

State Violence against Children¹

Outline

In accordance with rule 75 of its provisional rules of procedure, the Committee on the Rights of the Child has decided to devote periodically one day of general discussion to a specific article of the Convention or to a child rights theme.

The Committee believes that there is a need to increase further the attention given to violations of the right of children to be protected from all forms of torture, mistreatment and abuse. At its twenty-third session, in January 2000, the Committee decided to devote two annual days of general discussion (in September 2000 and September 2001) to the theme of Violence against children.

The purpose of the general discussions is to foster a deeper understanding of the contents and implications of the Convention as they relate to specific topics. The discussions are public. Government representatives, United Nations human rights mechanisms, as well as United Nations bodies and specialized agencies, non-governmental organizations and individual experts are invited to take part.

Background

The Committee has already held several discussion days on issues of relevance to this topic, including:

- in 1992 on children in armed conflict,
- in 1993 on economic exploitation of children,
- in 1994 on the role of the family in the promotion of the rights of the child,
- in 1995 on the administration of juvenile justice.

The Committee decided to divide the additional discussion of this topic into two different sessions, in order to permit more in-depth analysis. This division does not imply any conceptual distinction and should not be seen as negating the many aspects shared by all forms of violence against children, and in particular the fact that the root causes of such violence are often the same wherever it occurs. In order to have time for more detailed consideration, the Committee decided to focus the discussion on Violence against children in 2000 on State violence suffered by children living in institutions managed, licensed or supervised by the State, and in the context of “law and public order” concerns. In 2001, the focus will be on the problems of violence suffered by children in schools and within the family.

Theme for the day of general discussion on 22 September 2000: “State violence against children”

The Committee will explore the different aspects of the violence suffered by children at the hands of the State. The Convention on the Rights of the Child (in particular articles 37 and 40 and

¹ Excerpted from CRC/C/97, 25th Session, 22 September 2000.

article 19, but taking also into account the general principles contained in articles 2, 3, 6 and 12) establishes high standards for the protection of children against violence. Additional international instruments offer detailed guidance on the implementation of these provisions of the Convention. Yet, too often, children in the most vulnerable circumstances are the victims of unjustifiable violence at the hands of State officials.

The Convention enshrines the principle that parents and guardians bear the primary duty and responsibility for the upbringing of children, with the necessary support of the State (arts. 5 and 18). In addition, article 20 clearly states that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. Unfortunately, it is often children deprived of family protection who are most commonly victims of the worst forms of mistreatment and abuse, and too often such abuse takes place either at the hands of State agents or is made possible by their approval, tolerance or neglect. Thus, the Committee would like to study in detail the violence suffered by particularly vulnerable groups of children who are temporarily or permanently deprived of a family environment, which renders them more vulnerable to abuse.

Subthemes for discussion by working groups

The division of this issue into two subthemes for in-depth discussion by working groups will unavoidably lead to a certain amount of overlap between the working groups, while other relevant issues may receive less attention. The Committee is aware, in particular, that issues such as the impact of armed conflict on children, or the treatment of refugee and asylum-seeking children, have not been included. The Committee acknowledges their relevance to the discussion of State violence against children, but considers that such issues have already been the focus of attention during previous discussion days. They are also themes that receive specialized attention from other United Nations bodies and mechanisms, while the subthemes chosen have received less sustained attention from a child-rights perspective in the context of United Nations human rights activities. The working groups will concentrate on the following issues.

1. Mistreatment, abuse and neglect of children in the care of the State

The State has a particular obligation to protect from all forms of abuse those children deprived of a family environment who have been entrusted to its care (art. 20). This duty of special protection extends to children who have been placed for adoption or in foster care. However, the State can most easily take direct action to prevent violence against children placed in institutions which are managed by the State, either directly (public institutions) or through licensing and supervision systems (private institutions).

Violence committed against children living in institutions because they have been separated from their parents for the protection of their best interests (art. 9) or who have been placed in an institution by their own families because of disability (art. 23) is thus particularly unacceptable. Children are entitled to live in institutions that meet minimum standards for safety, health, number and suitability of staff, and supervision (art. 3 (3)). They have the right to be protected from high and unjustified mortality rates (art. 6). They are entitled to State protection from all forms of abuse by those who care for them (art. 19 (1)) and to live in conditions which respect their dignity, promote self-reliance and facilitate active participation in the community (art. 23 (1)).

2. Violence against children in the context of “law and public order” concerns

The Convention on the Rights of the Child excludes the imposition of capital punishment or life imprisonment sentences for offences committed by persons under 18 years (art. 37 (a)), yet such sentences persist in some States which have ratified the Convention.

At all stages of the juvenile justice process, children who are alleged to have committed offences are entitled to be treated “in a manner consistent with the promotion of the child’s sense of dignity and worth” (art. 40 (1)). Children have the right to be protected from all forms of torture and cruel, inhuman or degrading treatment or punishment (art. 37 (a)) and any other form of abuse (art. 19). Protection from violence should also cover violent treatment allowed under domestic law (e.g. flogging as a penalty, violent disciplinary measures, etc.). The right of children to be protected from such violence must extend to their contacts with police officers, as well as to custodial institutions and any other place of detention, and to children participating in any “diversionary” programme or subject to “alternative” measures.

Street children have been among the most vulnerable victims of the most extreme forms of violence, including extrajudicial or summary execution, in many countries. Such violence too often takes place at the hands of agents of the State, or at least with their encouragement or tolerance. Homeless children are particularly vulnerable to such violence, though children working in the streets are at great risk even if they are still living with their families. Violence against this group of children represents a particularly egregious violation of their rights (arts. 6 and 37), as it follows upon the failure of the State to offer protection and care to children whose rights are already under attack. Children living and/or working in the street are often deprived of a family environment (art. 20). They are often the subject of unacceptable economic exploitation (art. 32) and abuse (art. 19), including sexual abuse and exploitation (art. 34). In addition, many of these children are also in need of special protection against use and involvement in production and trafficking of narcotic drugs and psychotropic substances (art. 33).

Approach and objectives for the day of general discussion

The subject “State violence against children” is of particular relevance to a number of other United Nations human rights mechanisms. One objective of the discussion will be to facilitate the exchange of information and of the experience accumulated by different mechanisms in identifying the most productive approaches to the prevention and monitoring of human rights violations of this type.

The discussion may include issues such as the definitions of torture or abuse within the meanings of article 37 (a) and article 19 (1) of the Convention, or the position and roles of the perpetrators of violence and abuse and the legal approach to punishment and prosecution of violations. Both working groups will be expected to identify forms of violence allowed by domestic legislation and norms (and the resulting need for legislative reform) as well as violence committed in violation of existing domestic rules.

The Committee wishes to explore broader aspects of these themes, and the key objectives of the meeting will be:

- 1 To present, analyse and discuss the nature, extent, causes and consequences of violence against children as described above.

- 2 To present and discuss policies and programmes (including legislative and other measures) at the national and international levels to prevent and reduce these types of violence against children and to treat and rehabilitate victims of such violence.
- 3 To present recommendations focusing on concrete measures which should and could be taken by States parties to the Convention on the Rights of the Child to reduce and prevent violence against children in these circumstances.

Particular attention will be paid under all these aspects to the position and special vulnerability of girls, of children belonging to ethnic minorities and indigenous peoples, and of socio-economically marginalized children.

Participation in the day of general discussion

United Nations programmes and agencies are always invited to participate in the days of general discussion organized by the Committee on the Rights of the Child. Governments are also invited to attend and encouraged to participate actively. The meeting will be open to the public, with information on participation distributed to United Nations programmes and agencies, NGOs and other interested individuals and organizations.

The meeting will be held during the twenty-fifth session of the Committee, at the Office of the High Commissioner for Human Rights (Palais Wilson, Geneva) on Friday, 22 September 2000.

The Committee on the Rights of the Child invites written contributions on the issues and topics mentioned, within the framework outlined above. Contributions should be sent before 25 August 2000 (if possible in electronic version) to:

Secretariat, Committee on the Rights of the Child
Office of the High Commissioner for Human Rights, UNOG-OHCHR
CH-1211 Geneva 10
Switzerland
e-mail <mbustelo.hchr@unog.ch> or <pdavid.hchr@unog.ch>

For security reasons and due to limited space, participants at the meeting will be required to register. Participants should send their full name, organization and contact details (preferably by e-mail), before 6 September 2000, to the above address.

Summary of Discussion²

666. In the light of rule 75 of its provisional rules of procedure, the Committee on the Rights of the Child has decided periodically to devote one day of general discussion to a specific article of the Convention or to a theme in the area of the rights of the child in order to enhance understanding of the contents and implications of the Convention.

667. At its twenty-third session, in January 2000, the Committee decided to devote two annual days of general discussion (in September 2000 and September 2001) to the theme “Violence against children”.

² CRC/C/100.

668. In an outline prepared to guide the general discussion (for the full text of the outline, see CRC/C/97, annex VI), the Committee pointed out that:

- (a) The Committee has already held several discussion days on issues of relevance to this topic, including:
 - in 1992 on children in armed conflict;
 - in 1993 on economic exploitation of children;
 - in 1994 on the role of the family in the promotion of the rights of the child;
 - in 1995 on the administration of juvenile justice;
- (b) In order to have time for more detailed consideration, the Committee decided to focus the discussion of “Violence against children” in 2000 on State violence suffered by children living in institutions managed, licensed or supervised by the State, and in the context of “law and public order” concerns. In 2001, the focus will be on the problems of violence suffered by children in schools and within the family. This division does not imply any conceptual distinction and should not be seen as negating the many aspects shared by all forms of violence exerted against children;
- (c) Article 20 of the Convention clearly states that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. Unfortunately, it is often children deprived of family protection who are the most common victims of the worst forms of mistreatment and abuse, and too often such abuse takes place either at the hands of State agents or is made possible by their approval, tolerance or neglect;
- (d) The division of the discussion of State violence into two subthemes for in-depth discussion by working groups during the day of general discussion will unavoidably lead to a certain amount of overlap. The two working groups will concentrate on the following issues:
 - I. Working Group I, on “Mistreatment, abuse and neglect of children in the care of the State”: the State has a particular obligation to protect from all forms of abuse those children deprived of a family environment who have been entrusted to its care (Convention, art. 20). This duty of special protection extends to children who have been placed for adoption or in foster care. However, the State can most easily take direct action to prevent violence against children placed in institutions which are managed by the State, either directly (public institutions) or through licensing and supervision systems (private institutions),
 - II. Working Group II, on “Violence against children in the context of ‘law and public order’ concerns”: at all stages of the juvenile justice process, children who are alleged to have committed offences are entitled to be treated “in a manner consistent with the promotion of the child’s sense of dignity and worth” (art. 40.1). Children have the right to be protected from all forms of torture, cruel, inhuman or degrading treatment or punishment (art. 37 (a)) and any other form of abuse (art. 19). Street children have been among the most vulnerable victims of the most

extreme forms of violence, including extrajudicial or summary execution, in many countries. Homeless children are particularly vulnerable to such violence. Violence against this group of children represents a particularly egregious violation of their rights (arts. 6 and 37), as it follows upon the failure of the State to offer protection and care to children whose rights are already under attack;

- (e) The discussion may include issues such as the definitions of torture or abuse within the meanings of article 37 (a) and article 19 (1) of the Convention. However, the Committee wants to explore broader aspects of these themes, and the key objectives of the meeting will be:
- I. To present, analyse and discuss the nature, extent, causes and consequences of violence against children as described above;
 - II. To present and discuss policies and programmes (including legislative and other measures) at the national and international level to prevent and reduce these types of violence against children and to treat and rehabilitate victims of such violence;
 - III. And, in particular, to present recommendations focusing on concrete measures which should and could be taken by States parties to the Convention to reduce and prevent violence against children in these circumstances.

669. As for previous thematic discussions, the Committee invited representatives of United Nations organs, bodies and specialized agencies, as well as other competent bodies, including non-governmental organizations, research and academic organizations and individual experts, to contribute to the discussion. Several organizations and individual experts submitted contributions and other relevant documents on this theme. The list of these contributions is contained in annex VIII.

670. Representatives of the following organizations and bodies participated in the day of general discussion:

Governmental bodies

Ministry of Foreign Affairs of Sweden, Permanent Mission of Costa Rica to the United Nations Office at Geneva.

United Nations entities and specialized agencies

International Narcotics Control Board, UNICEF, UNHCR, OHCHR, ILO, WHO (and its European Regional Office).

Non-governmental organizations

Association for Down's Syndrome (Russia), All-Age Development Centre, Amnesty International, Association François-Xavier Bagnaud, Casa Alianza, Center for

Protection on the Rights of the Children Foundation (Thailand), Children's Human Rights Centre of Albania, Children's Rights Centre of Ghent University (Belgium), Christian Children's Europe Fund, Coalition Against Trafficking in Women, Consortium for Street Children (United Kingdom), Corporación Opción (Chile), Defence for Children International (DCI), Dignité en Détention, EPOCH-Worldwide, Fédération internationale de l'action des chrétiens pour l'abolition de la torture, Federation for the Protection of Children's Human Rights (Japan), Focal Point on Sexual Exploitation of Children, Foundation of Aboriginal and Torres Strait Islander Research Action (Australia), Human Rights Internet (Canada), Human Rights Watch, Humanitarian Law Project of International Educational Development, Inc., Institut international des droits de l'enfant (Switzerland), International Association for the Child's Right to Play, International Association of Youth and Family Judges and Magistrates, International Federation Terre des Hommes, Mouvement international ATD Quart Monde, Mouvement suisse contre l'enlèvement des enfants, NGO Group for the Convention on the Rights of the Child, Penal Reform International, Quakers United Nations Office, Radda Barnen Ethiopia, Radda Barnen Sweden, Save the Children UK, South African Human Rights Commission (NGO), TAPORI, University of Lincolnshire and Humberside (United Kingdom), University of Luton (United Kingdom), University of Hull Law School (United Kingdom), World Citizen's Movement to Protect Innocence in Danger, World Vision International.

Other organizations

International Committee of the Red Cross

671. Sir Nigel Rodley and Mr. Bruce Abramson also participated.

672. The meeting was opened by Ms. Ouedraogo, Chairperson of the Committee, who welcomed participants and guests and called attention to the serious problems of violence suffered by children. She mentioned inappropriate legislation, and reminded participants that the discussion was only the first of two, with the 2001 day of general discussion dealing with other forms of violence against children. She expressed the hope that the discussion would lead to the formulation of recommendations that would assist the Committee, States parties and other partners in the implementation of the Convention.

673. The first part of the morning session (see CRC/C/SR. 649) was devoted to statements by the High Commissioner for Human Rights, Mr. Antonio Silva Henriques Gaspar, the Rapporteur of the Committee on the Rights of the Child, and a member of the Committee against Torture (CAT). The High Commissioner welcomed the holding of a discussion day on the theme of State violence against children. She recalled the impact that Committee's discussions had had in the past, referring to the 1992 discussion on the involvement of children in armed conflict and the adoption by the General Assembly on 25 May 2000 of the Optional Protocol to the Convention on that subject. She also welcomed the participation of CAT and of the Special Rapporteur of the Commission on Human Rights on the question of torture in the discussion. The High Commissioner described her own experiences witnessing the abuses suffered by children and the requests for assistance that States formulate in trying to improve the implementation of the rights of children in that regard. She reminded participants that the recommendations emerging from the discussion should keep in mind the importance of action at the national level, and welcomed the participation of United Nations bodies and agencies in the discussion. In conclusion, she reminded participants that nothing could be more harmful to the full development of a child than violent victimization by those that child should have a right to trust, and that States should ensure that such victimization does not take place at its own hands.

674. Mr. Doek described the problem of social acceptance of violence used against children as a form of discipline. He underlined the harmful impact of violence on children, and reminded participants of the objectives of the discussion identified by the Committee in its outline, and in particular the emphasis on the identification of concrete measures to address in the most effective way the prevention of, protection from, and rehabilitation for violence against children. Mr. Henriques Gaspar underlined the useful assistance that could be obtained for the implementation of the Convention from other international human rights instruments. He suggested that the mechanisms and criteria established by the Convention against Torture, in particular, could be particularly relevant in the protection of children against State violence. Mr. Henriques Gaspar pointed out that the conditions under which children are placed in institutions, the use and conditions of detention, the use of force by staff of institutions, or the failure to provide appropriate care are all matters that the Committee against Torture could and should scrutinize. Article 1 of the Convention against Torture contains the most detailed definition of the concept to be found in international instruments. Article 16 contains an essential reference to the concept of “cruel, inhuman and degrading treatment” that has been developed into a useful additional framework for the prevention of and protection of children from State violence. In addition, articles 10, 12, 13 and 14 of the Convention against Torture provide useful guidance on how to implement the provisions of article 37 of the Convention on the Rights of the Child. The mechanism for the examination of individual complaints established under article 22 of the former Convention provides an additional possibility for enforcing international human rights standards to protect children.

675. After the introductory statements, the themes for the discussion in the two working groups were introduced by Ms. Smeranda Popa (UNICEF-Romania) and Sir Nigel Rodley (Special Rapporteur of the Commission on Human Rights on the question of torture).

676. Ms. Popa introduced the subject of discussion for Working Group I, “Mistreatment, abuse and neglect of children in the care of the State”. She emphasized the special responsibility of States for the protection of children deprived of a family environment, and suggested that institutionalization should be considered a measure of last resort. The best interests of the child should guide placement decisions, and support to families should be encouraged as well as the provision of alternative forms of care, judicial oversight and periodic review of placements. Among the harmful impacts of mistreatment, abuse and neglect, Ms. Popa identified physical injuries, stunted development, emotional and behavioural disorders, inadequate social skills, and loss of contact with family and community. She called for action to be taken in the fields of legislation, monitoring, research, training, complaints mechanisms, promoting attitudinal and behavioural change, and allocation of resources.

677. Sir Nigel pointed out that in his mandate he deals with issues affecting children. He drew attention in particular to his 1996 and 2000 reports to the Commission and to the General Assembly, which focused in particular on the conditions of detention of children and on children subjected to cruel, inhuman or degrading treatment in non-penal institutions. In introducing the subject of discussion for Working Group II, “Violence against children in the context of ‘law and order’ concerns”, Sir Nigel referred to violent attacks on street children, and to the torture and ill-treatment suffered by juvenile offenders during interrogation, pre-trial detention and in detention once convicted. He called for an emphasis on identifying examples of effective measures, policies and programmes to implement article 1 of the Convention against Torture and articles 37 and 19 of the Convention on the Rights of the Child. He emphasized in particular the need for alternative sentences, review of legislation, bringing to justice perpetrators of torture and providing compensation and rehabilitation to victims, and for efforts to be made for sensitization, education and training. Finally, Sir Nigel pointed out that, based on his own

experience, the discussion should seek to avoid calling for the creation of new international human rights mechanisms, and should instead focus on how to improve the existing mechanisms and the capacity to deal with the subject of State violence against children. In a context of limited United Nations resources, there was a risk that creating new mechanisms without providing additional resources would only further constrain the effectiveness of the existing ones.

678. The participants then divided into two working groups for the rest of the morning session. Working Group I was chaired by Mr. Doek; Ms. Jo Becker, of Human Rights Watch, served as Rapporteur. Working Group II, was chaired by Ms. Karp, with Mr. Bill Bell, of Save the Children UK, serving as Rapporteur.

679. The discussion in Working Group I concentrated heavily on the identification of useful implementation measures that would improve the prevention of, protection from and rehabilitation for child victims of State violence. Most of the issues discussed are reflected in the recommendations adopted by the Committee. More particularly, participants explored in more depth two issues. The first was the extent to which an appropriate balance needs to be kept between recognizing the specific elements that characterize State violence against children while at the same time acknowledging that all forms of violence against children are manifestations of the same problem and must be addressed together.

680. The second issue was the need to be careful in promoting alternatives to institutionalization as a way to prevent violence against children in the care of the State. Most participants agreed that preventing the placement of children in institutions was one of the most effective measures to prevent violence against children and to ensure the best possible environment for children in need of care, and that emphasis must be placed on providing support to parents to obviate the need to remove children from their families. Some participants acknowledged the provisions of articles 3, 5, 9 and 18 of the Convention but pointed out the need to avoid excessive emphasis on the dangers of institutionalization.

681. Participants pointed out that there is a risk that placement in families may come to be considered as automatically preferable to placement in institutions, without due attention to the characteristics of the families and the institutions being considered. Thus, placement in an institution that incorporates all the necessary safeguards and can provide an appropriate environment for the fullest development of a child can be preferable to allowing a child to remain or to be placed in a harmful family environment. In any case, the particular circumstances of each child and of the family, cultural and national context should be taken into account. The child should be given, in accordance with his or her age and maturity, the possibility to express his or her views on the preferred options for placement. Decisions should be taken giving the best interests of each child more weight than any predetermined preferences for a given placement setting.

682. Finally, the discussion in Working Group I emphasized repeatedly the need to pay particular attention to the situation of children with disabilities.

683. The discussion in Working Group II followed four broad themes: legislation, prevention and protection, awareness raising and monitoring. Like for Working Group I, most of the issues identified during the discussion are fully reflected in the recommendations adopted by the Committee. On legislation, participants repeatedly referred to the extensive failure in most cases to apply thoroughly the relevant provisions of the Convention on the Rights of the Child to the juvenile justice system. Even States that can provide an adequate level of resources without great difficulty often fail to implement all the relevant international standards. The discussion

underlined the need for legislation to be reviewed in a comprehensive manner. Participants also emphasized the problem posed by laws criminalizing children for “status” offences that should be seen as the result of failure to implement fully the economic and social rights of children and to give them the necessary protection. Such criminalization broadens the range of children who are placed at risk of being subjected to State violence.

684. Discussion of traditional methods of justice as a possible alternative to involving children in the formal criminal law system emphasized the need for such traditional methods to respect fully international human rights standards on the treatment of children alleged to have or recognized as having committed criminal offences. Such methods, and the sense of their “ownership” by the community, can help to promote respect for human rights and to prevent violence against children as well as unnecessary detention.

685. The often low professional status, poor working conditions and inadequate training of law enforcement officials were amongst the most serious obstacles to effective prevention of violence against children and to the appropriate protection and rehabilitation of children within the juvenile justice system.

686. During the afternoon session, the two working groups met again to discuss the draft recommendations prepared by the Rapporteurs for each group, in consultation with the Chairpersons. At a closing plenary session (see CRC/C/SR. 650), Ms. Becker and Mr. Bell presented to the plenary meeting the recommendations that had been identified by each group. The High Commissioner said that her Office would study with interest the recommendations adopted by the Committee. She also pointed out that some of the recommendations proposed for implementation at the international level would require decisions to be taken by other United Nations bodies.

687. Closing statements were made by Ms. Karp, Mr. Henriques Gasper, Sir Nigel Rodley and Mrs. Ouedraogo.

688. On the basis of the recommendations of the two working groups, the following recommendations were adopted by the Committee:

At the International Level

- 1 The Committee recommends that the Secretary-General be requested, through the General Assembly, to conduct an in-depth international study on the issue of violence against children, as thorough and influential as the 1996 report of the expert of the Secretary-General, Mrs. Graça Machel, on the impact of armed conflict on children (A/51/306). Such a study should:
 - (a) Explore the different types of violent treatment of which children are victims (including State violence, as well as violence in the home and in schools), identify their causes, the extent of such violence and its impact on children;
 - (b) Explore the links between different provisions of the Convention on the Rights of the Child and other international human rights treaties in relation to violence against children;

- (c) Collect information on the activities of different human rights mechanisms and United Nations bodies and agencies and the extent to which the problem of violence against children is addressed in those activities from a human rights perspective;
 - (d) Put forward recommendations regarding actions to be taken, including effective remedies and preventative and rehabilitation measures.
- 2 The Committee will consider the preparation of a set of general comments on different forms of violence against children.
- 3 The Committee urges all States, concerned United Nations agencies and bodies and non-governmental organizations to give priority attention to violence against children at the United Nations General Assembly Special Session on Children in 2001, and to include steps to eliminate such violence in its resulting plan of action.
- 4 The Committee recommends that efforts be made by United Nations human rights mechanisms with a mandate to consider individual complaints concerning violations of human rights to identify ways to respond more effectively to individual complaints concerning violence against children. It encourages non-governmental organizations to disseminate information about the existence and functioning of relevant mechanisms, including those under the Optional Protocol to the International Covenant on Civil and Political Rights, under article 22 of the Convention against Torture, and under the new Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Information should also be disseminated about other United Nations human rights mechanisms for urgent action, particularly by the Special Rapporteurs on the question of torture and on extrajudicial, summary or arbitrary executions and by the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention. The Committee also encourages non-governmental organizations and others to consider ways in which they can provide legal and other assistance for bringing individual complaints related to violations of the right of children to be protected against torture and other forms of violence before the relevant United Nations and regional human rights mechanisms.
- 5 The Committee recommends that effective measures be sought in order to strengthen existing United Nations human rights mechanism to ensure that violence against children and the situation of children living and/or working in the streets is adequately addressed. The Committee encourages the Office of the High Commissioner for Human Rights to organize a special workshop for all relevant treaty bodies, special procedures, and United Nations bodies and agencies to examine:
 - (a) Violence against children;
 - (b) The effectiveness of existing United Nations mechanisms in addressing this phenomenon;
 - (c) The need for improving and possible ways to improve such effectiveness, including consideration of the need to review the application of the existing definition of torture in order to take into account more adequately the special characteristics of children;

- (d) The possible need for either an optional protocol to the Convention to establish a procedure for individual complaints, or the establishment of a new “special procedure” of the Commission on Human Rights; and
- (e) Consideration that could be given to providing from within existing United Nations voluntary funds, assistance for the rehabilitation of child victims of violence.

Review of Legislation

- 6 The Committee urges States parties to repeal, as a matter of urgency, any legislation that allows the imposition of unacceptable sentences (death or life imprisonment) for offences committed before the age of 18, contrary to the provisions of the Article 37 (a) of the Convention.
- 7 The Committee recommends that States parties review all provisions of criminal legislation, including on criminal procedure, dealing with children under 18 (including any special legislation applying to armed forces) so as to ensure that it reflects appropriately the provisions of the Convention on the Right of the Child (arts. 37 and 40). It also recommends that States parties consider incorporating into all relevant domestic laws and regulations (including, where appropriate, those dealing with children in care) the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”, adopted by General Assembly resolution 40/33 of 29 November 1985), of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, adopted by General Assembly resolution 45/112 of 14 December 1990), of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990), and of the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines, annexed to Economic and Social Council resolution 1997/30 of 21 July 1997). In particular, the Committee recommends that penal legislation applicable to juveniles be reviewed so as to ensure that courts are not restricted to custodial sentences disproportionate to the offence.
- 8 The Committee recommends that States parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures), for punishment or disciplining within the child justice system, or in any other context. The Committee recommends that such legislation incorporate appropriate sanctions for violations and the provision of rehabilitation for victims.
- 9 The Committee recommends that States parties review all relevant legislation to ensure that children under 18, who are in need of protection are not considered as offenders (including legislation dealing with abandonment, vagrancy, prostitution, migrant status, “truancy”, runaways, etc.) but are dealt with under child protection mechanisms.
- 10 The Committee recommends that States parties review emergency and/or national security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children (for example, as threats to public order or in response to children living or working on the streets).

- 11 The Committee recommends, in particular, that States parties give urgent consideration to the need to provide appropriate safeguards to guarantee the security, protection and rehabilitation of children held in custody, including through measures such as the imposition of strict limits on pre-trial detention, that would reduce the number of children held in detention.
- 12 The Committee recommends that States parties review legislation dealing with children deprived of a family environment to ensure that placement decisions are subject to periodic judicial review, including at the request of children themselves. Such legislation should also be reviewed so as to ensure that relevant rules and regulations set out detailed standards of care for all institutions (public and private) caring for children, including the prohibition of the use of violence.
- 13 The Committee recommends that the effective implementation of all such legislation be carefully monitored, including for the provision of necessary resources.

Awareness-Raising, Sensitization and Training

- 14 The Committee encourages States parties, NGOs, United Nations human rights mechanisms, United Nations agencies and other bodies to give priority to raising awareness about the problem of violence against children:
 - (a) The Committee urges the launching of public information campaigns to raise awareness and sensitize the public about the severity of human rights violations in this domain and their harmful impact on children, and to address cultural acceptance of violence against children, promoting instead “zero tolerance” of violence;
 - (b) The media should be encouraged to play an active role in educating the public and raising awareness. Negative reporting (blaming categories of children for individual incidents) should be avoided and positive reporting (calling attention to the violations) encouraged;
 - (c) In raising awareness, children’s views and experiences of violence should be publicized and heard;
 - (d) Accurate, up-to-date and disaggregated data should be collected on the numbers and condition of children living in institutions or in the care of the State, held in pre-trial detention or in police stations, serving custodial sentences or subject to diversionary or alternative measures, etc.;
 - (e) States parties should translate appropriate information on violence against children into its national and local languages, and ensure that it is disseminated to all relevant professional groups, to children and to the general public.
- 15 The Committee recommends that minimum standards be set for the professional qualification and training of individuals working in institutions caring for children, in alternative systems, in the police, and in juvenile penal institutions, including the condition that they not have a prior record of violence. The professional status, rewards and career incentives for such workers should ensure that appropriate qualifications can be requested for these professional groups.

- 16 The Committee recommends that States parties, in partnership with relevant NGOs and seeking international technical assistance where appropriate, ensure training in child rights for all relevant professional groups including, but not limited to, care and social workers, health professionals, lawyers, the judiciary, members of police and other security forces, staff of penal institutions, etc. Such training should follow interdisciplinary methods promoting collaborative approaches, include relevant human rights standards and non-violent methods of discipline, promote alternatives to institutionalization, and provide information on child development, and on the background, rights and needs of specially vulnerable groups of children (those from minority groups, children with disabilities, etc.).

Prevention, Including Alternatives to Institutionalization

- 17 The Committee recommends that States parties develop the use of alternative measures in order to avoid long-term placement of children in institutions that do not provide the type of setting children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, psychological and social development, in a manner compatible with human dignity and to prepare the child for an individual life in a free society, in accordance with article 6 of the Convention.
- 18 The Committee also recalls to the attention of States parties the provisions of paragraphs 3 (b) and 4 of article 40 of the Convention, which call on State parties to deal with children alleged to have infringed or recognized as having infringed penal law without resorting to judicial proceedings, whenever appropriate, and by ensuring the availability of a variety of alternatives to institutional care to deal with such children in a manner appropriate for their well-being and proportionate to their circumstances as well as to the offence.
- 19 The Committee recommends that efforts be made to implement fully the provisions of article 18 (2) of the Convention, providing appropriate assistance to parents and legal guardians in their child-rearing responsibilities. The Committee notes that home visits by case workers with workloads small enough to allow for them can be effective in reducing the need for institutionalization.
- 20 In particular, the Committee points out that, in accordance with the provisions of article 23 of the Convention, special care as well as access to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities should be provided in a manner “conducive to the child’s achieving the fullest possible social integration and individual development”. The Committee encourages States parties to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent possible on an out-patient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions.
- 21 The Committee recommends that States parties make every effort to implement fully the provisions of article 20 (3) of the Convention; that special protection provided to children deprived of a family environment include as preferable options providing for the placement of children with suitable families, including members of their own families (including, where appropriate, child-headed families), foster families or adoptive families, whenever appropriate, and providing such families with the necessary support and supervision; and that regularly temporary placements be monitored and reviewed. In developing such alternatives,

States should consider the special needs of children affected by HIV/AIDS. Efforts should be made to involve children and their parents in decisions regarding the most appropriate care and placement alternatives for the child.

- 22 The Committee recommends that, for children placed in institutions, consideration be given to the following:
- (a) Small institutions caring for children in home-type settings often have a better record of caring for children;
 - (b) Smaller institutional settings, or the delivery of care and assistance to children and support to their families can be less costly and preferable for the full enjoyment of the human rights of children than institutionalization in large, sometimes impersonal institutions;
 - (c) A lesser number of better trained professionals can deliver more appropriate care to children than a large number of poorly trained or untrained workers;
 - (d) Efforts should be made to ensure contact between the child and his or her family (when appropriate) and to avoid the isolation of children in institutions (for example, by ensuring that education, recreation, or health services are provided outside the institution).
- 23 The Committee recommends that States parties consider the introduction of schemes for judges and magistrates to work with probation and social work staff to assess non-custodial alternatives. The Committee also encourages consideration of alternatives to pre-trial detention such as conditional release and bail schemes. Consideration should also be given to the use of traditional and local level mechanisms - where they are compatible with international human rights principles and rules - as a means of diverting children from contact with the more formal criminal justice system.
- 24 The Committee recommends that States parties make every effort to ensure, in recruiting staff to care for children in all types of institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline. Institutions should adopt anti-bullying and anti-violence strategies and policies, and provide training for staff in their implementation.
- 25 The Committee recommends that special training be given to encourage direct dialogue between police and children living or working in the streets. It also recommends that States parties develop community-based support systems for such children, provide access to social workers and promote education or employment training opportunities without requiring institutionalization.

Monitoring and Complaint Mechanisms

- 26 The Committee recommends that urgent attention be given to ensuring the establishment and effective functioning of systems to monitor the treatment received by children deprived of a family or alleged or recognized to have infringed penal law, and to provide advice to improve their care and condition. Such monitoring should:

- (a) Ensure full access to facilities and records, and inspection of all institutions (both public and private, and including police stations and penal institutions);
 - (b) Permit unannounced visits, and include the holding of private consultation with children and staff;
 - (c) Monitor the status and condition of the children and their development, rather than focus only on the state of the facilities or the provision of services;
 - (d) Provide input for the regular review of placements;
 - (e) Make adequate provision for reporting or complaints to be received from the institution, staff, children themselves, their parents or legal guardians, and from NGOs or other institutions of civil society, while providing appropriate protection from reprisals, particularly for children and staff;
 - (f) Include mandatory reporting by staff of incidences of violence;
 - (g) Ensure that children are informed and aware about the existence and functioning of complaints mechanisms, that they are involved in the design of appropriate mechanisms, and that their special needs are taken into account (for example, by avoiding the need for children to repeat their statements unless absolutely necessary), including those with disabilities, different linguistic abilities, etc;
 - (h) Provide full guarantees of independent and thorough investigation of any complaints, including judicial investigation for any deaths or cases of grievous bodily harm, and ensure that the perpetrators of violence are appropriately disciplined, including, when warranted, the possibility of dismissal and the bringing of criminal charges;
 - (i) Ensure that full reports on any investigations are made public (while maintaining the rights of the child to privacy) and made known to relevant government officials and policy makers.
- 27 The Committee recommends that medical and psychological services and rehabilitation provided to children in care or in detention be provided independently of the authorities running such institutions, and that provision be made to ensure that children can participate in the monitoring of the conditions of care.
- 28 The Committee recommends that consideration be given to the establishment of services to provide counselling, advice and support for child victims of violence including, for example, telephone hotlines or similar mechanisms.

Resources

- 29 The Committee draws the attention of States parties, United Nations bodies and agencies, organizations of civil society and other bodies to the need to ensure that adequate resources are allocated to the protection and rehabilitation of children in care and of children alleged or recognized to have infringed penal law, so as to ensure effective prevention of all forms of violence.

- 30 The Committee reminds States parties that under the provisions of article 4 of the Convention, only “economic, social and cultural rights” are subject to implementation to the “maximum extent of available resources” while States parties “shall undertake all appropriate legislative, administrative and other measures” for the implementation of all other rights, including the right of children to be free from torture, and cruel and inhuman or degrading treatment (in accordance with art. 37 (a)) and the right to be protected from all forms of violence and abuse (art. 19).
- 31 The Committee encourages States parties and donors of international technical assistance to allocate resources to programmes and measures designed to improve prevention, protection and rehabilitation mechanisms for children exposed to all forms of State violence.
- 32 The Committee recommends that States parties ensure that additional resources are allocated to improve the conditions under which children are cared for or held, including by improving the professional status of those working for or in contact with children. It urges States parties and others to ensure that available resources are used in the manner most conducive to preventing and protecting children from all sorts of violence. The Committee calls attention to the need to consider the allocation of resources as part of the effort to review the relevant legislation.

Role of non-governmental organizations

- 33 The Committee encourages non-governmental organizations to devote increased attention to the prevention of and protection of children from State violence. It urges NGOs to consider providing legal assistance to children and their advocates and assisting Governments to formulate appropriate prevention, protection and rehabilitation measures, in addition to monitoring the situation of children in vulnerable circumstances.
- 34 The Committee encourages NGOs in particular to support States parties and children in efforts to ensure that children’s views and experiences of violence are heard and taken into account in public debate and policy.
- 35 The Committee points out that NGOs in their provision of services to children should ensure that the State does not avoid its own obligations by delegating NGOs to provide services and care to children without providing both the necessary resources and appropriate supervision.
- 36 In accordance with the provisions of article 45 (a) of the Convention, the Committee encourages NGOs to prepare and present to it information regarding all forms of violence against children, including culturally “acceptable” forms.