based, and easy to access. Furthermore, links should be established between early intervention services, pre-schools and schools to facilitate the smooth transition of the child.

57. Following identification, the systems in place must be capable of early intervention including treatment and rehabilitation providing all necessary devices

D. Multidisciplinary care

58. Children with disabilities very often have multiple health issues that need to be addressed in a team approach

E. Adolescent health and development

59. The Committee notes that children with disabilities are, particularly during their adolescence, facing multiple challenges and risks in the area of establishing relationships with peers and reproductive health. Therefore, the Committee recommends that States parties provide adolescents with disabilities with adequate, and where appropriate, disability specific information, guidance and counselling and fully take into account the Committee's general comments No. 3 (2003) on HIV/AIDS and the rights of the child and No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child.

60. The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.

F. Research

61. Causes, prevention and management of disabilities do not receive the much needed attention on national and international research agendas. States parties are encouraged to award this issue priority status ensuring funding and monitoring of disability focused research paying particular attention to ethical implications.

VIII. Education and leisure (arts. 28, 29 and 31)

A. Quality education

62. Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention⁴

The Convention recognizes the need for modification to school practices and for training of regular teachers to prepare them to teach children with diverse abilities and ensure that they achieve positive educational outcomes.

63. As children with disabilities are very different from each other, parents, teachers and other specialized professionals have to help each individual child to develop his or her ways and skills of communication, language, interaction, orientation and problem-solving which best fit the potential of this child. Everybody, who furthers the child's skills, abilities and self-development, has to precisely observe the child's progress and carefully listen to the child's verbal and emotional communication in order to support education and development in a well-targeted and most appropriate manner.

B. Self-esteem and self-reliance

Inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has recognized identity and belongs to the community of learners, peers, and citizens. Peer support enhancing self-esteem of children with disabilities should be more widely recognized and promoted. Education also has to provide the child with empowering experience of control, achievement, and success to the maximum extent possible for the child.

C. Education in the school system

65. Early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions. Early intervention is of utmost importance to help children to develop their full potential.

Primary education, including primary school and, in many States parties, also secondary school, has to be provided for children with disabilities free of costs.

Also higher education, accessible on the basis of capacities, has to be accessible for qualified adolescents with disabilities.

D. Inclusive education

66. Inclusive education⁵ should be the goal of educating children with disabilities persons including children with disabilities are not excluded from the general education system on the basis of disability and that they receive the support required, within the general education system, to facilitate their effective education. It encourages States parties which have not yet begun a programme toward

A continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future.

Inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs. Close cooperation among special educators and regular educators is essential. Schools' curricula must be re-evaluated and developed to meet the needs of children with and without disabilities. Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.

E. Career education and vocational training

68. Education for career development and transition is for all persons with disabilities regardless of their age. It is imperative to begin preparation at an early age because career development is seen as a process that begins early and continues throughout life. Developing career awareness and vocational skills as early as possible, beginning in the elementary school, enables children to make better choices later in life in terms of employment. Career education in the elementary school does not mean using young children to perform labour that ultimately opens the door for economic exploitation. It begins with students choosing goals according to their evolving capacities in the early years. It should then be followed by a functional secondary school curriculum that offers adequate skills and access to work experience, under systematic coordination and monitoring between the school and the work place.

69. Career development and vocational skills should be included in the school curriculum. Career awareness and vocational skills should be incorporated into the years of compulsory education. In countries where compulsory education does not go beyond the elementary school years, vocational training beyond elementary school should be mandatory for children with disabilities. Governments must establish policies and allocate sufficient funds for vocational training.

F. Recreation and cultural activities

70. The Convention stipulates in article 31 the right of the child to recreation and cultural activities appropriate to the age of the child. This article should be interpreted to include mental, psychological as well as the physical ages and capabilities of the child. Play has been recognized as the best source of learning various skills, including social skills. The attainment of full inclusion of children with disabilities in the society is realized when children are given the opportunity, places, and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities.

71. Children with disabilities should be provided with equal opportunities to participate in various cultural and arts activities as well as sports. These activities must be viewed as both medium of expression and medium of realizing self-satisfying, quality of life.

G. Sports

72. Competitive and non-competitive sports activities must be designed to include children with disabilities in an inclusive manner, whenever possible. That is to say, a child with a disability who is able to compete with children with no disability should be encouraged and supported to do so. But sports are an area where, because of the physical demands of the sport, children with disabilities will often need to have exclusive games and activities where they can compete fairly and safely. It must be emphasized though that when such exclusive events take place, the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities.

IX. Special protection measures

(arts. 22, 38, 39, 40, 37 b-d, and 32-36)

A. Juvenile justice system

a) A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;

Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;

Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment

B. Economic exploitation

75. Children with disabilities are particularly vulnerable to different forms of economic exploitation, including the worst forms of child labour as well as drug trafficking and begging.

C. Street children

76. Children with disabilities, specifically physical disabilities, often end up on the streets for a variety of reasons, including economic and social factors. Children with disabilities living and/or working on the streets need to be provided with adequate care, including nutrition, clothing, housing, educational opportunities, life-skills training as well as protection from the different dangers including economic and sexual exploitation. In this regard an individualized approach is necessary which takes full account of the special needs and the capacities of the child. The Committee is particularly concerned that children with disabilities are sometimes exploited for the purpose of begging in the streets or elsewhere; sometimes disabilities are inflicted on children for the purpose of begging. States parties are required to take all necessary actions to prevent this form of exploitation and to explicitly criminalize exploitation in such manner and take effective measures to bring the perpetrators to justice.

D. Sexual exploitation

States parties should pay particular attention to the protection of children with disabilities recognizing their particular vulnerability

E. Children in armed conflict

F. Refugee and internally displaced children, children belonging to minorities and indigenous children

The Committee strongly emphasizes that refugee and internally displaced children with disabilities should be given high priority for special assistance, including preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration.

SUMMARY of GENERAL COMMENT No. 11 (2009)

INDIGENOUS CHILDREN AND THEIR RIGHTS UNDER THE CONVENTION

INTRODUCTION

1. In the preamble of the Convention on the Rights of the Child, States parties take "*due account of the importance and cultural values of each people for the protection and harmonious development of the child*".
2. Article 30 of the Convention states that "*In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.*"
3. Furthermore, article 29 of the Convention provides that "*education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*".
4. Article 17 of the Convention also makes specific mention as States parties shall "*encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous*".
5. Indigenous children require special measures in order to fully enjoy their rights. They continue to experience serious discrimination contrary to article 2 of the Convention in range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment.
12. **The primary objective** of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children.
13. The general comment explores the specific challenges which impede indigenous children from being able to fully enjoy their rights and highlights special measures required to be undertaken by States in order to guarantee the effective exercise of indigenous children's rights. Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of rights for indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, namely; non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard.

ARTICLE 30 AND GENERAL OBLIGATIONS OF STATES

16. The Committee recalls the close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for the right, in community with other members of his or her group, for a child to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.¹
17. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.²

18. In this context, the Committee also supports the Committee on the Elimination of Racial Discrimination in its call upon States parties *to recognise and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation.*³
20. The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned, and with the participation of children in the consultation process, as provided for by article 12 of the Convention. The Committee considers that consultations should be actively carried out in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue.
22. The Committee underlines that cultural practices provided by article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health and development. Should harmful practices be present, *inter alia* early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing attitudes and address gender roles and stereotypes that contribute to harmful practices.

GENERAL PRINCIPLES (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

23. Non-discrimination has been identified by the Committee as a general principle of fundamental importance for the implementation of all the rights enshrined in the Convention. Indigenous children have the inalienable right to be free from discrimination. In order to effectively protect children from discrimination, it is a State party obligation to ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible. The Committee highlights that the obligations of the State party extend not only to the public but also to the private sector.
24. The non-discrimination obligation requires States actively to identify individual children and groups of children 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 furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.
25. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice
26. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.
27. Public information and educational measures are to be taken to address the discrimination of indigenous children such as public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Furthermore, States parties should provide meaningful opportunities for indigenous and non indigenous children to understand and respect different cultures, religions, and languages.
28. In their periodic reports to the Committee, States parties should identify measures and programs undertaken to address discrimination of indigenous children in relation to the Declaration and Program of Action adopted at the 2001 World Conference against Racism Discrimination, Xenophobia and Related Intolerance¹¹.
29. In the design of special measures, States parties should consider the needs of indigenous children who may face multiple facets of discrimination and also take into account the different situation of

indigenous children in rural and urban situations. Particular attention should be given to girls in order to ensure that they enjoy their rights on an equal basis as boys. States parties should furthermore ensure that special measures address the rights of indigenous children with disabilities.

