



Survey on the CRC Committee Concluding Observations on the last EU Countries' reports

Updating of the 2006 ChilONEurope report

ChildONEurope Series 9

Survey
on the CRC
Committee
Concluding
Observations
on the last EU
Countries' reports

Updating
of the 2006
ChildONEurope report



ChildONEurope Secretariat

c/o Italian Childhood and Adolescence Documentation and Analysis Centre
Istituto degli Innocenti
P.zza SS. Annunziata 12 I-50122 Firenze
tel. +39 055 2037342/305/357 - fax +39 055 2037344
e-mail childoneurope@minori.it - website www.childoneurope.org

Survey on the CRC Committee Concluding Observations on the last EU Countries' reports. Updating of the 2006 ChildONEurope report

The work has been coordinated for the ChildONEurope Secretariat by
Raffaella Pregliasco and Erika Bernacchi

The scientific coordination has been carried out by
Roberta Ruggiero

The texts have been drafted by:
Carlotta Alloero, Erika Bernacchi, Ayana Fabris, Alessandra Gerbo, Roberta Ruggiero

Technical Coordination
Giovanna Marciano

Documentation
Alessandra Gerbo



Editing
Anna Buia

Cover
Cristina Caccavale

© 2014 Istituto degli Innocenti di Firenze
ISBN 978-88-6374-041-7

Extracts from this publication may be freely reproduced with due acknowledgement.

Table of contents

1. Introduction	7
1.1 Origin and aims of the survey	7
1.2 Methodology.....	7
1.3 The content of the survey.....	8
2. General measures of implementation.....	11
2.1 Comment on the Committee’s concluding observations related to coordination and national Plans of Action	11
2.2 CRC on dissemination and training.....	14
2.3 Independent monitoring institutions.....	16
2.4 Data collection	18
3. General principles	21
3.1 CRC on non-discrimination.....	21
3.2 CRC on the best interest of the child.....	26
3.3 CRC on the right to life, survival and development.....	31
3.4 CRC on respect for the view of the child	35
4. Civil rights and freedom	41
4.1 CRC on the right to identity	41
4.2 CRC on freedom of religion	44
4.3 CRC on children’s access to appropriate information.....	47
4.4 CRC on corporal punishment and abuse	51
4.5 CRC on torture, degrading treatment and deprivation of liberty.....	55
5. Education	59
5.1 CRC on education.....	59
6. Family environment	65
6.1 CRC on parental guidance and the protection owed to families by the State	65
6.2 CRC on family reunification.....	70
6.3 CRC on family environment – violence, abuse and neglect.....	72

6.4 CRC on alternative care for children deprived of their family environment.....	76
6.5 CRC on adoption	81
7. Health.....	85
7.1 CRC on children with disabilities.....	85
7.2 CRC on Child’s right to health and health services.....	89
7.3 CRC on adolescents’ health.....	92
7.4 CRC on standards of living.....	94
8. Special measures of protection.....	97
8.1 CRC on street children.....	97
8.2 CRC on unaccompanied, refugee and asylum-seeking children	99
8.3 CRC on children of minorities or of indigenous peoples.....	107
8.4 CRC on economic exploitation	112
8.5 CRC on drug abuse.....	116
8.6 CRC on sexual exploitation, abuse and trafficking.....	117
8.7 CRC on administration of juvenile justice.....	124
9. Comparative conclusions	133
10. Executive summary	143

1. Introduction

1.1 Origin and aims of the survey

The ChildONEurope Assembly entrusted the ChildONEurope Secretariat with the mandate of updating the survey on the Concluding Observations of the Committee on the Rights of the Child (Committee) concluded in May 2006.

This first work was requested by the *Austrian Federal Ministry of Social Security, Generations and Consumer Protection* on behalf of the Federal Republic of Austria on the occasion of its Semester of EU Presidency (from 1 January to 31 June 2006). The study of 2006 was presented during the *L'Europe de l'Enfance* meeting held on the 2nd of May 2006 in Vienna. It included in its analysis the last national reports discussed by 25 EU Member Countries, 2 EU Accession Countries (Bulgaria and Romania), and 2 Candidate Countries (Croatia and Turkey), for a total of 29 countries.

The updating process recorded in this report started in May 2012 and the analysis includes the last national reports which completed the examination process in front of the Committee by December 2012. Therefore it takes into consideration the governmental reports of 16 EU Members Countries, namely: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

With regard to the contents of this survey, as for the 2006 review, the overall objective is to support the discussion about mainstream children's rights in the policies implemented at the national level within the 15 EU Member Countries selected on the basis of the Convention on the Rights of the Child (CRC).

In this framework, the aim of the comparative analysis of the 16 Concluding observations is threefold: (1) to identify the issues most frequently raised by the Committee; (2) to discover the points of strength and of weakness of the CRC implementation in the EU Countries' policies; (3) to outline the evolutions which occurred from 2006 and 2012 in the implementation process of the CRC in the EU Countries.

The present review is not meant to make a comparison of the national policies on children's rights undertaken in the EU Member States; rather it aims to identify the most frequent issues of attention for the CRC Committee. This analysis ought, on the one hand, to share knowledge on the positive practices defined by the Committee as points of strength of the national policies and on the other, at pointing out the issues on which the EU Countries can improve their policies and intervention strategies.

1.2 Methodology

It is important to point out that all the EU Member States included in this review ratified the CRC and that the Committee's Concluding Observations are the last step of the procedure of monitoring the CRC implementation. This process of the CRC Committee includes first of all the presentation of the State party report, the eventual request for a list of issues and the reply to them, and then the discussion of the State party report, with the representatives of the State itself, and the preparation of the Concluding observations afterwards by the Committee.

In compliance with the mandate and the aims mentioned above, the survey was carried out on the basis of the following steps:

- The collection of the Committee's Concluding observations on the last national reports presented by 16 EU Member Countries. The national reports collected are the last periodical reports presented and discussed by the EU Countries with the Committee by December 2012.
- The analysis of the Concluding observations, identifying the common positive and critical points emerging more frequently from the Committee's Concluding observations. The overall aim of the survey has been to identify the achievements of the 16 EU Member States and the obstacles and challenges, which remain to be addressed in the process of full implementation of the CRC.
- The comparison of those common positive and critical points emerging more frequently from the CRC Committee concluding observations following the structure of the CRC and taking into consideration the issues mentioned above.
- The elaboration of conclusions emerging from the comparison of the positive and critical points analysed.

1.3 The content of the survey

This review is strictly connected with the Committee's activity, therefore its content is organised following the structure of the CRC, in particular taking into consideration the different categories gathering the substantial articles of the CRC which outline the inherent human rights and as discussed by the Committee in its concluding observations.¹

The present survey analyses the concluding observations formulated by the CRC Committee to the last national report of 16 EU Member States and follows the structure identified by the CRC Committee in the Guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44 of the CRC.² Therefore the main structure of the report is organised on the following seven thematic areas:

1. General measures of implementation;
2. General principles;
3. Civil rights and freedom;
4. Education;
5. Family environment;
6. Health;
7. Special measures of protection.

In compliance with the Committee requirement the different issues addressed are discussed through four steps of analysis and reasoning: 1. an introductory part dedicated at the presentation of the article/s concerned; 2. the description of the follow-up measures undertaken and progress achieved by the States Parties, 3. the outlining of the factors and

¹ The Committee's concluding observations are generally composed of four parts: 1. Introduction; 2. Follow-up measures undertaken and progress achieved by the State party; 3. Factors and difficulties impeding the implementation of the CRC; 4. Principal areas of concern and recommendations.

² Committee on the Rights of the Child, *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44*, paragraph 1 (b), of the Convention on the Rights of the Child, 23 November 2010, CRC/C/58/Rev.2.

difficulties impeding the implementation of the CRC; 4. the reporting of the principal areas of concern and recommendations. In details each issue analysed in the survey is organised as follows:

1. The relevant CRC article/s as each issue analysed is linked to one or more CRC articles.
2. A comment on the article/s of the CRC. This part of the survey presents the definitions and interpretation of the CRC principles and articles emerging from the documents adopted by the Committee, such as the General Comments and the General Days of Discussion as it is fundamental to understand the Committee's approach and interpretation of the CRC principles. This part also contains references to other fundamental documents of UN agencies, in particular the UNICEF Implementation Handbook for the Convention on the Rights of the Child.
3. A comment on the Committee's concluding observations. This is the key part of the survey that regards the analysis of the Concluding observations of the Committee. Attention is focused on the positive achievements, the Committee's concerns and the recommendations on the most frequent specific issues taken into consideration by the Committee and followed by an explanation of the Committee's approach to the issue addressed.

For the period of review – from May 2006 to December 2012 – the survey includes also an executive summary focusing on the analysis of the Committee's concluding observations and underlining the most frequent positive achievements and recommendations for each area analysed, following the structure of the Concluding observations. This last part has the intention of ameliorating the up-dating process. It is meant to identify and analyse through a longitudinal approach the differences emerging comparing the outcomes of 2006, with those of 2012 in terms of both positive achievements and criticalities that need to be addressed.

2. General measures of implementation

2.1 Comment on the Committee's concluding observations related to coordination and national Plans of Action

The CRC Committee has addressed the issue of coordination and national plans of action in relation to 16 EU Countries.¹ Concerning the issue of **coordination of policies** dealing with children at the national level, the Committee on the Right of the Child appreciated as **positive achievements**: the establishment and review of the role of government bodies such as: inter-ministerial conferences for the protection of children's rights and observatories to deal with the welfare of children at the national and local municipality levels and in charge of coordinating and monitoring the implementation of the Convention;² the establishment of coordination on the policy for the rights of the child, departments for monitoring on the rights of the child, high commissions for youth, national council on child protection responsible for monitoring the implementation of the Convention.³ Whereas referring to the development of a **national plan of action** the Committee welcomed the multitude of actors involved in the implementation of the CRC and adoption of national strategy for children, the various sectorial plans, policy programmes for the well-being of children, youth and families and the children's plans and national strategy for the protection and promotion of children's rights.⁴ In some cases still referring to the adoption of national plans of action and strategy the Committee appreciates the value of the preparation process of a national strategic plan for children and adolescents with the inclusion of public institutions and social organizations.⁵

Nonetheless, in relation to the same issues the Committee has often expressed its **concern** (16 EU Members⁶) and it should be said that in examining the Concluding Observation as already emerging in the first edition of this study in 2006 the Committee has almost invariably found it necessary to further encourage ensuring 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**, as defined in *General Comment no. 5*, 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 the 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. In line with this assumption the CRC favours a structured

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

² Austria, Denmark, Finland, France, Spain and The United Kingdom.

³ Belgium, Bulgaria, France, Spain, Romania, Sweden.

⁴ Bulgaria, Denmark, Finland, Greece, Italy, Spain, Romania, Sweden, The Netherlands and The United Kingdom.

⁵ Spain and Romania.

⁶ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

coordination system recommending to 10 EU Countries⁷ that they ensure the establishment of a single **permanent and effective coordination mechanism** on the rights of the child, that with an adequate mandate and resources could effectively coordinate the interventions fulfilling the principle set out in the CRC at the local, federal, departmental, regional and municipal level, also by effectively coordinating activities between central and local authorities.

From the Concluding Observation analysed, the CRC Committee consistently underlined its concern in relation to the development of an **effective and integrated system of policies**. On this basis it invited 8 EU Countries⁸ to strengthen coordination between the various government mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children and ensuring effective evaluation of the implementation of the Convention and its Optional Protocol in the country.

In addition the Committee manifested its concern in relation to the low budget allocations for coordination activity, suggesting to 10 EU Countries⁹ that they should allocate **sufficient financial and human resources** for the effective functioning of such a mechanism in order to ensure the effective implementation of the coordination role.

However a coordination policy should be implemented **along with the adoption of a national plan of action** for an inclusive pro-active policy on children's rights. Thus the Committee requested 9 EU Countries¹⁰ to prepare and implement a coherent and comprehensive rights-based **national plan of action** for the implementation of the Convention. The Committee also recommended that the States Parties ensure adequate budget allocation guarantying and enhance the implementation of the plan of action including human and material resources (11 EU Countries¹¹). In relation to this aspect the committee further recommended to 7 EU Countries¹² that per each national action plan follow-up and evaluation mechanisms should be developed for the full implementation of the plans of action to regularly assess progress achieved and allowing a more strategic selection of objectives and measures and the definition of time-bound goals and impact indicators, and improved processes for the participation of children and civil society in plan preparation, monitoring and evaluation.

In particular in relation to the development and adoption of specific policies the Committee requested 2 EU Countries to pay special attention to children belonging to the most vulnerable groups (e.g. poor households, asylum-seekers, Roma children, children with disabilities, children with HIV/AIDS, and children in need of alternative care).¹³

Again in relation to the development of a national plan of action, the Committee often noticed the concomitant existence in the same country of sectorial plans of action. Therefore, in order to overcome problem related to risks of a fragmented approach to the implementation of children's rights due to the existence of sectorial action plans, the

⁷ Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Greece, Italy, Spain and Sweden.

⁸ Austria, Belgium, Bulgaria, Finland, France, Greece, Spain and Sweden.

⁹ Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Italy and The United Kingdom.

¹⁰ Austria, Czech Republic, Denmark, Estonia, Finland, France, Sweden, The Netherlands and the The United Kingdom.

¹¹ Austria, Belgium, Denmark, Finland, France, Greece, Italy, Romania, Spain, The Netherlands and The United Kingdom.

¹² Czech Republic, Denmark, Finland, France, Italy, Spain and The Netherlands.

¹³ Romania and The United Kingdom.

Committee invited States Parties to put them into a comprehensive national framework which covers all areas of the Convention and its Protocol and develop efficient and effective mechanisms to adequately implement and review all plans of action that are relevant for children.¹⁴ The intention is to address the possible divergences between the different action plans by putting them in a comprehensive national framework which covers all areas of the Convention and its Optional Protocols.

In some other cases the Committee suggested to 8 EU Countries¹⁵ that they expedite the consideration of the National Plan of Action for its adoption and ensure the harmonization between the national plan of action and the Plan of Action “A world fit for children” as well as the “World fit for children + 5” review declaration.

Concluding, the Committee in the COs analysed dedicated particular attention to the necessity of elaborating comprehensive strategies of intervention operating on two levels, on one hand through the coordination of the policies dealing with children at the national level and on the other hand with the elaboration of children’s rights-based national plans of action. The intention is to develop a **comprehensive national strategy rooted in the Convention** as it is strongly stressed in *General Comment no. 5* on general measures of implementation of the CRC, in which the Committee states that “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. 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 (par. 12), meaningful consultation with children requires special child-sensitive materials and processes; it is not simply about extending to children access to adult processes.” As a consequence, “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 (par. 12), the non-discrimination principle does not prevent the taking of special measures to diminish discrimination. [...] The comprehensive national strategy may be elaborated in national sectorial 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.”

¹⁴ Bulgaria.

¹⁵ Belgium, Czech Republic, Estonia, Finland, France, Sweden, The Netherlands and The United Kingdom.

2.2 CRC on dissemination and training

ARTICLE 42

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

Comment on CRC article 42

Article 42 confirms the obligation that States Parties assume to make the Convention on the Rights of the Child known “by appropriate and active means” to adults and children.

In its Guidelines for Initial and Periodic Reports, the Committee on the Rights of the Child has included the implications of article 42 under “General Measures of Implementation”, linking it to article 4. In addition, under article 44(6) the Committee emphasizes the importance of widely publicizing at country level States Parties’ Initial and Periodic Reports, reports of discussions with the Committee and the Committee’s Concluding Observations.

In its comments on Initial and Second Reports, the Committee has emphasized that dissemination can achieve a variety of purposes:

- ensure the visibility of children;
- enhance respect for children;
- reaffirm the value of children’s fundamental rights;
- enhance democratic institutions;
- achieve national reconciliation;
- encourage the protection of the rights of children belonging to minority groups;
- change negative attitudes towards children;
- combat and eradicate existing prejudices against vulnerable groups of children and harmful cultural practices.

Comment on the Committee’s concluding observations on dissemination and training

The CRC Committee has included the issue of dissemination and training on the CRC its concluding observations to all the 12 EU Countries analysed.¹⁶

As regards the **positive achievements** of the EU States, the Committee has very often taken note of the efforts to make the principles and the provisions of the Convention widely known for 9 EU Countries.¹⁷ The Committee has positive underlined the activities carried out in order to make the CRC known in particular in schools with the support of youth organization, NGOs and the media for 3 countries.¹⁸ Moreover, it welcomed the inclusion of human rights and democracy as specific thematic focus of the school curricula at both primary and secondary school levels¹⁹ along with the implement of compulsory training of professionals working with or for children on the principles and provisions of the Convention, with a particular focus on children at risk.²⁰

Other aspects for which the Committee has noted some progress for a few countries are:

¹⁶ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

¹⁷ Austria, Cyprus, Finland, Greece, Romania, Spain, Sweden and The Netherlands.

¹⁸ Cyprus, Greece and The Netherlands.

¹⁹ Bulgaria, Denmark and Spain.

²⁰ Austria, Belgium, France, Italy Romania and The United Kingdom.

- The dissemination of the Convention as one of the objectives of the government's policy for the wellbeing of children and their families.²¹
- The activities carried out to make available the previous report, a summary of records of the meetings and Concluding Observations and child-friendly version of the CRC.²²
- The translation of the convention and of the handbook in the national language and in the minorities' languages.²³

However for the same issues the Committee has often expressed its concern recommending States to strengthen or further implement their activities in relation to the dissemination of the convention. In particular it has recommended to 7 EU Countries²⁴ that they continue or strengthen their efforts to make the **Convention widely known** and understood by adults as well as children and to organise a systematic awareness-raising campaign. In doing this the Committee urged the State party to promote knowledge of the Convention with the public at large through the mass media, namely for 4 Countries.²⁵

It is obviously very important for the Convention to be known by all those who work with children at different levels and in different areas. The Committee Guidelines for Periodic Reports also refer to incorporating the Convention in the "professional training curricula, codes of conduct or regulations", while in a workshop held in 1999 together with the Office of the High Commissioner for Human Rights the Committee stated that "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".²⁶

However, a particular focus of concern remains the one related to raising awareness in children about their rights. For 3 EU Countries²⁷ the Committee has also indicated the importance of dedicating specific attention, as regards the dissemination of the convention in close cooperation with non-governmental organizations (NGOs) and other stakeholders, to reaching **vulnerable groups** and by paying particular attention **to the remote and rural areas and children out of school**. Moreover, always referring to the school setting for 5 countries²⁸ the Committee requested the incorporation of the Convention in the school curricula in primary and secondary education.

In a few cases the Committee has also recommended steps to strengthen its measures to ensure that all children are aware of the Convention and its two Optional Protocols and can use such instruments to defend their rights;²⁹ to strengthen its programme for the dissemination and implementation of the Convention including in minority languages;³⁰ to give special attention to the participation of children in the dissemination of their rights.³¹

²¹ Finland and Belgium.

²² Belgium, Greece and The Netherlands.

²³ Austria, Romania and Sweden.

²⁴ Belgium, Finland, France, Romania, Spain, The Netherlands and The United Kingdom.

²⁵ Cyprus, Czech Republic, Denmark and Finland.

²⁶ Report on the twenty-second session, September/October 1999, CRC/C/90, par. 291(I).

²⁷ Austria, Bulgaria and Greece.

²⁸ Austria, Cyprus, Czech Republic, Greece and The United Kingdom.

²⁹ Austria and Sweden.

³⁰ Estonia

³¹ Bulgaria.

Referring to this latter aspect it is worth mentioning that concerning the methods for teaching children's rights, it is interesting to note what the Committee wrote on the occasion of the 1999 workshop: "The Committee recalls 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."³²

2.3 Independent monitoring institutions

The CRC does not contain an explicit reference to the setting up of independent monitoring institutions; however the CRC Committee has dedicated **General Comment n. 2 of 2002** specifically to this issue, thus demonstrating the special importance given to this subject.

The General Comment states that: "Article 4 of the Convention on the Rights of the Child obliges States parties to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention". **Independent national human rights institutions** (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child 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 [...]. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of the implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them."

Comment on the CRC's Concluding Observations on independent monitoring institutions

The CRC Committee has made reference to the issue of independent national human rights institutions in the Concluding Observations of the majority of EU States, namely 14 EU Countries.³³

As regards the **positive achievements**, first of all the Committee expressed its satisfaction about the **establishment or appointment at the national and local level of the children's rights commissioners**, ombudspersons for children or national councils for children in the case of 7 EU Countries.³⁴ Secondly the Committee commented positively on the **establishment of children's rights**. Moreover, the Committee for 3 EU Countries³⁵ appreciated the status and the range of activities undertaken by the children's Commissioner and Ombudsman.

As regards the Committee's recommendations, conversely to what was noticed on the occasion of the first edition of this survey in 2006, the least frequent one, addressed to 3 EU

³² Report on the twenty second session, September/October 1999, CRC/C/90, para. 291 (k).

³³ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Sweden, The Netherlands and The United Kingdom.

³⁴ Belgium, Bulgaria, Cyprus, Denmark, France, Italy, The United Kingdom.

³⁵ France, Greece, Sweden,

Countries,³⁶ has been to **establish independent human rights institutions at the national level, accessible to children** in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights - *The Paris Principles*³⁷ and the Committee's General Comment No. 2, The committee seems to have turned its attention more frequently to the aspect related to the mandate of the independent institution and the resources dedicated to these institutions. Namely for 9 EU Countries³⁸ the Committee underlined that these bodies should be equipped with the necessary **human and financial resources** in order to carry out their mandate in an effective manner. The Committee has recognized that the issue of resources is a crucial one by stating in its General Comment 2 that although this is a very sensitive issue, the Committee believes that "the mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers."

Concerning the mandate of these institutions the committee emphasised the necessity to empower these entities by expanding the mandate of the Ombudsman for Children with the integration of the power to **receive and investigate complaints** of violations of children's rights in a child-sensitive manner and to address them effectively for 9 EU Countries.³⁹ In this regard General Comment 2 indicates that "NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children."

When making such recommendation the Committee has often referred to its **General Comment n. 2** that as previously stated, provides a clear indication of the characteristics that these independent national human rights institutions should have in general and in particular in the promotion and protection of the rights of the child in order to be really considered as independent institutions.

The General Comment provides clear indications as regards the mandate and power, the establishment process, the resources, the pluralistic representation, the provision of remedies for breaches of children's rights, the accessibility and participation, the recommended activities, the cooperation with the CRC Committee and other UN mechanisms, relations with NGOs and regional and international cooperation.

As regards the **mandate and power**, the General Comment states that "NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments."

Moreover, the committee has the aim of strengthening the role of the Ombudspersons for children, to ensure adequate coordination and cooperation of the ombudsmen's institutions at Community level, as well as between ombudsmen's institutions operating at federal and Community levels (3EU Countries⁴⁰).

³⁶ Czech Republic, Estonia, Italy.

³⁷ General Assembly resolution 48/134, annex.

³⁸ Bulgaria, Czech Republic, Estonia, Finland, France, Greece, Romania, Sweden and The United Kingdom.

³⁹ Belgium, Bulgaria, Cyprus, Denmark, Estonia, Romania, Sweden, The Netherlands and The United Kingdom.

⁴⁰ Belgium, Finland, Italy and The United Kingdom.

2.4 Data collection

Comment on the Committee's concluding observations on data collection

There isn't a specific article of the CRC dedicated to data collection; however the Committee faced the issue in the General Comment n. 5 (2005) on the CRC general measures of implementation. In the document the Committee underlined that "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. The Committee also underlined that "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."

The issue of **data collection** has been discussed by the Committee with **almost all the EU Countries** analysed (11 EU Countries).⁴¹

Positive achievements made by 10 EU Countries⁴² were emphasized by the Committee. In particular, the specific issues about which the Committee expressed its appreciation are as follows: the conscious effort made to **improve** data collection (2 EU Countries);⁴³ the **extensive quality and quantity** of statistical data provided by EU Countries in the report and/or with the list of issues and in the written replies (1 EU Country);⁴⁴ the establishment of **specific instruments, programmes or organisms** dealing with the collection of statistical data (5 EU Member Countries)⁴⁵ for example a data collection system at regional and national level, a national centralised system of data collection and monitoring centre gathering information relating to children at risk, a national department of monitoring on children's rights or a working group on statistics or simply by annually publishing a report on children.

The Committee was concerned with various issues. The most frequent regards the **absence of a nationwide and comprehensive system of disaggregated data** (13 EU Countries)⁴⁶ – incorporating **all the territories** of a Country and/ or **all the areas** covered by the Convention, i.e. on age, on gender, on children belonging to minority groups among others and children in need of special protection, in particular on children living in rural areas, children in institutions, children with disabilities, street children, working children,

⁴¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden and The Netherlands.

⁴² Austria, Belgium, Bulgaria, Denmark, Estonia, France, Italy, Romania, Spain and The Netherlands.

⁴³ Denmark and Sweden.

⁴⁴ Belgium.

⁴⁵ Bulgaria, France, Italy, Romania and The Netherlands.

⁴⁶ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Italy, Romania, Spain and The Netherlands.

unaccompanied and separated children, asylum-seeking and refugee children, Roma children, domestic and inter-country adoptions, children of economically or socially disadvantaged households, children in conflict with the law, abortions, substance abuse and child abuse and neglect, including sexual abuse and exploitation, and victims of trafficking.

Another issue that the Committee notes with concern, is the **lack or the need to strengthen the coordination** and the development of regular and systematic collection, in particular with regard to the most vulnerable groups of children (5 EU Countries),⁴⁷ i.e. because the data collected by individual ministries, departments or other regional authorities are not integrated into a central data-collection mechanism. In some cases this accompanies the need to establish a coordinated approach to data collection between all entities collecting data on children.⁴⁸

The Committee's other concerns addressed to each point refer to: the **insufficient evaluation** of data to devise policies and programmes and the insufficient **attention** dedicated to this aspect. The Committee underlined in several cases that the data should be used **“as a basis for assessing progress achieved in the realization of children's rights and to help design policies and programmes to implement the Convention”** (5 EU Countries).⁴⁹ In particular in relation to the use of data to inform policy and programmes, the Committee also requested the **development child-specific indicators** to evaluate policies, legislations and outcomes of interventions, resource allocation and monitoring on the implementation of the CRC (4 EU Countries).⁵⁰

In line with the situation which had emerged already in 2006 the recommendations most frequently made by the Committee to the EU Countries are still requesting to strengthen efforts to **develop/continue to develop/ update/establish a (nationwide) system for a comprehensive collection of indicators and comparative disaggregated data on all persons under 18 years for all the Country's territories and all areas** covered by the CRC, with an emphasis on the **most vulnerable groups**. The differences between these recommendations made to those EU Countries are focused on the most vulnerable groups and /or children in need of special protection, because they are not always specified and are not all mentioned in all the recommendations. However, in the cases in which this specific reference is made to the group mentioned, they are referred to: children belonging to minority groups among others and children in need of special protection, in particular children living in rural areas, children in institutions, children with disabilities, unaccompanied and separated children, asylum-seeking and refugee children, Roma children, and victims of trafficking (6 EU Member).⁵¹

⁴⁷ Belgium, Bulgaria, Czech Republic, France and Sweden.

⁴⁸ Sweden.

⁴⁹ Austria, Czech Republic, Denmark, Finland and Italy.

⁵⁰ Cyprus, Czech Republic, Greece, Romania.

⁵¹ Czech Republic, Finland, Greece, Romania, Spain and Sweden.

3. General principles

3.1 CRC on non-discrimination

ARTICLE 2

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

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

Comment on article 2¹

The first paragraph of article 2, along with article 3(2) and article 4, sets out the fundamental obligations of States Parties in relation to the rights outlined in the remainder of the Convention on the Rights of the Child – to “respect and ensure” all the rights in the Convention to all children in their jurisdiction without discrimination of any kind. “Non-discrimination” has been identified by the Committee on the Rights of the Child as a general principle of fundamental importance for implementation of the whole Convention.

In General Comment no. 18, the Human Rights Committee proposes that the term “discrimination” should be understood to imply “any distinction, exclusion, restriction or preference which is based on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”. The non-discrimination principle does not bar affirmative action, the legitimate differentiation in treatment of individual children; a Human Rights Committee General Comment emphasizes that States will often have to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination. In its Preamble, the Convention on the Rights of the Child recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration...”. For this reason certain articles set out special provisions for children particularly prone to forms of discrimination, for example, disabled children (article 23), and refugee children (article 22). Because discrimination is at the root of various forms of child exploitation, other articles that protect the child call for action that involves challenging discrimination.

The Committee on the Rights of the Child has asserted the fundamental importance of article 2 and raises the issue of non-discrimination in its consideration of each State Party report. The Committee has not, as at March 2012, issued any interpretative specific General Comment on article 2. However, in its first General Comment, issued in 2001, on the aims of education, the Committee states: “Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities”. It goes on to detail discriminatory practices which

¹ From Hodgkin, R., Newell, P., *The implementation handbook for the Convention on the Rights of the Child* (3rd ed.). New York, Unicef, 2007, p. 19-37.

“are in direct contradiction with the requirements in article 29(1) (a) that education be directed to ‘the development of the child’s personality, talents and mental and physical abilities to their fullest potential”² (see the chapter on education).

The language of article 2 itself and its interpretation by the Committee on the Rights of the Child emphasize that the obligation of States Parties to prevent discrimination is an active one, requiring, like other aspects of implementation, a range of measures that include review, strategic planning, legislation, monitoring, awareness-raising, education and information campaigns, and evaluation of measures taken to reduce disparities. In terms of international law, the obligation “to respect” requires States “to refrain from any actions which would violate any of the rights of the child under the Convention [...]. The obligation ‘to ensure’ goes well beyond that of ‘to respect’, since it implies an affirmative obligation on the part of the State to take whatever measures are necessary to enable individuals to enjoy and exercise the relevant rights.”³

Moreover, the CRC Committee in its General Comment no. 5 (2003) providing an interpretation of the wording “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” (article 2(1)) declares that “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.”⁴

In relation to the second part of article 2 it is doubtful whether the very wide potential implications of this provision have been sufficiently considered during the preparation and consideration of reports by States Parties, because paragraph 1 of article 2 lists as grounds for discrimination “the child’s or his or her parent’s or legal guardian’s race, colour, sex...,” whereas paragraph 2 adds protection against “all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”. In fact, while paragraph 1 concerns discrimination only in relation to the enjoyment of rights in the Convention, paragraph 2 requires action against “all forms of discrimination”, and is not confined to the issues raised by the Convention. Thus, implementation requires States to ensure that any existing Constitution, relevant legislation, court decisions and administrative policy and practice comply with this principle.

Comment on the Committee’s concluding observations on article 2

The Committee has addressed the issue of non-discrimination in its Concluding Observations all the 16 EU Member Countries. The Committee welcomed for 7 EU⁵ countries the adoption and strengthening of the equality legislation which incorporates the principle and mainstream children’s rights to non-discrimination, in three cases⁶ positively

² Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5.

³ Ph. Alston, *The legal framework of the Convention on the Rights of the Child*, Bulletin of Human Rights, 91/2, p. 5.

⁴ Human Rights Committee, General comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 ss.

⁵ Austria, Bulgaria, Cyprus, Finland, France, Sweden, The Netherlands, The United Kingdom.

⁶ Belgium, Greece, Spain.

appreciating the approval of national action plans or strategy dedicated to action against discriminatory practices and promoting equal opportunities, for another 3 EU⁷ countries the establishment of national or cantonal institutions such as the ombudsman for equal treatment, the council for combating discrimination, Roma and gender equality was positively underlined and in one case⁸ was welcomed as well the development of programmes of education and awareness-raising, including inter-cultural and civic education at school.

In relation to the obligation of the States Parties to respect and ensure the rights set forth in the CRC and to prevent discrimination in an active manner, the Committee has constantly stressed the need for an active approach to implementation of the CRC principles without any kind of discrimination in the majority of the concluding observations analysed, taking into consideration the peculiarity of any singular national situations. Thus, the implementation of article 2 must be crucial in a transversal manner for the effective implementation of all other articles ensuring that all the rights mentioned are available to all children without discrimination of any kind.

In particular the Committee in its *Guidelines for Periodic Reports* asks whether non-discrimination is included as a binding principle in the Constitution or in domestic legislation specifically for children and whether all the possible grounds for discrimination spelled out in article 2 of the Convention are reflected in such legal provisions.

On the basis of the fact that article 2 emphasizes that all the rights in the CRC must apply to all children in the State, including visitors, refugees, children of migrant workers and those in the State illegally. As mentioned above the ban on discrimination of any kind does not outlaw legitimate differentiation between children in implementation, for example, of the respect for the “evolving capacities” of children and of giving priority, “special consideration” or affirmative action to children living in exceptionally difficult conditions. In addition the CRC Preamble recognizes that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.” Inevitably, the category of children living in exceptionally difficult conditions includes children with widely different problems requiring widely different remedies. On this basis the Guidelines for Periodic Reports seek information on “the specific measures adopted to reduce economic, social and geographical disparities, including between rural and urban areas, to prevent discrimination against the most disadvantaged groups of children, including children belonging to minorities or indigenous communities, disabled children, children born out of wedlock, children who are non-nationals, migrants, displaced children, refugees or asylum-seekers, and children who are living and/or working on the streets.”

The Guidelines also ask, in various articles, for information on special or specific measures adopted for disadvantaged children. The Committee has consistently commented on the need to identify the most vulnerable and disadvantaged children in a State and has expressed concern about their situation and recommended action to ensure that such children enjoy their rights under the CRC.

Other CRC articles highlight groups of children who may also suffer particular forms of discrimination, for example children without families (article 20), refugee children (article 22), disabled children (article 23), children of minorities or indigenous communities (article

⁷ Finland, France, Romania.

⁸ Austria.

30), children suffering economic and other exploitation (articles 32, 34, 36), children implicated in the juvenile justice system, children whose liberty is restricted (articles 37 and 40), and children in situations of armed conflict (article 38).

As in 2006, the Committee is still adopting a proactive position in relation to the phenomenon of child discrimination. Therefore, it indicated explicitly to all the 16 States the need to adopt legal provisions, a national action plan and to set up instruments to facilitate access to social services, law enforcement and to develop information campaigns.⁹ In particular, in relation to vulnerable groups of children, the Committee manifested its concern in the development and adoption of effective strategies to eliminate the existing forms of discrimination towards children with disabled and Roma children.

For the latter, the Committee urges the 8 UE Members¹⁰ to expeditiously take all measures necessary to ensure the effective elimination of any and all forms of segregation of children of Roma origin, especially the discriminatory practices against them in the education system, and the provision of essential services and housing in accordance with its commitments under the Strasbourg Declaration on Roma (2010) and in pursuance of the Council of Europe Committee of Ministers' Recommendation on policies for Roma and/or Travellers in Europe and in line with recommendations of the Committee on the Elimination of Racial Discrimination. In particular, still referring to Roma children, in one case welcoming the adoption of the Programme for Equal Integration of Roma people into Bulgarian Society, the Committee demands that the State party provide for sufficient human resources, an adequate strategic approach and effective coordination¹¹.

However, conversely to what was reported in 2006, in 2012 the Committee's observations, even though referred to all the Countries under analysis, cannot be gathered into another macro sub-group. It seems that in a certain manner the CRC Committee's analysis of the different national realities became more country driven and more precise on the national realities.

In four cases it is possible to identify a certain recurrence of observations. First, the Committee emphasized for 3 EU Member Countries¹² the importance of collecting disaggregated data to enable monitoring of discrimination against all children and the related extent of discrimination. It recommended that States should collect disaggregated data to enable effective monitoring of de facto discrimination and adopt and implement a comprehensive strategy addressing all forms of discrimination, including multiple forms of discrimination against all groups of children in vulnerable situations and combating discriminatory societal attitudes, in particular towards children living in poverty, children with disabilities and children of foreign origin, including multiple discrimination that may particularly affect boys and girls who belong to ethnic minorities and/or who have special needs or are in situations of vulnerability.¹³

Even in this second review in 2012 the monitoring and evaluation activities seem still to be essential for the realization of all rights within the CRC for all children, without discrimination. Thus the monitoring process and the indicators used must be sensitive to the various issues specifically mentioned in the article: race, colour, sex, language, religion,

⁹ Austria, Belgium, Bulgaria, Cyprus, Czech Rep., Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

¹⁰ Bulgaria, Czech Rep., Finland, Greece, Italy, Romania, Spain and The United Kingdom.

¹¹ Bulgaria.

¹² Belgium, Denmark and Italy.

¹³ Belgium.

political or other opinion, national, ethnic or social origin, property, disability, birth or other status. As the wording of article 2 indicates, the list is not exhaustive but merely illustrative, and States must consider other grounds that might cause discrimination. The Guidelines for Periodic Reports request disaggregated data in many articles, for example by age, gender, region, rural/urban area, social and ethnic origin. The purpose is to ensure that States Parties have sufficient information to judge whether there is discrimination in implementing the article or provision concerned. The consideration of the implications of each and every article must include the consideration of possible discrimination against individual children or groups of children. Article 2 highlights the ‘double jeopardy’ many children face, discriminated against not only on the grounds of their age and status but also on the grounds of their sex or race or disability.

Thus, the Committee has also suggested that strategies to combat discrimination should be evaluated: “...to each child within their jurisdiction...”.¹⁴

The Committee further urges 2 EU Members¹⁵ to effectively adopt a comprehensive national action plan on the prevention of racism, racial discrimination, xenophobia and intolerance, taking into full account all the relevant provisions of the Durban Declaration and Plan of Action, with particular emphasis on Article 2 of the Convention. Whereas always referring to the need to develop general measures of implementation of the non-discrimination principles it requires 3 EU Countries, respectively to: take all necessary measures to ensure that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination in accordance with article 2 of the Convention by implementing the existing law;¹⁶ amend domestic legislation so as to ensure a prohibition of discrimination on the grounds of disability;¹⁷ and strengthen the mandate of the National Office against Racial Discrimination, in particular in the systematic collection of data on racist and xenophobic acts against children.¹⁸

Moreover, still in order to prevent and combat negative social attitudes and eliminate negative stereotyping, the Committee invites 2 EU Member Countries¹⁹ to take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes and behaviour based on sex, age, race, nationality, ethnicity, religion and disability. Moreover, the Committee urges 7 EU Member Countries²⁰ to introduce measures and programmes to fulfil the requirement of the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Committee’s general comment No. 1 (2001) on the aims of education, and in doing so strengthening its efforts to promote values and behaviour free of discrimination on any grounds, including gender, ethnic origin, immigration status, disabilities, sexual orientation and any other.²¹

The latter recommendation is formulated on the basis of the Committee’s first General Comment on the aims of education, in which it underlined the importance of education in combating discrimination, including racism: “Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or

¹⁴ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee’s Concluding Observations on the last EU Countries’ Reports*, Florence, Istituto degli Innocenti, 2006, p. 19.

¹⁵ Czech Rep. and Italy.

¹⁶ Bulgaria.

¹⁷ Bulgaria.

¹⁸ Italy.

¹⁹ Belgium and Bulgaria.

²⁰ Austria, Bulgaria, Czech Rep., Denmark, Estonia, Finland and Italy.

²¹ Denmark.

other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including respect for differences, and challenges all aspects of discrimination and prejudice. Thus, to education should be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena”²² (see chapter on education).

Particular attention is also dedicated to the elimination of any remaining discrimination between children born in marriage and **children born outside marriage**. The Committee urges one UE Member to take appropriate legislative measures to eliminate this form of discrimination and expedite the ratification of the European Convention on the Legal Status of Children Born out of Wedlock.²³

3.2 CRC on the best interest of the child

ARTICLE 3

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

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.*

3. *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

Comment on article 3²⁴

The concept of the “best interests” of children has been the subject of more academic analysis than any other concept included in the Convention on the Rights of the Child. In many cases, its inclusion in national legislation pre-dates ratification of the Convention, and the concept is by no means new to international human rights instruments.

The Committee on the Rights of the Child has highlighted in the article 3(1), that the best interest of the child shall be a primary consideration in all actions concerning children, as one of the general principles of the Convention on the Rights of the Child, alongside articles 2, 6 and 12. The principle was first seen in the 1959 Declaration of the Rights of the Child, which uses it in Principle 2: “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”

Interpretations of the best interests of children cannot trump or override any of the other rights guaranteed by other articles in the Convention. The concept acquires particular

²² Committee on the Rights of the Child, General Comment 1, 2001, HRI/GEN/1/Rev.5, p. 258.

²³ Italy.

²⁴ Mainly from Hodgkin, R., Newell, P., *Implementation handbook for the Convention on the Rights of the Child* (3rd ed.), New York, Unicef, 2007, p. 39-51.

significance in situations where other more specific provisions of the Convention do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies.

Within the Convention itself, the concept is also evident in other articles, providing obligations to consider the best interests of individual children in particular situations in relation to:

- separation from parents: The child shall not be separated from his or her parents against his or her will “except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”; and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis “except if it is contrary to the child’s best interests” (article 9(1) and (3));
- parental responsibilities: Both parents have primary responsibility for the upbringing of their child and “the best interests of the child will be their basic concern” (article 18(1));
- deprivation of family environment: Children temporarily or permanently deprived of their family environment “or in whose own best interests cannot be allowed to remain in that environment”, are entitled to special protection and assistance (article 20);
- adoption: States should ensure that “the best interests of the child shall be the paramount consideration” (article 21);
- restriction of liberty: Children who are deprived of liberty must be separated from adults “unless it is considered in the child’s best interest not to do so” (article 37(c));
- court hearings of penal matters involving a juvenile: Parents or legal guardians should be present “unless it is considered not to be in the best interest of the child” (article 40(2) (b) (iii)).

The Working Group drafting the Convention did not discuss any further definition of “best interests”, and the committee on the Rights of the Child has not as yet attempted to propose criteria by which the best interests of the child should be judged in general or in relation to particular circumstances, aside from emphasizing that the general values and principles of the Convention should be applied to the context in question.

The Committee has repeatedly stressed that the Convention should be considered as a whole and has emphasized its interrelationships, in particular between those articles it has elevated to the status of general principles (articles 2, 3, 6 and 12).

Thus, the principles of non-discrimination, maximum survival and development, and respect for the views of the child must all be relevant to determining what the best interests of a child are in a particular situation, as well as to determining the best interests of children as a group. And consideration of best interests must embrace both short and long-term considerations for the child. Any interpretation of best interests must be consistent with the spirit of the entire Convention – and in particular with its emphasis on the child as an individual with views and feelings of his or her own and the child as the subject of civil and political rights as well as special protections. States cannot interpret best interests in an overly culturally relativist way and cannot use their interpretation of “best interests” to deny rights now guaranteed to children by the Convention, for example to protection against traditional practices and violent punishments.

The wording of the first paragraph "...shall be a primary consideration" indicates that the best interests of the child will not always be the single, overriding factor to be considered; there may be competing or conflicting human rights interests, for example between individual children, between different groups of children and between children and adults. The child's interests, however, must be the subject of active consideration. It needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration.²⁵

The wording of the principle indicates that its scope is very wide, going beyond State-initiated actions to cover private bodies too, and embracing all actions concerning children as a group.

In its reporting *Guidelines* and in its examination of States Parties' reports, the Committee on the Rights of the Child has emphasized that consideration of the best interests of the child should be built into national plans and policies for children and into the workings of parliaments and governments, nationally and locally, including, in particular, in relation to budgeting and allocation of resources at all levels. The assessment of child impact and building the results into the development of law, policy and practice thus become an obligation (see article 4).

Where the phrase "best interests" is used elsewhere in the Convention (see above), the focus is on deciding appropriate action for individual children in particular circumstances and requires determination of the best interests of individual children. In such situations, the child's interests are the paramount consideration (as stated explicitly in relation to adoption in article 21).

The Committee on the Rights of the Child has emphasized that article 3(1) is fundamental to the overall duty to undertake all appropriate measures to implement the Convention for all children in article 4. For example, where a plan of action for children is proposed, the "best interests" principle should be fully integrated.

Integration of the principle must imply the development of mechanisms to assess the impact of government actions on children and to incorporate the results of the assessment in policy development (see article 4).

In relation to the vital issue of resource allocation, the best interests principle demands first that within the overall central government budget, and regional and local budgets, there must be an adequate allocation for children (see article 4). There must therefore be sufficient analyses of relevant budgets to determine the proportion and amount allocated to children. In considering priorities in resource allocation, both between and within services at the national and local level, best interests must be a primary consideration. The non-discrimination principle is also important; but as emphasized in article 2, the non-discrimination principle allows for positive discrimination – that is, affirmative action – on behalf of particularly disadvantaged or vulnerable groups of children.

Thus, the setting of priorities and targeting within resource allocation is vital to reducing discrimination in overall implementation.

The Committee has paid increasing attention to the importance of budget analysis in its examination of reports and in its discussions with representatives of States Parties. Its *Guidelines for Periodic Reports* seeks information on: the proportion of the budget devoted to social expenditure for children at all levels; budget trends; the "arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified"; and

²⁵ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 10-12.

“the steps taken to ensure that all competent national, regional and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policymaking”.

Similarly, the impact on children of economic adjustment policies and budgetary cuts must be considered in the light of the best interests principle and other basic principles. This consideration is also highlighted in the *Guidelines for Periodic Reports*: “The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector” (para. 20).

The Committee looks for processes which ensure that the best interests of children are considered in policy formulation, and it has promoted the concept of child impact assessment (see article 4).

In particular article 3.1 had been the object of a specific recent interpretation by the Committee on the rights of the child through the adoption on May 2013 of the General comment No. 14. The General comment no. 14 is meant to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration and promotes “a real change in attitudes leading to the full respect of children as rights holders”.

The univocal interpretation provided for the first paragraph of the article 3 shed light on some of the most debated aspects of the best interest principles. The General comment reiterates that the best interest of the child is a “dynamic concept that encompasses various issues which are continuously evolving”. Moreover, it provides a “framework for assessing and determining the child’s best interests”. Therefore though its adoption the Committee does not try to ‘prescribe what is best for the child’ it underlines that in a dynamic inclusive proceeding of the child opinion the best interest has to be determined on a case-by-case procedure in any given situation at any point in time.²⁶

An exception is made in respect of adoption (art. 21), where this right of best interests is further strengthened. In this case the best interest of the child is not simply an element of “a primary consideration” but aspect of “the paramount consideration” in the decision making procedure.²⁷

The second and third paragraphs of article 3 are also of great significance. An article 3(2) outlines an active overall obligation of States, ensuring the necessary protection and care for the child’s well-being in all circumstances, while respecting the rights and duties of parents. Together with article 2(1) and article 4, article 3(2) sets out the overall obligations of the State.

Article 3(3) requires that standards be established by “competent bodies” for all institutions, services and facilities for children, and that the State ensures that the standards are complied with. This paragraph demands that institutions, services and facilities be established for children, and that the State must ensure that the standards are complied with through appropriate monitoring. Other articles refer to particular services that States Parties should ensure are available; for example “for the care of children” (in article 18(2) and (3)), alternative care provided for children deprived of their family environment (article 20), care for disabled children (article 23), rehabilitative care (article 39) and institutional

²⁶ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 32.

²⁷ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 36-40.

and other care related to the juvenile justice system (article 40).

The provision covers not only state-provided institutions, services and facilities but also all those “responsible” for the care or protection of children. In many countries, much of the non-family care of children is provided by voluntary or private bodies, and in some States policies of privatization of services are taking more institutions out of direct State control. Article 3(3) requires standards to be established for all such institutions, services and facilities by competent bodies. Together with the non-discrimination principle in article 2, the standards must be consistent and conform to the rest of the Convention.

Comment on the Committee’s concluding observation on article 3

The Committee has addressed the issue of the child’s best interest in the Concluding observations on 12 EU Countries.²⁸

The attention of the Committee in these concluding observations is mainly focused on the principle set down in article 3(1) and 3(3). While appreciating the fact that the harmonization procedure of the national legislation brought in with the integration of the principle of the best interests of the child in national legislation,²⁹ that the principle of the best interests of the child has been included in some national Constitutional laws³⁰ and that some Courts of Cassation have acknowledged the direct applicability of article 3, para. 1 of the Convention³¹ the Committee has, first of all, asked for a greater effort in integrating the best interest principle into all relevant legislation concerning children and applied in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children. For 9 of these EU³² countries the Committee demands that appropriate and efficient measures be taken in order to ensure that the principle of the best interests of the child, ‘in accordance with article 3 of the Convention, is adequately integrated into all legal provisions and applied in judicial and administrative decisions and in projects, programmes and services which have an impact on children. In particular for 2 EU Countries³³ referring to the implementation of this provision in all legislative, administrative and judicial proceedings as well as in all policies, programmes dedicated directly or indirectly to children, the Committee encouraged the States Parties to develop ‘procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate these practices to public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. For 4 EU³⁴ Countries the Committee requires that the legal reasoning of all judicial and administrative judgments and decisions should also be based on the principle of the child’s best interests. This is in line with General Comment no. 5 of 2003 in which the Committee stresses that article 3(1) refers to actions undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. Thus the principle requires active measures through 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

²⁸ Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

²⁹ Austria, Belgium, Denmark, Finland, France, Romania, Spain, Sweden.

³⁰ Austria.

³¹ France.

³² Austria, Belgium, Cyprus, Czech Republic, Finland, Romania, Sweden, The Netherlands and The United Kingdom.

³³ Austria and Cyprus.

³⁴ Austria, Cyprus, Czech Republic and Finland.

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.”

From the concluding observations the Committee’s concern also appears in relation to the fact that sufficient consideration has not yet been given to the principle of the child’s best interest, particularly in the cases in which the municipalities are asked to determine the placement of a child outside his or her home as well as in the applications from unaccompanied asylum-seeking children.³⁵ Still referring to the condition of migrant children the Committee requires the principle of the best interest to be used as a basis and guiding element in all the decisions related to asylum cases involving children.³⁶ A particular issue of concern is also the necessity of providing regular training for staff at the Migration Board and the social welfare authorities and for all decisions makers (judges, public officials, legislative bodies etc.).³⁷

Moreover the Committee demands a stronger implementation of the article 3, inviting the States Parties to take all appropriate measures in particular through concrete procedural rules, to ensure that the principle of the best interests of the child guides all central and autonomous government actions and decisions with regard to legal provisions as well as in judicial and administrative decisions which have an impact on children.³⁸ In these cases the Committee demands also the assessment of the impact on the best interests of the child of government and civil society actions, in order to further enhance its own understanding – and therefore its guidance – of what constitutes “best interests”.³⁹

3.3 CRC on the right to life, survival and development

ARTICLE 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Comment on article 6⁴⁰

Article 6 is one of the articles designated by the Committee on the Rights of the Child as a general principle, guaranteeing the child the fundamental right to life, upheld as a universal human rights principle in other instruments, and to survival and development to the maximum extent possible.

The concept of “survival and development” to the maximum extent possible is crucial to the implementation of the whole Convention. The Committee on the Rights of the Child considers development as a holistic concept, and many articles of the Convention specifically refer to the goal of development. Other articles emphasize the key role of parents and the family for child development and the State’s obligation to support them. Protection from violence and exploitation is also vital to maximum survival and development.

³⁵ Denmark.

³⁶ Sweden.

³⁷ Spain, Sweden and France.

³⁸ France and Spain.

³⁹ France and Spain.

⁴⁰ From Hodgkin, R., Newell, P. (2007), *Implementation handbook for the Convention on the Rights of the Child* (3rd ed.). New York: Unicef, p. 95-106.

As with the other identified general principles (articles 2, 3, and 12), the Committee on the Rights of the Child has proposed that article 6 should be reflected in domestic legislation. The inherent right to life is upheld as a universal human rights principle in article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of person.”

Article 1 of the CRC deliberately leaves open the starting point of childhood, that is, whether it is conception, birth or sometime in between. Thus, the Convention leaves individual States to decide for themselves the conflicting rights and interests involved in issues such as abortion and family planning, and the Committee on the Rights of the Child has therefore suggested that reservations to preserve State laws on abortion are unnecessary (see article 1).

Following the 1997 *General Discussion on the rights of children with disabilities*, throughout its monitoring activity the Committee invites States to “review and amend laws affecting disabled children which are not compatible with the principles and provisions of the Convention, for example legislation (i) which denies disabled children an equal right to life, survival and development⁴¹ (see article 23). This element had been reiterated in September 2006 with the adoption of the *General Comment no. 6 on ‘The rights of children with disabilities’*. In this General comment the Committee report that children with disabilities are in many countries subject to a variety of practices and crimes such as infanticide at birth, killing, witchcraft allegations and family abandonment. These crimes often go unpunished or perpetrators receive reduced sentences, therefore the Committee “urged to undertake all the necessary measures required to put an end to these practices, including raising public awareness, setting up appropriate legislation and enforcing laws that ensure appropriate punishment.”⁴²

In its second paragraph, article 6 of the Convention on the Rights of the Child goes beyond the fundamental right to life to promote survival and development “to the maximum extent possible”. The concept of “development” is not just about the preparation of the child for adulthood, it is about providing optimal conditions for childhood, for the child’s life now.

The Committee on the Rights of the Child has emphasized “child development” as a holistic concept, embracing the whole Convention. In the *Guidelines for Periodic Reports*, it asks States to describe measures taken “to create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, 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” (par. 40).

Many of the obligations of the Convention, including in particular those related to health, adequate standard of living, education, and leisure and play (articles 24, 27, 28, 29 and 31) are relevant to ensuring the maximum development of the child, and individual articles expand on the concept of “development”, for instance, in article 27, States Parties recognize “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. Among the aims of education set out in article 29 is “...The development of the child’s personality, talents and mental and physical abilities to their fullest potential...” and preparation of the child for “responsible life in a free society.” The Convention’s provisions protecting the child from violence and exploitation (in particular articles 19 and 32-39) are as vital to maximum survival and

⁴¹ See also on this point Report on the sixteenth session, CRC/C/69, p. 51 ss.

⁴² General Comment No. 9 (2006), The rights of children with disabilities, CRC/C/GC/9 27 February 2007.

development as those on the provision of services. The CRC's Preamble upholds the family as the "natural environment for the growth and well-being of all its members and particularly children" and recognizes that the child, "for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." Article 5 requires respect for the "evolving capacities of the child" – a key concept of overall development. Article 18 recognizes that parents or legal guardians have the "primary responsibility" for the upbringing and development of the child and requires the State to provide appropriate assistance and in article 20, special protection for those deprived of a family environment. Article 25 requires a periodic review of all children placed in care, under protection or treatment – an important safeguard for their maximum development. And in relation to disabled children, article 23 requires assistance to be provided "in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development." The Committee expects implementation of all other articles to be carried out with a view to achieving the maximum survival and development of the child – a concept clearly in line with the principle of the best interests of the child.

Moreover in its *General guidelines for periodic reports*⁴³ in relation to article 6 the Committee demanded that States Parties also provide information on the measures taken to ensure the registration of the deaths of children, the causes of death and, where appropriate, investigation and reporting on such deaths, as well as on the measures adopted to prevent children's suicide and to monitor its incidence and to ensure the survival of children at all ages, including adolescents, and the prevention of risks to which that group may be particularly exposed (for example, sexually transmitted diseases, street violence). In addition the Committee asked States to provide relevant disaggregated data, including on the number of suicides among children (par. 41).

Comment on the Committee's concluding observations on article 6

Concerning the right to life, survival and development, the Committee has made a recommendation addressing this issue for a total of 6 EU Countries.⁴⁴

In *General Comment no. 5* (2003) on the general measures of implementation of the Convention on the Rights of the Child, in which, referring to article 6 of the CRC the "Committee expected 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".

As it emerged already in the previous version of this 2006 review, in 2012 the Committee also addressed the issues of the protection of children from death and injuries due to traffic and home accidents, outlining that the main cause of this problem is the lack of attention dedicated to this point at the national level and to the absence of a consolidated awareness of the children and of those in close contact with them. In particular in two cases the committee required the use of all available resources to protect the child's right to life, also by reviewing the effectiveness of preventive measures and it also required the introduction of 'a systematic, independent and public review of any unexpected death or serious injury involving children in particular in institutions of care and custody or detention in order to

⁴³ CRC/C/58, 20 November 1996.

⁴⁴ Cyprus, France, Greece, Romania, The Netherlands and The United Kingdom.

enhance the results of this review' and its preventive measures.⁴⁵ Furthermore, the Committee demanded that Taser guns and Attenuating Energy Projectiles (AEP) be considered as weapons subject to the applicable rules and called for a ban on the use of all harmful devices on children.⁴⁶

Referring specifically to traffic accidents, an aspect of constant concern is "road safety" and how to reduce the high number of injuries and "deaths caused by accidents". The Committee required an increase of the effort to increase the road safety and to reduce the accidents "through the implementation of further traffic safety and awareness-raising initiatives."⁴⁷

Moreover, the Committee's attention seems to be more focused on the single national situations; for this reason in this field there are recommendations often formulated toward one or two States Parties. This is due to the necessity to support each Country in the process of amelioration the conditions of the youngest generations in that specific Country and in relation to its socio-economic situation. Therefore, these singular cases are referred to the necessity to conduct assessment of the effects of the crisis on life prospects and development of children, especially adolescents, with the intention of minimizing risks to their survival and development⁴⁸ or so as to protect and enhance the right to life, survival and development of vulnerable groups. For this latter case the Committee recommends that efforts to address the causes of child and infant mortality and malnutrition be intensified, in particular those associated with poor access to health care services, poverty and lower levels of education among Roma families and families living in rural areas.⁴⁹ In this case the Committee, in particular, encourages States Parties to enhance pre-natal and post-natal services and to develop training programmes in parenting skills, the positive effects of breastfeeding, nutritious diet for mother and child and proper hygiene rules targeted at deprived communities.⁵⁰

Finally, **in line with its previous recommendations noted in the 2006 version of this report**, the CRC Committee referred to the practice of **euthanasia** also applicable to children aged 12 years or older and observance of the required criteria explicitly set out in the national legal framework. In line with its previous recommendations, the Committee urges the State party to study the problem of the application of criminal law on the termination of life of neonatal children. The Committee recommends the revision of the regulations and procedures of monitoring with respect to the termination of life on request, in order to ensure that children, including newborn infants with severe abnormalities, enjoy special protection, and that the regulations and procedures are in conformity with article 6 of the Convention.⁵¹

⁴⁵ France and The United Kingdom.

⁴⁶ The United Kingdom.

⁴⁷ Cyprus.

⁴⁸ Greece.

⁴⁹ Romania.

⁵⁰ Romania.

⁵¹ The Netherlands.

3.4 CRC on respect for the view of the child

ARTICLE 12

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

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

Comment on article 12⁵²

The Committee on the Rights of the Child asserted that article 12 is a general principle of fundamental importance to all aspects of implementation of the Convention on the Rights of the Child and to the interpretation of all other articles.

In its paragraph 1 it requires States to assure that any child capable of forming his/her own view has the right to express views freely in all matters affecting him or her and that the child's views are given due weight in accordance with the age and maturity.

In paragraph 2, article 12 specifically provides the child with the right to be heard in any judicial and administrative proceedings affecting him or her, covering a very wide range of court hearings and also formal decision-making affecting the child in, for example, education, health, planning, the environment and so on (see juvenile justice).

The Committee has consistently emphasized that the child must be regarded as an active subject of rights and that a key purpose of the Convention is to emphasize that human rights extend to children.

Article 12, together with the child's right to freedom of expression (article 13), and other civil rights to freedom of thought, conscience and religion (article 14), and freedom of association (article 15) underline children's status as individuals with fundamental human rights, and views and feelings of their own. The Committee has rejected what it has defined as "the charity mentality and paternalistic approaches" to children's issues. Thus, within its monitoring activity the CRC Committee invariably raises implementation of article 12 with States Parties and identifies culture attitudes as possible obstacles.

The wording of the two paragraphs of article 12 have been object of a literal analysis by General Comment no. 12 on 'The right of the child to be heard' adopted by the Committee in June 2009. The General comment, aimed to provide a univocal interpretation of the article, states that in it there is no reference to a right to self-determination and clarifies that article 12 recognises the children's right to be heard in all decision-making processes affecting their life.⁵³ The references to the "evolving capacities" of the child, in articles 5 and 14 emphasize the need to respect the child's developing capacity for decision-making.

Several other articles include references to children's participation. Article 9(2) refers to the child's right to be heard in relation to proceedings involving separation from his or her parent(s), during which "all interested parties shall be given an opportunity to participate in the proceedings and make their views known" (article 9) (see separation from parents). In

⁵² From Hodgkin, R., Newell, P., *Implementation handbook for the Convention on the Rights of the Child* (3rd ed.), New York, Unicef, 2007, p. 159-184.

⁵³ General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009.

relation to adoption proceedings, article 21(a) refers to “the informed consent” of the persons concerned (see adoption). Every child deprived of his or her liberty has the right under article 37 to challenge the legality of the deprivation before a court or other authority, suggesting a right to initiate court action rather than just to be heard (see juvenile justice). Whereas, article 40, in relation to children “alleged as, accused of, or recognized as having infringed the penal law,” emphasizes the juvenile’s right to an active role in the proceedings, but that he or she must not “be compelled to give testimony or to confess guilt” (article 40(2)(b)(iv)) (see juvenile justice).⁵⁴

The significance of article 12 of the Convention on the Rights of the Child is that it not only requires that children should be assured the right to express their views freely, but also that they should be heard and that their views be given “due weight”. Referring to this aspect the General Comment emphasised that the views of the child must be “given due weight in accordance with the age and maturity of the child.” Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views. This “due weight” has to be determined in accordance with age and maturity. Age alone cannot determine the significance of a child’s views. Therefore the biological age, in order to evaluate the child maturity has to be combined with child experience, environment, social and cultural expectations, and levels of support. These are all aspects which contribute to the development of a child’s capacities to form a view. “For this reason, the views of the child have to be assessed on a case-by-case examination”.⁵⁵

These principles are recognised as such also by the Universal Declaration of Human Rights that states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers” (article 19). And the International Covenant on Civil and Political Rights states: “Everyone shall have the right to hold opinions without interference” (article 19(1)).

Concluding, the CRC Committee through the adoption in 2003 of the *General Comment no. 5 on General measures of implementation of the Convention on the Rights of the Child*, affirmed that the principle of article 12 highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights and it applies equally to all measures adopted by States to implement the Convention. The General Comment no. 5 urged for the opening of government decision-making processes to children as a positive challenge. General Comment no. 12 intervened on the same lines, with the overall intention of supporting States parties in the effective implementation of article 12. To achieve this objective the General Comment no. 12 provides a univocal interpretation of meaning of article 12 and provides action oriented suggestions on how to implement this article. It described the implications of the article 12 for governments, stakeholders, NGOs and society at large, it outlines the scope of legislation, policy and practice necessary to achieve full implementation of article 12 and proposed basic requirements for appropriate ways to give due weight to children’s views in all matters that affect them. A particular aspect is the requirement to develop regulations and procedures that systematically include the child hearing in the different steps of the deciding procedure in all the possible settings of interest for the child involved.⁵⁶

⁵⁴ For more information on the right to be heard and the links with other provisions of the Convention, please see: General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, pp. 17-21.

⁵⁵ General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, p. 11.

⁵⁶ General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, pp. 6-7, 29-31.

Comment on the Committee's concluding observations on article 12

Concerning the principle of respecting the view of the child, the CRC Committee addressed this point for 16 EU Countries.⁵⁷ Such a large number of observations show the importance of this principle in the full implementation of the CRC for the Committee.

In relation to the principles set down in article 12 CRC and with the intention of underlining that the child has rights and is an active participant, in 1999 the Committee together with the Office of the High Commissioner for Human Rights, held a two-day workshop: "Tenth anniversary of the Convention on the Rights of the Child commemorative meeting: achievements and challenges", on 30 September and 1 October 1999. On that occasion the Committee made detailed recommendations, stating: "Child rights must be viewed as the human rights of children. The experience of general human rights activities over recent decades should be analyzed and used to promote respect for the rights of the child, and to avoid the perseverance of the charity mentality and paternalistic approaches to children's issues." On that occasion the Committee was invited to adopt, 'as a priority, a comprehensive general comment on child participation as envisaged in the Convention (and more particularly in article 12) bearing in mind that participation includes, but is not limited to, consultation and proactive initiatives by children themselves.' The Committee on the rights of the child, as above mentioned, adopted General Comment no. 12 in June 2009, which at the present seems to be the basis of the concluding observation formulated by the CRC Committee since its adoption in 2009.

First of all, while appreciating the efforts made by States parties to promote respect for the views of the child, the Committee expressed its concern about the need to further develop the consideration and attention given to this essential principle by civil society and the public and private institutions.

Thus, it recommended to 14 EU Countries,⁵⁸ that they should provide the reinforcement of awareness raising campaigns among the public in general. The Committee demanded to strengthen the attention to the implementation of its General Comment no. 12 and to continue to ensure the implementation of the right of the child to be heard in accordance with article 12 of the Convention and promote the participation of all children at all levels of government and within the family, schools and the community, requiring particular attention to children in vulnerable situations. This has to be achieved through awareness-raising campaigns "to facilitate families and adults understanding and respecting the right of children to express their views and actively create opportunities for children participation in matters that concern them".

In 3 cases the education and training of professionals is prescribed with a view to the implementation of this general principle in daily life, in particular in relation to professionals in the juridical, welfare and other sectors dealing with children. This training has to be systematically provided and appropriate with the intention to improve skills on hearing and taking into account children views in all decisions affecting them and in accordance with the child's age and maturity.⁵⁹

In 2 cases the Committee explicitly stressed the necessity for skill-development and training programmes on children's rights, in a community setting for parents, teachers,

⁵⁷ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

⁵⁸ Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Italy, Romania, Spain, Sweden, The Netherlands and The United Kingdom.

⁵⁹ Denmark, Greece and Sweden.

professionals working with and for children, local officials, community leaders, administrative officials and the judiciary, to encourage children to express their informed view.⁶⁰

Article 12 states one of the fundamental values of the Convention and probably also one of its basic challenges. “In essence it affirms that the child is a fully-fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight. Thus the child has the right to participate in the decision-making process affecting his or her life, as well as to influence decisions taken in his or her regard...” At the first sight it might be considered that article 12 is basically addressing the same issue as article 13 on freedom of expression and information. It is true that they are closely connected. But the fact they were both incorporated in the Convention and coexist in an autonomous manner, has to be interpreted as to mean that, while article 13 recognizes in a general way freedom of expression, article 12 should prevail in all those cases where the matters at stake affect the child, while stressing the right of the child to be heard and for the child’s views to be taken into account.”⁶¹

For this reason the Committee in its Concluding Observations recommended to States Parties that efforts be made to continue to promote within the family, schools, administrative bodies and other institutions respect for the view of the children and to facilitate their participation in all matters affecting them. In 11 EU Countries⁶² it requested the States to continue to enhance child participation and respect for the opinions of the child, including at national and local levels, to ensure that children’s views are heard and taken into in political discussions and to further encourages the establishment of systems and institution such as youth boards, child council, youth centres and children’s parliaments⁶³ for including the views of the child in political discussions and decisions affecting them. In some of these cases the Committee requires explicitly to take measures to ensure that children are included in the development of national and regional legislation and policies relevant to them⁶⁴ and in the implementation and evaluation of plans, programmes and policies.⁶⁵ In addition in two cases States Parties are requested to support children’s participation in the reporting process.⁶⁶

From the legal point of view, while welcoming the efforts made by the States amending, reviewing and harmonising the national legislation at the ordinary and constitutional level in order to reinforce the rights of the child to express his/her own opinions freely in all matters affecting her/him⁶⁷ and the fact that article 12 has been declared by national Constitutional Court as directly applicable in the domestic legal system,⁶⁸ the Committee expressed its concern in relation to the necessity that the revisions of the national legislation should expand children’s opportunities and the setting up of procedures to express their views and to be heard. As already emerged in the 2006 version of this study the Committee stressed that it was essential to adopt provisions to ensure that article 12 of the Convention

⁶⁰ Bulgaria and Estonia.

⁶¹ Manual on Human Rights Reporting, 1997, p. 426.

⁶² Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Italy, Sweden, The Netherlands and The United Kingdom.

⁶³ Bulgaria, Cyprus, Estonia and France.

⁶⁴ Bulgaria, Denmark, France, Italy.

⁶⁵ Denmark and Spain.

⁶⁶ Belgium and Denmark.

⁶⁷ Austria, Bulgaria, Denmark, Finland, France, Greece, Italy, Romania, Spain and Sweden.

⁶⁸ Italy.

is fully implemented, and would be applicable to courts, administrative bodies, institutions, schools, childcare centres and in family matters affecting children and would guarantee the right to appeal against the decisions adopted, for 8 EU Countries.⁶⁹ However, in 2012 this Committee requested the inclusion of an additional pivotal integration of the adoption of governing procedure in courts and administrative proceedings, including civil (family, divorce) procedure and penal matters, and in administrative proceedings affecting them in order to ‘ensure that a child capable of forming his/her own views has the right to express those views and that they are given due weight’ for all children, including children from distinct ethnic, religious, linguistic or cultural groups.⁷⁰

In relation to age, article 12(1) does not set any lower age limit on children’s right to express views freely. It is clear that children can and do form views from a very early age, and the Convention on the Rights of the Child provides no support to those who would impose a lower age limit on the ascertainment or consideration of children’s views. And it is important to note, for example, that ascertaining the views of some disabled children may require special consideration.

The *Manual on Human Rights Reporting*, 1997 and the General Comment no 12 (2009) state that in order to pursue the provisions of article 12, States Parties have the precise obligation to assure the child the right to have a say in situations that may affect him or her. The child is not envisaged as a passive human being, therefore the right to be heard should be ensured and respected ‘even in situations where the child would be able to form views and yet be unable to communicate them, or when the child is not yet fully mature or has not yet attained a particular older age, since his or her views are to be taken into consideration “in accordance with the age and maturity of the child.”⁷¹

General comment no. 12 reiterates that there are no limits to the obligation of States Parties to assure the child the right to express views freely neither in relation to age, nor in relation to the setting or context. Therefore, the right recognized in article 12 is to be assured in relation to all matters affecting the child and it should apply in all questions, even those that might not be specifically covered by the Convention, whenever those same questions have a particular interest for the child or may affect his or her life. For these reasons General Comment no. 12 does not provide any age limit or identification of specific settings and situations in which this right should be applied.⁷²

In particular to referring to the age limitation it is worth mentioning that the Committee in one case invites the State Party to conduct research to monitor the impact of the lowering of the voting age and to undertake educational activities for children on the exercise of the right to vote in an effective manner.⁷³

⁶⁹ Finland, France, Denmark and Italy.

⁷⁰ Belgium, Bulgaria and Greece.

⁷¹ *Manual on Human Rights Reporting*, 1997, p. 426.

⁷² General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, pp. 6-7 and 21-29.

⁷³ Austria.

4. Civil rights and freedom

4.1 CRC on the right to identity

ARTICLE 7

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

2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Comment on article 7

Article 7 of the CRC provides for the following children's rights:

- birth registration
- a name
- a nationality
- know and be cared for by their parents.¹

The Committee of the Right of the child highlights the importance of Article 7 for children's enjoyment of other political, cultural, economic and civil rights.² The first step towards a proper implementation of children's right to identity is birth registration.

As stated by the Committee, "Birth registration is closely linked to the right to a legal identity and protection, and serves to safeguard children against violations of their rights. Birth registration is normally required in order to access education and health services, and birth registration data are essential for State planning regarding the provision of social services."³

The Committee, furthermore, acknowledges that specific groups of children – with disabilities, indigenous children and migrant children – are more vulnerable to the risk of non-registration. The provisions of article 7 need to, hence, be "fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interest of the child (art. 3)."⁴

Non registration increases children's risk of neglect and statelessness,⁵ which States have a duty to prevent. In the context of international migration, therefore, properly implementing article 7 means for States to review their legislation on migration as to allow illegal or undocumented migrant parents to register their children, who would otherwise

¹ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p 32.

² Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

³ Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

⁴ Committee on the Rights of the Child, General Comment 9, 2006, p. 10.

⁵ Committee on the Rights of the Child, General Comment 11, p. 9. Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

become stateless.⁶ Children born in destination countries have the right to be registered immediately after birth and to acquire a name and nationality (article 7 CRC, article 24 ICCPR, article 29 CMW).⁷

The Committee also notes that Article 7 establishes a child's right to family life - reinforcing what stated in the preamble of the Convention as well as in articles 3, 8, 9, 10, 16, and 18.⁸ Birth registration, in that sense, "facilitates family reunification in migration proceedings."⁹

As reported in the ChildONEurope Survey of 2006, "the second part of paragraph 1 of article 7, as the Manual on Human Rights Reporting, 1997, notes, also contains a "new right" "the child's right to know and be cared for by his or her parents. The right is qualified by the words 'as far as possible.' It may not be possible to identify parents, and even when they are known, it may not be in the child's best interests to be cared for by them. Article 7 should be read in conjunction with article 8 (preservation of identity, including nationality, name and family relations), article 9 (separation from parents), article 10 (family reunification) and article 20 (continuity in upbringing of children deprived of their family environment)."¹⁰

Comment on the Committee's concluding observations on article 7

Out of the 16 States taken into consideration in this survey, 8 countries received observations on matters related to article 7.¹¹

Considering what had been discussed up to 2006, the CRC Committee noted positive developments such as a slight increase in the registration rate of ROMA children in one EU Country,¹² legal amendments that simplify naturalization procedures of stateless children in another EU Country¹³ and the developments of legal provisions that will guarantee children's rights to know their origins in 2 EU Countries.¹⁴ At the same time the Committee urged multiple States to take further steps in all the areas thus mentioned.

4 EU Countries¹⁵ were recommended to fully enforce **children's rights to know their biological parents**. The Committee acknowledged different factors responsible for hampering children's capacity to access information about their origin in each country. Reasons why that is the case range from the occurrence of **anonymous abandonment through baby nests**,¹⁶ to the **lack of clearly defined procedures for storing information on the identity and medical conditions of biological parents**¹⁷ as well as **the right mothers have in certain countries to conceal their identity**.¹⁸ As urgent steps to take, the

⁶ Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

⁷ Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

⁸ Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 21.

⁹ Committee on the Right of the Child, 2012 Day of General Discussion, Right of All Children in the Context of International Migration, Background paper, p. 27.

¹⁰ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 32.

¹¹ Austria, Belgium, Czech Republic, Estonia, France, Greece, Italy and Romania.

¹² Greece.

¹³ Estonia.

¹⁴ Belgium and France.

¹⁵ Austria, Belgium, Czech Republic and France.

¹⁶ Austria.

¹⁷ Belgium.

¹⁸ France.

Committee recommended 2 EU Countries¹⁹ to keep **confidential records of the information pertaining biological parents** of children given for adoption and make that available to the adopted child at a later stage of his or her life. Such provisions may entail **legal amendments** as well as the establishment of **bodies endowed with the specific task of facilitating people's access to information** on their origin. With respect to this point, the Committee noted the relevance of the French National Council on Access to Personal Origins.

As pointed out in the previous ChildONEurope survey, the importance of storing the information and making it available to the adopted child at a time that is deemed appropriate is linked both with the child's right to identity as well as his or her **right to health**;²⁰ **biological parents** carrying important **medical-genetic information** concerning the child. The role of biological parents is thus being re-evaluated, both for psychological and medical reasons. In that sense, a proper implementation of article 7 entails unpacking the definition of parent with the awareness that out of home children may relate to multiple parents or guardians, who all play crucial roles in their lives and rights fulfilment.²¹

Issues of **nationality, citizenship and the risk of statelessness**, which appeared to be salient matters in the ChildONEurope report in 2006, were the object of important observations made by the Committee, which acknowledged positive developments taking place in a few countries. It was noted, for instance, that an EU Country's commitment to **simplifying the process of naturalization** of children of stateless persons²² is resulting in the **decrease in the number of stateless persons**. The Committee, furthermore, complimented 2 EU Countries²³ for taking institutional measures to ensure birth registration of vulnerable groups such as Roma children.

Obstacles to birth registration and access to nationality/citizenship, however, were seen to persist in hindering the implementation of article 7 in 6 EU Countries.²⁴ Challenges standing in the way of children being registered and acquiring a nationality relate to:

- discrimination on the basis of parents' illegal residence or similar status;
- discrimination on the basis of parents' past opinions or activities;
- geographical constraints of children born in remote areas;²⁵
- challenges in accessing information on birth registration facilities;
- civil records procedures requiring residence permits;
- delays in birth registration procedures.

While the **obligation of States to register children** – who would otherwise be stateless – **regardless of their parents' background** is clearly spelled out in multiple international treaties,²⁶ the analysis of the CRC's concluding observations on the 16 countries examined shows that many EU States have yet to eliminate all **forms of discrimination** which are

¹⁹ Austria and Belgium.

²⁰ ChildONEurope, *Survey on the CRC Committee Concluding Observations on the last EU Countries' report*, p. 33.

²¹ For a reflection on the changing weight of the concept of parent in the advancement of children's right with regards to article 7 of the CRC see Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 35.

²² Estonia.

²³ France and Greece.

²⁴ Czech Republic, Estonia, France, Greece, Italy and Romania.

²⁵ The Committee highlighted the persistence of a lack of birth registration in certain areas of French Guyana.

²⁶ Convention on the Right of the Child (1989), Convention on the Reduction of Statelessness (1961), the Declaration of the Rights of the Child (1959), Convention relating to the Status of Stateless Persons (1954).

observed to influence their **legal-administrative apparatus** jeopardizing children's right to nationality and citizenship. It was noted that public security measures²⁷ may, in particular, collide with States' duty to protect children and provide them with birth registration and nationality/citizenship rights. Moreover, in one EU Country children were seen to suffer the consequences of their parents' former activities.²⁸

Taking note of what has been discussed so far, the importance of connecting article 7 to **article 8 of the Convention on the Right of the Child**, as well as the principle of **non-discrimination** of many other international documents, is evident. It is interesting to note that while discriminatory practices may jeopardize children's right to be registered and acquire a nationality, they may even influence the way in which these rights are ensured. In one EU Country, for instance, the Committee stressed the importance for **names to be properly transliterated and given in a fashion that differentiates each individual child** if States are to protect children from the **risk of stigmatization and discrimination**.²⁹

Similarly to what was highlighted in the 2006 ChildONEurope Survey, vulnerable groups were seen to call for specific actions. The Committee noted that in 2 EU Countries³⁰ Roma children still face a high chance of not being registered which results in **hundreds of these children being stateless**. Furthermore, one EU Country was noted for being weak in ensuring birth registration of certain categories of children such as out of home children, babies abandoned in hospitals and children of parents who lack birth registration themselves.³¹

In the light of the facts observed, the Committee renewed the recommendation that States³² should **accede to the Convention on the Reduction of Statelessness** or fully implement it if they have already signed it. The Committee also urged 3 States³³ to carry out **information campaigns targeting parents belonging to vulnerable groups** (undocumented migrants, Roma...), who may refrain from registering children due to fear of discrimination or expulsion from the country. At the same time, the Committee highlighted the importance of **raising awareness** among people working within those national authorities and institutions that come in contact with these groups and, thus, have a chance to protect the rights of the children.

4.2 CRC on freedom of religion

ARTICLE 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

²⁷ The Committee noted that in Italy the 2009 Public Security Act No 94 requirement for non-Italians to show residence permits to obtain civil record has a relevant implication on migrant children's chance of being unregistered.

²⁸ In Estonia children of former military and security personnel have been denied citizenship.

²⁹ In Greece, while children's family names are registered properly, their first names are often shortened to 'AKO' (awaiting baptism). Furthermore, in Greece, Turkish names are arbitrarily transliterated creating problems for individuals using documents thus transcribed when travelling.

³⁰ Italy and Romania.

³¹ Romania.

³² Czechs Republic and Estonia.

³³ Estonia, Italy and Romania.

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others*

Comment on Article 14 of the CRC as pointed out in the previous ChildONEurope survey on the concluding observations published in 2006, Article 14 of the CRC confirms children's fundamental civil right to freedom of thought, conscience and religion, which has been recognized for everyone in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The CRC does not define what freedom of religion includes, but in the human rights conventions a reference can be found in **art. 18 of the International Covenant on Civil and Political Rights**: "This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". In its General Comment on article 18, the Human Rights Committee underlined that the terms religion and belief must be understood in a broad sense including theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. Furthermore no one can be obliged to reveal his adherence to a religion or belief.

The second paragraph, in accordance with article 5 of the CRC, requires respect for the **role of parents in providing direction to the child** in a manner **consistent with the evolving capacities of the child**. As far as the child's right to **freedom of religion** relates to the **parents' direction**, the CRC differs from the International Covenant on Civil and Political Rights, that states in article 18, par. 4 the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, while art. 14 of the CRC refers to the right of the child him/herself to freedom of religion. The second paragraph refers to the direction of parents, but it is the child who exercises the right. Furthermore the direction that parents can provide must be consistent with the child's evolving capacities and must be applied in conformity with the whole Convention. Direction cannot involve, for instance, any form of physical or mental violence (article 19). In addition the child's views must be taken seriously as indicated in article 12 on the children's rights to express their views.

The wording of article 14 and the Convention's general principles certainly **do not support the concept of children automatically following their parent's religion** until the age of 18, although article 8 (preservation of identity), article 20 (preservation of religion when deprived of the family environment), and article 30 (right to practice religion in the community with members of the child's group) support the children's right to acquire their parents' religion. The *Guidelines for Periodic Reports* ask for information on any **legal minimum age** defined in legislation for choosing a religion or attending religious school teaching.

The Committee has underlined the "close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures."³⁴

³⁴ Committee on the Right of the Child, General Comment 11, 2009, p. 4.

Article 14 is, furthermore, linked with **art. 20**, that requires the States to pay due regard to the child's religious background when arranging alternative care. Article 14 and article 20(3) of the CRC require that the right to freedom of religion must be maintained also when children are **separated from their families** and are in **alternative care**. Article 20(3) states that when considering alternative care for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. However inflexible laws requiring that the child should automatically be brought up in the religion of his or her parent(s) are not consistent with article 14.

Paragraph 3 indicates some, but very limited cases in which restrictions to the child's freedom to manifest his or her religion or belief are allowed. As reported in its General Comment number 8, the Committee notes, for instance that religious texts may be interpreted as to justify corporal punishment. The Committee, therefore, illustrates that while "practice of a religion or belief must be consistent with respect for others' human dignity and physical integrity. Freedom to practice one's religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others."³⁵

Comment on the Committee's concluding observations of article 14

3 EU Countries received observations with regard to article 14 of the CRC. Interestingly, the 3 countries also appeared to be in the group of 5 countries that had received observations on the matter as reported by the ChildONEurope Survey published in 2006.³⁶

The Committee was concerned that in **2 countries**³⁷ States Parties should work harder to **eliminate all forms of discrimination** on the grounds of religion, as stated among others by article 2 of the CRC, and promote dialogue and religious tolerance in society. It is interesting to point out that challenges to children's freedom of religion are due to social practices or laws rooted in **specific socio-cultural contexts**, which differ greatly from one EU Country to the other.

Firstly, and similarly to what had emerged in the analysis of the previous ChildONEurope survey, children's right to freedom of religion is closely linked with **religious teaching practices in schools** as well as the **manifestation of one's religious affiliation in the public sphere**. On the latter point, the Committee welcomed the measures taken by one EU Country³⁸ to mitigate the effects of its national Law³⁹ banning religious clothing in public schools. Consistently with what the committee had recommended to this country, schools are seen to have opened up a space for **mediation**, which is understood to be a powerful tool to ensure religious freedom and mutual respect. A proper implantation of article 14, in a case like the one so far discussed, calls for an 'adjustment' of the tradition of *laïcité* underlying the principles of a legislation regulating the expression of religious beliefs through the wearing of symbolic clothing.

At the same time, other countries may encounter challenges of quite different nature that affect schools' religious teaching practices. **One EU Country**, for instance, was reminded of the need to highlight the **optional nature of religious teaching** as well as

³⁵ Committee on the Right of the Child, General Comment 8, 2006, p. 9.

³⁶ In 2006 researchers found out that 5 countries had received observations concerning the implementation of article 14. Italy, Greece, France as well as Germany and Poland.

³⁷ France and Greece.

³⁸ France.

³⁹ In France, Law No 2004-228 of 15 March 2004.

provide **real alternatives** to the specific religion⁴⁰ that presently overruled its class curriculum. In this case, States Parties face challenges that are linked with a specific religious tradition rooted deeply in society and influencing the school structure. Providing alternatives, in this case, calls for the study of and comparison with other models of religious education that may be successfully integrated. As noted in the previous ChildONEurope Survey “public education that includes instruction in a particular religion or belief is inconsistent with article 18 (of the International Covenant on Civil and Political Rights) unless provision is made **for non-discriminatory exemptions or alternatives** that would accommodate the wishes of parents and guardians.”⁴¹

Lastly, it is interesting to consider that obstacles to a proper implementation of article 14 may lie in **administrative procedures**; such as in **one EU Country** where the Committee noticed that children’s religion is mentioned in schools’ records and leaving certificates.

Taking into account what has been reported so far, schools emerge as a socio-political structure bearing great importance for the respect of children’s right to freedom of religion, conscience and thought. In that regard, article 14 is strictly connected with article 28 and 29 of the CRC to the extent that, in some cases, guaranteeing article 14 may be a *sine qua non* for States to be able to ensure children’s right to education. Acknowledging the increase in the socio-cultural diversity of schools’ population throughout Europe, it is important to stress that empowering schools to respect children’s right to religion also means empowering schools to foster mutual respect in the face of pluralism (Article 29).

4.3 CRC on children’s access to appropriate information

ARTICLE 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;*
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;*
- (c) Encourage the production and dissemination of children’s books;*
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;*
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.*

Comment on article 17

Article 17 is particularly focused on the **role of the mass media** but includes a general obligation for States Parties to ensure that the child has access to information and material from diverse sources, in particular those aimed at promoting well-being and physical and

⁴⁰ Catholicism.

⁴¹ Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev.5, p. 145, in Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee’s Concluding Observations on the last EU Countries’ Reports*, Florence, Istituto degli Innocenti, 2006, p. 37.

mental health. This right is therefore linked to the right to freedom of expression (article 13), and to maximum development (article 6).

The media must be encouraged to disseminate positive material of benefit to the child and in line with the detailed aims for education set out in article 29. The media should also be accessible to the child, promoting and respecting the participatory rights in respect of the views of children (article 12).

In a General Comment released in 2009, the Committee addressed the above mentioned interconnection between article 17 and articles 13. “Fulfilment of the child’s right to information, consistent with article 17 is, to a large degree, a **prerequisite for the effective realization of the right to express views**. Children need access to information in formats appropriate to their age and capacities on all issues of concern to them. This applies to information, for example, relating to their rights, any proceedings affecting them, national legislation, regulations and policies, local services, and appeals and complaints procedures.”⁴² In the same comment, the Committee also illustrates how article 13 and 17 are “crucial prerequisites for the effective exercise of the right to be heard”.⁴³ In order for children to have their opinions taken into consideration they need to **access appropriate information about their rights and be provided with venues and forums to speak up**. While media are understood to provide children with a tool for awareness raising as well as a space to express themselves;⁴⁴ the Committee also noted that in order to properly implement article 17 and consistently with article 42 “States parties should include children’s rights in the school curricula”.⁴⁵

As far as article 17 relates to States Parties’ capacity to promote children’s physical and mental health (article 24 of the CRC), the Committee has recently delineated **mass media organizations’ responsibilities** on the matter. “These can be further expanded to include promoting **health and healthy lifestyles among children**; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to child and general health; and not perpetuating health-related stigma.”⁴⁶

It has been noted that the **Media industry can have a twofold impact on children**. The Committee on the Right of the child has dwelled on the issue while commenting on State obligations to regulate the impact of the business sector on children’s rights. To the extent that the media industry, including advertising and the marketing industry, can have a negative impact on children,⁴⁷ the Committee has highlighted the need to regulate the media “to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children.”⁴⁸ The Committees articulate the need to develop guidelines to enforce protection measures and encourage “business enterprises to adhere to codes of conduct and use clear

⁴² Committee on the Right of the Child, 2009, General Comment 12, p. 19.

⁴³ Committee on the Right of the Child, 2009, General Comment 12, p. 19.

⁴⁴ See Bernacchi, E., Moyersoer, J., Ruggiero, R., *Survey on the CRC Committee’s Concluding Observations on the last EU Countries’ Reports*, Florence, Istituto degli Innocenti, 2006, p. 39.

⁴⁵ Committee on the Right of the Child, 2009, General Comment 12, p. 20.

⁴⁶ Committee on the Right of the Child, 2009, General Comment 15, p. 18.

⁴⁷ “Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children’s self-esteem, for example when portraying unrealistic body images.” Committee on the Right of the Child, 2009, General Comment 16, p. 16.

⁴⁸ Committee on the Right of the Child, 2009, General Comment 16, p. 16.

and accurate product labelling and information that allow parents and children to make informed consumer decisions.⁴⁹

The Committee, furthermore, expresses an augmented concern for the risks of digital media including sexual violence and exploitation of children phenomena such as child pornography, cyber grooming and trafficking through the internet. Digital companies are understood to play a more or less direct role in the facilitation of criminal acts such as sex tourism. To counteract these phenomena related to States Parties' capacity to safeguard article 17, the Committee recommends close collaboration with the information and communication technology industry to develop protection measures. The Committee clearly states that "States should provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help."⁵⁰

A proper implementation of article 17 hence requires States Parties to control the media's content and regulate in such a way that it protects children from harmful and violent content, while providing social and cultural benefit. In the General Comment on article 31 of the CRC, in fact, the Committee noted that "States parties are encouraged to ensure that children are provided with the widest possible access, through different media, to information and materials related to their own culture and to other cultures, in a language that they understand, including sign language and Braille, and by permitting exceptions to copyright laws in order to ensure the availability of printed materials in alternative formats. In so doing, care must be taken to protect and preserve cultural diversity and to avoid cultural stereotypes".⁵¹

As specified in the previous version of this publication, the Committee also highlighted the importance of ensuring the right of **children with special needs** to have access to appropriate information. In particular it stated that ensuring that **disabled children** have equal access to information through the media may require special and additional arrangements (see article 23) while as regards **children whose liberty is restricted** it affirmed that special consideration may need to be given to children's access to the media in any institutional placement and in other special circumstances. In 2009, the Committee released a general comment on the protection of the rights of indigenous children in which article 17 was linked with article 30 of the Convention. Specific relevance was given to the linguistic needs of indigenous children: securing the attainment of article 17 for this specific category requires providing them with information in their own languages.⁵²

Comment on the Committee's concluding observations on article 17

8 EU Countries⁵³ received observations on the state of implementation of article 17. Exposure to harmful information through audiovisual technologies emerges as the most frequent violation of the right to access appropriate information. 5 EU Countries⁵⁴ were found to improperly safeguard children's access to violent and/or pornographic content. The Committee's evaluation of media narratives and children's access to various contents through different technologies, such as the internet and mobile phones, depicts a complex picture that States Parties need to engage with.

⁴⁹ Committee on the Right of the Child, 2009, General Comment 16, pp. 16-17.

⁵⁰ Committee on the Right of the Child, 2009, General Comment 16, p. 17.

⁵¹ Committee on the Right of the Child, 2013, General Comment 17, p. 9.

⁵² Committee on the Right of the Child, 2009, General Comment 11, p. 9.

⁵³ Austria, France, Greece, Italy, Spain, Sweden, The United Kingdom and Romania.

⁵⁴ Austria, France, Greece, Italy and Spain.

The Committee found that 4 states⁵⁵ need to increase their efforts in educating children and adults about the risks of the internet and misuse of electronic media. The issue is related to an increase of cases of child abuse and sexual exploitation that take place through electronic media. Phenomena such as ‘cyber mobbing’ and grooming through mobile phones and internet are on the rise. Social forums provide fertile grounds for humiliation and defamation processes that carry heavy consequences on the wellbeing of children involved in these processes. 2 EU Countries⁵⁶ received a specific recommendation about the need to prevent abuse of this kind through the provision of adequate tools for children and their carers.

Exposure to harmful content also relates to the role of the advertising industry, which is understood to negatively influence children’s consumption patterns of food and toys to a worrying extent at least in 3 EU Countries.⁵⁷

However, media narratives are also seen to impact EU states parties’ capacity to implement article 17 with regard to a different phenomenon: the media’s representation of criminal proceedings involving children’s victims or perpetrators of violence and sexual offences. In 4 EU Countries⁵⁸ the media is seen to reveal child victims’ and perpetrators’ identity and share sensitive images that are harmful for the children affected as well as the ones accessing this type of information concerning violence and sexual crimes. In 2 of these countries⁵⁹ the television industry is seen to pursue another practice that is harmful to children and in contrast with article 17 of the CRC: improper appearances of children in TV reality shows and more broadly in talk shows. In one EU⁶⁰ country, the practice concerns children from the age of 14 accused of abuse and sexual violence who dangerously participate in talk shows and audio-visual reportages.

As far as article 17 requires states to pay particular attention to marginalized groups and cultural minorities, a few countries were recommended to strengthen their efforts. In particular, 2 countries⁶¹ were recommended to provide marginalized groups, such as minority children or young people living in rural areas, access to appropriate information, requiring the broadcasting of media products in the languages spoken by these children. A third country’s⁶² attention was brought to the negative portrayal given by the media of immigrants and minorities.

Counteracting the aforementioned issues calls for closer cooperation between the governments and the media industry to devise effective protection measures. Media codes of conduct and regulations are seen to be a first important step in the fight against these types of abuse and breach of article 17. However awareness raising and children’s as well as carers’ media literacy are relevant tools as well. In that sense, the Committee welcomed some positive achievements such as the establishment of self-regulatory codes for print and broadcast media in 2 EU Countries⁶³ and a national law regulating audio-visual communication in one of these.⁶⁴

⁵⁵ Austria, Greece, Italy and Spain.

⁵⁶ Austria, Spain.

⁵⁷ Greece, Italy and Romania.

⁵⁸ Austria, Greece, Romania and The United Kingdom.

⁵⁹ Romania and the The United Kingdom.

⁶⁰ Romania.

⁶¹ Greece and Romania.

⁶² Italy.

⁶³ Italy and Spain.

⁶⁴ Spain, General Law on Audiovisual Communication, March 2010.

The Committee, furthermore noted the establishment of monitoring institutions in 3 countries⁶⁵ and the activities focusing on counteracting harmful internet content of two such bodies in one country.⁶⁶ With regard to children's and adults' misuse of electronic media, the Committee noted the implementation of awareness raising campaigns on the risks of internet misuse and parental control software in one country.⁶⁷

4.4 CRC on corporal punishment and abuse

ARTICLE 19

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

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Comment on article 19

The wording of article 19 goes beyond children's rights to protection from what is arbitrarily defined as physical, emotional and sexual "abuse" in different societies, and beyond the protection, guaranteed under article 37, from torture and cruel, inhuman or degrading treatment or punishment; in fact article 19 requires children's protection from "all forms of physical or mental violence." Article 19 asserts children's equal human right to respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6. There are legal and/or administrative definitions of child abuse – physical, emotional and sexual.

However, the inclusion of these words and of additional articles expanding on sexual and other forms of exploitation (in particular article 32, economic exploitation; article 34, sexual exploitation; the new Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; and article 36, other forms of exploitation, emphasizes the intention of the drafters of the Convention to make the protection implied by article 19 comprehensive.

Article 19 requires states to work with a definition of violence that does not tolerate any type of infringement of children's right to dignity and physical and psychological integrity.⁶⁸ Intensity of violent acts, frequency or intentions are, therefore, to be considered as side factors to be taken into account for proportional responses. However, they are no prerequisite for the definition of violence.

In order to empower states to operationally implement the zero tolerance approach, the

⁶⁵ The Austrian Press Council in Austria; the Media Literacy Database for Children, Young People and the Media by the Hellenic Audiovisual Institute and the Independent Committee on the Protection of the Rights of Minors in Greece; the Media and Minors Committee in Italy.

⁶⁶ In Sweden the Government Committee Media Council is seen to effectively cooperate with the Swedish National Agency for School Improvement.

⁶⁷ France.

⁶⁸ Committee on the Right of the Child, 2011, General Comment 13, p. 8

Committee disseminated a non-exhaustive list of forms of violence.⁶⁹ The list includes a definition of neglect or negligent treatment, mental and physical violence, corporal punishment, sexual abuse and exploitation but also self-harm, violence among children and through information and communications technologies. The operationalization of these various forms of abuse and violence should be used by States Parties to develop **national rights-based legal definitions of forms of violence to be banned in all settings**.

As noted in the previous version of this survey, article 19's comprehensive scope also extends to the diversity of social contexts where violence may take place. It is known that children may be abused in domestic settings as well as care institutions or those social environments where adults exercise power over them, i.e. schools or the justice systems. Protecting children from violence in accordance with article 19, therefore, is linked with a proper implementation of article 5 on parents' responsibilities, but also article 28's regulation of schools' administration of discipline and article 37 and 40.

Article 19 encompasses events taking place within the family home (bearing in mind the Convention's wide definition of the family; and within other "caring" situations – foster care and day care, schools, all institutional settings and so forth. The requirement in article 3(3) for consistent standards and supervision for all institutions, services and facilities is relevant to the prevention of violence against children.

It has further been noticed that while children in general are particularly vulnerable to acts of abuse and violence, disabled children are five times more likely to fall victims of abuse than non-disabled minors. As such, States ought to devise specific measures to safeguard the dignity of this specific category. Indeed, disabled children's inability to move, dress and toilet independently exposes them to more intrusive care that makes room for abuse and violence to go unnoticed.

It is important to link article 19 to the fact that knowledge about violence against minors is developing as an increasing number of initiatives advocate for governments' and institutions' engagement with the phenomenon. This process is leading to an improved understanding of the phenomenon and the various situations it creates: from sexual exploitation over the Internet, to witnessed violence or minor over minor bullying. As harmful practices become visible they ought to be included in article 19's wording "all forms of violence."

It has been recalled that the Convention, "like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time."⁷⁰ In that sense, the document evolves with societies' awareness of rights violations. This quality is extremely important when interpreting article 19's scope of intervention. With regard to corporal punishment, for instance, the Committee noted that while the practice is not directly addressed in article 19,⁷¹ its occurrence in children's homes, schools and other institutions has become more visible in the two decades since the drafting of the Convention, through the work of research and advocacy carried out by national human rights institutions and non-governmental organizations (NGOs) among others.⁷²

Once visible, a phenomenon like corporal punishment immediately appears to be a violation of children's right to be protected from all forms of violence. The same applies to

⁶⁹ See Committee on the Right of the Child, 2011, General Comment 13.

⁷⁰ Committee on the Rights of the Child, 2006, General Comment 8, p. 6.

⁷¹ Committee on the Rights of the Child, 2006, General Comment 8, p. 6.

⁷² Committee on the Rights of the Child, 2006, General Comment 8, p. 6.

different kinds of abuse and violence that may at present fail to be acknowledged.

Connected to the issue of visibility of violence is the relation between article 19 and other articles of the convention such as article 3 on the best interest of the child and article 18 which frames children's best interest as the basic concern of parents.⁷³ Within specific socio-cultural as well as psychological contexts, parents or caregivers may deem a certain level of violence appropriate for educational or household management purposes. At the same time violence may be socially perceived to be appropriate when situated in specific religious contexts. Religious freedoms are, furthermore, protected by article 14 of the CRC as well as other documents such as article 18 of the International Covenant on Civil and Political Rights (art. 18). However interpretation of the child's best interest as well as freedom of religion ought to be consistent with article 19 and, therefore, justify no violent practice and physical or psychological harm.⁷⁴

To the extent that violence may be culturally accepted in socio-cultural contexts, the Committee identifies a need for explicit bans of forms of violence rather than milder provisions aimed at discouraging these practices. These bans can be integrated with positive measures to "ensure protection of children against mistreatment, whether in their relations with public authorities, or in relations among individuals or with non-governmental entities"⁷⁵ as noted, among others, by the Inter-American Court of Human Rights.

States Parties are further required to put in place effective measures to a) identify risky situations, b) make reporting mechanisms safely available c) train referral officers d) develop investigation protocols and e) develop treatment services.⁷⁶ These are crucial measures to effectively implement article 19, and they can be complemented by mechanisms of national and international cooperation to be able to effectively respond to, for instance, transnational phenomena such as sex tourism.

Comment on Concluding Observations on article 19

In 2006 the United Nations delivered a study on violence against children. It was a global effort to document the phenomenon worldwide and identify response actions implemented by various stakeholders internationally. The study also highlighted important recommendations to fight violence against children, from legal reforms to awareness raising and support to parents and families.⁷⁷ As the study is directly linked with article 19, the Committee recommended all 16⁷⁸ countries examined in this survey to take all necessary measures for the implementation of the recommendations contained in the report. More specifically the Committee urged 7 Countries to prioritize the elimination of all forms of violence against children in national plans and public policy agendas.

The United Nations report on violence sheds light on worrisome trends of violence being inflicted on children worldwide, which makes the implementation of article 19 and, therefore, the **elimination of all forms of violence a priority for States.**

7 countries⁷⁹ were also specifically requested to provide information concerning the

⁷³ Convention of the Rights of the child, 1989, Committee on the right of the Child, 2006, General Comment 8.

⁷⁴ Committee on the Rights of the Child, 2006 and 2011, General Comment 8 and 13.

⁷⁵ Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of 28 August 2002, paras. 87 and 91 in Committee on the Rights of the child, 2006, General Comment 8, p. 7.

⁷⁶ Committee on the Rights of the Child, General Comment 13, pp. 18-21.

⁷⁷ See the Recommendations Chapter of the United Nations Secretary General Violence against children 2006, pp. 94-123.

⁷⁸ Belgium, Bulgaria, Czech Rep., Denmark, Estonia, Finland France, Greece, Italy, Romania, Spain, Sweden, The Netherlands, The United Kingdom, Cyprus, Austria.

⁷⁹ Czech Rep., Denmark, Finland, France (only general part), Italy, Cyprus, Greece.

implementation by the State party of the recommendations of the above mentioned study through:

- the development in each State of a national comprehensive strategy to prevent and address all forms of violence against children;
- the introduction of an explicit national legal ban on all forms of violence against children in all settings; and
- the consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children.

Comprehensive strategies at the national level, legal bans and the establishment of national data collection systems, hence, are seen to be crucial elements for the fulfilment of article 19.

It is interesting to note that as far as the promulgation of legal bans of forms of violence is concerned, the recommendation entailed an even higher number of countries with respect to corporal punishment. Indeed, 10 Countries were advised to prohibit corporal punishment of children in all settings, notably in family/home and in non-institutional childcare settings. An even higher number of countries – 12 – however, were encouraged to pursue positive measures to contrast corporal punishment and domestic violence. Awareness- raising campaigns and (public) parenting education programmes to promote non-violent alternative forms of discipline are important tools identified to counteract violent education methods providing alternatives in line with the dignity of the child.

Promotion of non-violent values and awareness raising emerge as key elements for the fight against corporal punishment, domestic violence but also peer-to-peer violence and other forms of violence against children. That is the reason why 7 countries received a more general recommendation to promote nonviolent values through awareness raising. These measures relate to an important strategy to fight violence against children: strengthening prevention measures. While 4 countries received a specific observation on the matter and were directly asked to invest in preventive measures, protecting children from violence and abuse requires States Parties to intervene before risky situations degenerate as specifically expressed in article 19.

At the same time, reintegration and recovery services are still relevant issues needing further investment: protection measures following the occurrence of violence and abuse are, in fact, seen to require further efforts in 6 countries.

With regard to developing policies and actions capable of effectively address the phenomenon, it has become increasingly important to seek public-private synergies. In that respect, 8 countries were explicitly invited to use the recommendations as a tool for action and seek partnership with civil society and with the involvement of children.

An important factor emerges in the recommendations which concern the timing of interventions. Time-bound actions are, in fact, identified to be important tools to be used in response to cases of violence and abuse. This is due to the fact that the intensity of several types of violence develops over time and is best addressed at early stages. Similarly the consequences that individuals bear as they fall victims of violence become increasingly serious as the time of abuse is prolonged.

Overall, the Committee invited States Parties of 5 countries to support and cooperate with the Special Representative of the Secretary-General on violence against children and four States Parties to seek technical cooperation, from the Office of the United Nations High Commissioner for Human Rights (OHCHR), UNICEF and the World Health

Organization (WHO) and other relevant agencies, inter alia, the International Labour Organization (ILO), UNESCO, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC), as well as NGO partners.

Concerning positive achievements by the States examined, legal provisions tackling and regulating issues of violence and corporal punishment emerge as the most widespread measure being pursued. The Committee, in fact, noted positive legal developments in 7 countries. 3 banned corporal punishment, 1 amended its penal code to restrict defense of “reasonable chastisement”; 1 country prohibited all forms of physical violence; 1 amended its civil code to ban negative parenting and promoting positive nonviolent discipline and 1 passed a specific law on domestic violence.

Positive parenting is gaining momentum as a powerful realm of policy making where prevention can be sought through offering quality support to those family nuclei particularly likely to develop dangerous circumstances conducive to violence. 4 countries developed National Plans tackling different dimensions of violence against children. 1 country was also seen to have set up network against violence in schools in an effort to prevent violence and bullying.

Awareness campaigns were also seen to be successfully implemented in 2 countries.

4.5 CRC on torture, degrading treatment and deprivation of liberty

ARTICLE 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Comment on article 37

Article 37 provides the child with the right to be protected from:

- torture;
- other cruel, inhuman or degrading treatment or punishment;
- capital punishment;
- life imprisonment without possibility of release;

- unlawful or arbitrary deprivation of liberty.

The article also indicates the conditions for any arrest, detention or imprisonment of the child, which shall be:

- in conformity with the law
- used only as a measure of last resort; and
- for the shortest possible time.

Finally the article provides further conditions for the treatment of any child deprived of liberty:

- to be treated with humanity and respect for the inherent dignity of the human person in a manner which takes into account the needs of persons of his or her age;
- to be separated from adults unless it is considered in the child's best interest not to do so;
- to maintain contact with his or her family, through correspondence and visits, save in exceptional circumstances;
- to have the right to prompt access to legal and other appropriate assistance;
- to have the right to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority;
- to have the right to a prompt decision on such action.

Article 37, together with art. 40 (administration of juvenile justice) and art. 39 (rehabilitation and reintegration), represent the CRC's specific provisions relating to **children in trouble with the law**, however the prohibition of torture and cruel, inhuman or degrading treatment or punishment is an absolute provision that requires the State to protect children wherever they are. In addition the provisions relating to the restriction of liberty do not just cover children in trouble with the law as in many States restriction of the liberty of children is permitted for reasons not related to criminal offences, e.g. for welfare, mental health and in relation to asylum-seeking and immigration.

Finally article 39 provides an obligation to promote the recovery and reintegration of child victims of torture and other cruel, inhuman or degrading treatment or punishment.

In 2011 the Committee of the Rights of the Child released a General Comment on children's right to be protected from all forms of violence. The comment, which was motivated by the acknowledgment that the extent of violence exerted on children remains alarming, provides a non-exhaustive list of definitions of 'forms of violence'. Among these, the Committee provides the following definition of torture and inhuman or degrading treatment or punishment. **"This includes violence in all its forms against children in order to extract a confession, to extra judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children, including armed non-State actors. Victims are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests. This includes children in conflict with the law, children in street situations, minorities and indigenous children, and unaccompanied children. The brutality of such acts often results in**

life-long physical and psychological harm and social stress.”⁸⁰

It is interesting to note that this definition encompasses both the type of violent acts that may be inflicted on children as well as critical categories of adults and children who are likely to become perpetrators and victims of violations of article 37. Moreover, the consequences of such types of punishment practices are mentioned, highlighting the extent of the damage suffered by children thus treated. Torture and inhuman or degrading treatment or punishment lead to life-long physical and psychological damage; therefore, these practices affect the society where the child should reintegrate. Similarly, the Committee has pointed out that “The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society.”⁸¹

Article 37, hence, requires States, justice personnel, police and all stakeholders involved with children in trouble with the law or involved in acts of delinquency, to refrain from the use of violence as punishment or corrective measure and prosecute individuals that fail to restrain themselves. This also links article 37 and 19 to the issue of corporal punishment, which is not to be legally or socially tolerated as an acceptable education strategy. As specified by the Committee “Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”⁸²

Comment on the Committee’s concluding observations on article 37

Out of the 16 countries examined in this survey, 5⁸³ received observations about the implementation status of article 37.

While 2 countries⁸⁴ are seen to be surveilling the issue at stake, the observations analysed shed light on the need to monitor children’s treatment in institutions and prosecute allegations promptly while providing care for the victims.

A few gaps emerge when looking at the system currently in place in different countries. A first area to be improved concerns the tools provided for children in institutions, enabling them to file complaints and communicate violations of their right to be protected from torture or cruel and degrading treatment. 2 countries⁸⁵ received a specific observation on the matter with a recommendation to enhance the mechanisms available to children to file complaints in different types of institutions.

Secondly, it seems that allegations are not processed thoroughly enough. The lack of thorough investigations of allegations and prosecution of responsible parties was observed in 3 countries.⁸⁶ The issue of impunity, which was expressly linked with the activity of police personnel in 1 country,⁸⁷ or relatively low rates of investigations following children’s allegations, accounts for the Committee’s recommendation to raise awareness about the existence of article 37 in 2 countries.⁸⁸ It was furthermore suggested that evidence extorted through torture should be invalidated during legal proceedings.

⁸⁰ Committee on the rights of the Child, 2011, General Comment 13, p. 10-11.

⁸¹ Committee on the rights of the Child, 2007, General Comment 10, p. 5.

⁸² Committee on the rights of the Child, 2007, General Comment 10, p. 6.

⁸³ Austria Bulgaria, France, Romania and The United Kingdom.

⁸⁴ Austria, France.

⁸⁵ Bulgaria.

⁸⁶ France, Bulgaria, Romania.

⁸⁷ Romania.

⁸⁸ Bulgaria and France.

Intervening at the level of law enforcement by official and institutions staff, raising their awareness about children's right to be protected from cruel and degrading treatment, continues to be an important priority that concerns both detention and psychiatric institutions, but also schools. Indeed, peer to peer cases of heavy bullying calls for further training of teachers so as to build schools' capacity to deal with the phenomenon in 1 country.⁸⁹

On the subject of raising awareness it is interesting to note that 1⁹⁰ country was strongly encouraged to tackle a specific type of degrading treatment of children that is becoming more popular within its context due to recent demographic shifts. Female genital mutilation has, in fact, become a significant violation of children's right to being protected from degrading treatment. As the phenomenon is relatively new within the European landscape, the country in question was advised to carry out a study on the phenomenon and develop awareness raising activities, building on the results of this investigation. Tackling this issue may call for international cooperation strategies as some of the girls subjected to the practice are mutilated in different countries from the one where they reside. While legislation regulating the matter exists, the Committee encouraged countries to enhance its implementation. The same was said about the legislation abolishing torture and degrading practices in another EU Country.⁹¹ As far as article 37 is also connected to the issue of degrading forms of punishment it is important to mention that 1 EU Country⁹² was noted to have reviewed the use of physical constraint and solitary confinement as a type of punishment. However, it was still recommended to ensure that these measures may be used exclusively to prevent harm to the child or others, but that physical restraints should otherwise not be used for disciplinary purposes.

⁸⁹ Bulgaria.

⁹⁰ Austria.

⁹¹ Romania.

⁹² The United Kingdom.

5. Education

5.1 CRC on education

ARTICLE 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and freely available to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Comment on article 28

Article 28 of the CRC establishes the **right of the child to education**. It recognizes that education is essential for all children and that the right must be achieved on the basis of **equal opportunity**, reflecting that many children around the world, also in Europe, suffer **discrimination in access** to education, for example children in rural areas, girls, children refugees and asylum-seekers, Roma and disabled children. Hence, article 28 spells out a principle of equitable access to schools which requires specific efforts with regards of peculiar categories of children among which it is important to mention disable and indigenous minors. States ought to devise financial and geographic strategies but also tailor school practices and teacher training to the peculiar needs of these groups in order to provide children with equal opportunity to learning

Unfortunately education is not always free of charge and not all States are able to meet the educational needs of their children; often the right will need to be achieved **progressively**. Nevertheless article 28 provides the fundamental basis:

- free, compulsory **primary education** for all;
- different forms of secondary education and vocational guidance available and accessible to all;
- **higher education** must be **accessible** on the basis of capacity.

The article 28 also underlines that States must take measures to reduce school **drop-out rates**, to ensure that **school discipline** respects the rights of the child and to encourage **international cooperation** on education, as an instrument for social, cultural and economic development

As article 28 guides school discipline strategies, it is important to note that paragraph 2 should be interpreted as spelling out a need to strictly limit discipline, which means abolishing corporal punishment entirely, and actively **promote non-violence in school settings**.

It is also important to note that article 28 dwells on States right to ensure financial and physical access to schooling, but it also indicates a need to encourage children's participation in school life. Article 28 and 29 are, in fact, linked children's right to express their views freely and participate.

ARTICLE 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Comment on article 29

Article 29 (1) concerns the **aim of education** with a consensus of world opinion and is the subject of the Committee's **General Comment n. 1**. This document does not detail the tools of learning (literacy, numeracy, factual knowledge, problem solving and so on) but addresses learning's basic aims: to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused with appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.¹ It is interesting to note that as far as education should be geared towards developing each child's potential to the fullest, specific attention needs to be paid to the individual person. This becomes even more important when ensuring access to education of, for instance, disabled children. The Committee acknowledged the fact that children with disabilities are very different from each other and, therefore, require the teacher's capacity to tailor learning strategies to each individual being thoughtful about monitoring progress to develop

¹ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 53.

the child's communication, orientation, problem solving capacities to his or her best potential.² The same can be said about non-disabled children considering that each child comes with specific talents and personality. It is meaningful to recall **article 26 of the Universal Declaration of Human Rights** that provides: Education shall be directed to the full development of the human personality and to the strengthening of **respect for human rights** and fundamental freedoms. It shall **promote understanding, tolerance and friendship** among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.³ Article 29 should prepare **a child to live responsibly in free societies** "in which he/she can assume a constructive role with respect for human rights and fundamental freedoms."⁴ To effectively achieve that, States ought to develop educational curricula and dissemination materials for professionals and for students that is **inclusive of different socio-cultural narratives and devoid of discriminatory attitudes and practices including racism**. In 2009 the Committee underlined this principle enshrined in article 29 with regard to the States Parties' obligation "to provide meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions and languages."⁵ In the same comment, the Committee highlighted the importance to indeed ensure that educational material and especially history textbooks provide "a fair, accurate and informative portrayal of the societies and cultures of indigenous people ... discriminatory practices, such as restrictions on the use of cultural and traditional dress should be avoided in the school setting."⁶ Accurate narratives and freedom of cultural expression within school settings also concern multicultural societies in Europe and the rights of children of migrated parents. Hence two further areas emerge as strictly interconnected with a fair implementation of article 29: provision of opportunities for children to be heard as an important tool to stimulate their personality and evolving capacity⁷ as well as provision of forums for cultural and artistic development, sports and games.⁸ It should again be noted that cultural and artistic activities ought to be sensitive to the socio-cultural diversity of children participating and can be used as a tool to spread values of tolerance and friendship.

It is important to conclude by recalling that the rights of individuals and groups to organize their own forms of education are safeguarded by article 29 (2), so long as these accomplish the aims of education as set out in the article and any official minimum standards.⁹

Comment on the Committee's concluding observations on articles 28 and 29

The most frequent recommendation that emerges from the analysis of the observations made on the implementation of article 28 and 29 concerns, interestingly, States Parties' need to invest and strengthen protective measures to tackle bullying and violence. 10 countries¹⁰ were advised to adopt a number of different measures to **actively counteract and**

² Committee on the Rights of the Child, General Comment 9, 2006, p. 17.

³ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 53.

⁴ Committee on the Rights of the Child, General Comment 10, 2007, p. 7.

⁵ Committee on the Rights of the Child, General Comment 11, 2009, p. 6.

⁶ Committee on the Rights of the Child, General Comment 11, 2009, p. 13.

⁷ Committee on the Rights of the Child, General Comment 12, 2009, p. 19.

⁸ Committee on the Rights of the Child, General Comment 1 in General Comment 17, 2013, p. 10.

⁹ Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 53.

¹⁰ Belgium, Denmark, Italy, Greece, Finland, Estonia, Sweden, Spain, the Netherlands, The United Kingdom.

prevent school violence episodes. It is interesting to note, that looking at the various tools suggested, such as awareness raising among teachers and students, promotion of non-violence, development of school staff and students' conflict resolution capacities as well as tolerance towards differences among others, the Committee commends a **participatory approach aiming at fostering a culture of peace and tolerance rather than resorting to punitive measures**. Importance is given to providing students and teachers with forums to engage in **dialogues about violent incidents** and the **monitoring of peer relations** as mediated by the school structure. 1 country¹¹ was noted to have pursued important actions counteracting bullying, raising awareness about the need for a cohesive response to the phenomenon.

As part of the overall effort that schools should carry out to foster peace and tolerance, according to article 29, 7 countries¹² were reminded to include teaching of human rights and children's rights in school curricula at all levels. 3 countries¹³ were noted to have included the study of the Convention on the Rights of the Child and other human rights tools in the school programme. However, more States Parties should focus on this recommendation as the inclusion of such studies in the overall school curricula aim at counteracting violence and the development of discriminatory attitudes. Indeed, it was noted that, among all relevant topics concerning human and children's rights, the rights of minorities should be addressed by school as well as teacher training curricula. Teacher training is crucial to the attainment of various aspects spelled out by articles 28 and 29, including ensuring quality of education, providing students with a safe environment and guaranteeing cultural rights of specific groups needing linguistic training and access to studying their mother tongue. As regards this latter point 2 countries¹⁴ were directly recommended to further **enhance the system of education for national minorities**, providing for mother-tongue instruction or bilingual education for those students whose native language is not the one spoken by the national majority.

While 4 countries¹⁵ were seen to have passed specific legislation to ensure equal opportunities to and in education, the issue of reaching better standards on inclusive education concerned 10 EU Countries.¹⁶ Unequal access to education and unequal opportunities in education are seen as relevant issues accounting for uneven rates of school attendance and performance concerning students with different socio-economic backgrounds, urban-rural residence as well as ethnic background and disability status in different countries. The Committee issued a number of different recommendations to tackle this situation which range from an **increase in the overall budget allocated for education** in 4 countries,¹⁷ financial regulations to ensure free education eliminating school costs for 2 countries¹⁸ and economic support for disadvantaged children in 3 countries.¹⁹ However, legislative and administrative measures were also identified as powerful tools to ensure

¹¹ Denmark.

¹² Bulgaria, Estonia, Finland, Romania, the Netherlands, Sweden and the The United Kingdom.

¹³ Estonia, Spain and the Netherlands.

¹⁴ Estonia and Cyprus.

¹⁵ Belgium (June 2002, decree on equal opportunities in education in the Flemish Community; 2006 circular on free education), Czech Republic (2004 Education Act abolishing the State Party's so-called special schools, 2010 National Plan for Inclusive Education), Romania (Law 268/2003 changing and completing Education Law no. 84/1995), Spain (Law 2/2006 on education, includes 'Education for citizenship' and human rights content in school curricula).

¹⁶ Austria, Bulgaria, Czech Republic, Greece, Italy, France, Romania, Spain, Sweden and The Netherlands.

¹⁷ Italy, Romania, France and The United Kingdom.

¹⁸ Romania and Belgium.

¹⁹ Italy, Romania and Czech Republic.

access to inclusive education for marginalized groups; for instance, with regard to **facilitating school access for children with missing or incomplete documents as well as paying attention to language barriers and integrating systems** where appropriate. It is interesting to note that 5 countries²⁰ were addressed recommendations concerning the existence of de facto ethnic segregated schools in their territories. According to each specific scenario, the committee encouraged States Parties to seek alternative measures to the confinement of specific groups of children to special education programmes, whether on a socio-economic basis, ethnic categories or admission related practices which discriminate de facto certain socio-cultural groups compared to others. As far as school performance of different groups of children is concerned, the Committee highlighted the need for 3 countries²¹ **to reduce achievement disparities** investing in teachers' capacity to address the peculiar needs of children of foreign origin or disadvantaged social background.

Roma children appear as a specific category calling for special measures in at least 4 countries.²² The actions recommended to achieve better standards of Roma children school's enrolment and participation span from provision of special transport systems, to counteracting discriminatory attitudes towards Roma and seeking communities' and parents' engagement in the drafting of school curricula and learning methods.

As noted with regard to the recommendations delivered on the occurrence of school violence and bullying episodes, the Committee suggests positive measures as opposed to punitive actions. Similarly, the analysis of the observations received on article 28 and 29 highlights a need for States Parties to refrain from using repressive measures to discipline students' behaviours and school attendance. 7 countries²³ were addressed with observations on the strategies they currently implement to address drop-out rates, an important indicator of article 28 implementation, or situations of conflict between the student and the school structure. 2 countries²⁴ were complimented on their efforts to counteract drop-out rates through positive measures; at the same time practices such as permanent or temporary exclusion, for instance, are seen negatively by the Committee as they risk leading students to distance themselves from the education path. Similarly, penalizing parents or criminalizing students' undisciplined behaviour can bear negative consequences on the children and their right to equal opportunities in education. The Committee recommends seeking a **dialogue with students and disadvantaged families** and the promotion of **school activities that may be attractive to a heterogeneous pool of students**.

As noted in the comment to article 28, the right to education is strictly linked to article 12 on the right to express one's views. In that sense, it should always be a primary concern of schools to seek students' participation in taking decisions that directly involve them, including punitive actions on delinquent behaviour. 3 countries²⁵ were directly recommended to seek **student participation in all matters at schools from learning activities to exclusion decisions**. It is noted that students' perceptions should be studied and taken into account when devising school policies and children in alternative care should be carefully monitored in their relationship with the school structure. Similarly to the need to seek synergies with Roma communities and parents and children's right to education is best safeguarded when his or her family and socio-cultural background are well

²⁰ Belgium, Czech Republic, the Netherlands, Romania and The United Kingdom.

²¹ Belgium, France and The United Kingdom.

²² Bulgaria, Czech Republic, Greece, Romania.

²³ France, The United Kingdom, Belgium, Spain, France, The Netherlands, Estonia.

²⁴ Romania and Spain.

²⁵ Spain, The United Kingdom and Finland.

understood and taken into considerations by school administrations and teachers.

An important area that emerges as in need of further attention concerns States Parties provision of early childhood schooling opportunities and equal access to these. 5 Countries²⁶ were encouraged to invest **further resources and develop early childhood care and preschooling**. The issues addressed concern a need to improve the quality of the services provided through the establishment of early childhood policies as early interventions are understood to have a great impact on children's capacity to enjoy article 28 and 29 further on in their development history. Early education provides children with an important **forum to develop socio-linguistic skills that are crucially important**, especially for children belonging to minority groups or backgrounds different from the overall majority of the nation where they are growing up. In that sense, the Committee urges States Parties to ensure access to early childhood care and (pre) schooling for all children, referring explicitly to the General Comment on early Childhood Education and Care, which continues to be a priority action.

Lastly, access to vocational training is an important issue to be better regulated and ensured in 5 countries²⁷ that were recommended to provide minors with opportunities to acquire skills and qualifications; which is an important priority to ensure their competitiveness in the job market. Financial support should, therefore, be targeted to those institutions that can provide such training as well as to minors who have dropped out from education and risk become socially excluded. **Expanding vocational training opportunities** may require legislative actions fostering the opportunities available for minors thus trained and regulating their access to the labour market, so as to avoid, among other risks, exploitation and criminalization of youth. 1 country²⁸ was seen to provide useful counselling on employment dynamics and the workings of the labour market to both primary and secondary students, which is understood to be an important life-skill to gain for adolescents approaching the adult world of working life.

²⁶ Austria, Bulgaria, Czech Republic and Finland.

²⁷ Bulgaria, Italy, France, Spain and Sweden.

²⁸ Sweden.

6. Family environment

6.1 CRC on parental guidance and the protection owed to families by the State

ARTICLE 5

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

Comment on article 5¹

Several provisions of the Convention stipulate that obligatory measures to be undertaken by States Parties must be adapted according to the particular stage of a child's development. By providing a framework for the relationship between the child, his or her parents and family, and the State, article 5 recognized that while parents, legal guardians, extended family or the community, as provided by local custom, have rights and responsibilities to provide appropriate direction and guidance to their children, that duty must be exercised "in a manner consistent with the evolving capacities of the child." Article 5 hence introduces two new concepts in line with the perception of children as subjects and holders of rights: parental responsibility and "evolving capacities of the child."

The parents' primary responsibility in their children's upbringing is recognized also in other parts of the CRC that place strict limits on State intervention and any separation of children from their parents (articles 3(2), 7, 9, 10, 18) while one of the aims of education is the development of respect for the child's parents (article 29).

Another important aspect to note is that it provides a flexible understanding of the **concept of family** that reflects the wide variety of kinship and community arrangements within which children are brought up around the world. This concept has been better specified during the Committee General Discussion on "*The role of the family in the promotion of the rights of the child*" which stated that "When considering the family environment, the CRC reflects different family structures arising from various cultural patterns and emerging familial relationships. In this regard, the CRC refers to the extended family and the community and it applies to situations of nuclear family, separated parents, single-parent family, common-law family and adoptive family."² In its General Comment n. 7 on "Implementing child rights in early childhood," the Committee "recognizes that 'family' ... refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided that these are consistent with children's rights and best interests." The Committee also recognises that social trends may influence family size and structure and acknowledges the importance of these arrangements in promoting children's well-being.³

¹ Partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 75-82.

² Report on the fifth session, January 1994, CRC/C/24, Annex V, p. 63.

³ Committee on the Rights of the Child, General Comment N. 7, 2005, CRC/C/GC/7Rev.1, para. 15 e 19.

Article 5 must be read in conjunction with art 18. While article 5 introduces the concept of “**parental responsibilities**,” art. 18 requires States parties to “use their best endeavours” to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The Convention does not provide a definition of “parental responsibilities”, although it appears clearly from the whole CRC that such responsibilities must be exercised to support the enjoyment by the child of the rights recognised in the CRC. Parental responsibilities are also mentioned in article 27(2).

The rights and duties that parents have derive from their responsibility to act in the best interest of the child. The implication is that the concept of parental responsibilities should be reflected and defined in the law, using the framework of the CRC.

Article 5 further specifies that parental guidance must not be understood as being unlimited, rather it must be exercised “in a manner consistent with the evolving capacities of the child” and must be “appropriate.” The concept of the “**evolving capacities of the child**” is a key concept in the CRC that aims to acknowledge that children’s development towards independent adulthood must be respected and promoted throughout childhood. Through the use of this concept, the Convention has avoided setting arbitrary age limits or definitions of maturity tied to particular issues.

The principle of “evolving capacities,” considered by the Committee as an “enabling principle,”⁴ is closely connected with article 12 which establishes that every child capable of forming her or his views has the right to express those views and to have them duly taken into consideration in all decision that will affect that child, in accordance with the child’s age and maturity. The connection of article 12 to article 5 is of special relevance, since it is crucial that the guidance given by parents takes account of the evolving capacities of the child. In other words, the child has a right to direction and guidance, which have to compensate for the lack of knowledge, experience and understanding of the child and are restricted by his or her evolving capacities, as stated in this article. In fact, the more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in a child’s development, but will steadily increase as the child is encouraged to contribute her or his views.⁵

Moreover, article 3(h) of the **Convention on the Rights of Persons with Disabilities** affirms that one of the general principles guiding its implementation must be respect for the evolving capacities of children with disabilities.”

The focus of article 5 on “evolving capacities” is not only about children’s growing autonomy in relation to parents. It also relates to the child’s process of development (articles 6, 27 and 29) and parents’ responsibility not to demand or expect from the child anything that is inappropriate to the child’s developmental state. Article 5 is about the child’s path to maturity, which must come from an increasing exercise of autonomy.

Lastly, article 5 must be read in conjunction with article 19 providing that in no circumstances must parental guidance be exercised using physical or mental violence and the Committee has consistently upheld the view that **corporal punishment** is not consistent with the CRC.

⁴ Committee on the Rights of the Child, General Comment N. 7, 2005, CRC/C/GC/7Rev.1, para. 17.

⁵ Committee on the Rights of the Child, General Comment n. 12 (2009), “The right of the child to be heard”, CRC/C/GC/12, para. 84.

ARTICLE 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Comment on article 18⁶

Article 18 regulates the balance of **responsibilities between the child's parents and the State**, and particularly emphasizes State support for parents in the performance of their responsibilities. The article must be read in conjunction with article 5 as well as articles 3(2) and 27 (the State's responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living). These four articles of the CRC, taken together, make clear that parents have primary responsibility for securing the best interests of the child as their "basic concern," but that this responsibility is circumscribed by the child's rights under the Convention and may be shared with others such as members of the wider family. The State must take appropriate steps to assist parents in fulfilling their responsibilities. If parents cannot, the State must intervene to ensure that the child's rights and needs are met.

Protection of the family by the State had already been provided by the **International Covenant on Economic, Social and Cultural Rights** that in article 10 states "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."

Two are the main points stressed by article 18 for the upbringing and the development of children: on one hand the **primacy of parents** in carrying out their duty; and on the other hand the **common responsibilities of both parents**. This article makes a clear statement in supporting the primacy of parents which includes the obligation not to separate children from their parents, unless it is in the child's best interests (art. 9). It must be noted that in other articles (article 5 and 30) the Convention recognises the family structures vary and that children's wide family, community, etc. can play an important role in the child's upbringing.

The principle of common responsibilities applies also in the case of fathers of children born out of wedlock. The Committee has often expressed its concern at the large number of single-parent families: a concern that does not relate to the state of marriage but to the need of children to have both parents actively involved in their upbringing and to the greater likelihood of poverty for children in one-parent families. The State should undertake legal reform to end any discrimination against children who are born outside marriage. Again, the principle of common responsibilities should also apply **when parents separate**, as explicitly recognised in article 9 of the CRC stating "...the right of the child who is separated from

⁶ Partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 231-248.

one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." This implies that unless it is proved to the contrary, the continued involvement of both parents in the child's life is in his or her best interests.

The Convention recognises the vital role played by States in enabling parents to accomplish with their obligations. Indeed, States have the duty to advise and educate parents about their responsibilities to provide them with **quality and diversified services** (day-care services for working parents; health and education services; centres for mothers with babies, etc.). It should also be noted that the duty on States under this article is to "ensure the **development of institutions, facilities and services**" which means that the State can never be complacent or inflexible about its delivery of services to children. Constant evaluation of the service's effectiveness is required. Paragraph 2 of article 18 details governmental duties mentioned in article 4, under which States parties are required to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. During its forty-sixth session, held in Geneva in September 2007, the Committee decided to devote its Day of General Discussion to "Resources for the Rights of the Child - Responsibility of States" and among its recommendations the Committee encourages States Parties to give importance of systematically supporting parents and families which are among the most important 'available resources' for children.

Comment on the Committee's concluding observations on articles 5 and 18

Whereas the issue of evolving capacities of children and parental guidance has not been addressed, the Committee focused on the issue of the protection and support owed to families by the State in its Concluding Observations for all the EU Countries which were the object of this survey, but two.⁷

As previously noted in the first edition of this survey, most countries have enacted laws and plans of action dealing with social security for families, child benefits and parental leave. In its last Concluding Observations, only for three countries the Committee positively welcomed the enactment of new legislation on public services of social security and assistance to families in vulnerable socio-economic situations.⁸

In its comments, the Committee has observed that the current financial and economic crisis affecting many of the European countries has exacerbated the difficult situation of families and children. A common issue of concern repeatedly expressed by the Committee was that families without adequate assistance are, above all, those from the most disadvantaged and poorest families, single-parent households and children with disabilities.⁹ The **lack of appropriate assistance** in the performance of parents' child-rearing responsibilities has been addressed in the Concluding Observations of 5 EU Countries.¹⁰ As regards this point, the Committee has recommended to 8 EU Member States to intensify their effort to render appropriate assistance to parents and to adopt measures to ensure that families are provided with **financial resources and social support**.¹¹

Among the general measures of implementation to consider with regard to article 18, the development of appropriate training of childcare staff (such as social workers, child guidance

⁷ Austria and Denmark.

⁸ Greece, Romania, Czech Republic.

⁹ Belgium, Bulgaria, The United Kingdom, Greece, France, Spain.

¹⁰ Belgium, France, Sweden, The United Kingdom, Spain.

¹¹ Belgium, Bulgaria, Czech Republic, Estonia, Italy, Romania, Spain, The United Kingdom.

staff, community workers, social security officers, etc.) must be taken into consideration. In this perspective, the Committee has underlined the importance of having qualified staff and regretted – as in this survey’s first edition – the **lack of knowledge of professionals to identify, address and respond to children’s and family problems**. Thus the Committee recommended to the concerned States Parties to **train all professionals working with children**, including social workers and health care professionals.¹² In one European country the Committee was concerned about the insufficient investment in the staff.¹³

In positive terms, the Committee has noticed some improvements in many of the surveyed countries, especially in terms of **increasing the range of social services for family and children**.¹⁴

As indicated in article 18, the State has a duty to advise and educate parents about their responsibilities. Investment in parent education is increasingly recognized as being cost-effective, for example in terms of lowering children’s delinquency rates. The Committee has underlined the **need to prepare parents for their role in children’s life and development**. Consequently, as already highlighted in the first edition of this survey, States have been invited to improve effective counselling and community-based programmes for families; to support parental education programmes, in particular for parents of disadvantaged children and also with a view to prevent abandonment and institutionalisation. This point has been recommended to the majority of Countries taken into consideration in this study.¹⁵ In general, the Committee has stressed in its Concluding Observations to many countries the need for parental education measures, and specifically for the countries concerned, by implementing community based programmes with a view to assisting the extended family in taking an active role, e.g. conference models, and by providing parenting education in a culturally sensitive manner¹⁶ or by conducting awareness-raising campaigns.¹⁷

To conclude, it is worth noticing two new emerging points (compared with the first edition of this survey) that have been addressed in the most recent concluding observations of the EU Countries in question, namely the importance of **strengthening preventive services and early support and intervention measures**, that are essential for preventing separation of children from their family and thus their institutionalisation. In this regard, the Committees invited Countries to refer to the Europe 2020 Strategy of the European Union and be in line with the 2011 Communication from the European Commission entitled “Early Childhood Education and Care: Providing all our children with the best start for the world of tomorrow” (COM (2011) 66).¹⁸ The second aspect that preoccupies the Committee regards the **long waiting lists in which children requiring urgent assistance are put in order to obtain appropriate social services**. The Committee requested 2 EU Member States to conduct comprehensive research on the reasons for these long waiting lists.¹⁹

¹² Belgium, Bulgaria, Finland, The United Kingdom.

¹³ The United Kingdom.

¹⁴ Belgium, Bulgaria, Spain, Italy, The United Kingdom, France, Netherlands, Estonia.

¹⁵ Estonia, Italy, Romania, The Netherlands, Bulgaria, Greece, The United Kingdom, Czech Republic.

¹⁶ The Netherlands.

¹⁷ Sweden.

¹⁸ Czech Republic, Finland, Italy, The Netherlands, Sweden.

¹⁹ Belgium and The Netherlands.

6.2 CRC on family reunification

ARTICLE 10

1. *In accordance with the obligations of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by the States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.*

2. *A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.*

Comment on article 10²⁰

Article 10 of the Convention on the Rights of the Child is concerned with rights to “family reunification” of children who are, or whose parents are, involved in entering or leaving a country. The article requires States to deal with family reunification “in a positive, humane and expeditious manner” and to allow parents and children to visit each other if they live in different States. Hence this article must be read in conjunction with article 22 on refugee children.

Most families affected by article 10 are either so called “economic migrants,” refugees (although it should be noted that parents or children of refugees may seek entry for the purposes of family reunification rather than asylum) or children of separated parents living in different countries.

While family unity is a fundamental principle of the Convention, the wording of article 10 is notably weaker than that of article 9 in so far as the right to family reunification is not expressly guaranteed (even though article 10 makes an express reference to article 9(1)). The tentative wording of article 10 reflects concerns about immigration control – a cause of great anxiety to richer nations, haunted by the spectre of mass migrations of the world’s poor. Indeed, the point of view of wealthier States continues to be very much the same since, as a consequence of the fact that many of them have increasingly closed their borders to labour migration; family reunion has become the main legal entitlement for the settlement of immigrants. This, in turn, has led to restrictions in family reunification procedures.²¹ Some countries require nationality status before such rights can be secured. Most countries require applicants to prove that there are sufficient resources to support the immigrant’s family members without recourse to public funds. Other countries have stricter conditions for foreigners who themselves entered the country for family reunion when they were children. Not all States recognize 16- to 18-year-olds as children and some countries require children to be “dependent,” or the exclusive responsibility of one parent if the parents are separated.

²⁰ From the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 135-142.

²¹ In recent years, some European countries have passed new laws on immigration to limit people's ability to proceed to family reunification.

Article 10 does not directly address the right of children or their parents to “remain” for the purposes of family reunification, bringing in the whole question of the deportation of parents. However, by implication, since a deported parent would at once be in a position to wish to re-enter the country, these cases can be assumed to be covered by this article.

The provision requiring that applications for family reunification do not cause “adverse consequences” for any member of the family relates to those countries where applications to enter or leave have resulted in the applicant or the applicant’s family being persecuted or discriminated against which is obviously a violation of human rights in all circumstances.

Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best interest-based balancing test has decided against return, the obligation under article 10 and 9 of the Convention come into effect and should govern the host country’s decisions on family reunification therein.²²

As regards the right (save in exceptional circumstances) to maintain, on a regular basis, personal relations and direct **contacts with both parents** when the parents reside in different States, it is important to note that the **Hague Convention on the Civil Aspects of International Child Abduction** (1980) allows parents to enforce court orders for access (contact) in the Hague Convention States.

At present, a great number of countries have ratified or acceded to the Hague Convention, but even so, not all parents with access problems in foreign countries have court orders. In such circumstances art 10 of the CRC should ensure that States give favourable consideration both to applications for access and applications for entry and exit in order to exercise access.

In relation to the obligations set forth in this article the Committee has requested States to ratify the relevant international treaties on refugees as well as the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** that in article 44 declares that States should take measures “which they consider appropriate and which are within their powers to facilitate the reunion of migrant workers with their spouses, or with any persons having a relationship with them, which in accordance with the law is the equivalent of marriage, as well as their dependent or single children.” In particular, as for the European countries which are the object of this survey, the Committee encouraged 14 of them to ratify the above mentioned convention.²³

Comment on the Committee’s concluding observations on article 10

The Committee has issued Concluding Observations specifically referring to article 10 of the CRC in relation to only **4 European Countries**.²⁴ As to the other States, information on this article must be gathered from the Concluding Observations relating to article 22 on refugee children.

In particular, the Committee is, in general, concerned by the **restrictions** that States intend to adopt with regard to family reunification²⁵ and it has reiterated, as in the previous survey, its recommendations in ensuring that **family reunification procedures are dealt**

²² From General Comment n. 6, 2005, on “Treatment of unaccompanied and separated children outside their country”, para. 83, p. 21.

²³ Austria, Bulgaria, Denmark, The United Kingdom, Greece, The Netherlands, Romania, Sweden, Czech Republic, Italy, Cyprus, France, Spain.

²⁴ Romania, Sweden, Estonia, Italy. In the 2006 survey, 5 EU Countries had received specific observations on article 10. In the clusters of 2006 and 2013, Estonia is the only country that appears in both clusters.

²⁵ France, The Netherlands.

with in a positive, humane and expeditious manner, hence without entailing a risk of infringement of the rights of children under the Convention.²⁶ Similarly to what was highlighted in the 2006 ChildONEurope Survey, it must be noted that delay in procedures can be extremely prejudicial to children's healthy development. It is therefore extremely important that States have in place procedures that allow children arriving in the host country to be protected and reunified to their family as quickly as possible. The problem of the **length of family reunification procedures** has been specifically highlighted in 2 European countries.²⁷ Interestingly, of these 2 countries, one country had received the same observation as that of the 2006 ChildONEurope survey.²⁸

Regarding 3 European Countries, the Committee has welcomed the progress made²⁹ and **adoption of national legislation and jurisprudence**³⁰ regarding family reunification in line with the Convention. On the other hand, the Committee has also expressed worries about the fact that **some national legislation does not comply with the rights of children under article 10** of the CRC. This is the case of 3 European Member States for which the Committee asked to amend their national laws.³¹ In one case, the Committee encouraged a country to amend its domestic law on immigration with the aim of explicitly specifying the right of family reunification.³²

Lastly, it is important to note that all of the provisions of the Convention must be widely known and understood by adults, especially by those working for and with children. It is therefore extremely important to have in place an **adequate and systematic training of all professionals**, in particular law enforcement and immigration officials. One country in this survey received such a recommendation.³³

6.3 CRC on family environment – violence, abuse and neglect

Many provisions in the CRC deal with the right of children to be protected from all forms of violence and abuse. In this section, the issue is treated under the angle of the family environment.

ARTICLE 19

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

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

²⁶ Belgium, Estonia and Sweden.

²⁷ France and Italy.

²⁸ France.

²⁹ Greece, Romania.

³⁰ Estonia.

³¹ Italy, Estonia, The United Kingdom.

³² Italy.

³³ The United Kingdom.

Comment on article 19³⁴

Several provisions in the CRC deal with the right of children to be protected from all forms of violence, abuse and neglect. With regard to the issue we are treating in this section, it is important to recall the right of children to be protected from all forms of violence (physical and mental), abuse and neglect, maltreatment and exploitation beginning with the family environment in itself. Indeed, as recalled by the report of the independent expert for the United Nations study on violence against children, Paulo Sérgio Pinheiro, only with a stable family environment, characterised by a good parenting system and where strong attachment bonds between parents and children are developed, children can be protected and grow up in a protective home setting

Article 19 goes beyond children's right to protection from what is arbitrarily defined as "abuse" in different societies, and beyond their right to protection, guaranteed under article 37, article 19 requires children's **protection from "all forms of violence" while in the care of their parents or others**. With its wording, article 19 asserts children's equal human right to full respect for their dignity and physical and personal integrity. As a principle, it is linked to the right to life and to maximum survival and development guaranteed under article 6.

In order to reach its goal, article 19 requires States to take a variety of measures – legislative, administrative, social and educational – to protect children from all forms of violence. Paragraph 2 sets out possible protective measures, acknowledging that social and educational measures, and in particular the provision of appropriate support for children and families, are relevant to the protection of the child from violence, abuse and exploitation. The Committee has consistently interpreted the Convention as requiring prohibition and other measures to end all corporal punishment and other cruel or degrading punishment or treatment of children, and it confirmed this in a detailed General Comment issued in 2006 (CRC/C/GC/8).

Growing awareness exists in all countries of the extent of violence against children in their homes, in institutions and in the community. Only in the last few decades has the prevalence of deliberate violence against children by parents and other caregivers been widely acknowledged.³⁵ Along with growing knowledge of the prevalence of violence against children has come growing awareness, through research, of its dangers and of the links between childhood experience of violence and violent and other anti-social behaviour in childhood and later life.

The Committee has devoted considerable attention to the issue of children's protection against violence, initially with **two Days of General Discussion** on violence against children, respectively in September 2000 on "State violence against children" and in September 2001 on "Violence against children, within the family and in schools." One key recommendation was to carry out an in-depth international study on violence against children. The proposal was adopted by the General Assembly in November 2001, and in 2003 Professor Paulo Sergio Pinheiro was appointed to lead the **Study on violence against children** which was presented to the General Assembly in October 2006. This study addresses violence against children within different settings, including home and family environment, and contains specific recommendations which apply to the home and family as regards prioritizing prevention, legal measures, development of education programmes,

³⁴ Partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 249-276.

³⁵ Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 33.

targeted programmes and programmes to support families and care-bearers, and investments in health care, education and social welfare services.³⁶

ARTICLE 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Comment on article 39

Article 39 is a complement of article 19 as well as of all other articles dealing with violence against children. These two articles should be read in conjunction. Indeed article 39 deals with child victims of violence in the phase of **recovery and social reintegration**, establishing that States shall take all appropriate measures to help child victims of, amongst other things, neglect, exploitation, or abuse, underlining once more the need to respect the dignity of the child. While adopting measures meant to further the recovery and reintegration of children, the general principles of the Convention on the Rights of the Child must be applied so that these measures shall apply without discrimination to all child victims; the best interests of the child must be a primary consideration; the maximum survival and development of the child must be ensured; and the views of the child should be respected – for example in planning and implementing programmes, the accountability of States to provide for the recovery and rehabilitation of child victims of violence and violence and practices prohibited by the CRC and to adopt all appropriate measures to protect the rights and interests of those children of is set forth also in other international standards, such as the **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**, both adopted in 2000 and in force since 2002³⁷ and in the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime, also adopted in 2000 and in force since 2003.

³⁶ Report of the independent expert for the United Nations study on violence against children, United Nations, General Assembly, sixty-first session, August 2006, A/61/299, para. 110: “110. Bearing in mind that the family has the primary responsibility for the upbringing and development of the child and that the State should support parents and caregivers, to care for children, I recommend that States:

(a) Develop or enhance programmes to support parents and other carers in their child-rearing role. Investments in health care, education and social welfare services should include quality early childhood development programmes, home visitation, pre- and post-natal services and income-generation programmes for disadvantaged groups;

(b) Develop targeted programmes for families facing especially difficult circumstances. These may include families headed by women or children, those belonging to ethnic minorities or other groups facing discrimination, and families caring for children with disabilities;

(c) Develop gender-sensitive parent education programmes focusing on nonviolent forms of discipline. Such programmes should promote healthy parent-child relationships and orient parents towards constructive and positive forms of discipline and child development approaches, taking into account children’s evolving capacities and the importance of respecting their views”.

³⁷ The OPSC is in force for 163 countries. The OPAC is in force for 151 countries. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is in force in 155 Countries. For the status of signature, ratification and accession, see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

Comment on the Committee's concluding observations on articles 19 and 39

The issue of child abuse is certainly one of the most amply treated in the Committee's Concluding observations, in particular under the chapter of civil rights and freedom (see the relevant part) and of family environment.

As regards the issue of violence, abuse and neglect in the framework of the family environment, out of the 16 States taken into consideration in this second survey, the Committee has addressed recommendations related to these articles for **12 EU Member States**.³⁸ Looking back at their previous recommendations, amongst these 12 States, 10 States under observation had received similar recommendations.

In the wake of the outcomes highlighted in the 2006 survey and of the consequences coming from the implementation of the Study on violence against children for the States considered, the Committee has positively recognised the efforts and improvements made in this time span by some countries, in terms of the enactment of **new laws on child protection and domestic violence**,³⁹ the adoption of **specific plans of action** aiming at preventing and combating domestic child abuse,⁴⁰ the setting up of a specific **mechanism to monitor** this phenomenon,⁴¹ and a **nationwide awareness campaign** to sensitize the public on the issue of domestic violence and child abuse.⁴²

Despite these advances, the Committee remains concerned about the lack of information and divulgation of the positive actions undertaken by EU Countries. In general, the foremost concern of the Committee remains the **extent of child abuse** in States party and the fact that, in general, only a negligible number of cases are reported and reach the courts.⁴³ In one case, the Committee drew the State's attention to the fact that abuse is the second cause of infant mortality.⁴⁴ In another country, the Committee expressed concerns that there is still no clarity on the issues of confidentiality and reporting duties for many professionals and for the public.⁴⁵

Considering the great attention given to this subject at an international and national level, the Committee is also alarmed at the persistent **lack of a comprehensive nationwide strategy** in addressing and tackling the problem of abuse and neglect of children, specifically underlined in 4 EU Countries.⁴⁶

The Committee has also devoted much attention to:

- the importance of having a national data collection system on all forms of violence against children (5 EU Countries);⁴⁷
- the need to have a system for reporting and investigating cases of domestic violence (3 EU Countries),⁴⁸ and
- the importance of facilitating access to justice for child victims of abuse and neglect (2 EU Countries).⁴⁹

³⁸ Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Greece, Italy, Netherlands, Romania, Sweden and The United Kingdom.

³⁹ Austria, France, Greece.

⁴⁰ The Netherlands.

⁴¹ France.

⁴² Cyprus, Sweden.

⁴³ Austria, France, The Netherlands, Greece, Belgium.

⁴⁴ Belgium, where mortality from child abuse is higher than in most OECD countries.

⁴⁵ Netherlands.

⁴⁶ Belgium, Greece, Italy, The United Kingdom.

⁴⁷ Cyprus, Greece, Italy, Romania, The United Kingdom.

⁴⁸ Bulgaria, Cyprus, Romania, The United Kingdom.

⁴⁹ Austria and France.

Finally, 4 EU Countries were noted to be lacking in adequate mechanisms of physical and psychological recovery and social reintegration for child victims of violence and abuse.⁵⁰

In the light of facts mentioned above, and follow-ups to the United Nations study on violence against children, the Committee renewed the general recommendations to adopt all necessary measures to prevent and combat child abuse, similarly to what was highlighted in the 2006 survey, by recommending States to:

- develop a **comprehensive national strategy** to prevent and address all forms of violence against children in all settings;⁵¹
- establish mechanisms for **monitoring the number of cases and the extent of sexual abuse**, neglect, maltreatment or exploitation;⁵²
- ensure **appropriate training of all professionals** working with children concerning their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;⁵³
- strengthen **support and protection for victims** of violence, abuse, neglect and maltreatment;⁵⁴
- consolidate the **national system of data collection**, analysis and dissemination, and a research agenda on violence against children;⁵⁵
- provide for the care and access to **adequate services for recovery, counselling** and other forms of integration.⁵⁶

Finally, in one case, the Committee regretted that a State party did not provide any information on cases and government policies concerning child abuse and neglect and therefore invited it to provide more detailed information in this regard in its next periodic report⁵⁷ while for other countries, the Committee invited them to **provide, in their next periodic reports, information** concerning the implementation of the recommendations highlighted within the above mentioned Study on violence against children.⁵⁸

6.4 CRC on alternative care for children deprived of their family environment

ARTICLE 20

1. *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.*

2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*

3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

⁵⁰ Greece, The Netherlands, The United Kingdom, Sweden and Romania.

⁵¹ Belgium, Bulgaria, Cyprus, Italy, Romania.

⁵² Belgium, Romania, The United Kingdom, Greece, France, The Netherlands.

⁵³ Belgium, Bulgaria, Cyprus, France, Greece, Romania, The Netherlands, The United Kingdom.

⁵⁴ Bulgaria, The United Kingdom, Greece, Romania, Sweden, The Netherlands.

⁵⁵ Cyprus, Finland, Italy.

⁵⁶ Belgium, Cyprus, Greece, Romania, The United Kingdom, Sweden, The Netherlands.

⁵⁷ Finland.

⁵⁸ Cyprus, Italy, Finland, Greece.

Comment on article 20

Article 20 concerns children who are **temporarily or permanently unable to live with their families**, either because of circumstances such as death, abandonment or displacement, or because the State has determined that they must be removed in their best interests.

Such children are entitled to “special protection and assistance”. The method of care for them will depend in part on national traditions (for example Islamic law does not recognize adoption, and guardianship preserving the original family relationship is common in Central and Eastern Europe), but must secure the child’s rights under the Convention and, in particular, give due regard to the desirability of **continuity of upbringing** including ethnicity, religion, culture and language (see articles 21, 8 and 30).

A first important point to notice in the wording of article 20 is that it refers to the family and not to parents, thus implying that in case the child is deprived of his/her parents or it is in his/her best interest to be removed from them, the State will first have to seek to place the child in the wider family before looking for other alternatives.

Article 20 then lists the forms of alternative care: **foster care, adoption and, if necessary, placement in suitable institutions** for the care of children. The order in which they are listed suggests a hierarchy of options: first, family relatives; second, substitute family through fostering or adoption; and third, an appropriate institution.

The situation of children deprived of their family environment has been a constant issue upon which the Committee on the Rights of the Child has repeatedly expressed its concerns. Very often, the Committee has noted, while reviewing the periodical States’ reports, the non-compliance of States’ actions and measures with the treaty’s provisions, in particular with article 20 and that institutionalisation of children has been systematically used.

Based on its observations, in September 2005 the Committee on the Rights of the Child decided to dedicate the **Day of General Discussion to the subject of children without parental care** in order to “improve implementation of the Convention on this topic and identify practical solutions and steps for ensuring that the rights of children living without parental care are respected.”⁵⁹ One of the key recommendations emerging from that day was to draft United Nations Guidelines for the Care and Protection of Children without Parental Care aimed at giving guidance not only to Governments but also to all other duty-bearers and professionals working with and for children.

After five years of discussions and preparation, on the occasion of the 20th anniversary of the Convention on the Rights of the Child, the United Nations General Assembly (UNGA) formally welcomed the **Guidelines for the Alternative Care of Children**. Since that time, the Committee has been making full use of the principles and objectives established in the Guidelines when examining the reports of States Parties and in formulating its observations and recommendations to them. It is also worth noting that even before the official acceptance, some countries and organisations had already made use of or referred to these Guidelines:

The Guidelines – prepared by the International Social Service and UNICEF, in collaboration with the NGO Working Group on Children without Parental Care, governments led by Brazil, and also with the involvement of many experts, academics, other

⁵⁹ Report of the fortieth session of the committee on the rights of the child, Day of general discussion on children without parental care, CRC/C/153, para. 641.

non-governmental organisations, and young people with experience in alternative care – are divided into 9 clusters of issues, each one focusing on a specific question, that makes them easy to read and to find inspiration to the alternative care components. Besides, they assume particular importance because they are the first international instrument, that covers all types of alternative care: not only formal but also “informal” arrangements. Specific provisions apply to the latter arrangements.⁶⁰

The purpose of the Guidelines is “to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.” To do so, the Guidelines set out “desirable orientation for policy and practice” that should be used as a landmark by all sectors (public and/or private) directly or indirectly involved, and by no means just to governments.

By recalling that the family is the natural environment where a child should grow and be raised and that all efforts should lead to enabling to child to remain or return to the care of their parents, the Guidelines establish two basic principles that should be taken into account while dealing with a situation falling under article 20:

- the principle of necessity,
- the article of appropriateness.

According to the first principle (*necessity*), the alternative care must be truly needed. In other words, this means that governments should have adopted policies in favour of families in difficulties and that all other solutions have been considered before separating a child from his/her parents. Nonetheless, when it is in the best interest of a child to be separated from his parents, alternative care has to be provided in an appropriate manner ensuring children a stable and permanent situation (*appropriateness or suitability*). Based on this principle, the Guidelines define a range of suitable alternative care options, much broader than the list indicated within article 20.

There are also other key principles that should be taken into consideration while deciding the best solution for a child living out of his/her family, namely the requirement for case-by-case decision-making; the principle of non-discrimination; the planning of a permanent project for each individual child; the effective participation of the concerned child in all the measures affecting his/her life; the promotion of family reintegration, etc. Most importantly, all alternative care options should be developed in the context of an overall deinstitutionalization strategy with precise goals and objectives. Priority in all countries should be given to family and community-based settings. Specific attention is paid to agencies and facilities responsible for formal care in terms of both care facilities and individual carers as well as to the support that children leaving care need for the aftercare period.

To complete these Guidelines, a **handbook, *Moving Forwards: Implementing the Guidelines for the Alternative Care of Children***, has recently been developed. This new tool aims to help practitioners, organisations and governments responsible for the care of children who are, or might be, in need of alternative care in better understanding and interpreting the Guidelines as well as in better putting into practice the recommendations and orientations contained therein. Therefore, these two instruments should be consulted in conjunction.

⁶⁰ Guidelines for the Alternative Care of Children, para. 55, 75-78.

Comment on the Committee's concluding observations on article 20

As mentioned above, the Committee has paid great attention to the issue of **alternative care for children deprived of their family environment** for all of the **16 EU Member Countries** involved in this survey.⁶¹

The picture that emerges from the analysis of the Committee's Concluding Observations is in general and regrettably not in line with the recommendations and suggestions contained in the 2009 Guidelines. Explicit reference to the Guidelines is addressed in relation to **6 EU Member Countries**⁶² for which the Committee recommends taking them into account in order to put all the recommendations into practice, and in one case to formulate coherent national policies on de-institutionalization.⁶³

To begin with, the most frequent concerns already articulated and pointed out in the previous concluding observations appear to be repeatedly expressed also in the Concluding Observations under review. Despite some slight improvements in a few countries,⁶⁴ the Committee continues to be concerned by the preference of the institutions as primary alternative care and thus by a high number of children out of their families and placed in those institutions. The prevalence of institutions as an alternative care solution is evident in 9 EU Countries,⁶⁵ whereas the Committee appreciated that in 3 EU Countries⁶⁶ foster care is preferred to institutions.

Other critical aspects underlined by the Committee, which are common to almost all countries under revision, are:

- the absence of a regular periodic review of placements;
- the absence of complaint mechanisms;
- the absence of adequate data;
- the inadequacy of training for care professionals;
- the insufficiency of supervision and monitoring of alternative care facilities.

Based on the above-mentioned outcomes, the Committee hence once more recommended States to:

- use **institutionalisation** only as **measure of last resort** and to develop additional programmes to strengthen alternative foster care facilities;⁶⁷
- develop individualized care plans;⁶⁸
- support biological parents and guarantee contacts with biological parents;⁶⁹
- collect **adequate statistical data** either on institutions or on the quality control of

⁶¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, The Netherlands, Romania, Spain, Sweden, The United Kingdom.

⁶² Austria, Belgium, Czech Republic, Denmark, Finland, Italy.

⁶³ Czech Republic.

⁶⁴ Cyprus (preference of foster care to institutional care for children under 5 years) Czech Republic (amendments of laws; use of European funds to deinstitutionalise children and improve training of case managers), The Netherlands (recruitment of more foster families and efforts to reduce waiting lists), Romania (boost of number of children in foster care).

⁶⁵ Belgium (for children under the age of 3); Bulgaria, Cyprus (for children aged more than 5 years), Czech Republic, Denmark, Estonia, Finland, The Netherlands, Greece.

⁶⁶ Bulgaria, Cyprus (for children under the age of 5); Romania, The United Kingdom.

⁶⁷ Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Spain.

⁶⁸ Bulgaria, Denmark, France, Romania.

⁶⁹ Denmark, Finland, France, Italy, Greece, The United Kingdom.

alternative care institutions and family type alternative care;⁷⁰

- ensure proper selection, training and supervision of professionals as well as of foster families;⁷¹
- ensure that **the guidance, supervision and monitoring of children** placed in care for the protection of their best interests is adequately supported by central and regional authorities.⁷²

Two more points need to be further underlined. On one hand, 2 EU Countries were encouraged to **conduct survey/studies** on the phenomenon of institutionalisation and children out of their family;⁷³ on the other hand, noting the lack of adequate complaint mechanisms, the Committee has recommended to take all necessary measures to ensure that **complaint mechanisms** and **remedy mechanism for abuse and/or neglect** for children are in place.⁷⁴

The Committee then focused its attention on the issue of the **periodic review of placements** in accordance with article 25 of the CRC that recognizes the right of a child placed by “the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

As the 2009 Guidelines emphasised, continuous monitoring has indeed proved crucial in assessing the decisions taken on the basis of the principle of the child’s best interests and in preventing abuse. In addition, a periodic review and the relative assessment of the child’s situation and possible return to parental care should be done by an authorised and competent professional or by a multidisciplinary team in consultation with the different actors involved.⁷⁵ The Committee has therefore recommended **8 EU Member Countries** to ensure that children’s placements are periodically reviewed and that the children’s view is taken into account while reviewing and evaluating the “individualized care plan.”⁷⁶ In one case, the Committee positively welcomed the establishment of Independent Reviewing Officers.⁷⁷

Finally, for 2 EU Member Countries the Committee has recommended guaranteeing the contact between the children placed in out-of-home care and their parents. In particular, in the case of children with one or both parents in prison, the Committee requested one country to support this category of children and to prevent their stigmatisation as well as discrimination against them.⁷⁸

⁷⁰ Austria, Estonia, Greece.

⁷¹ Cyprus, Czech Republic, Italy, Romania, Finland.

⁷² Austria, Denmark, Romania.

⁷³ Estonia, Italy.

⁷⁴ Bulgaria, Cyprus, Estonia, Finland, France, Romania, Spain, Sweden, The United Kingdom.

⁷⁵ Guidelines for the Alternative Care of Children, para. 7 and 48.

⁷⁶ Bulgaria, Czech Republic, Estonia, Finland, Greece, Romania, Spain, Sweden.

⁷⁷ The United Kingdom.

⁷⁸ The United Kingdom.

6.5 CRC on adoption

ARTICLE 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Comment on article 21⁷⁹

Article 21 addresses the rights of children who are adopted while recognizing that not all countries permit adoption. It establishes the **paramountcy of children's best interests** in all adoption arrangements and details minimum requirements for adoption procedures. In the adoption procedure **the best interests of the child must be "the paramount" consideration** rather than simply "a primary" consideration as in article 3. The provision establishes that no other interests, whether economic, political, state security or those of the adopters, should take precedence over, or be considered equal to, the child's.

Inter-country adoption is only to be considered if the child cannot be suitably placed in his or her own country. The need of all young children for a family, and for a sense of security and permanency in their relationships, is recognized in most parts of the world and is celebrated in the Convention's Preamble which asserts that the family is "...the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children" and that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." Adoption as the permanent solution to meet this need is, however, more controversial.

The Convention on the Rights of the Child **remains neutral about the desirability of adoption**: article 20 mentions it as one of the possible options for the care of children without families. It is clear that children's psychological need for permanency and individual attachments can be met without the formality of adoption; where adoption is used, it should be properly regulated by the State to safeguard children's rights.

In all countries where adoption is allowed, the Committee has expected to see legislation

⁷⁹ Partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 293-303 and from Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006.

regulating both its domestic and inter-country forms.

Article 21 sets minimum criteria that have to be followed while dealing with adoptions. First of all, adoption must be done only by “**competent authorities.**” The reference to competent authorities must be understood as including the judicial and professional authorities charged with vetting the viability of the placement in terms of the best interests of the child, and with ensuring that proper consents have been obtained and all relevant information considered.

As regards the requirement of the **determination** “on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians’ it is clear that an adoption can only take place if parents are unwilling or are deemed by judicial process to be unable to discharge this responsibility and any legislation that permits adoptions under less stringent conditions would probably amount to a breach of both children’s and parents’ rights under the Convention. The CRC further specifies the requirement of the **informed consent** to the adoption because of cases in which children have been wrongfully removed from their parents.

These safeguards do however mean that the paramountcy of children’s best interests in adoption is in one sense circumscribed by the legal necessities of satisfying legal grounds and gaining necessary consents. If the procedures are not followed then an adoption must not proceed, regardless of the child’s best interests.

In the concept of the child’s best interests the **principle of the consideration of the child’s views** should also be considered. Although the Convention does not explicitly mention this point in the requirements relating to consent, a proper consideration of it is certainly to be considered implicit and in accordance with art. 12. **The 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption**, which is the most important international treaty in this regard, is very clear on this point specifying that the child’s consent must be given freely, in duly forms and that the child’s opinion must be taken into duly consideration by the competent authorities.

As regards the institute of **inter-country adoption**, the wording of article 20 clearly indicates that this is to be considered as a **solution of last resort**. States have a clear obligation to take active measures to ensure that all possible efforts have been made to provide suitable care for the child in his or her country of origin. This principle is in accordance with article 20(3) requiring due regard to be paid to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background;” with article 7, upholding the child’s rights to know and be cared for by parents, and with article 8, the child’s right to preserve identity. This it is confirmed by the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption. However, according to the interpretation of the Hague Convention by the Permanent Bureau of the Hague Conference on International Private Law, the **subsidiarity principle** means that inter-country adoption must be preferred to the alternative care options. A permanent family solution is the sought solution and hence, as a general rule, institutional care should be considered as a last resort for a child in need of a family.

Respect for this principle and the regulation of inter-country adoption is crucial in order to **prevent an improper use of this institute**, such as when it is arranged on a commercial basis or by illicit means or even in situations of grave violations of children rights as in the cases of trafficking of children for sexual exploitation or slavery. In this regard, the 1993

Hague Convention on Inter-country Adoption aims to establish safeguards to prevent abduction, sale and trafficking in children for adoption: all the mechanisms and criteria established by the Convention serve indeed to protect all the parts involved in an adoption procedure, birth families, prospective adoptive parents as well as children from exploitation and undue pressure. In addition, the Convention establishes minima criteria to regulate agencies and individuals involved in adoptions in the light of preventing illicit adoptions. The importance of preventing illegal procedures has also been recognized by **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography** that requires States to take measures to criminalize as an extraditable offence any sort of trafficking in children, including: “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable internal legal instruments on adoption.”

The CRC, as well as the Hague Convention, also state that inter-country adoption should not result in “**improper financial gain.**” While payments by adoptive couples may be made in good faith and without harm to the child, a system that puts a price on a child’s head is likely to encourage criminality, corruption and exploitation. Also article 35 requires States Parties to take measures to prevent the sale of children for any purpose. The CRC further specifies that “the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national Adoption.” This implies that “every international adoption must be authorized as being in the best interests of the child by competent authorities of the child’s State, on the basis of proper investigation and information and with proper consents (with counselling, if necessary) having been obtained.

Comment on the Committee’s concluding observations on article 21

With regard to the institute of adoption, the Committee has issued Concluding observations for almost all the EU Countries which are the object of this survey, with the exception of three countries.⁸⁰

The Committee has focused its attention on the legislative guarantees for the adoption procedure as provided by the **Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993** which is the foremost international treaty specifically dealing with inter-country adoption. The objective of this convention is “to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law”, as set out in its article 1. In fact, the convention was drafted to provide protection of children, who are declared adoptable, through the establishment of a legal framework of co-operation between authorities in the States of origin and in the receiving States. By doing so, the 1993 Hague Convention gives effect to Article 21 of the United Nations Convention on the Rights of the Child by adding substantive safeguards and procedures to the principles and norms enshrined in the Convention on the Rights of the Child. All the EU Countries in consideration are Parties to the 1993 Hague Convention, which is – nowadays – one of most ratified Hague conventions.⁸¹

The last Committee’s Observations were mainly focused on the issue of inter-country adoption, while the issue of **domestic adoption** was not always addressed but only in two

⁸⁰ Denmark, Finland, Sweden.

⁸¹ For the status of the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993, see www.hcch.net

cases to which the Committee dedicated more attention.⁸²

In general, the Committee positively welcomed all national legal provisions that the EU States have introduced, some of them strengthening guarantees for inter-country adoption processes, while others were more in line with the 1993 Hague Convention.⁸³ Nonetheless, the Committee expressed several concerns. In general, the Committee required States to ensure that the **principle of the best interest of the child** is observed and hence taken as paramount consideration in all measures and steps of the adoption process.⁸⁴ The Committee was drawn by the fact that many inter-country adoptions are carried out with **countries of origins that have not ratified the 1993 Hague Convention**,⁸⁵ therefore it recommended to sign bilateral agreements with non-Hague Countries. It has also expressed its concerns about the **large number of accredited bodies** in some countries.⁸⁶ Other aspects that have raised the Committee's concern and that are worthy of mention are: 1) absence of clear and consistent set of criteria for assessing the suitability for adoption;⁸⁷ 2) insufficient organizational and human resources in the central authority;⁸⁸ 3) absence of efficient mechanism to collect statistics on adoption;⁸⁹ 4) the length and delays in adoption processes.⁹⁰

It also is worth mentioning another important issue raised by the Committee, which regards **illegal adoptions** included the so-called "**private adoption**:"⁹¹ arrangements for adoption made directly between a biological parent in one Contracting State and prospective adopters in another Contracting State.⁹² These adoptions are not in line with either the Convention on the Rights of the Child or the 1993 Hague Convention as they increase the risk of sale of children. In this regard, it is fundamental that article 3 of the Optional Protocol on the sale of children, child prostitution and child pornography is fully translated into national legislation.

Finally, the Committee noted that some of the States parties of the 1993 Hague Convention in consideration are not uniformly applying the 1993 Hague Convention, hence treating differently **adoptions from their Overseas Territories**. For that reason, the Committee recommended those States party to apply the 1993 Hague Convention to the Overseas Territories.⁹³

⁸² Belgium, France.

⁸³ Belgium, Bulgaria, France, Italy, Romania, Spain.

⁸⁴ Austria, Bulgaria, Italy, Romania, Spain, The United Kingdom.

⁸⁵ Austria, France, Italy, Spain.

⁸⁶ France, Italy, Spain.

⁸⁷ Czech Republic.

⁸⁸ Bulgaria, Romania.

⁸⁹ Estonia.

⁹⁰ Greece, Romania, The United Kingdom.

⁹¹ Greece, The Netherlands, Spain.

⁹² Definition from the *Implementation and Operation of the 1993 Hague Intercountry Adoption Convention*, Guide of Good Practice no. 1.

⁹³ The Netherlands, The United Kingdom.

7. Health

7.1 CRC on children with disabilities

ARTICLE 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Comment on article 23¹

During its forty-third session held in Geneva in September 2006 the Committee decided to specifically address the issue of children with disabilities and formulated a General Comment (CRC/C/GC/9) in this respect. The origins of this General Comment date back to 1997, when it was first proposed in recommendations adopted following the Committee's Day of General Discussion on "The rights of children with disabilities" (Report on the sixteenth session, September/October 1997, CRC/C/69, paras. 338 and 339).

In the General Comment, introducing its considerations, the Committee observes that in the world there are around 150 million children affected by disabilities, 80% of whom in developing countries. While the situation is more serious in developing countries, children with disabilities are victims of discrimination almost everywhere. At the same time, it is universally recognised that most of the causes of disability, such as war, illness and poverty, are preventable, which also means that the secondary impacts /consequences of disabilities, often caused by the lack of early/timely intervention, can be prevented or reduced. There is still room for improvement, consequently, in terms of political will and real commitment to investigate and put into practice the most effective actions to prevent disabilities.

¹ This section is partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 322-339.

On the other hand, the Committee acknowledges the positive achievements that have been made concerning people with disabilities in the past few decades, particularly in terms of advocacy for their rights: a new focus on this vulnerable component of society that also justifies a clear statement from the Committee itself. Considerable steps forward have been made within the framework of the human rights treaties and the United Nations human rights treaty bodies. Those bodies have considerable potential in advancing the rights of persons with disabilities, but they have generally been underused. The Committee underlines that, since the entry into force of the Convention in 1990, it has paid sustained and particular attention to disability-based discrimination while other human rights treaty bodies have paid attention to disability-based discrimination under “other status” in the context of articles on non-discrimination of their relevant Convention. The Committee underlines in particular the contribution of the Committee on Economic, Social and Cultural Rights and of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General Assembly at its forty-eighth session in 1993.

A further reason for issuing a general comment is the wealth of information on the status of children with disabilities worldwide that the Committee has accumulated during years of reviewing State party reports. This undoubtedly gives the Committee a special position to observe the evolutions in the implementation of the convention by States Parties in relation to the rights of children with disabilities. In the overwhelming majority of countries some recommendations had to be made specifically to address the situation of children with disabilities.

On the whole, they are still experiencing serious difficulties and facing barriers to the full enjoyment of the rights enshrined in the Convention: barriers which are often not represented by the disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives.

The strategy for promoting their rights is therefore to take the necessary action to remove those barriers. Acknowledging the importance of articles 2 and 23 of the Convention, the Committee states from the outset that the implementation of the Convention with regard to children with disabilities should not be limited to these articles. The General Comment, therefore, intends to provide guidance and assistance to States parties in their efforts to implement the rights of children with disabilities in a comprehensive manner, which covers all the provisions of the Convention. Briefly said, this General Comment intends to mainstream the rights of children with disabilities.

As far as the definition of disability is concerned, the Committee in its General Comments avoids giving a definition by itself, but quotes (para. 7) the non-exclusive one included in article 1 of the Convention on the Rights of Persons with Disabilities: “Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Turning now to analyse the two key provisions of the CRC concerning the issue at stake, in relation to article 2, the Committee proposes that States should:

- include disability as a forbidden ground for discrimination in constitutions and/or in specific anti-discrimination laws;
- provide effective remedies in case of violations of the rights of children with disabilities, easily accessible to the children, their parents and/or others caring for the child;

- conduct awareness-raising and educational campaigns with the public and specific groups of professionals to prevent/eliminate discrimination.

In para. 10 the Committee underlines the importance of paying particular attention to girls with disabilities, who, due to gender discrimination, are even more vulnerable. If necessary, the Committee suggests the adoption of extra measures in this regard.

Paragraph 1 of article 23 – the enjoyment of a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate active participation in the community – should be considered the “leading principle” in the implementation of the Convention for children with disabilities. The core message of this paragraph is that children with disabilities should be included in society. Measures taken, for example in health and education, should explicitly aim at the maximum inclusion of children with disabilities in society.

States Parties should develop and effectively implement a comprehensive policy with a plan of action. This should aim at full enjoyment of the Convention without discrimination, and also ensure that the child with a disability and his/her parents or other carers do receive the special care and assistance they are entitled to, free of charge whenever possible. With reference to paragraphs 2 and 3 of article 23, the Committee urges States to make special care and assistance for children with disabilities a matter of high priority, investing the maximum amount of available resources in eliminating discrimination and maximising inclusion, and ensuring effective access to and receipt of education, training, health care, recovery, preparation for employment and recreation opportunities.

In relation to paragraph 4, the Committee encourages more active exchange of information on prevention and treatment; it also urges States to pay more attention to children with disabilities and their survival and development in the framework of bilateral or multilateral development assistance.

Concerning the general measures of implementation, the Committee underlines the need for clear and explicit provisions in legislation for the protection and exercise of the specific rights of children with disabilities and the inclusion in national plans of action involving plans and strategies for children with disabilities, with measurable outcomes. There should be a coordination body for children with disabilities, as part of a broader coordination system for the rights of the child or of a national coordination system for persons with disabilities. States Parties are ultimately responsible to oversee that adequate funds are allocated to children with disabilities, along with strict guidelines for service delivery. The Committee notes that the implementation of this right has been a concern since many States parties not only do not allocate sufficient resources but have also reduced the budget allocated to children over the years, thus making it even more difficult to provide further resources for children with disabilities and their special needs. Concerning data collection, it should reflect the actual situation of children with disabilities and data must be accurate, standardized and allow disaggregation. In relation to the need for independent monitoring, with reference to its General Comment No. 2 on “The role of national human rights institutions,” the Committee emphasizes that institutions must be accessible to children with disabilities, not only in the physical sense but also to ensure that these children can raise complaints or issues easily and confidentially. States should support and cooperate with NGOs which provide services for children with disabilities. With reference to article 42 of the Convention, States should conduct systematic awareness-raising and training, including in Braille and appropriate forms and use the mass media, to foster positive attitudes towards children with disabilities.

The General Comment then reviews the rights of children with disabilities in relation to the other articles of the Convention on the Rights of the Child, using the clusters of articles identified for reporting: General principles, Civil rights and freedoms, Family environment and alternative care, Basic health and welfare, Education and leisure, Special protection measures. The implications of the General Comment in relation to other articles will be reviewed in the relevant chapters of this analysis.

Comment on the Committee's concluding observations on article 23

The Committee addressed the issue of children with disabilities in its Concluding Observations for all the 16 EU Member Countries considered. Among the positive appreciations expressed by the Committee, many concern the approval of a national action plan or laws concerning protection, equal opportunities and integration of persons with disabilities (Austria, Romania, Spain and Finland). Others refer to specific pieces of legislation/other measures concerning the integration of children with disabilities, in particular in the education system (Belgium, France, Cyprus, Greece, Czech Republic). In more general terms, the Committee is positively impressed by the efforts made to improve the situation of children with disabilities and their integration (Italy, The United Kingdom, Denmark). In one case the Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (Sweden).

Taking into consideration the main concerns expressed by the Committee and starting from a general level, many references are made to **the ratification of the International Convention on the Rights of People with Disabilities**, which is recommended in four cases in different terms depending on each Country's situation.²

The effective implementation of the CRC is addressed in relation to three Countries,³ for which the Committee recommends to take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for disabled children, are effectively implemented. In one case the Committee recommended to revise and adopt specific legislation in order to fully protect all children with disabilities and establish a monitoring system.⁴

An aspect that continues to deserve attention, as it was already one of the main findings in this survey's first edition, is the **lack of policies for children with disabilities at a national and local level**. In two cases the Committee suggested the adoption of comprehensive national policies concerning children with disabilities,⁵ in order to better protect them and ensure their equal access to social, educational and other services. The review of existing policies and practices concerning children with disabilities is suggested in two cases,⁶ together with the adoption of a rights-based approach and/or a due consideration of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the Committee's recommendations. In two cases⁷ the Committee recommended development of a comprehensive national strategy with appropriate gender sensitivity for the inclusion of children with disabilities in society.

In a policy perspective, the Committee also recognizes a problem concerning the lack of information about children with disabilities and recommends **improvement of the**

² Finland, The United Kingdom, The Netherlands, Romania.

³ Romania, The Netherlands, The United Kingdom.

⁴ Greece.

⁵ Romania, Sweden.

⁶ Estonia, Italy.

⁷ France, The United Kingdom.

collection of comprehensive and disaggregated data in 4 cases.⁸

Furthermore, the Committee requested 10 EU Member Countries⁹ to **ensure inclusive education for children with disabilities** (to integrate them in mainstream education) by providing them with programmes and specialized assistance, providing special training for teachers, ensuring the provision of adequate financial, technical and human resources for schools and making buildings more accessible from a physical point of view.

To ensure that the quality of education, care and assistance received by children with disabilities is of an equal level to that of all children, so that equal opportunities can be ensured, the Committee stresses the importance of providing adequate training to all professionals working with them, from teachers to social workers, from medical to therapeutic staff. This point is recommended to almost all Countries taken in consideration in this study.¹⁰ In one case, the Committee also recommended States to develop skills of local-level governments and institutions.¹¹

Another important point already noted during the first ChildONEurope Survey is **the need to promote the full participation of those children in their family life**. Therefore, the Committee urged 5 EU Member Countries¹² to provide support to families with children with disabilities, both from a socio-economic and from an educational point of view. Furthermore, placement in institutions should be used as a measure of last resort, while greater efforts must be made to implement alternatives, including community-based rehabilitation programmes.¹³ The focus of those services must be improving the quality of children's life and their inclusion in society.

Finally, the importance of **promoting awareness raising** to favour inclusion and to eradicate negative social attitudes towards children with disabilities remains one of the Committee's concerns, this issue being identified in the Concluding Observations related to 6 EU Member States.¹⁴

7.2 CRC on Child's right to health and health services

ARTICLE 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the

⁸ Bulgaria, Italy, Sweden, Czech Republic.

⁹ Belgium, Czech Republic, Italy, France, Sweden, Cyprus, Austria, Estonia, Finland and Greece.

¹⁰ Excluding Cyprus, Austria and Spain.

¹¹ Bulgaria.

¹² Czech Republic, Bulgaria, Finland, Austria and Denmark.

¹³ Estonia, Greece, Austria.

¹⁴ Estonia, France, Romania, The Netherlands, The United Kingdom, Czech Republic.

provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

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

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Comment on article 24¹⁵

The CRC non-discrimination principle (article 2) requires Countries to recognize **the right of all children without discrimination to “the highest attainable standard of health”** as well as to “facilities for the treatment of illness and rehabilitation of health.” And States Parties must strive to ensure “that no child is deprived of his or her right of access to such health care services.”

Paragraph 2 provides a non-exclusive list of appropriate measures that States must take in pursuing full implementation of the right, including “to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary healthcare.” The holistic nature of the CRC and the Committee’s interpretation stress the obvious connections between realizing the child’s health rights and the child’s right to an adequate standard of living (article 27) and to education (article 28) as well as to protection from all forms of physical or mental violence (article 19).

Respect for the views of the child needs to be built into health care and into the design of health services, and respect for evolving capacities (article 5, page 85) underlines the need for full consideration of adolescent health issues.

Article 24, **paragraph 3, requires action to abolish traditional practices “prejudicial to the health of children,”** drafted because of particular concern over female genital mutilation and requiring a review of all potentially harmful practices.

Paragraph 4 asserts the importance of international cooperation (reflecting the general provision found in article 4) in achieving full realization of the right to health and health care services.

Provisions concerning health in the CRC developed from provisions in the Universal Declaration of Human Rights and the two International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights– and from the formulation of definitions and principles by international organizations, in particular the World Health Organization (WHO) and UNICEF. The **broad definition of health adopted by the WHO** in its Constitution – a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity – emphasizes again the holistic nature of the CRC and the **links to the broad definition of child development** that the Convention promotes. Child development must be, among the rest, healthy.

¹⁵ This section is taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 344.

Comment on the Committee's concluding observations on article 24

In its concluding observations, the Committee referred to the issue of health care, health services and welfare for 15 States on the 16 analysed.¹⁶

Some positive achievements were expressed by the Committee to a minority of EU Countries (7 out of the 16 taken into consideration¹⁷) in relation to the following specific issues among the others: the recent progress made in the promotion of breastfeeding¹⁸ and the adoption of law reforms/national plans of action or programmes/measures concerning health (4 Member Countries¹⁹).

Concerning the Committee's recommendations on standards of health, the following analysis is made with the same order through which the specific issues are presented by article 24 of the CRC. First of all the Committee has recommended that States ensure or facilitate the **adequate and equal access of all children**, without discrimination, **to health care and services** (8 Member States²⁰), with special attention to children from ethnic or minority groups, Roma in particular²¹ and to other disadvantaged/vulnerable children (migrant, asylum-seeking and street children).²² Concerning **health care and services on other specific issues**, the Committee requested States to monitor the state of health of children,²³ to collect data on the basic national health indicators,²⁴ to improve mother and child health services,²⁵ to improve the provision of health services, above all through the strengthening of health infrastructures and the recruitment and training of health staff.²⁶

Regarding other specific issues of basic health, the Committee expressed its concern and adopted many recommendations.

While, differently from what emerged in the first ChildONEurope survey on the CRC's Concluding Observations, there are no recommendations concerning malnutrition, the Committee referred to **overweight and obesity** in 4 cases,²⁷ recommending stronger efforts to prevent and combat it.

Another important issue emerging is the need to **promote breastfeeding**, which was recommended by the Committee to 10 Member States,²⁸ mainly through the training of nurses and other health staff and through general awareness raising campaigns.

In parallel, the Committee also stresses the importance of regulating the market of breast-milk substitutes, whose indiscriminate diffusion has a negative impact on breastfeeding practices. The Committee made observations in this direction in relation to 11 Countries,²⁹ in most cases recommending States to strengthen their legislation regulating the marketing of breast-milk substitutes with a view to fully complying with the standards of

¹⁶ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Italy, Romania, Spain, Sweden, The Netherlands, The United Kingdom

¹⁷ Austria, Bulgaria, Finland, France, Romania, Spain and The United Kingdom.

¹⁸ France and The United Kingdom.

¹⁹ Bulgaria, Finland, Romania and Spain.

²⁰ Romania, The United Kingdom, The Netherlands, France, Belgium, Bulgaria, Czech Republic and Greece.

²¹ Greece, Bulgaria.

²² Greece, Bulgaria and Czech Republic.

²³ Austria and Belgium.

²⁴ Greece.

²⁵ Bulgaria and Romania.

²⁶ Greece, Romania, Italy.

²⁷ Belgium, Denmark, Spain and Austria.

²⁸ Denmark, France, The United Kingdom, Czech Republic, Finland, Italy, Greece, Romania, Austria, The Netherlands.

²⁹ Italy, Greece, Austria, Cyprus, Denmark, Belgium, France, Netherlands, The United Kingdom, Czech Republic, Romania.

the International Code of Marketing of Breast milk Substitutes.

Concerning the problem of female genital mutilation, the Committee has raised the issue in relation to 2 EU Member States.³⁰ In both cases it recommended that States implement the law prohibiting this harmful practice, undertake studies with the aim of verifying the extent of the phenomenon, organise information and awareness raising programs and strengthen international cooperation in order to help eradicate this practice. In one case (Bulgaria), the Committee referred to another harmful traditional practice, i.e. early marriage, recommending collaboration with the minority communities and their respective leaders to elaborate effective measures to abolish it.

The issues of **sexually transmitted infections (STI) and HIV/AIDS** are addressed with particular reference to adolescents' health, so they will be mentioned in next paragraph.

The importance of **developing (or strengthening) a comprehensive mental-health-care system and a mental- health policy for children and young people** is stressed by the Committee in its recommendations to a number of EU Countries.³¹ The Committee suggests mental-health systems should include prevention, treatment of common mental health problems in primary health care and specialized care for serious disorders. Another important point concerns the need to adopt an integrated approach, involving all actors concerned by the problem: families, schools, social care homes, the juvenile justice system and treatment centres. The importance of allocating adequate financial and human resources is stressed in many cases,³² as also for the need to intensify suicide prevention measures.³³

With reference to mental health, the last important issue emerging from the CO is the widespread diffusion of psycho-stimulant over-prescription, which is mentioned in 5 cases.³⁴ The Committee recommends that States investigate the phenomenon and provide children diagnosed with ADHD (Attention-deficit hyperactivity disorder), as well as their parents and teachers, with access to a wide range of psychological, educational and social measures and therapies.

7.3 CRC on adolescents' health

Comment on the Committee's concluding observations on adolescents' health (article 24)

During the years and following the recommendations of the various global conferences and United Nations agencies, the Committee has placed increasing emphasis on the development of appropriate health services for adolescents. In this field the reference still remains General Comment No. 4 on "Adolescent health and development in the context of the Convention on the Rights of the Child," adopted by the Committee in 2003. In the General Comment, the Committee observes that adolescents up to age 18 are holders of all the rights in the Convention, so they are entitled to special protection measures and, in parallel, they can progressively exercise their rights according to their evolving capacities.

The Committee also notes with concern that in implementing their obligations States Parties have not given sufficient attention to the specific concerns of adolescents as rights

³⁰ Belgium and Austria.

³¹ Belgium, Romania, Italy, Denmark, Finland, Spain, Sweden.

³² Italy, Belgium, The United Kingdom and Romania.

³³ Sweden, Finland, Czech Republic and Greece.

³⁴ Belgium, Denmark, Finland, Spain, Austria.

holders and to promoting their health and development. The General Comment aims therefore to raise awareness and provide guidance and support to States.

In its examination of States Parties reports, the Committee almost invariably comments in detail on adolescent health issues. This was also the case for the concluding observations analyzed in this survey.

Concerning positive achievements, the Committee notes that two Countries have introduced a ban on the sale of alcohol to persons under the age of 18 years³⁵ and one on the sale of tobacco.³⁶ It also underlines the fact that positive achievements have been made in the field of adolescents' sexual and reproductive health, including HIV/AIDS and sexually transmitted diseases prevention.³⁷ Moreover, the Committee acknowledges progress made to prevent and combat drug, alcohol and other substances abuse by two Countries³⁸ and welcomes the creation of a Department of Child and Adolescent Health in Finland.

With regard to the main concerns expressed, in three cases³⁹ the Committee recommended that close attention be paid to child and adolescent health or that States should **ensure effective implementation for adolescents' health programmes**. In doing this, the Committee often refers to its already mentioned General Comment No. 4.

Reproductive and sexual health seems to be an issue of serious concern, having been mentioned in relation to 6 Countries.⁴⁰ In particular, the recommended improvement of adolescents' sexual and reproductive health impacts both the prevention of early unwanted pregnancies and of sexually transmitted infections, including HIV/AIDS.⁴¹ Among the suggested measures to improve adolescents' sexual and reproductive health are the enhancement of the availability of contraceptive services, the promotion of sex education targeted at adolescents, in schools and out of schools and the development of child-friendly programmes to assist teenage mothers and their children.

Another issue of high concern, addressed in the recommendations to 11 States,⁴² is **the increasing use of alcohol, drugs and tobacco**. In some cases the Committee suggests to States to undertake comprehensive studies in order to know the extension of this phenomenon or to understand its root causes.⁴³ Prevention of drugs, tobacco and alcohol abuse is recommended through, inter alia, effective enforcement of the prohibition of the sale of such products to children and adolescents⁴⁴ and awareness raising initiatives on the negative impacts of alcohol and tobacco, also ensuring the contribution of the mass media.⁴⁵ Furthermore, the Committee also recommends strengthening care and rehabilitation programmes for adolescents/children suffering from substance addiction.

The third issue of concern is adolescents' mental health/emotional wellbeing. The importance of promoting, developing, strengthening mental health programs, policies and/or services for adolescents is recognized by the Committee in its recommendations to seven

³⁵ Denmark, Czech Republic.

³⁶ Czech Republic.

³⁷ Estonia, Finland and Romania.

³⁸ Cyprus, Estonia.

³⁹ Estonia, Spain and Belgium.

⁴⁰ Denmark, Czech Republic, Romania, Sweden, The United Kingdom and Greece.

⁴¹ HIV/AIDS is explicitly referred to only in the case of Romania.

⁴² Belgium, Cyprus, Finland, Italy, Greece, Czech Republic, Spain, Netherlands, The United Kingdom, Austria and France.

⁴³ Cyprus, Czech Republic, The United Kingdom.

⁴⁴ Cyprus, Czech Republic.

⁴⁵ Finland, Italy, France, The United Kingdom.

Countries.⁴⁶ Specifically, the Committee underlines that mental health and counselling services should be strengthened⁴⁷ and in one case recommends the allocation of financial and human resources at all levels of the mental health care system.⁴⁸ Furthermore, States should ensure that youth/child-sensitive and confidential counselling services⁴⁹ are available and accessible to adolescents who need them. In two cases⁵⁰ the Committee recommends reinforcing the training of general practitioners, nurses, social workers and other primary-care specialists in the field of mental health. For the same two countries the Committee acknowledges the need to undertake a comprehensive and multidisciplinary study to assess the scope of adolescent health problems, including psychological development.

7.4 CRC on standards of living

Comment on article 27⁵¹

The focus of article 27 is **the right of the child to an adequate standard of living for his/her full development**. The primary responsibility for securing this right lies with parents, with States assisting them if necessary. In case of need, States must therefore provide material support for the child, such as food, clothing and housing, also taking appropriate measures to cover maintenance from parents.

In connection with article 27, there are **two essential CRC principles**, also found in other articles. The first, set out in paragraph 1 of article 27, is **the right of each child to “development”**, which, as the CRC makes clear, must be to “the maximum extent” (article 6) or to the child’s “fullest potential” (article 29). The second, set out in paragraphs 2 and 4 of article 27, is that **parents have primary responsibility for securing this development, with the assistance of the State**. This principle is also asserted in articles 5, 7 and 18.

Article 27 recognizes that **the child’s development cannot be separated from his or her living conditions**. By listing the different components of full development – physical, mental, spiritual, moral and social –, article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are. Very few countries that have reported to the Committee to date can claim to be using their available resources to the maximum extent possible to alleviate children’s needs. Some of the wealthiest nations of the globe still have children experiencing unacceptable levels of poverty and deprivation.

Comment on the Committee’s concluding observations on article 27

When parents are unable to ensure an adequate standard of living for their children, the State has the duty to intervene and support them. Article 27 also indicates explicit qualifications on the States’ obligations that should be “in accordance with national conditions and within their means.”

These words reflect a general worry expressed by the Committee about States’ political and financial commitment to effectively combat child poverty and provide support for

⁴⁶ Estonia, France, Greece, Sweden, The United Kingdom, Bulgaria and Romania.

⁴⁷ France, The United Kingdom.

⁴⁸ Netherlands.

⁴⁹ Estonia, France, Greece, The United Kingdom.

⁵⁰ Bulgaria and Romania.

⁵¹ This section is partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 393-403.

children and families in need. Compared to the first analysis carried out by ChildONEurope in 2006, the Committee's Concluding Observations seem to reflect an **intensified concern about the growing rates of child poverty in Europe**, which are a consequence of the long-lasting economic crisis. In many cases the Committee expresses concern for the **high proportion of children living under the poverty threshold**, often noting that those children are concentrated in particular areas of the countries, thus creating unevenness in the enjoyment of the right to an adequate standard of living. In addition, in its CO to the wealthiest European countries, the Committee does not fail to underline how the distribution of wealth has been scattered by the recent crisis, creating disparities, which are likely to hamper the already weakest categories. As a consequence, migrant or Roma children, or children living in single household and other **vulnerable groups need to be additionally supported by Governments** in this moment.

Turning to analyze the CO in more detail, with regard to positive achievements, the Committee underlines that the fight against child poverty has been considered a priority by a number of Countries⁵² and **welcomes the adoption of those pieces of legislation and specific policies** (reforms, funds allocation, acts or national action plans) designed for this end.⁵³

The need to design public policies aimed at addressing the problem of increasing child poverty both in the short-term and in a sustained manner is also the focus of the Committee's recommendations.⁵⁴ In particular, these policies must be capable of effectively coordinating actions at different government level (national, regional and local) and in the various areas that are particularly responsible for children (economy, healthcare, housing, social policy and education). Moreover, in the process of policy development, participation of children must be ensured. To those Countries that are committed to end child poverty by 2020,⁵⁵ the Committee strongly recommends that they adopt and adequately implement a coherent legislation, including by establishing measurable indicators. Another important step in order to tackle child poverty in an effective manner is to conduct an in-depth analysis of its complex determinants.⁵⁶ The need to take concrete steps to support families, in particular those in difficulties, is often underlined in the recommendations: in particular, States are invited to increase income-support measures,⁵⁷ prioritising the most vulnerable ones (children from low-income families, migrant children etc.) and to provide material support as well, particularly with regard to nutrition, clothing, schooling and housing.⁵⁸ In this last respect (provision of material support); in three cases the Committee makes specific reference to children belonging to Roma and Travellers' communities.⁵⁹ In one specific case,⁶⁰ the Committee suggests, as a measure to prevent child poverty, increasing the participation of women in the labour market and promoting flexible working arrangements for both parents, including by increasing the provision of childcare.

⁵² France, The United Kingdom, Belgium and Greece.

⁵³ Belgium, Finland, France, Italy, Romania, Spain and The United Kingdom.

⁵⁴ Greece, Spain, Sweden, Italy.

⁵⁵ France and The United Kingdom.

⁵⁶ Belgium, Denmark and Finland.

⁵⁷ Bulgaria, Belgium, Italy, Denmark, Finland, France and Sweden.

⁵⁸ Romania, Bulgaria, The United Kingdom, France, Czech Republic.

⁵⁹ Romania, Bulgaria and The United Kingdom.

⁶⁰ Italy.

8. Special measures of protection

8.1 CRC on street children

Comment on the CRC on street children

The issue of children living or working on the streets is not specifically addressed in the CRC, however it has been an issue of major concern for the Committee in its Concluding Observations on State reports as these children are certainly among the most vulnerable and disadvantaged.

Article 2 which prohibits discrimination of any kind against children on different grounds (irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status) certainly also covers the case of the so-called "street children."

In the Report on its sixth (special) session, the Committee noted resolution 1994/93 of the **Commission on Human Rights** on "The plight of street children": "...In its discussion the Committee also pointed out that the **term "street children"** may not clearly define the nature or the causes of the violations these children suffer. It is in fact an expression that covers a diversity of situations affecting children. Some work on the streets but have homes, others are abandoned or for other reasons become homeless, others again have escaped abuse, some are pushed into prostitution or drug abuse. Another concern about the term was that it was understood in some societies to be stigmatizing and discriminatory. The Committee, therefore, had endeavoured to use **more appropriate terminology**" (Report on the sixth (special) session, April 1994, CRC/C/29, p. 31)

Other articles of the CRC that should be taken into consideration when considering the issue of children living and/or working in the street are art. 9 and art. 20.

Article 9 addresses the issue of children's separation from parents stating that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."

This provision may be relevant also in the cases when children are abandoned by their families in specific circumstances such as war or extreme poverty or when children leave their home due for instance to violence experienced in the family. In such cases the Committee has encouraged the States to make efforts to trace families in order to verify if family reunification would be in the child's best interest or other solution should be found.

Article 20 addresses the issue of children deprived of their family environment requesting the States to provide for special protection or assistance.

This provision applies therefore to those children living on the streets who are deprived of their family environment either because they are orphans, have been abandoned by their parents or have left their families. However it would be a mistake to think that all street children are deprived of their family as a number of them have a family to which they return on a regular basis and their choice to live and work on the streets may be due in some contexts to economic reasons rather than to a family rejection.

Comment on the Committee's concluding observations on article 30

In its concluding observations, the Committee referred to the issue of 'street children' for 4 States out of 16 analysed.¹ No specific positive development in this area is identified by the Committee.

As in its Concluding Observations issued until 2006, the Committee has focused in particular on the necessity for States parties to provide protection and assistance for children currently living on the streets taking into account the views of these children.² It has further requested States to ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development.³ The Committee also recommended States parties to develop and implement a national strategy for the prevention of, support to and social integration of children living and/or working on the streets.⁴ The Committee also specified that such a plan should establish annual targets for the reduction of street children's numbers and allocation of appropriate resources as well as containing appropriate guidelines for implementation of such a strategy by public services and NGOs.⁵ The Committee also recommended States to continue their efforts in cooperation with relevant NGOs to fulfil the rights and needs of street children, to address the root causes and develop effective strategies to increase awareness⁶ and to ensure that these children are provided with recovery and reintegration services, including psychosocial assistance for physical, sexual and substance abuse, and services for reconciliation with their families.⁷ The Committee further required the increase in the number and quality of available shelters and psychosocial rehabilitation centres for children in street situations, equipped with trained personnel and adequate resources.⁸

As in the past the Committee has stressed the importance of undertaking studies and assessment in order to better understand the causes of this phenomenon and its possible solutions. More specifically it requested States to undertake a systematic assessment of the situation of street children in order to obtain an accurate picture of its root causes and magnitude⁹ and to elaborate and implement programmes, on the basis of in-depth studies and analysis of the root causes, in order to prevent children from leaving families and schools for the street.¹⁰

Finally the Committee has focused on the issue of prevention of separation and on reunification, again in continuation with its past work. In particular it required States to support family reunification programmes or other alternative care, provided they are in the best interests of the child with the active involvement of children themselves.¹¹ States parties are also requested to ensure that adequate compensation or alternative housing is provided whenever forced evictions take place, with special attention to young children and their families and to strengthen efforts to prevent children's separation from their family.¹²

¹ Bulgaria, Estonia, Greece and Romania.

² Bulgaria and Greece.

³ Estonia, Greece and Romania.

⁴ Greece and Romania.

⁵ Romania.

⁶ Bulgaria.

⁷ Estonia.

⁸ Greece.

⁹ Greece and Romania.

¹⁰ Bulgaria and Estonia.

¹¹ Greece and Romania.

¹² Romania.

8.2 CRC on unaccompanied, refugee and asylum-seeking children

ARTICLE 22

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

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

8.2.1 Comment on article 22

Article 22 of the CRC regards the rights of refugee and asylum-seeking children to receive appropriate protection and humanitarian assistance, including tracing family members or his or her previous legal or customary primary caregiver.

Article 22 should be read in combination with other CRC articles, in particular the following: article 9 related to the separation from parents only when that are considered indispensable in the best interests of the child, article 10 related to the right to family reunification, that has to be implemented in a positive, humane and expeditious manner), article 20 related to the protection of children without families, article 37 related to the deprivation of liberty as a measure of last resort and article 39 related to recovery and rehabilitation after experience of armed conflict, torture and other forms of abuse. It should also relate to the guidelines of the UNHCR, especially the 1994 Refugee children Guidelines on Protection and Care.

The international definition of refugees is provided by the Convention relating to the Status of Refugees 1951 amended by the 1967 Protocol relating to the Status of Refugees, it states, for adults and children, that “refugees must be outside their country of nationality (or without nationality) because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, and they must be unable or unwilling to return because of this fear. A child or adult who holds this refugee status cannot be forced to return to his or her country of origin where he or she may face persecution, or be passed on to another country that might force such a return.”¹³

Article 22 also includes children who are “seeking refugee status”, in particular in relation to the essential protection needed by those children who are still awaiting the conclusion of the request for asylum, and unaccompanied or separated children.

As accompanied migrant children in general assume their parents’ refugee status, the problem concerns unaccompanied or separated children who have to prove their refugee status. “Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible

¹³ See also the *Implementation Handbook for the Convention on the Rights of the Child*, Unicef, 2002, p. 308-309.

for doing so.”¹⁴ Whereas, “Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.”¹⁵ “Country of origin is the country of nationality or, in the case of a stateless child, the country of habitual residence.”

The UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, (1997) and Refugee Children Guidelines on Protection and Care (1994) provide details on essential safeguards for the determination of the status of such children and stress that the interviews and hearings should be conducted in child-friendly environments and that there should be access to appeal. A guardian or adviser, who is appointed to ensure that all decisions taken are in the child’s best interests, should assist unaccompanied and separated children.

UNHCR points out that refugee children are disproportionately likely to be victims of sexual abuse.

In relation to the special needs of children and adolescent refugees, UNHCR points out that: “The needs of young children are usually evident as adequate nutrition, health care and support are essential for mere survival. The needs of older children, and particularly those of adolescents who are mid-way between childhood and full maturity, may be less visible but are of equal importance [...] Unaccompanied and separated adolescents may find themselves in situations of great responsibility for themselves and others. They may be difficult to place in foster families, and, moreover, may be part of child headed households assuming responsibility for younger children. Access to post-primary education, vocational training and income generating opportunities are the key means of supporting the rights and capacities of adolescents to develop life skills and become self-sufficient.”¹⁶ These two programmatic documents were integrate in 2009 with the adoption of the UNHCR Guidelines on international protection on child asylum claims under articles 1(a)2 and 1(f) of the 1951 Convention.¹⁷ Through the adoption of this Guidelines on child asylum claims of the UNHCR offers assistance to governments and agencies carrying out refugee status determination in a child-sensitive manner highlighting the specific rights and protection needs of children in asylum procedures. They also provides legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR internal staff carrying out refugee status determination in the field. The 2009 Guidelines operationalizes the four general principles of the CRC: 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; Article 3 (1): the best interests of the child as a primary consideration in all actions concerning 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; and Article 12: the child’s right to express his/her views freely regarding “all matters affecting the child,” and that those views be given due weight. In the guidelines this principles inform both the substantive concept and procedural aspects of procedure evaluating a child’s application for refugee status. In particular, as far as

¹⁴ General Comment no. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee on the Rights of the Child, Thirty-ninth session, 17 May – 3 June 2005, p. 6.

¹⁵ See the previous footnote.

¹⁶ From Summary Note on the UNHCR’s Strategy and Activities concerning Refugee Children and Adolescents, September 2000.

¹⁷ Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009.

the best interest principles is concerned, it is worth mentioning that in 2008 the UNHCR issued as well the Best Interests Determination Guidelines to assist UNHCR and staff of partner stakeholders in the implementation of best interest procedures.¹⁸

8.2.2 Comments on the Committee's Concluding Observations on article 22

The Committee appreciated the effort made by EU Countries concerning some specific issues related to the principles expressed in the article to 13 EU Member Countries.¹⁹

In particular, the Committee **positively underlined** the effort to **discuss and/or approve national legal reforms** to improve the legal situation of asylum-seeking children and unaccompanied children in order to pay more attention to their needs (8 EU Member)²⁰ i.e. referring to the special circumstances of unaccompanied children in need of international protection and to the need to ensure them a differentiated treatment based on the principle of the best interests of the child in decisions regarding the refugee determination status;²¹ the creation of a specific register of unaccompanied children;²² the regulation by law of the age determination procedures by means of medical examination in particular when it is disputed;²³ the withdrawal of reservation to article 22; the development of legal reforms introducing specific statutory child safeguarding duty for the competent national authorities;²⁴ the transposition of EU Asylum Acquis and international protection standards into national law;²⁵ the prohibition of placement of children under the age of 14 in detention pending deportation procedure;²⁶ the adoption of legal provisions providing asylum-seekers and former asylum-seekers or 'children in hiding' with a right to health care and medical services under the same conditions of children legally residing in the country.²⁷

The Committee positively underlined also that some countries increased the number of refugees and asylum-seeking children accepted and decreased the number of repatriated children.²⁸ The Committee also appreciated that States paid special attention to the needs of this category of children (3 EU Member Countries),²⁹ i.e. by enhancing the standards of the reception centres for unaccompanied children seeking asylum, the access to a legal representative following a negative decision on their asylum,³⁰ the setting up of a specific group of ad hoc trained experts to interview children.³¹

Concerning the recommendations of the Committee these were formulated for 14 EU Member Countries.³²

¹⁸ UNHCR Guidelines on Determining the Best Interests of the Child, available on <http://www.unhcr.org/4566b16b2.pdf>

¹⁹ Austria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Italy, Netherlands, Romania, Spain, Sweden and The United Kingdom

²⁰ Cyprus, Czech Republic, Finland, Italy, Romania, Spain, Sweden and The United Kingdom.

²¹ Spain and Romania.

²² Spain.

²³ Finland and Greece.

²⁴ The United Kingdom.

²⁵ Cyprus.

²⁶ Austria.

²⁷ Sweden.

²⁸ The Netherlands and Spain.

²⁹ Denmark, Spain, The United Kingdom.

³⁰ Denmark.

³¹ The United Kingdom.

³² Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Italy, Romania, Spain, Sweden, Netherlands, United Kingdom.

The most recurrent observation emerging from the recommendations refers to the issues related to the age determination addressed to 7 EU Countries.³³ In this specific context the Committee required in 3 cases to recognise the ‘benefit of the doubt’ to the child when there is a doubt about the age of the asylum seeker by treating him/her as a child, and to introduce the possibility for asylum-seekers to appeal the outcome of the age determination as well as to seek experts’ guidance on how to determine the age.³⁴ Always referring to the age determination, a further concern is the need of developing a uniform protocol for age determination methods and to ensure that procedures for age determination are conducted in a scientific, safe, child and gender sensitive manner avoiding any risk of violation of the physical integrity of the child as it is recommended in General Comment no. 6 of 2005.³⁵ In the two remaining cases the recommendations referred to the introduction of more recent methods of age determination which have been proved to be more accurate than the determination by bone test currently used³⁶ and the removal of a legal proposal stating that if the child does not cooperate with the age-determination process there could be procedural consequences on the assessment of his/her request of asylum.³⁷

Nevertheless, in 2012 there were few legislative reforms on very specific topics (5 EU Countries),³⁸ i.e. the Committee requested to: widen the scope of the national legislation on asylum in order to include the international standards and the EU Asylum Acquis (3 EU Countries),³⁹ in order to ensure the appointment of a guardian for an unaccompanied minor from the beginning of the asylum process and thereafter as long as necessary, also in the case he/she enters the country without valid immigration documents,⁴⁰ to make sure that each child under its jurisdiction has the right to an individual examination of his or her circumstances and to be provided with prompt access to asylum procedures⁴¹ and to extend the law provisions in order to provide for specific guarantees for unaccompanied children and separated children.⁴²

Concerning the legal aid, the Committee’s recommendations invited the systematic introduction of guardians for unaccompanied, asylum-seekers and migrant children in relation to 3 EU Countries⁴³ and to introduce appropriate legislative amendments to the national legislation, to enable the establishment of a functional, substantial and effective guardianship system for unaccompanied and separated minors.⁴⁴ The Committee further demanded to ensure that unaccompanied asylum-seeking children are promptly appointed a legal representative in order to effectively access the asylum procedure, as well as assistance and protection, including access to free interpretation.⁴⁵ Moreover, the guardians should be qualified and their systematic assignment and functioning to unaccompanied and separated asylum-seeking children should be ensured for each child within 24 hours of his/her arrival.⁴⁶ In those cases, States should appoint a legal representative or a **guardian ad litem**

³³ Austria, Finland, France, Denmark, Romania, Spain and United Kingdom.

³⁴ Finland, Romania and United Kingdom.

³⁵ Austria and Spain.

³⁶ France.

³⁷ Denmark.

³⁸ Cyprus, Italy, Romania, Spain, and United Kingdom.

³⁹ Cyprus, Romania and Spain.

⁴⁰ Belgium and United Kingdom.

⁴¹ Italy.

⁴² Cyprus and United Kingdom.

⁴³ Austria, Belgium and United Kingdom.

⁴⁴ Greece.

⁴⁵ Greece and Sweden.

⁴⁶ Sweden and France.

as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements during the entire asylum process.⁴⁷ The guardian should be consulted and informed regarding all actions taken in relation to the child and the guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings and care arrangements. The guardian or adviser should have the necessary expertise in the field of child protection, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, *inter alia*, the guardian acting as a link between the child and existing specialist agencies/individuals providing the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship.

Another important question concerns the reception centres where refugee and asylum-seeking children are placed. Some of the Committee's recommendations are focused on this issue, 5 EU Member Countries⁴⁸ concern the characteristics of those reception centres: there must be enough special reception centres for unaccompanied minors⁴⁹ with specific characteristics ensuring the good quality of the service provided and its related constant assessment, and mechanisms to receive and address complaints from children,⁵⁰ the decision of the placement moreover has to be taken in the waiting zone and the duration of the permanence has to be for the shortest time possible.⁵¹

Regarding the treatment and management of unaccompanied foreign, refugee and asylum-seeking children, the Committee asked the States parties to facilitate access to basic services such as education and health for 6 EU Member Countries.⁵² In comparison with the findings emerging in 2006, in 2012 the recommendations related to these issues are more specific and less holistic in their contents. Referring to the education related problems, the Committee addressed this problem only in relation to 2 EU Countries⁵³ recommending allocation of the necessary financial, technical and human resources to provide special language programmes for refugee or asylum-seeking children to prepare them for full-time entry into the general educational system;⁵⁴ to provide supplementary assistance to refugee children according to individual education plans, in order to prevent early dropout and meet specific educational needs⁵⁵ and ensure that asylum-seeking and refugee children receive the same quality of education as children in public schools.⁵⁶ Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. Access to quality education should also be ensured for children with special needs, in particular children with disabilities. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximising learning opportunities. All

⁴⁷ Cyprus.

⁴⁸ Belgium, France, Finland, Greece and Spain.

⁴⁹ Finland.

⁵⁰ Spain, Greece, Austria, Denmark, Luxembourg, Slovenia, Spain.

⁵¹ Belgium.

⁵² Cyprus, Czech Republic, Denmark, Finland, France and Sweden.

⁵³ Czech Republic and Denmark.

⁵⁴ Czech Republic.

⁵⁵ Czech Republic.

⁵⁶ Denmark.

unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return”.⁵⁷

The Committee, in particular, recommends that States should also ensure access to adequate health services in relation to 5 EU Countries,⁵⁸ ensuring a legal status and a durable solution for children suffering from trauma and diagnosed with psychological or psychiatric problems, providing the social and health measures required for their mental rehabilitation,⁵⁹ in particular, adequate support and supervision should be provided to children living in reception centres, as well as, adequate psychological and psychiatric care for traumatized asylum-seeking children.⁶⁰ Moreover, the Committee recommended that States should provide refugees with the same level of health care as nationals, including adequate medical care to persons with special needs, and free medical care, when they do not have the means⁶¹ and to take the necessary steps to ensure that all children, including undocumented children, have a right to health care and medical services under the same conditions as children legally residing in the country.⁶²

In relation to the health issues. The Committee recommends the necessity of setting up essential social services in relation to 2 EU Countries,⁶³ to provide culturally sensitive family services along with the request to withdraw the declaration concerning article 22 and implement programmes and policies to ensure their access to health, education and other social services,⁶⁴ and to ensure that children of internally displaced persons have equal access to all essential services, including housing.⁶⁵ This is perfectly in line with respect of the right to health as it is described in the Committee report of the 2012 Day of General Discussion on the rights of all children in the context of international migration. In this document the Committee underlines that “States should ensure and implement adequate and accessible measures for addressing trauma experienced by children during migration, asylum-seeking or trafficking.”

Furthermore, the Committee recommended that particular attention be given to the training of personnel working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children. The Committee invited some EU Countries to provide, continue and strengthen this kind of activities for 3 EU Member Countries,⁶⁶ in particular a special attention is dedicated to extending the training throughout the country on child-friendly interview techniques to all

⁵⁷ General Comment no. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee on the Rights of the Child, Thirty-ninth session, 17 May – 3 June 2005, p. 18-19.

⁵⁸ Cyprus, Denmark, Finland, France and Sweden.

⁵⁹ Denmark, Finland, France and Sweden.

⁶⁰ Denmark.

⁶¹ Cyprus.

⁶² Sweden.

⁶³ Cyprus and Netherlands.

⁶⁴ Netherlands.

⁶⁵ Cyprus.

⁶⁶ Romania, Spain and United Kingdom.

decision makers involved in the refugees status determination (RSD) as well as to those acting as legal guardians.⁶⁷

In comparison with the first report of this review issued in 2006, the detention of unaccompanied or separated children is another increasing issue of concern that the Committee addressed in relation to 6 EU Members States.⁶⁸ The recommendations formulated on this point are rather fragmented and refer to specific national aspects. In two cases the Committee recommended to avoid any form of detention of asylum-seekers under 18 years of age and to put an end to the detention of children in closed centres,⁶⁹ whereas in another case the Committee requested to create alternatives to detention for asylum-seeking families and children implying the banning of the detention in those cases in which an under-aged is involved. The Committee also invited 3 EU Member States to ensure that detention of asylum seeking children is carried out as a last resort, for the shortest time possible, when no alternative measures can be applied either to children separated or together with their families.⁷⁰ Always referring to detention the Committee explicitly required to ensure that children under the age of 14 are not placed in detention under any circumstances, and use administrative detention of unaccompanied refugee and asylum-seeking children above 14 years only as a measure of last resort when non-custodial alternatives to detention are unavailable,⁷¹ further reduce the use of aliens' detention for unaccompanied children and for families with children⁷² and ensure that detention conditions are of a non-punitive character and in line with the special status of such children as minors who are not suspected or convicted of any crime.⁷³ On this point, according to article 37 and article 3 – the principle of the best interests of the child – unaccompanied or separated children should not, as a general rule, be detained. **Detention cannot be justified** solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is **exceptionally justified** for other reasons, it shall be conducted in accordance with article 37 (b) of the Convention that requires detention to conform to the law of the relevant country and only to be used as a **measure of last resort** and for the **shortest appropriate period of time**. Therefore, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

The Committee recommended States i.e. to: avoid any form of detention of asylum-seekers under 18 years of age, to ensure that the detention of children whose application for refugee status has been rejected is used only as a measure of last resort, and that all children awaiting expulsion receive adequate education and housing. As there have been reports of cases of arbitrary detention and threatened expulsion, States should fully implement their international obligations concerning lawful detention as well as the principle of non-refoulement. This principle means that “as under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in

⁶⁷ Romania and United Kingdom

⁶⁸ Czech Republic, Greece, Italy, Lithuania, Netherlands, United Kingdom, Romania.

⁶⁹ Belgium and Czech Republic.

⁷⁰ Finland, Greece and United Kingdom.

⁷¹ Austria.

⁷² Netherlands.

⁷³ Austria.

conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment or participation, directly or indirectly, in hostilities.”⁷⁴

The following paragraph is dedicated to the recommendations adopted by the Committee on the issue of family reunification in the country of origin. Three EU Member Countries⁷⁵ received recommendations in relation to this issue. In this case the Committee produced a holistic and at the same time detailed (in relation to article 10 of the CRC) recommendation requiring to continue its effort to significantly reduce the length of family reunification procedures for recognized refugees; to adopt all appropriate measures to ensure that the implementation of DNA testing, as a way to establish filiation, does not create additional obstacles to family reunification, and that the use of such method is always subject to the prior informed consent of the applicant, to recognise the Kafalah system within the context of family reunification and give effect to the jurisprudence of the Council of State.⁷⁶

The definitions used by the Committee regarding the procedure for family reunification are various (returned unaccompanied minors, repatriation and expulsion) and depend on the national laws and procedures. In any case, the Committee explicitly requested the States to respect in the applied procedure the best interest of the child for 2 EU Member Countries,⁷⁷ adequate safeguards, including an independent assessment of the conditions upon return, including the family environment.⁷⁸ The Committee also recommended that should children be repatriated, they are returned to family members willing to care for them or to an appropriate social service agency.⁷⁹ Moreover, follow-up should be guaranteed for those children who are repatriated in order to protect them from the risk of being trafficked and moreover their are not returned to the country where this danger exists.⁸⁰ Recommendations related to the expulsion issue are addressed to 2 EU Member Countries,⁸¹ and i.e. to take all necessary measures to prevent irregular procedures in the expulsion of unaccompanied children and to review domestic law and ensure that it prohibits the expulsion of persons under the age of 18, even for reasons of public order and State security, where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.⁸²

Another issue underlined by the Committee regards statistical data and information. In order to intervene in a phenomenon, it is fundamental to know it and to facilitate this knowledge the collection and exchange of statistical data and information is a basic point. In the experience of the Committee, data and statistics collected with regard to unaccompanied and separated children tend to be limited to the number of arrivals and/or

⁷⁴ General Comment no. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, adopted by the Committee on the Rights of the Child, Thirty-ninth session, 17 May – 3 June 2005, p. 18-19.

⁷⁵ Austria, France and Spain.

⁷⁶ France.

⁷⁷ France and Italy.

⁷⁸ Romania and United Kingdom,

⁷⁹ Spain.

⁸⁰ France.

⁸¹ Italy and Spain.

⁸² Italy and Spain.

number of requests for asylum. The Committee requested to 2 EU Member Countries⁸³ to set up an effective data collection and information storage system with respect to all children, including asylum-seeking and refugee children, with protection needs and to provide disaggregated statistical data in their next report on the number of children seeking asylum, including those whose age is disputed and to draw upon the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin in the implementation of the recommendations.⁸⁴

A new issue that emerges as a reason for concern for the Committee is the prevention of children's disappearance. The issue is addressed in relation to 2 EU Members States.⁸⁵ In particular while referring to this aspect the Committee required to undertake a systematic survey on the disappearance of unaccompanied asylum-seeking children and to integrate findings in the formulation of the State party's policies for ensuring that the rights of children in such circumstances are fully respected;⁸⁶ to strengthen the measures already taken to prevent the disappearance of asylum seeking children;⁸⁷ to initiate timely, practical and appropriate measures for preventing the disappearance of unaccompanied asylum-seeking children, including by: (i) only applying the Dublin II Regulation in cases where it is compatible with the child's best interest; and (ii) ensuring that all unaccompanied asylum-seeking children are provided with a trained guardian and, if necessary, legal aid.⁸⁸

Only in one case the Committee requested the creation of a national best interests determination procedure that is complemented by procedural safeguards, in order to guide public and private institutions and administrative authorities in their actions affecting third-country national children.⁸⁹

8.3 CRC on children of minorities or of indigenous peoples

ARTICLE 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Comment on article 30

Article 30 protects the rights of children from minority or indigenous groups to enjoy their culture, to practice their religion and use their language together with other members of their group.

The protection of children belonging to minority or indigenous groups is also addressed in other articles of the CRC. First of all the general provision on non-discrimination contained in article 2 guarantees that all rights set forth in the Convention must be enjoyed by all children irrespective of the child's or his or her parent's or legal guardian's race, colour,

⁸³ Italy and The United Kingdom.

⁸⁴ Italy and The United Kingdom.

⁸⁵ Denmark and Netherlands.

⁸⁶ Denmark.

⁸⁷ Netherlands.

⁸⁸ Denmark.

⁸⁹ Greece.

language, religion, national, ethnic or social origin or other status.

In addition Articles 7 and 9 prevent unreasonable separation from parents; article 8 secures the right of the child to preserve his or her identity; article 14 safeguards children's freedom of religion with direct reference to their parent role in this respect; article 16 prevents arbitrary or unlawful interference with the child's family; article 20 ensures that where the child is deprived of his or her family environment due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background; article 21 reaffirms this in respect of intercountry adoption; article 29 includes respect for the child's own culture, language and values for the aims of education and upholds the child's right to be educated outside the state system; and article 40 requires the use of interpreters if the child cannot understand the language used in the administration of juvenile justice. Finally articles 10 and 22 require special measures regarding immigrant and refugee children.

However during the preparatory process of the CRC it was felt that the protection of children belonging to minority or indigenous groups deserved a specific provision due to the presence of serious and continuing discrimination against such groups which at present continues to be an important matter of concern.

Article 30 of the CRC has a very similar wording to article 27 of the International Covenant on Civil and Political Rights indicating in this way that the rights provided by the International Covenant must apply to children as well.

The Committee in its *Guidelines for periodic reports* has asked the States to provide information on the measures adopted, including at the legislative, administrative, educational, budgetary and social levels, to ensure that a child belonging to an ethnic, religious or linguistic minority or who is indigenous is not denied the right, in community with other members of his or her group to: enjoy his or her culture; profess and practice his or her own religion; use his or her own language.

States are also asked to indicate which ethnic, religious or linguistic minorities or indigenous groups are present within the State Party's jurisdiction, as well as which measures are to be adopted to ensure the preservation of the identity of the minority or indigenous group, the measures adopted to recognise and ensure the enjoyment of the rights set forth in the CRC by children belonging to a minority or who are indigenous; the measures adopted to prevent any form of discrimination and combat prejudice against those children, as well as those designed to ensure that they benefit from equal opportunities, including in relation to health care and education.

In 2009 the Committee approved the General Comment No. 11 (2009) on Indigenous children and their rights under the Convention. The Committee decided to draft the General Comment on the basis that indigenous children continue to face serious discrimination including in the areas of health of education.

The General Comment n. 11 draws on the latest legal developments in this area, in particular: the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples set up in 2001; the 2003 session of the United Nations Permanent Forum on Indigenous Issues dedicated to the theme of indigenous children and youth; the 2003 Day of General Discussion of the Committee on the Rights of the Child that was also dedicated to the rights of indigenous children and the UN Declaration on the Rights of Indigenous Peoples approved in 2007.

General Comment n. 11 focuses on indigenous children, however the Committee notes

that the Convention refers to both minority and indigenous children and that certain references in the General Comment may be relevant for children of minority groups as well.

The Committee recalls that States Parties are under an obligation to ensure the exercise of the right contained in art. 30 and it further states that positive measures of protection are required.⁹⁰ The Committee specifies that the presence of indigenous peoples is established by self-identification.⁹¹ There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.

The Committee notes the insufficient attention given by States to the development of art. 30 and urges States to consult with indigenous populations and with children themselves.

As regards cultural practices, the Committee recalls that these must be exercised in accordance with other provisions of the Convention and “under no circumstances may be justified if deemed prejudicial to the child’s dignity, health and development. Should harmful practices be present, inter alia early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication.”⁹²

As regards the principle of non-discrimination, the Committee highlights, in particular, the need for disaggregated data collection and the development of indicators in order to ensure the implementation of this principle. The Committee also recommends that States Parties provide for special measures in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.

The Committee further calls the attention of States in relation to situations of multiple discrimination that may be faced by girls or by indigenous children with disabilities.

Concerning the principle of the best interest of the child, the Committee states that this cannot be neglected in preference for the best interests of the group to which the child belongs. It also notes that there may be a distinction between the best interests of the individual child and the best interests of children as a group.

In relation to the right to life, survival and development, the Committee is concerned that disproportionately high numbers of indigenous children live in extreme poverty, and are affected by high infant and child mortality rates as well as malnutrition and diseases. As a consequence the Committee urges the States to adopt special measures on this point. In relation to the right to life, survival and development, States parties should also consider the cultural significance of traditional land and the quality of the natural environment.

Concerning the respect for the views of the child, the Committee specifies that there is a distinction to be made between the right of the child as an individual to express his or her opinion and the right to be heard collectively. In both cases States parties have to ensure that this right is implemented.

Concerning civil rights and freedom, the Committee notes the importance for indigenous children to have access to media in their own languages. In relation to birth registration, the Committee is concerned about the higher proportion of indigenous children who are not registered. As a consequence it urges States parties to take special measures on this point. It also affirms that States parties should ensure the possibility that indigenous children be given names in the language of their parents.

Concerning the issue of family environment and alternative care, the Committee recalls

⁹⁰ Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, para. 6.1.

⁹¹ ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, article 1 (2).

⁹² CRC General Comment n. 11, CRC/C/GC/11, 12 February 2009, para. 22.

that maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations. Furthermore it emphasizes that where indigenous children are overrepresented among children separated from their family environment, special measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity.

Regarding provisions on basic health and welfare, the Committee notes with concern that indigenous children enjoy a lower level of health care both in developing and developed countries. As a consequence States parties are invited to enact special measures. In particular health services should to the largest extent possible be community based and planned and administered in cooperation with the peoples concerned. Moreover health-care services should be culturally sensitive and information about these should be available in indigenous languages. The Committee also recalls the right of indigenous people to their traditional medicine. The Committee draws attention to the fact that in some States suicide rates among indigenous children are significantly higher than for non-indigenous children and calls States to take appropriate measures on this point.

The implementation of the right to education for indigenous children is described as “an essential means of achieving individual empowerment and self-determination of indigenous peoples.”⁹³ In order to implement the right to education States parties are called to ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples. The Committee also regards restrictions on the use of cultural and traditional dress as discriminatory practices and that as such they should be avoided in schools. The Committee also notes that indigenous children are less likely to be enrolled in school and have higher drop out and illiteracy rates than non-indigenous children. Indigenous children often have to face discriminatory attitudes and racism in schools. States parties are urged to implement special measures in order to address this situation. They are also invited to recognize the right of indigenous peoples to establish their own educational institutions, provided that they meet minimum standards established by the competent authority in consultation with these peoples. Finally the Committee recalls the right of the child to use his or her own language, including in education.

Concerning special measures, the Committee notes that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal conflicts. As a consequence States parties should take preventive measures in consultation with the communities concerned. States parties are also invited to avoid military conscription of indigenous children under the age of 18 years and to ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict.

Regarding the issue of economic exploitation, the Committee recalls that ILO Convention No. 138 (Minimum Age Convention) and Convention No. 182 (Worst Forms of Child Labour Convention) distinguish between child labour that needs abolition and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture.

The Committee further notes with grave concern that indigenous children are disproportionately affected by poverty and are at particular risk of being used in child labour, especially its worst forms, such as slavery, bonded labour, child trafficking, including for domestic work, use in armed conflict, prostitution and hazardous work. States have

⁹³ CRC General Comment n. 11, CRC/C/GC/11, 12 February 2009, para. 57.

therefore to implement appropriate preventive measures. States parties are also invited to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

On juvenile justice the Committee registers that incarceration of indigenous children is often disproportionately high and in some instances it attributes this phenomenon to systemic discrimination. States parties are also encouraged to support indigenous peoples in the implementation of traditional restorative justice systems as long as these systems are in accordance with the best interests of the child.

Finally the Committee recommends that States parties, in order to recognize the rights of indigenous children, to ensure the maximum extent of their available resources. For the same aim, states parties should consult with indigenous communities and directly with indigenous children.

Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language are regarded by the Committee as “an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations”.⁹⁴

Comment on the Committee’s concluding observations on article 30

In its concluding observations, the Committee referred to the issue of indigenous children’s rights for 8 States out of 16 analysed.⁹⁵ In a few cases the Committee expressed its appreciation for the approval of specific legislation on children of minorities concerning in two cases the approval of general policy measures about national minorities, such as the National Policy on Roma⁹⁶ and the ratification of the European Framework Convention for the Protection of National Minorities⁹⁷ and in one case special measures on education regarding the possibility for children to study in their mother tongue when this is not the national one.⁹⁸

As regards the Committee’s recommendations, the Committee has dedicated specific attention to the situation of Roma children, in continuation with the Concluding Observations issued in 2006. In this area states are required to strengthen their efforts to remove discrimination and to continue developing and implementing – in close collaboration with the Roma community – policies and programmes aimed at ensuring equal access to culturally appropriate services, including education (4 Member States⁹⁹). States parties are also required to initiate campaigns, at all levels and in all regions, aimed at addressing the negative attitudes towards the Roma in society at large, including among police and professionals (3 Member States¹⁰⁰). The Committee also required States to allocate adequate human, technical and financial resources to ensure sustainable improvement in the socio-economic conditions of Roma children (2 Member States¹⁰¹). The Committee further required States to develop and adopt, with the participation of affected communities, a national plan of action for the genuine social integration of Roma in society, taking into due consideration the vulnerable situation of Roma children, as well as to

⁹⁴ CRC General Comment n. 11, CRC/C/GC/11, 12 February 2009, para. 82.

⁹⁵ Bulgaria, Denmark, Estonia, Finland, France, Greece, Italy, Romania. In addition to these countries, in the case of Austria, the Committee also expresses concern about the scarcity of information on education for minority children with disabilities and requires the State to provide information in the next periodic report.

⁹⁶ Finland.

⁹⁷ The Netherlands.

⁹⁸ Estonia.

⁹⁹ Bulgaria, France, Greece and Romania.

¹⁰⁰ Bulgaria, Greece, Romania and Italy.

¹⁰¹ Greece and Italy.

discontinue the state of emergency in relation to settlements of nomad communities.¹⁰²

The Committee issued similar recommendations in relation to other minority populations. Also in this case there are no significant differences in the areas covered in relation to the Concluding Observations issued in 2006, with the exception of the recommendation to adopt measures to address harmful practices such as early marriage.¹⁰³ States are further required to provide a culturally sensitive education and to validate the cultural knowledge of minority populations without discrimination;¹⁰⁴ to provide education in minority population's language education as well as in that of the majority population's language. States are also requested to monitor and evaluate the integration of indigenous children's rights in national plans and programmes.¹⁰⁵

Finally as regards ratification of other international instruments, States parties are required to take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention (CRC/C/GC/11); to ratify ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries¹⁰⁶ and to ratify the European Charter for Regional or Minority Languages.¹⁰⁷

8.4 CRC on economic exploitation

ARTICLE 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- a) Provide for a minimum age or minimum ages for admission to employment;*
- b) Provide for appropriate regulation of the hours and conditions of employment;*
- c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Comment on article 32¹⁰⁸

Article 32 recognizes the right of the child **to be protected from economic exploitation**; and from any work that is likely to be **hazardous**, or to **interfere** with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The article requires States Parties to take **legislative, administrative, social and educational measures** to ensure implementation, and in particular to provide:

- a minimum age or ages for admission to employment;
- appropriate regulation of the hours and conditions of employment; and

¹⁰² Italy.

¹⁰³ Italy.

¹⁰⁴ France and Denmark.

¹⁰⁵ Finland.

¹⁰⁶ Finland.

¹⁰⁷ Italy and Romania.

¹⁰⁸ Taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 479-502 and from Bernacchi, E., Moyerso, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006.

- appropriate penalties or other sanctions to ensure effective enforcement.

States Parties must have regard “to the relevant provisions of other international instruments”. The two main Conventions focusing specifically on child labour, on minimum age for admission to employment and on the worst forms of child labour, were developed by the International Labour Organization (ILO). It is important that countries both ratify the Conventions, and take positive action to both end child labour and support the rehabilitation and education of former child labourers. It is worth underlining that there are 27 ILO Conventions and 14 ILO Recommendations relevant to the employment of children. Of particular relevance to the implementation of Article 32 are ILO Convention No. 138 Concerning Minimum Age for Admission to Employment (1973); ILO Recommendation No. 146 concerning the Minimum Age for Admission to Employment (1973) and the Worst Forms of Child Labour Convention, 1999 (No. 182) The Committee on the Rights of the Child consistently encourages States Parties to ratify these Conventions.

The most comprehensive ILO instrument on child labour is the **Minimum Age Convention, 1973 (No. 138)**, supplemented by Recommendation (No. 146). Convention No. 138, in particular, has been upheld by the Committee on the Rights of the Child as a relevant standard, and States Parties that have not already ratified it have been urged to do so by the Committee. The Minimum Age Convention is a consolidation of principles that had been gradually established in various earlier instruments and applies to all sectors of economic activity, whether the children are employed for wages or not.

According to ILO: “The Convention obliges ratifying States to fix a minimum age for admission to employment or work and undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention was not intended as a static instrument prescribing a fixed minimum standard but as a dynamic one aimed at encouraging the progressive improvement of standards and of promoting sustained action to attain the objectives. Recommendation (No. 146), which supplements Convention No. 138, provides the broad framework and essential policy measures for both the prevention of child labour and its elimination.”

On 17 June 1999, the **Worst Forms of Child Labour Convention (No. 182)** was adopted by the General Conference of the ILO. The Conference also adopted the Worst Forms of Child Labour Recommendation (No. 190), supplementing the Convention.

The new Convention requires Member States which ratify it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency” (article 1). Article 3 defines the “worst forms of child labour.” The definition includes work “likely to harm the health, safety or morals of children.” It is left to States to determine what types of work fall within this definition, in consultation with employers’ and workers’ organizations and taking international standards into account. Member States must design and implement programmes of action to eliminate the worst forms of child labour as a priority, design appropriate mechanisms for monitoring implementation, take time-bound measures for prevention, provide support for the removal of children from the worst forms of child labour and for their rehabilitation and access to free basic education or vocational training. It calls for international cooperation or assistance with implementation, including support for economic development, poverty eradication and education.

Comment on the Committee's concluding observations on article 32

The Committee has addressed the issue of child labour for 7 of the EU Countries under consideration for this second edition of the survey.¹⁰⁹

While in its previous Concluding Observations, the Committee had focused its attention on the state of ratification of the ILO Conventions and hence recommended those countries not having yet ratified the ILO Conventions to do so, in these last observations the Committee focused more on ensuring the **effective implementation of the ILO Conventions**.

Few positive achievements were underlined by the Committee for **5 European Countries**,¹¹⁰ especially in terms of raising the working age for children,¹¹¹ adopting a National Plan for Combating the Worst Forms of Child Labour¹¹² and adopting or amending legislations to be more in line with the international standards.¹¹³ Despite these achievements, many concerns have been highlighted by the Committee. First of all, the **question of the age of child labour** comes back in the Observations of the Committee that remains concerned that in some countries the age is still very low and not in line with the provisions of **ILO Convention No. 138**. Article 32 of the Convention requires that a minimum age, or minimum ages, for employment **must be set; it does not prescribe any particular ages**. But the Committee has indicated that such ages should be established in the light of other international instruments, and in particular ILO Convention No. 138 which establishes:

- a commitment “to pursue a national policy designed to ensure the **effective abolition of child labour and to progressively raise the minimum age** for admission to employment or work to a level consistent with the fullest physical and mental development of young persons” (article 1);
- a minimum age for any employment not less than the age of completion of compulsory schooling and in any event not less than 15 (article 2); and
- a minimum age of **18 “for admission to any type of employment or work** which by its nature or the circumstances in which it is carried out is likely to **jeopardize the health, safety or morals of young persons**” (article 3).

The **lack of adequate protection of working children** is the recurrent issue in the last Concluding Observations of the Committee. The Committee underlined the need to continue to collaborate with the ILO in order to assess the situation of child labour: the informal sector, family businesses, light work and after-school work are the sectors where States should strengthen their actions to combat this phenomenon. In particular the Committee has requested countries to continue efforts to develop strategies to strengthen awareness, prevention and assistance programmes with the aim of ensuring adequate protection and safeguards for children employed as workers through: the establishment of **monitoring systems; labour inspectorates** should be empowered¹¹⁴ and **penalties** imposed in case of violation.¹¹⁵ Above all, the Committee is concerned that the prohibition of child labour is not applied by States' companies with businesses abroad and multinational

¹⁰⁹ Austria, Bulgaria, Cyprus, Estonia, Finland, Italy, The Netherlands, Romania.

¹¹⁰ Austria, Bulgaria, Cyprus, Estonia, Romania.

¹¹¹ Austria, The Netherlands.

¹¹² Bulgaria.

¹¹³ Bulgaria, Cyprus, Romania.

¹¹⁴ Cyprus, Italy, The Netherlands.

¹¹⁵ Netherlands.

companies headquartered in the European countries. Specifically, the Committee is concerned at allegations regarding the use of forced child labour in the harvest of cotton imported by European countries that by doing so, could facilitate the exploitation of child labour in exporting countries (2 EU Member Countries).¹¹⁶ Therefore, the Committee recommended that States should **provide a framework for prohibiting the use of child labour by EU companies based abroad** and that States Parties adopt and implement **regulations to ensure that the business sector complies with international and domestic standards on corporate social responsibility.**

Another sensitive issue underlined by the Committee is the **use of children in domestic work** (2 EU member Countries),¹¹⁷ a sector where, according to the most recent ILO data, it is estimated that 17.2 million children aged 5-17 are involved in domestic work, representing 6.5 per cent of all children in economic activities in this age group. In order to combat this phenomenon, in 2011 the ILO adopted **Convention No. 189 and Recommendation No. 201 concerning decent work for domestic workers.** The aim of these international standards is to ensure that all domestic workers enjoy the same fair terms of employment and decent working conditions as other workers and are equally entitled to respect for their rights and dignity. Following ILO Convention No. 189, “domestic work” means work performed in or for a household or households and “domestic worker” means any person engaged in domestic work within an employment relationship, whereas with regard to “child labour in domestic work”, it is referred to situations where domestic work is performed by children below the relevant minimum age (for light work, full-time non-hazardous work, in hazardous conditions or in a slavery-like situation). In particular, articles 3 and 4 of the ILO Convention n. 189 focus on child labour establishing that:

- States should take measure to effectively effective abolish child labour (article 3);
- States “should set a minimum age for domestic workers consistent with the provisions of the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally” (article 4, I paragraph).
- States should “take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training” (article 4, II paragraph).

In one case, the Committee recommended the State party to consider ratifying ILO Convention n. 189 on the Protection of Domestic Workers.¹¹⁸

As for the previous edition the **lack of adequate or recent disaggregated data** on child labour has been an important issue to be addressed. The Committee reiterated its recommendations to **collect data** on child victims of economic exploitation, disaggregated by sex, age, urban/rural areas and ethnic or social origin in child labour.¹¹⁹

¹¹⁶ Finland, Italy.

¹¹⁷ Bulgaria, Cyprus.

¹¹⁸ Cyprus.

¹¹⁹ Bulgaria, Romania.

8.5 CRC on drug abuse

ARTICLE 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Comment on article 33¹²⁰

Article 33 of the CRC requires ratifying States to take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the production or trafficking of such drugs. The article does not indicate which are such **drugs** and **substances**, but it refers to relevant international treaties that have identified the following categories:

- opium, morphine and opium alkaloids and synthetic morphine (for example heroin);
- coca leaves and cocaine;
- cannabis products (marijuana);
- any psychotropic/psychoactive drug capable of producing a state of dependence or the abuse of which could lead to social and public health problems warranting international control (sedatives such as barbiturates, stimulants such as amphetamines and hallucinogens such as LSD).

In addition the Committee in its **Guidelines for Periodic reports** has asked States to provide information on legislative and other measures to prevent also the use by children of **alcohol, tobacco** and other substances which may be prejudicial to their health and which may be available with or without restrictions to adults. States are asked to indicate the measures they have adopted not only at legislative and administrative levels, but also at social and educational level as the emphasis of article 33 is on protection and prevention.

The main international treaties on drugs are the **Single Convention on Narcotic Drugs** (1961) as amended by the 1972 **Protocol**, and the **Convention on Psychotropic Substances** (1971) and in its Guidelines for Periodic Reports, the Committee asks ratifying States to report on the relevant Conventions to which they are parties.

Besides art. 33, there are other articles of the CRC that are relevant for the issue of drug abuse, for instance article 6 on children's right to life and optimum development, article 24 on children's rights to health services and health promotion and article 29 on education to prepare children for responsible life.

Drug abuse by children was not a significant issue of concern in the post-war decades and therefore the question does not figure in the conventions and declarations of that period. On the contrary it has nowadays become one of the most pressing issues of concern as regards the health as well as the physical and mental integrity of children becoming a high priority in the political agendas. For instance the 1990 **World Summit's Plan of Action** stated: "Drug abuse has emerged as a global menace to very large numbers of young people and, increasingly, children – **including permanent damage incurred in the prenatal stages of life. Concerted action is needed by Governments and intergovernmental**

¹²⁰ This section has been taken from the previous ChildONEurope 2006 Survey, as the Committee on the Rights of the Child has not addressed this issue in the last Concluding Observations of the selected countries, object of this survey.

agencies to combat illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances to counter this tragedy. Equally important is community action and education, which are vitally needed to curb both the supply of and the demand for illicit drugs. Tobacco and alcohol abuse are also problems requiring action, especially preventive measures and education among young people.”.

Furthermore the **Declaration on the Guiding Principles of Drug Demand Reduction** of 1998 identifies youth as a group in need of special attention, and invites countries to establish networks that facilitate their participation in the design and implementation of youth drug-reduction programmes. Participation by children is also listed by the UNDCP (United Nations Drug Control Programme) among the key factors to be taken into consideration when designing drug prevention programmes for youth. The issue of illicit drugs is linked with that of **criminality**, as children who use drugs may find themselves involved in the production or trafficking of drugs or be involved in various forms of exploitation. This is why the issue is also addressed in the International Labour Organization **Convention n. 182 on the Worst Forms of Child Labour** that includes “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties...”.

Comment on the Committee’s concluding observations on article 33

The Committee did not address the issue of drug abuse in the concluding observations of EU Countries in the relevant period.

8.6 CRC on sexual exploitation, abuse and trafficking

ARTICLE 34

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

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

Comment on article 34¹²¹

Article 34 provides obligations to protect children from “all forms of sexual exploitation and sexual abuse,” requiring national, bilateral and multilateral measures to protect children from three particular (and often linked) forms of exploitation set out in paragraphs (a), (b) and (c). More generally it covers protection from “all forms of physical or mental violence” and specifically mentions **sexual abuse**, also referring to the **exploitative use of children in prostitution and pornography**, which States Parties are required to take all appropriate measures to prevent. In 1994, the Committee noted the adoption by the Commission on Human Rights of a resolution on the need to adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography (resolution 1994/90, 9 March 1994), and the decision of the Commission to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the

¹²¹ Partially taken from the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 513-530 and from Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee’s Concluding Observations on the last EU Countries’ Reports*, Florence, Istituto degli Innocenti, 2006.

Convention on the sale of children, child prostitution and child pornography, as well as basic measures needed for their prevention and eradication. Thus, during its sixth session (April 1994) the Committee adopted a formal statement on “Cooperation with United Nations bodies - Sale of children, child prostitution and child pornography”, in which it stressed the important framework established by the Convention to deal with such situations, and “that the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity, as well as special protection and support within the family and society.” In a 1996 statement to the working group, the Committee pointed out that the Convention not only provides specific provisions on sexual exploitation, but that it also “sets up a holistic approach for the consideration of the human rights of children. In the light of such an approach, all rights are recognized as inherent to the human dignity of the child, and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. [...] The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore not be seen simply in isolation but in the broader context of the realization of children’s rights and taking into due consideration the international obligations arising from the Convention.” In a word, the Convention reaffirms the indivisibility and interdependence of human rights.

During its 20th session in January 1999 the Committee made a statement to the 5th session of the open-ended working group on the draft optional protocol, reconsidering the best way to proceed: “...it seems to the Committee that it might be helpful for the working group to take stock of recent developments and to reassess its approach in the light of these changing circumstances, with a view to providing a very valuable opportunity for the international community to ensure that the overall approach which is emerging is optimal. There are a lot of calls for coherence and coordination but it is difficult to achieve these objectives when many initiatives are developing simultaneously; it is essential to avoid duplication and overlapping initiatives, as well as the risk of inconsistency and incompatibility... It is indeed the belief of the Committee that the *“holistic approach to the rights of the child enshrined in the Convention requires a careful effort, and closer collaboration among all the relevant actors, to ensure the harmonization of outcomes.”* The open-ended working group continued to meet and develop successive drafts of the optional protocol and on the 25th of May 2000 the United Nations General Assembly adopted the Optional Protocol, which was ratified by 26th January 2006, by 103 States Parties.

Other international instruments and standards can be found in the Universal Declaration of Human Rights (article 4) which requires generally that: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. This is repeated in article 8 of the International Covenant on Civil and Political Rights, which also covers “forced and compulsory labour” (see article 32). The **Human Rights Committee**, in a General Comment on article 24 of the International Covenant (which recognizes children’s right to protection), notes the need to protect children “from being exploited by means of forced labour or prostitution.” The **1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others** targets procurers and exploiters of prostitutes; the **1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery** requires States to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of”, *inter alia*, “any institution or practice whereby a child or young person

under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” (article 1). The **1979 Convention on the Elimination of All Forms of Discrimination against Women** requires States Parties in article 6 to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The Committee on the Elimination of Discrimination against Women issued a General Recommendation in 1991 on violence against women which notes in commenting on article 6 that: “Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.” The **ILO Worst Forms of Child Labour Convention, 1999 (No. 182)** includes in its definition of “the worst forms of child labour”, “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (see article 32). In 2000 the **United Nations Convention against Transnational Organized Crime** was adopted, together with its **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**. The purposes of the Protocol are “to prevent and combat trafficking in persons, paying particular attention to women and children (children are defined as in the Convention on the Rights of the Child) and to “protect and assist the victims of such trafficking, with full respect for their human rights”, promoting cooperation among States Parties to meet these objectives (article 2). “Trafficking in persons” is defined to mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. “Exploitation” includes “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (article 3). The Protocol covers offences which are transnational in nature and involve “an organized criminal group.” It requires States Parties to “establish comprehensive policies, programmes and other measures” to prevent and combat trafficking in persons and to protect victims (article 9).

Lastly, in 2007 the **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** was open to signature. This Convention is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including abuses committed in the home and family, with the use of the force, coercion or threats. Secondly, it ensures that certain types of conduct are classified as criminal offences, such as engaging in sexual activities with a child below a legal age and child pornography. Thirdly, it criminalizes the solicitation of children for sexual purposes (“grooming”) and “sex tourism.” With the aim of combating child sex tourism, the convention establishes that individuals can be prosecuted for some offences even when the act is committed abroad. The Convention also established programmes to support victims; it encourages people to report suspected sexual exploitation and abuse, and sets up telephone and internet help-lines for children

Following the adoption of the Convention on the Rights of the Child in 1989, increasing attention has been paid, through various United Nations bodies and other international initiatives, to the sexual exploitation of children. In particular, in 1990 the Commission on Human Rights decided to appoint a Special Rapporteur on the sale of Children, child

prostitution and child pornography, who prepares annual reports for the Human Rights Council. Another Special Rapporteur on Trafficking in Persons, especially in Women and Children and the Special Representative of the Secretary-General for Children and Armed Conflict present reports and recommendations relevant to the protection of children from sexual exploitation.

Moreover, besides the activities of the Committee on the Rights of the Child and the Commission on Human Rights, the international community decided there was a need to have **World Congresses against commercial sexual exploitation of children**. Up to now, three World Congresses have been organised. The First World Congress Against Commercial Sexual Exploitation of Children took place in Stockholm, Sweden in 1996, resulting in the '**Stockholm Declaration and Agenda for Action**', which was adopted by 122 countries. This committed countries to develop strategies and plans of action with agreed-upon guidelines. However, more than a decade after Stockholm, many studies – including the recent 'UN Study on Violence Against Children' – indicate that the sexual exploitation of children and adolescents is increasing. There is also growing evidence of criminal activity related to the trafficking of children for sexual purposes, exploitation by tourists and travelers, the proliferation of child abuse imagery and internet-related crimes. The sexual exploitation of children is fueled by international demand, which threatens children and adolescents of all ages, in every corner of the world. In December 2001, the Second World Congress Against Sexual Exploitation of Children was held in Yokohama, Japan, resulting in the '**Yokohama Global Commitment 2001**.' The Congress consolidated global partnerships and reinforced the global commitment to protect children from sexual exploitation. In November 2008, the third World Congress against commercial sexual exploitation of children took place in Rio de Janeiro (Brazil). The driving force behind the third World Congress was to make the global response more emphatic and comprehensive as this problem continues to become more complex in its manifestations and scope. In contrast with World Congress II, which focused exclusively on commercial sexual exploitation of children, the Brazilian Congress also discussed strategies for combating non-commercial forms of child sexual exploitation, including the sexual exploitation of children in their homes, by religious leaders, teachers, peacekeepers and armed groups in war zones. The Brazilian Congress resulted in the **Rio Declaration and Call for Action** which calls for a holistic and comprehensive strategy, describing specific measures in various spheres (namely prevention, multi-stakeholder and international cooperation, protection, care and recovery of victims, child and youth participation) and identifying areas of cross-sectoral coordination for more integrated and concerted responses to the complex issue of Commercial Sexual Exploitation. In addition to endowing strong linkages with transversal issues of concern, such as efforts to eliminate the worst forms of child labour led by ILO's *Global Action Plan* endorsed in 2006, or to supporting the recommendations of the UN Secretary-General's Study on Violence against Children, the *Rio Declaration and Call for Action* creates more prospects for engagement of a broader range of stakeholders to establish a more far-reaching and embracing base of child protection, calling not only on the responsibility of governments, inter-governmental and non-governmental organisations, human rights institutions, ombudspersons, the private sector, law enforcement and the legal community, but also religious leaders, parliamentarians, researchers and academics, civil society and children, adolescents and families.

It is worth mentioning that two years after the Rio Congress, the international community decided to meet in Bangkok to review progress in the implementation of the Rio Declaration and Call for Action. Some positive developments have been recognised (such as

the enactment of new national legislation across countries, international instruments and new UN special procedures with mandates dedicated to protecting children from human rights violations; increased youth participation in various fora including in decision-making and intensification of peer-to-peer sensitization; the growing endorsement of responsibility by players such as Internet Service Providers, the tourism and travel industry and social and other media; and an increase in law enforcement collaboration across borders).

A great problem often linked with the sexual exploitation of children is the **phenomenon of child trafficking**. The only mention of the phenomenon of child trafficking in the CRC can be found in article 35, which states that:

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 35 acts as a fail-safe protection for children at risk of abduction, sale or trafficking, whereas article 11 protects against the illicit “transfer or non-return of children abroad” (usually undertaken by relatives, not for profit); article 21 provides that international adoption must not involve “improper financial gain”; article 32 protects children against exploitative or harmful work; article 33, from involvement in drug trafficking; article 34 from their use in the sex trade; and article 36, from all other forms of exploitation. Article 35 is a safety net to ensure that children are safe from being abducted or procured for these purposes or for any other purpose.

During the initial phases of drafting the CRC, articles 34, 35 and 36 were condensed into one, but the Working Group agreed it would be more useful to tease out the separate strands of child exploitation. Article 35 was introduced because the **sale or trafficking of children** was wider in scope than that of article 34, which relates to prostitution and child pornography.¹²² Article 35 also requires **measures to deal with internal abductions** within the jurisdiction. In addition, children in poor countries can be sold into the equivalent of slavery, through bonded labour or debt repayment, and they can be trafficked for the purposes of begging. Article 32 protects children from economic exploitation. Moreover in conditions of war, children can be forced to become soldiers or servants to armed forces (see article 38). Children can also be trafficked for the purposes of sex into prostitution or the production of pornography or, less overtly, through forced marriages or traditional practices (see article 34). Children, particularly babies, are a desirable commodity for adoption: article 21 requires measures to ensure that inter-country adoption “does not result in improper financial gain for those involved in it”. There is also a strong suspicion that children’s bodies are being used to provide organs for transplants, in breach of article 6.

Thus, with article 35, the CRC provides a double protection for children: the main forms of child trafficking are dealt with in the different articles, but blanket action on abduction, sale or traffic “for any purpose or in any form” is also required by this article.

Comment on the Committee’s concluding observations on article 34

The Committee has paid consistent attention to the issue of sexual exploitation during its examination of reports from States Parties. As the results highlighted in the previous edition, also this time the Committee addressed the issue of sexual exploitation for almost

¹²² E/CN.4/1987/25, pp. 15-24.

all EU Member States. Only one country did not get any comment in this regard.¹²³

During the examination of the States Parties' reports, the Committee appreciated the efforts made by many States to prevent and fight the phenomenon of sexual exploitation and child trafficking, e.g. through the ratification of the Council of Europe Convention on the Protection of children against Sexual Exploitation and Sexual Abuse¹²⁴ and/or the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;¹²⁵ the amendment of penal codes and acts in order to criminalize sexual exploitation and child pornography;¹²⁶ the adoption of National Plans for Combating Sexual Abuse or against Trafficking;¹²⁷ the establishment of cooperation agreements with countries of origin of children trafficked for sexual or other exploitative purposes¹²⁸ and the creation of Observatories/Agencies specialised in fighting against these phenomena.¹²⁹

However, despite the efforts made and the results achieved the phenomenon of sexual exploitation of children and child trafficking remain among the most serious areas of concern for the Committee. In particular, the Committee has noticed and hence is concerned at the **rise in rates of children who are subjected to sexual exploitation and abuse.** This increase in the number of victims of sexual exploitation and abuse is often linked nowadays with the **rapid growth of the use of the Internet** as explicitly underlined by the Committee for one country.¹³⁰ The law has to keep abreast with the technological changes that offer new ways of exploiting vulnerable children. The World Report on Violence against children accompanying the Secretary General's Study on this subject, notes that there is worldwide concern about the potential of the Internet to expose children to images of violence and sexual violence, to disseminate child pornography and to enable predatory abusers to "groom" and manipulate children they contact through cyber-space. The Report recommends: "As well as educating children and parents, Government should work with industry to devise global standards for child protection, undertake research on protective hardware and software solutions, and fund worldwide education campaigns on safe use of the new technologies. Government should also pursue law enforcement approaches, including criminalizing those who make, distribute, possess or profit from pornography involving children."¹³¹

As observed and recommended in the previous Concluding Observations, the Committee has repeatedly expressed its concern for the **lack of information and data** and has stressed the importance of establishing national monitoring mechanisms and of undertaking studies assessing in view of the causes, nature, victim and perpetrator typology, and extent of sexual exploitation, as well as adopting the necessary legal, administrative and **policy measures to combat violence in the digital media** for 6 EU Countries.¹³² In particular, for four EU Countries the Committees recommended that States launch and/or increase **awareness raising campaigns and public education** on sexual exploitation, prostitution and child abuse for children, their families, communities and the public at large and ensure the recognition of the gender perspective in these campaigns and in public

¹²³ Greece.

¹²⁴ Denmark, Finland.

¹²⁵ Denmark, The United Kingdom.

¹²⁶ Czech Republic, Italy, Romania, Sweden, The United Kingdom.

¹²⁷ Belgium, The Netherlands, Romania, Spain, Sweden.

¹²⁸ France.

¹²⁹ Italy, Romania.

¹³⁰ Spain.

¹³¹ P.S. Pinheiro, *World Report on Violence against Children*, Geneva, United Nations, 2006, pp. 314 and 338.

¹³² Bulgaria, Czech Republic, Estonia, Finland, The Netherlands, Spain.

education; on how to tackle attitudes, such as the idea that it is acceptable to abuse and exploit children living in poverty in foreign countries, as well as improving awareness of national action plans and measures existing in the country.¹³³

Concerning the **lack of sufficient data** on these phenomena, the Committee suggested countries to intensify their efforts to **collect data on the extent of sexual exploitation and sale of children**, in order to determine the adequate measures to be taken to combat these problems; to develop and implement a standardized system of data collection on children who have been sexually exploited and/or abused with a view to allowing the effective cross-comparison, analysis and application of such data by relevant sectors of the State party; to set up a mechanism for collecting data and information relating to sex tourism, including investigations, prosecutions and punishments, in a systematic manner.¹³⁴

In spite of noting the increase of the ratification of international instruments, the Committee remains concerned about the **lack of full compliance of States Parties with the international standards** they have ratified, in particular with the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC). The Committee, in some occasions, reiterated its previous Concluding Observations and strongly recommended States Parties to fulfil their obligations and thus harmonize national legislation with the OPSC or to apply it to its entire territory, including overseas territories.¹³⁵ In one case, the Committee recommended that the State party submit the first report under the OPSC,¹³⁶ whereas for another country, the Committee urged the State party to accelerate the ratification of the OPSC.¹³⁷ Furthermore, noting the lack of sufficient and effective measures to prevent sexual exploitation and trafficking of children, the Committee also recommends States parties **taking into account the outcome documents adopted at the 1996, 2001 and 2008 World Congresses against Sexual Exploitation of Children** and, following the outcomes of the World Congresses, to implement appropriate policies and programmes for prevention and protection and for the recovery and social reintegration of child victims.¹³⁸

As recalled in its previous Concluding Observation, also in the last observations the Committee expressed concern that, while commercial sexual exploitation must be criminalized, the child survivors of it must not be criminalized or penalized. **“Child-friendly” and sensitive procedures** are required; those who expose violations must be protected from reprisals. Thus, it demanded 6 EU Member¹³⁹ to treat all child victims of prostitution not as offenders but as victims and to provide them with special protective measures to prevent victimization and re-victimization as well as with programmes aimed at the recovery and social reintegration of child victims.¹⁴⁰ No sanctions involving deprivation of liberty or fines are imposed on them. Most importantly, the Committee recommended 2 EU Member to ensure that those children have effective access to justice.¹⁴¹ The importance of having well trained professionals and specialists has also been underlined by the Committee for 4 EU Member States.¹⁴²

Finally, compared with the previous edition, the Committee has raised two new issues

¹³³ Bulgaria, Cyprus, Czech Republic, Sweden.

¹³⁴ France, Czech Republic, Netherlands, Romania, Spain, Sweden, The United Kingdom.

¹³⁵ Austria, Denmark, Italy.

¹³⁶ Romania.

¹³⁷ Finland.

¹³⁸ Belgium, Bulgaria, Cyprus, Estonia, Finland, Netherlands, Spain, Sweden.

¹³⁹ Austria, Czech Republic, Denmark, Romania, Spain, The United Kingdom.

¹⁴⁰ Austria, Belgium, Bulgaria, Denmark, Czech Republic, Finland, Romania, Sweden, The United Kingdom.

¹⁴¹ Czech Republic, Denmark.

¹⁴² Belgium, Italy, Netherlands, Sweden.

compared to the previous edition: on one hand, to **strengthen cooperation with the authorities of countries from or to which children are trafficked in order to combat the phenomenon** by negotiating bilateral agreements and multilateral agreements with the countries concerned, including neighbouring countries, to prevent the sale, trafficking and abduction of children, and develop joint plans of action between and among the countries involved;¹⁴³ and, on the other hand, to strengthen **cooperation with non-governmental organizations and the tourist industry** in order to better meet the guidelines set up by the World Tourist Organization on the protection of children from sexual exploitation in tourism.¹⁴⁴

8.7 CRC on administration of juvenile justice

ARTICLE 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

ARTICLE 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

ARTICLE 40

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

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

¹⁴³ Netherlands, Sweden.

¹⁴⁴ Sweden.

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

In 2007 the UN Committee on the Rights of the Child issued a General Comment on juvenile justice. The Committee noted with appreciation the efforts of many States in the establishment of a juvenile justice system, while stating that many states still have a long way to go. First of all, the Committee recalls the CRC general principles that are relevant when dealing with the issue of juvenile justice, in particular those contained in articles 2, 3, 6 and 12 of the CRC. Concerning the principle of non discrimination (art. 2), the Committee states that particular attention must be paid to de facto discrimination in relation to vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In order to avoid such an occurrence, training of all professionals involved emerges as particularly important. The Committee also urges States to prevent discrimination of children in conflict with the law. These children are often victims of discrimination, for instance when they try to access education or the labour market.

Furthermore, the Committee recommends that the States parties abolish the provisions on status offences (such as vagrancy, truancy, runaway children) in order to establish an equal treatment under the law for children and adults, in compliance with the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). On the contrary, some States regard these acts as offences only when committed by children, but not by adults. