

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	316
Land:	Diverse emner
Kilde:	FN's Børnekomité
Titel:	General Comment No. 5 (2003) - General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)
Udgivet:	27. november 2003
Optaget på baggrundsmaterialet:	13. maj 2024



Convention on the Rights of the Child

Distr.
GENERAL

CRC/GC/2003/5
27 November 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-fourth session
19 September-3 October 2003

GENERAL COMMENT No. 5 (2003)

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

FOREWORD

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

Article 4

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

I. INTRODUCTION

1. When a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it. Implementation is the process whereby States parties take action to ensure the realization of all rights in the Convention for all children in their jurisdiction.¹ Article 4 requires States parties to take "all appropriate legislative, administrative

and other measures” for implementation of the rights contained therein. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality of the human rights of children - needs to engage all sectors of society and, of course, children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in Government, parliament and the judiciary at all levels.²

2. In its periodic examination of States parties’ reports under the Convention, the Committee pays particular attention to what it has termed “general measures of implementation”. In its concluding observations issued following examination, the Committee provides specific recommendations relating to general measures. It expects the State party to describe action taken in response to these recommendations in its subsequent periodic report. The Committee’s reporting guidelines arrange the Convention’s articles in clusters,³ the first being on “general measures of implementation” and groups article 4 with article 42 (the obligation to make the content of the Convention widely known to children and adults; see, paragraph 66 below) and article 44, paragraph 6 (the obligation to make reports widely available within the State; see paragraph 71 below).

3. In addition to these provisions, other general implementation obligations are set out in article 2: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind ...”.

4. Also under article 3, paragraph 2, “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”

5. In international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the present general comment and which are referred to below.⁴

6. Article 4, while reflecting States parties’ overall implementation obligation, suggests a distinction between civil and political rights and economic, social and cultural rights in its second sentence: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.” There is no simple or authoritative division of human rights in general or of Convention rights into the two categories. The Committee’s reporting guidelines group articles 7, 8, 13-17 and 37 (a) under the heading “Civil rights and freedoms”, but indicate by the context that these are not the only civil and political rights in the Convention. Indeed, it is clear that many other articles, including articles 2, 3, 6 and 12 of the Convention, contain elements which constitute civil/political rights, thus reflecting the interdependence and indivisibility of all human rights. Enjoyment of economic, social and

cultural rights is inextricably intertwined with enjoyment of civil and political rights. As noted in paragraph 25 below, the Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.

7. The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation. When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation (see paragraph 60 below).

8. The sentence is similar to the wording used in the International Covenant on Economic, Social and Cultural Rights and the Committee entirely concurs with the Committee on Economic, Social and Cultural Rights in asserting that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances ...”.⁵ Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.

9. The general measures of implementation identified by the Committee and described in the present general comment are intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies - governmental and independent - comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes. One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities - children’s rights units at the heart of Government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children’s budgets and “state of children’s rights” reports, NGO coalitions on children’s rights, children’s ombudspersons and children’s rights commissioners and so on.

10. While some of these developments may seem largely cosmetic, their emergence at the least indicates a change in the perception of the child’s place in society, a willingness to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights.

11. The Committee emphasizes that, in the context of the Convention, States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.

12. The development of a children’s rights perspective throughout Government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of the following articles in the Convention identified by the Committee as general principles:

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

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

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

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

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

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

II. REVIEW OF RESERVATIONS

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

14. Article 2 of the Vienna Convention on the Law of Treaties defines "reservation" as a "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a Treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the Treaty in their application to that State". The Vienna Convention notes that States are entitled, at the time of ratification or accession to a treaty, to make a reservation unless it is "incompatible with the object and purpose of the treaty" (art. 19).

15. Article 51, paragraph 2, of the Convention on the Rights of the Child reflects this: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted". The Committee is deeply concerned that some States have made reservations which plainly breach article 51 (2) by suggesting, for example, that respect for the Convention is limited by the State's existing Constitution or legislation, including in some cases religious law. Article 27 of the Vienna Convention on the Law of Treaties provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

16. The Committee notes that, in some cases, States parties have lodged formal objections to such wide-ranging reservations made by other States parties. It commends any action which contributes to ensuring the fullest possible respect for the Convention in all States parties.

III. RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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

IV. LEGISLATIVE MEASURES

18. The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation. And while it is important that this review process should be built into the machinery of all relevant government departments, it is also advantageous to have independent review by, for example, parliamentary committees and hearings, national human rights institutions, NGOs, academics, affected children and young people and others.

19. States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems. This remains a challenge in many States parties. Of particular importance is the need to clarify the extent of applicability of the Convention in States where the principle of “self-execution” applies and others where it is claimed that the Convention “has constitutional status” or has been incorporated into domestic law.

20. The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation (see also paragraphs 40 et seq. below).

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

22. The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children’s rights statutes, which can highlight and emphasize the Convention’s principles. But the Committee emphasizes that it is crucial in addition that all relevant “sectoral” laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.

23. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41. The Committee emphasizes that the other international human rights instruments apply to all persons below the age of 18 years.

V. JUSTICIABILITY OF RIGHTS

24. For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.

25. As noted in paragraph 6 above, the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective.

VI. ADMINISTRATIVE AND OTHER MEASURES

26. The Committee cannot prescribe in detail the measures which each or every State party will find appropriate to ensure effective implementation of the Convention. But from its first

decade's experience of examining States parties' reports and from its ongoing dialogue with Governments and with the United Nations and United Nations-related agencies, NGOs and other competent bodies, it has distilled here some key advice for States.

27. The Committee believes that effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves. Invariably, many different government departments and other governmental or quasi-governmental bodies affect children's lives and children's enjoyment of their rights. Few, if any, government departments have no effect on children's lives, direct or indirect. Rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others.

A. Developing a comprehensive national strategy rooted in the Convention

28. If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.

29. The Committee commends the development of a comprehensive national strategy or national plan of action for children, built on the framework of the Convention. The Committee expects States parties to take account of the recommendations in its concluding observations on their periodic reports when developing and/or reviewing their national strategies. If such a strategy is to be effective, it needs to relate to the situation of all children, and to all the rights in the Convention. It will need to be developed through a process of consultation, including with children and young people and those living and working with them. As noted above (para. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.

30. Particular attention will need to be given to identifying and giving priority to marginalized and disadvantaged groups of children. The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of States. As noted above (para. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination.

31. To give the strategy authority, it will need to be endorsed at the highest level of government. Also, it needs to be linked to national development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes.

32. The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children. The comprehensive national strategy may be elaborated in sectoral national plans of action - for example for education and health - setting out specific goals, targeted implementation measures and allocation of financial and human resources. The strategy will inevitably set priorities, but it

must not neglect or dilute in any way the detailed obligations which States parties have accepted under the Convention. The strategy needs to be adequately resourced, in human and financial terms.

33. Developing a national strategy is not a one-off task. Once drafted the strategy will need to be widely disseminated throughout Government and to the public, including children (translated into child-friendly versions as well as into appropriate languages and forms). The strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public.

34. The “national plans of action” which States were encouraged to develop following the first World Summit for Children, held in 1990, were related to the particular commitments set by nations attending the Summit.⁹ In 1993, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, called on States to integrate the Convention on the Rights of the Child into their national human rights action plans.¹⁰

35. The outcome document of the United Nations General Assembly special session on children, in 2002, also commits States “to develop or strengthen as a matter of urgency if possible by the end of 2003 national and, where appropriate, regional action plans with a set of specific time-bound and measurable goals and targets based on this plan of action ...”.¹¹ The Committee welcomes the commitments made by States to achieve the goals and targets set at the special session on children and identified in the outcome document, *A World Fit for Children*. But the Committee emphasizes that making particular commitments at global meetings does not in any way reduce States parties’ legal obligations under the Convention. Similarly, preparing specific plans of action in response to the special session does not reduce the need for a comprehensive implementation strategy for the Convention. States should integrate their response to the 2002 special session and to other relevant global conferences into their overall implementation strategy for the Convention as a whole.

36. The outcome document also encourages States parties to “consider including in their reports to the Committee on the Rights of the Child information on measures taken and results achieved in the implementation of the present Plan of Action”.¹² The Committee endorses this proposal; it is committed to monitoring progress towards meeting the commitments made at the special session and will provide further guidance in its revised guidelines for periodic reporting under the Convention.

B. Coordination of implementation of children’s rights

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

38. The Committee believes that, as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties. There are many formal and informal ways of achieving effective coordination, including for example inter-ministerial and interdepartmental committees for children. The Committee proposes that States parties, if they have not already done so, should review the machinery of government from the perspective of implementation of the Convention and in particular of the four articles identified as providing general principles (see paragraph 12 above).

39. Many States parties have with advantage developed a specific department or unit close to the heart of Government, in some cases in the President's or Prime Minister's or Cabinet office, with the objective of coordinating implementation and children's policy. As noted above, the actions of virtually all government departments impact on children's lives. It is not practicable to bring responsibility for all children's services together into a single department, and in any case doing so could have the danger of further marginalizing children in Government. But a special unit, if given high-level authority - reporting directly, for example, to the Prime Minister, the President or a Cabinet Committee on children - can contribute both to the overall purpose of making children more visible in Government and to coordination to ensure respect for children's rights across Government and at all levels of Government. Such a unit can be given responsibility for developing the comprehensive children's strategy and monitoring its implementation, as well as for coordinating reporting under the Convention.

C. Decentralization, federalization and delegation

40. The Committee has found it necessary to emphasize to many States that decentralization of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State party's Government to fulfil its obligations to all children within its jurisdiction, regardless of the State structure.

41. The Committee reiterates that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions.

D. Privatization

42. The process of privatization of services can have a serious impact on the recognition and realization of children's rights. The Committee devoted its 2002 day of general discussion to the theme "The private sector as service provider and its role in implementing child rights", defining the private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit. Following that day of general discussion, the Committee adopted detailed recommendations to which it draws the attention of States parties.¹³

43. The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.

44. The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.

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

45. Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy.

46. Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions (see paragraph 65 below).

47. The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.

F. Data collection and analysis and development of indicators

48. Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation. The Committee reminds States parties that data collection needs to extend over the whole period of childhood, up to the age of 18 years. It also needs to be coordinated throughout the jurisdiction, ensuring nationally applicable indicators. States should collaborate with appropriate research institutes and aim to build up a complete picture of progress towards implementation, with qualitative as well as quantitative studies. The reporting guidelines for

periodic reports call for detailed disaggregated statistical and other information covering all areas of the Convention. It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in implementation, to identify problems and to inform all policy development for children. Evaluation requires the development of indicators related to all rights guaranteed by the Convention.

49. The Committee commends States parties which have introduced annual publication of comprehensive reports on the state of children's rights throughout their jurisdiction. Publication and wide dissemination of and debate on such reports, including in parliament, can provide a focus for broad public engagement in implementation. Translations, including child-friendly versions, are essential for engaging children and minority groups in the process.

50. The Committee emphasizes that, in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized. Interviewing children and using children as researchers (with appropriate safeguards) is likely to be an important way of finding out, for example, to what extent their civil rights, including the crucial right set out in article 12, to have their views heard and given due consideration, are respected within the family, in schools and so on.

G. Making children visible in budgets

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

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

H. Training and capacity-building

53. The Committee emphasizes States' obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children. These include, for example, community and religious leaders, teachers, social workers and other professionals,

including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others. Training needs to be systematic and ongoing - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must, of course, be promoted among children themselves, through the school curriculum and in other ways (see also paragraph 69 below and the Committee's General Comment No. 1 (2001) on the aims of education).

54. The Committee's guidelines for periodic reports mention many aspects of training, including specialist training, which are essential if all children are to enjoy their rights. The Convention highlights the importance of the family in its preamble and in many articles. It is particularly important that the promotion of children's rights should be integrated into preparation for parenthood and parenting education.

55. There should be periodic evaluation of the effectiveness of training, reviewing not only knowledge of the Convention and its provisions but also the extent to which it has contributed to developing attitudes and practice which actively promote enjoyment by children of their rights.

I. Cooperation with civil society

56. Implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves. The Committee recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults, and non-State services and organizations. The Committee concurs, for example, with general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, paragraph 42, of which states: "While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities."

57. Article 12 of the Convention, as already emphasized (see paragraph 12 above), requires due weight to be given to children's views in all matters affecting them, which plainly includes implementation of "their" Convention.

58. The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, child- and youth-led organizations and youth groups, parent and family groups, faith groups, academic institutions and professional associations. NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital.

59. The Committee welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children's human rights and urges Governments to give them non-directive support and to develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention, coming within the definition of "competent bodies" under article 45 (a), has in many cases given a real impetus to the process of implementation as well as reporting. The NGO Group for the Convention on the Rights of the Child has a very welcome, strong and supportive impact on the reporting process and other aspects of the Committee's work. The Committee underlines in its reporting guidelines that the process of preparing a report "should encourage and facilitate popular participation and public scrutiny of government policies".¹⁵ The media can be valuable partners in the process of implementation (see also paragraph 70).

J. International cooperation

60. Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation.¹⁶ The Charter of the United Nations (Arts. 55 and 56) identifies the overall purposes of international economic and social cooperation, and members pledge themselves under the Charter "to take joint and separate action in cooperation with the Organization" to achieve these purposes. In the United Nations Millennium Declaration and at other global meetings, including the United Nations General Assembly special session on children, States have pledged themselves, in particular, to international cooperation to eliminate poverty.

61. The Committee advises States parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product. This goal was reiterated along with other targets in the Monterrey Consensus, arising from the 2002 International Conference on Financing for Development.¹⁷ The Committee encourages States parties that receive international aid and assistance to allocate a substantive part of that aid specifically to children. The Committee expects States parties to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children's rights.

62. The Committee endorses the aims of the 20/20 initiative, to achieve universal access to basic social services of good quality on a sustainable basis, as a shared responsibility of developing and donor States. The Committee notes that international meetings held to review progress have concluded that many States are going to have difficulty meeting fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased. The Committee takes note of and encourages efforts being made to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP). As the central, country-led strategy for achieving the millennium development goals, PRSPs must include a strong focus on children's rights. The Committee urges Governments, donors and civil society to ensure that children are a prominent priority in the development of PRSPs and sectorwide approaches to development (SWApS). Both PRSPs

and SWAps should reflect children's rights principles, with a holistic, child-centred approach recognizing children as holders of rights and the incorporation of development goals and objectives which are relevant to children.

63. The Committee encourages States to provide and to use, as appropriate, technical assistance in the process of implementing the Convention. The United Nations Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR) and other United Nations and United Nations-related agencies can provide technical assistance with many aspects of implementation. States parties are encouraged to identify their interest in technical assistance in their reports under the Convention.

64. In their promotion of international cooperation and technical assistance, all United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children's rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.

K. Independent human rights institutions

65. In its general comment No. 2 (2002) entitled "The role of independent national human rights institutions in the protection and promotion of the rights of the child", the Committee notes that it "considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights". Independent human rights institutions are complementary to effective government structures for children; the essential element is independence: "The role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities."¹⁸ General comment No. 2 provides detailed guidance on the establishment and operation of independent human rights institutions for children.

Article 42: Making the Convention known to adults and children

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

66. Individuals need to know what their rights are. Traditionally in most, if not all, societies children have not been regarded as rights holders. So article 42 acquires a particular importance. If the adults around children, their parents and other family members, teachers and carers do not

understand the implications of the Convention, and above all its confirmation of the equal status of children as subjects of rights, it is most unlikely that the rights set out in the Convention will be realized for many children.

67. The Committee proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society. This should include information on those bodies - governmental and independent - involved in implementation and monitoring and on how to contact them. At the most basic level, the text of the Convention needs to be made widely available in all languages (and the Committee commends the collection of official and unofficial translations of the Convention made by OHCHR. There needs to be a strategy for dissemination of the Convention among illiterate people. UNICEF and NGOs in many States have developed child-friendly versions of the Convention for children of various ages - a process the Committee welcomes and encourages; these should also inform children of sources of help and advice.

68. Children need to acquire knowledge of their rights and the Committee places special emphasis on incorporating learning about the Convention and human rights in general into the school curriculum at all stages. The Committee's general comment No. 1 (2001) entitled "The aims of education" (art. 29, para. 1), should be read in conjunction with this. Article 29, paragraph 1, requires that the education of the child shall be directed to "... the development of respect for human rights and fundamental freedoms ...". The general comment underlines: "Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice whether at home, in school or within the community. Human rights education should be a comprehensive, lifelong process and start with the reflection of human rights values in the daily life and experiences of children."¹⁹

69. Similarly, learning about the Convention needs to be integrated into the initial and in-service training of all those working with and for children (see paragraph 53 above). The Committee reminds States parties of the recommendations it made following its meeting on general measures of implementation held to commemorate the tenth anniversary of adoption of the Convention, in which it recalled that "dissemination and awareness-raising about the rights of the child are most effective when conceived as a process of social change, of interaction and dialogue rather than lecturing. Raising awareness should involve all sectors of society, including children and young people. Children, including adolescents, have the right to participate in raising awareness about their rights to the maximum extent of their evolving capacities".²⁰

"The Committee recommends that all efforts to provide training on the rights of the child be practical, systematic and integrated into regular professional training in order to maximize its impact and sustainability. Human rights training should use participatory methods, and equip professionals with skills and attitudes that enable them to interact with children and young people in a manner that respects their rights, dignity and self-respect."²¹

70. The media can play a crucial role in the dissemination of the Convention and knowledge and understanding of it and the Committee encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.²²

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

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

71. If reporting under the Convention is to play the important part it should in the process of implementation at the national level, it needs to be known about by adults and children throughout the State party. The reporting process provides a unique form of international accountability for how States treat children and their rights. But unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.

72. The Convention explicitly requires States to make their reports widely available to the public; this should be done when they are submitted to the Committee. Reports should be made genuinely accessible, for example through translation into all languages, into appropriate forms for children and for people with disabilities and so on. The Internet may greatly aid dissemination, and Governments and parliaments are strongly urged to place such reports on their web sites.

73. The Committee urges States to make all the other documentation of the examination of their reports under the Convention widely available to promote constructive debate and inform the process of implementation at all levels. In particular, the Committee's concluding observations should be disseminated to the public including children and should be the subject of detailed debate in parliament. Independent human rights institutions and NGOs can play a crucial role in helping to ensure widespread debate. The summary records of the examination of government representatives by the Committee aid understanding of the process and of the Committee's requirements and should also be made available and discussed.

Notes

¹ The Committee reminds States parties that, for the purposes of the Convention, a child is defined as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier” (art. 1).

² In 1999, the Committee on the Rights of the Child held a two-day workshop to commemorate the tenth anniversary of adoption of the Convention on the Rights of the Child by the United Nations General Assembly. The workshop focused on general measures of implementation following which the Committee adopted detailed conclusions and recommendations (see CRC/C/90, para. 291).

³ General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a) of the Convention, CRC/C/5, 15 October 1991; General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996.

⁴ Human Rights Committee, general comment No. 3 (thirteenth session, 1981), *Article 2: Implementation at the national level*; Committee on Economic, Social and Cultural Rights, general comment No. 3 (fifth session, 1990), *The nature of States parties' obligations (article 2, paragraph 1, of the Covenant)*; also general comment No. 9 (nineteenth session, 1998), *The domestic application of the Covenant*, elaborating further on certain elements in general comment No. 3. A compendium of the treaty bodies' general comments and recommendations is published regularly by the Office of the High Commissioner for Human Rights (HRI/GEN/1/Rev.6).

⁵ General comment No. 3, HRI/GEN/1/Rev.6, para. 11, p. 16.

⁶ Human Rights Committee, general comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 et seq.

⁷ General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1 (b) of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 11.

⁸ World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.

⁹ World Summit for Children, "World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s", CF/WSC/1990/WS-001, United Nations, New York, 30 September 1990.

¹⁰ World Conference on Human Rights, Vienna, 14-25 June 1993, "Vienna Declaration and Programme of Action", A/CONF.157/23.

¹¹ *A World Fit for Children*, outcome document of the United Nations General Assembly special session on children, 2002, para. 59.

¹² *Ibid.*, para. 61 (a).

¹³ Committee on the Rights of the Child, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights", paras. 630-653.

¹⁴ General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child, CRC/C/58, 20 November 1996, para. 20.

¹⁵ *Ibid.*, para. 3.

¹⁶ The following articles of the Convention relate to international cooperation explicitly: articles 7 (2); 11 (2); 17 (b); 21 (e); 22 (2); 23 (4); 24 (4); 27 (4); 28 (3); 34 and 35.

¹⁷ Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/Conf.198/11).

¹⁸ HRI/GEN/1/Rev. 6, para. 25, p. 295.

¹⁹ Ibid., para. 15, p. 286.

²⁰ See CRC/C/90, para. 291 (k).

²¹ Ibid., para. 291 (l).

²² The Committee held a day of general discussion on the theme “The child and the media” in 1996, adopting detailed recommendations (see CRC/C/57, paras. 242 et seq.).

Annex I

RATIFICATION OF OTHER KEY INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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

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

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