Best interests of the child

30. The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the best interests of the child cannot be neglected or violated in preference for the best interests of the group.
31. As regards legislation, policies and programmes that affect indigenous children, in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.
32. The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests.
33. The principle of the best interests of the child requires States to undertake active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests. In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child.

The right to life, survival and development

34. The Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact on their survival and development. The Committee is furthermore concerned over the high infant and child mortality rates as well as malnutrition and diseases among indigenous children. Article 4 obliges States parties to address economic, social and cultural rights to the maximum extent of their available resources and where needed with international co-operation. Articles 6 and 27 provide the right of children to survival and development as well as an adequate standard of living, and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children.
35. The Committee reiterates its understanding of development of the child as set out on its general comment No. 5, as a "holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development." The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture. States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children's right to life, survival and development to the maximum extent possible.

Respect for the views of the child

37. 38. With regards to the individual indigenous child, the State party has the obligation to respect the child's right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one's opinion.

39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they are consulted on all matters affecting them. The State party should ensure that this principle is applied in particular in the school environment, alternative care settings and in the community in general.

CIVIL RIGHTS AND FREEDOMS
(arts. 7, 8, 13-17 and 37 (a) of the Convention)

Access to information

40. The Committee underlines the importance that the media have particular regard for the linguistic needs of indigenous children; in accordance with articles 17(d) and 30 of the Convention. The Committee encourages States parties to support indigenous children to have access to media in their own languages. The Committee underlines the right of indigenous children to access information, including in their own languages, in order for them to effectively exercise their right to be heard.

Birth registration, nationality and identity

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality.
42. Therefore, States parties should take special measures such as mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.
43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.
44. Furthermore, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity.
45. A child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

46. States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27(3) of the Convention¹⁸.
47. States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children.
48. Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and, in accordance with article 20 (3) of the Convention, pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Specially targeted policy measures should be developed, if necessary and in consultation with indigenous communities in order to reduce the number of indigenous children placed in alternative care and prevent the loss of their cultural identity. Special measures to ensure that the child can maintain his or her cultural identity should be undertaken.

BASIC HEALTH AND WELFARE

49. 50. The Committee urges States parties to take special measures to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children and notes that States parties have a positive duty to ensure that indigenous children have equal access to health services and to combat malnutrition as well as infant, child and maternal mortality.

51. Health services should to the greatest extent possible be community based and planned and administered in co-operation with the peoples concerned. Special consideration should be given to ensure that health care services are culturally sensitive and that information about these is available in indigenous languages. Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.
52. Health care workers and medical staff from indigenous communities play an important role by serving as a bridge between traditional medicine and conventional medical services and preference should be given to employment of local indigenous community workers. States parties should encourage the role of these workers by providing them with the necessary means and training in order to enable that conventional medicine be used by indigenous communities in a way that is mindful of their culture and traditions. The Committee recalls article 25(2) of the ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.
53. States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and post natal care, child and adolescent health, vaccinations, communicable diseases (in particular HIV/AIDS and tuberculosis,), hygiene, environmental sanitation and the dangers of pesticides and herbicides..
54. Regarding adolescent health, States parties should consider specific strategies in order to provide indigenous adolescents with access to sexual and reproductive information and services, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted infections (STIs).
55. In certain States suicide rates for indigenous children are significantly higher than for non indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, establishing and maintaining a dialogue with the indigenous community.

EDUCATION

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives include the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies. States are encouraged to refer to the Committee's General Comment No. 1 on the aims of education for further guidance.
57. The implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples.
58. States parties are responsible for protecting children from all forms of discrimination as and for actively combating racism. States parties should ensure that the curricula, educational materials and history text books provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples. Discriminatory practices, such as restrictions on the use cultural and traditional dress, should be avoided in the school setting.
59. States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child.
60. In order for indigenous children to enjoy their right to education on equal footing with non-indigenous children, States parties should ensure a range of special measures to this effect. States parties should allocate targeted financial, material and human resources in order to implement

policies and programmes which specifically seek to improve the access to education for indigenous children. Education programmes and services should be developed and implemented in co-operation with the peoples concerned to address their specific needs. Furthermore, governments should recognise the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. States should undertake all reasonable efforts to ensure that indigenous communities are aware of the value and importance of education and of the significance of community support for school enrolment.

61. States parties should ensure that school facilities are easily accessible where indigenous children live. The school cycle should take into account and seek to adjust to cultural practices as well as agricultural seasons and ceremonial periods. States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.
62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Article 28 of the ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country. Bilingual and inter-cultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.
63. The Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights.

SPECIAL PROTECTION MEASURES

Children in armed conflict and refugee children

64. Through its periodic reviews of State parties' reports, the Committee has concluded that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest, where they continue to face risks of being victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community.
66. States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned.
67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities.
68. Indigenous children who have been displaced or become refugees should be given special attention and humanitarian assistance in a culturally sensitive manner.

Economic exploitation

69. All children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development - distinguishing child labour that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture, on the other.
70. Provisions in the Convention on the Rights of the Child refer to the use of children in illicit production and trafficking of drugs (article 33), sexual exploitation (article 34), trafficking in children (article 35), children in armed conflicts (article 38). These provisions are closely related to the definition of the worst forms of child labour under the ILO Convention No. 182.

For the effective elimination of exploitative child labour States parties must identify the existing barriers to education and the specific rights and needs of indigenous children with respect to school education and vocational training. This requires that special efforts be taken to maintain a

dialogue with indigenous communities and parents regarding the importance and benefits of education. Analysis of the structural root causes of child exploitation must be made from data collection, and prevention programmes, with adequate allocation of financial and human resources by the State party, should be carried out in consultation with indigenous communities and children.

Sexual exploitation and trafficking

72. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.
73. States should, in consultation with indigenous communities, including children, design preventive measures and allocate targeted financial and human resources for their implementation. Preventive measures should be based on studies which include documentation of the patterns of violations and analysis of root causes.

Juvenile justice

74. The Committee notes with concern that incarceration of indigenous children is often disproportionately high and in some instances may be attributed to systemic discrimination from within the justice system and/or society. States are required to undertake measures to deal with children alleged as, accused of, or recognised as having infringed the penal law without resorting to judicial proceedings, whenever appropriate. The arrest, detention or imprisonment of a child may be used only as a measure of last resort.
75. States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child. The United Nations Guidelines for the Prevention of Juvenile Delinquency encourage the development of community programmes for the prevention of juvenile delinquency. States parties should seek to support, in consultation with indigenous peoples, the development of community based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.
76. All children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.
77. Professionals involved in law enforcement and the judiciary should receive appropriate training on the content and meaning of the provisions of the Convention and its Optional Protocols, including the need to adopt special protection measures for indigenous children and other specific groups.
78. Ratification of the Convention on the Rights of the Child obliges States parties to take action to ensure the realisation of all rights in the Convention for all children within their jurisdiction, and to ensure that the exercise of the rights of indigenous children is fully protected against any acts of the State party by its legislative, judicial or administrative authorities or by any other entity or person within the State party.
79. States parties should ensure that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 4 of the Convention requires States parties to undertake measures to implement the Convention to the maximum extent of their available resources. Article 42 sets out that States parties are further required to ensure that children and adults are provided information on the principles and provisions of the Convention.
80. In order to effectively implement the rights of the Convention for indigenous children, States parties need to adopt appropriate legislation in accordance with the Convention. Adequate resources should be allocated and special measures adopted in a range of areas in order to effectively ensure that indigenous children enjoy their rights on equal level with non-indigenous children. Further efforts should be taken to collect and disaggregate data and develop indicators to

evaluate the degree of implementation of the rights of indigenous children. In order to develop policy and programming efforts in a culturally sensitive manner, States parties should consult with indigenous communities and directly with indigenous children. Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights.

81. The Committee calls for States parties to better integrate information, when applicable, in their periodic reports to the Committee on the implementation of indigenous children's rights and on the adoption of special measures in this regard.
82. Finally, the Committee urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No.169 and the United Nations Declaration on the Rights of Indigenous Peoples. In order to guarantee effective monitoring of the implementation of the rights of indigenous children, States parties are urged to strengthen direct cooperation with indigenous communities and, if required, seek technical cooperation from international agencies, including UN entities. Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations.

UNITED NATIONS GENERAL COMMENT No. 12 (2009): The right of the child to be heard

Article 12 of the Convention on the Rights of the Child provides:

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

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

A. INTRODUCTION

The right of all children to be heard and taken seriously is one of the four general principles of the Convention, the others being the right to **non-discrimination**, the right to **life and development**, and the primary consideration of **the child's best interests**. Participation is not only a right in itself, but should also be considered in the interpretation and implementation of all other rights.

The term "participation is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.

The Committee notes that, this right continues to be impeded by many long-standing practices and attitudes, as well as political and economic barriers. In particular certain groups of children, including younger boys and girls, as well as children belonging to marginalised and disadvantaged groups, face particular barriers in the realisation of this right. The Committee also remains concerned about the quality of many of the practices that do exist. There is a need for a better understanding of what article 12 entails and how to fully implement it for every child.

The right to be heard and to be taken seriously applies to both an individual child to a group of children and States should consider children collectively as a group to be heard. States should encourage the child to form a free view and should provide an environment that enables the child to exercise her or his right to be heard. The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation.

The concept of participation emphasises that **including children** should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives. The child is an active holder of rights that he or she can exercise, and is not just a passive subject of rights for protection or dependency by adults.

Governments that have signed the Convention are under a strict obligation to make sure all children have this right - by finding out the views of the child in all matters affecting her or him and then giving due weight to those views.

"Capable of forming his or her own views"

States shall assure the right to be heard to every child "capable of forming his or her own views". They should presume that a child **does** have the capacity to form her or his own views and they should recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity. Note that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him.

In this respect, the Committee underlines the following:

- First, the right to participation is "... anchored in the child's daily life from the earliest stage".⁵ Research shows that the child is able to form views from the youngest age, even when she or he may be unable to express them verbally.⁶ Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences;
- Second, it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter;
- Third, children experiencing difficulties in making their views heard should be assisted, for instance, children with disabilities. Efforts must also be made to recognise the right to expression of views for minority, indigenous and migrant children and other children who do not speak the majority language;
- Lastly, States must undertake all necessary measures to ensure that the right to be heard is exercised ethically - ensuring full protection of the child.

"The right to express those views freely" means without pressure and choosing whether or not she or he wants to exercise her or his right to be heard. The child must be informed about the facts, options and possible decisions to be taken and their consequences, by those hearing her or his opinions and by the child's parents or guardian. The child must also be informed about the conditions under which she or he will be asked to express her or his views. This right to information is essential, because it is the precondition of the child's clarified decisions.

"In all matters affecting the child" - the child must be heard if the matter under discussion affects the child. There should be a wide interpretation of such *matters* as this helps to include children in the social processes of their community and society. \

"Being given due weight in accordance with the age and maturity of the child"

- the capacity of the child has to be assessed in order to give due weight to her or his views, or also to communicate to the child the way in which those views have influenced the outcome of the process.
- Due weight means that simply listening to the child is not enough; the views of the child have to be seriously considered
- age alone cannot determine the significance of a child's views. The views of the child have to be assessed on a case-by-case examination because the child's capacity is linked to his or her experience, environment, social and cultural expectations, knowledge and levels of support.
- Maturity refers to the ability of the child to understand and to express her or his views on issues in a reasonable and independent manner. The impact of the matter on the child must also be taken into consideration. The greater the impact of the outcome on the life of the child, the more relevant is the appropriate assessment of the maturity of that child.

The right "to be heard in any judicial and administrative proceedings affecting

the child” has to be provided “in any judicial and administrative proceedings affecting the child” - including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Proceedings may include, for example, decisions about children’s education, health, environment, living conditions, or protection. Proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption.

Laws and regulations should require decision makers in judicial or administrative proceedings **to explain** what consideration they gave to the views of the child and the consequences for the child.

Proceedings must be both accessible and child-appropriate. Information must be child-friendly and provided in a child-friendly manner. There should be adequate support for the child to give opinions (self-advocacy), appropriately trained staff, child friendly design of court rooms, clothing of judges and lawyers, sight screens for privacy, and separate waiting rooms.

“Either directly, or through a representative or an appropriate body” - when the child has decided to be heard, he or she will have to decide how to be heard. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings. But if the child chooses to have a representative, it is of utmost importance that the child’s views are transmitted correctly to the decision maker by the representative. The representative must represent exclusively the interests of the child and not the interests of other persons **Codes of conduct** should be developed for representatives who are appointed to represent the child’s views.

“In a manner consistent with the procedural rules of national law”- States are encouraged to comply with the basic rules of fair proceedings, such as the right to a defence and the right to access one’s own files.

Steps for the implementation of the child’s right to be heard

(a) Preparation - the decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard.

(b) The hearing - The context has to be enabling and encouraging, so that the child can be sure that the adult who is responsible for the hearing is willing to listen and seriously consider what he or she has decided to communicate. Experience indicates that the situation should have the format of a talk rather than a one-sided examination. Preferably, a child should not be heard in open court, but under conditions of confidentiality.

(c) Assessment of the capacity of the child - If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue.

(d) Information about the weight given to the views of the child (the feedback) - the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered. This forms part of the records of the case and ensures that the views of the child are not only heard as a formality, but are taken seriously. The child is given an opportunity to insist, to agree or to make another proposal or, in the case of a judicial or administrative procedure, to file an appeal or a complaint.

(e) Complaints, remedies and redress - Legislation is needed to provide children with complaint procedures and remedies when their participation right is disregarded and violated. Children should have the possibility of appealing to a impartial authority such as an ombudsperson, or a person of a comparable role in all children’s institutions, including schools and day-care centres. In the case of family conflicts, a child should be able to turn to a person in the youth services of the community. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment.

3. Obligations of States parties

(a) Core obligations of States parties

States must review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress.

- **Review and withdraw restrictive declarations** and reservations to article 12;
- **Establish independent human rights institutions**
- **Provide training** on article 12, and its application in practice, for all professionals working with, and for, children, including lawyers, judges, police, social workers, community workers, psychologists, caregivers, residential and prison officers, teachers at all levels of the educational system, medical doctors, nurses and other health professionals, civil servants and public officials, asylum officers and traditional leaders;
- **Establish laws and regulations** which are firmly anchored in laws and institutional codes and are regularly evaluated with regard to their effectiveness to ensure children can express their views, and that these views are given due weight
- **Combat negative attitudes**, which impede the full realisation of the child's right to be heard, through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child.

(b) Specific obligations with regard to judicial and administrative proceedings

- (i) **Civil cases:** The child's right to be heard in civil judicial proceedings such as divorce and separation, alternative care, adoption and *kafalah* of Islamic law
- (ii) **Criminal cases:** The child's right to be heard in penal judicial proceedings - the child offender, and the child victim and child witness
- (iii) **Administrative proceedings:** The child's right to be heard in administrative proceedings such as those to address discipline issues in schools (e.g. suspensions and expulsions), refusals to grant school certificates and performance-related issues, disciplinary measures and refusals to grant privileges in juvenile detention centres, asylum requests from unaccompanied children, and applications for driver's licences. In these matters a child should have the right to be heard and enjoy the other rights "consistent with the procedural rules of national law".

B. The right to be heard and the links with other provisions of the Convention

Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

The connection of article 12 to article 5 (evolving capacities of the child and appropriate direction and guidance from parents) is of special relevance, since it is crucial that the guidance given by parents takes account of the evolving capacities of the child.

Articles 12 and 'best interests' principle: The views of the child are crucial when making decisions on the best interest principle. If the best interests of large numbers of children are at stake, heads of institutions, authorities, or governmental bodies should provide opportunities to hear the concerned children and to give their views due weight when they plan actions.

Articles 12, 2 and 6: States shall take adequate measures to ensure participatory rights to every child without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. In some societies, customary attitudes and practices undermine and place severe limitations on the enjoyment of this right. States shall take adequate measures to raise awareness and educate the society about the negative impact of such attitudes and practices and to encourage attitudinal changes.

Article 29 and 6: child participation is a tool to stimulate the full development of the personality and the evolving capacities of the child, consistent with article 6 and with the aims of education article 29.

Articles 12, 13 and 17: Article 13, on the right to freedom of expression, and article 17, on access to information, are essential for the effective exercise of the right to be heard. Together with article 12, they assert that the child is entitled to exercise those rights on his or her own behalf, in accordance with her or his evolving capacities. Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. Article 13 by creating an environment of respect for children to express their views, contributes towards building children's capacities to exercise their right to freedom of expression. Article 17 is on the child's right to information, which is, to a large degree, necessary for the effective realisation of the right to express views. Children need access to information in formats appropriate to their age and capacities on all issues of concern to them. This applies to information on any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures. States should include children's rights in the school curricula. The media are an important means both of promoting awareness of the right of children to express their views, and of providing opportunities for the public expression of such views.

4. Articles 12 and 5: under Article 5 States must respect the responsibilities, rights and duties of parents, legal guardians, or members of the extended family or community as provided for by local custom, to give direction and guidance to the child. And under Article 12 the more the child himself or herself knows, has experience and understands, the more the parent, legal guardian (or other person legally responsible for the child) should transform direction and guidance into reminders and advice and later to an exchange on an equal footing. Children are entitled to an increasing level of responsibility for the regulation of matters affecting them, as they acquire capacities.

Article 12 and the implementation of child rights in general - the requirement of planning, working and developing in consultation with children is present throughout the Convention. The practice of including children applies to issues such as health, the economy, education and the environment, which are of interest to the child as an individual, and to groups of children and children in general.

C. The implementation of the right to be heard in different settings and situations

The right of the child to be heard has to be implemented in the diverse settings and situations in which children grow up, develop and learn. In these settings and situations, different concepts of the child and her or his role exist, which may invite or restrict children's involvement in everyday matters and crucial decisions. Various ways of influencing the implementation of the child's right to be heard are available, which States may use to foster children's participation.

1. In the family - a family where children can freely express views and be taken seriously from the earliest ages provides an important model, and is a preparation for the child to exercise the right to be heard in the wider society. The media should play a strong role in communicating to parents that their children's participation is of high value for the children themselves, their families and society.

2. In alternative care - children in all forms of alternative care, including in institutions, should be able to express their views and that those views be given due weight in matters of their placement, the regulations of care in foster families or homes and their daily lives.

3. In health care - the child's right to express his or her views and to participate in promoting healthy development and well-being. This applies to individual health-care decisions, as well as to children's involvement in the development of health policy and services.

4. In education and school respect for right of the child to be heard is fundamental to the realisation of the right to education. The Committee notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterise the reality of many schools and classrooms. Human rights education can shape the motivations and behaviours of children only when human rights are practised in the institutions in which the child learns, plays and lives together with other children and adults. Children's participation is indispensable for the

creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child-centred interactive learning. Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and in disciplinary measures. The Committee welcomes the expansion of peer education and peer counselling.

5. In play, recreation, sports and cultural activities- children require play, recreation, physical and cultural activities for their development and socialisation. These should be designed taking into account children's preferences and capacities.

6. In the workplace - children working at younger ages than permitted by laws and International Labour Organisation Conventions Nos. 138 (1973) and 182 (1999) have to be heard in child-sensitive settings in order to understand their views of the situation and their best interests.

7. In situations of violence - States should consult with children in the development and implementation of legislative, policy, educational and other measures to address all forms of violence. Particular attention needs to be paid to ensuring that marginalised and disadvantaged children, such as exploited children, street children or refugee children, are not excluded from consultative processes designed to elicit views on relevant legislation and policy processes. Much of the violence perpetrated against children goes unchallenged both because certain forms of abusive behaviour are understood by children as accepted practices, and because they have no one to whom they can report in confidence and safety about experienced maltreatment

8. Effective inclusion of children in protective measures requires that children be informed about their right to be heard and to grow up free from all forms of physical and psychological violence. States parties should oblige all children's institutions to establish easy access to individuals or organisations to which they can report in confidence and safety, including through telephone help-lines, and to provide places where children can contribute their experience and views on combating violence against children.

States should support and encourage children's organisations and child-led initiatives to address violence and to include these organisations in the elaboration, establishment and evaluation of anti-violence programmes and measures, so that children can play a key role in their own protection.

9. In immigration and asylum proceedings - children who come to a country following their parents in search of work or as refugees are in a particularly vulnerable situation, and need to be heard on all aspects of the immigration and asylum proceedings. In the case of migration, the child has to be heard on his or her educational expectations and health conditions in order to integrate him or her into school and health services. In the case of an asylum claim, the child must additionally have the opportunity to present her or his reasons leading to the asylum claim. These children have to be provided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings. A guardian or adviser should be appointed, free of charge. Asylum-seeking children may also need effective family tracing and relevant information about the situation in their country of origin to determine their best interests. Particular assistance may be needed for children formerly involved in armed conflict to allow them to pronounce their needs. Furthermore, attention is needed to ensure that stateless children are included in decision-making processes within the territories where they reside.

10. In emergency situations - children are able to make a significant contribution in conflict situations, post-conflict resolution and reconstruction processes following emergencies.²⁰ Children affected by emergencies should be encouraged and enabled to participate in analysing their situation and future prospects. Children's participation helps them to regain control over their lives, contributes to rehabilitation, develops organisational skills and strengthens a sense of identity. However, care needs to be taken to protect children from exposure to situations that are likely to be traumatic or harmful.

11. In national settings - structures for formal representative participation in local, district, regional, federal state and national levels are part of the many approaches to the implementation of article 12. Consulting hours of politicians and officials, open house and visits in schools and kindergartens create additional opportunities for communication.

Children should be supported and encouraged to form their own child-led organisations and initiatives, which will create space for meaningful participation and representation. In addition, children can contribute their perspectives, for example, on the design of schools, playgrounds, parks, leisure and cultural facilities, public libraries, health facilities and local transport systems in order to ensure more appropriate services. In community development plans that call for public consultation, children's views should be explicitly included.

Youth parliaments, councils and conferences provide forums for children to present their views and make them known to relevant audiences. NGOs and civil society organisations have developed practices to support children, which safeguard the transparency of representation and counter the risks of manipulation or tokenism.

Networking among child-led organisations should be actively encouraged to increase opportunities for shared learning and platforms for collective advocacy.

12. At the international level, children's participation at the World Summits for Children convened by the General Assembly in 1990 and 2002, and the involvement of children in the reporting process to the Committee on the Rights of the Child have particular relevance. The Committee welcomes written reports and additional oral information submitted by child organisations and children's representatives in the monitoring process of child rights implementation by States parties, and encourages States parties and NGOs to support children to present their views to the Committee.

In the outcome document "A world fit for children" States promised "to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels" (adopted by the twenty-seventh special session of the General Assembly).

The Committee has stated: "It is important that Governments develop a direct relationship with children, not simply one mediated through non-governmental organisations (NGOs) or human rights institutions."¹³

D. Basic requirements for the implementation of the right of the child to be heard

The Committee urges States parties to avoid tokenistic approaches, which limit children's expression of views, or which allow children to be heard, but fail to give their views due weight. It is not ethical to manipulate or place children in situations where they are told what they can say, or expose children to risk of harm through participation.

If participation is to be effective and meaningful, it needs to be understood as a process, not as an individual one-off event. Effective, ethical and meaningful participation means that all processes in which a child or children are heard and participate, must be:

- (a) **Transparent and informative**
- (b) **Voluntary**
- (c) **Respectful**
- (d) **Relevant**
- (e) **Child-;**
- (f) **Inclusive**
- (g) **Supported by training** of leaders and the children
- (h) **Safe and sensitive to risk**
- (i) **Accountable** – a commitment to follow-up and evaluation is essential.

E. Conclusions

Investment in the realisation of the child's right to be heard in all matters of concern to her or him and for her or his views to be given due consideration, is a clear and immediate legal obligation of States under the Convention.

It is the right of every child without any discrimination.

Achieving meaningful opportunities for the implementation of article 12 will necessitate dismantling the legal, political, economic, social and cultural barriers that currently impede children's opportunity to be heard and their access to participation in all matters affecting them. It requires a preparedness to challenge assumptions about children's capacities, and to encourage the development of environments in which children can build and demonstrate capacities. It also requires a commitment to resources and training.

Fulfilling these obligations will present a challenge. But it is an attainable goal if the strategies outlined in this general comment are systematically implemented and a culture of respect for children and their views is built.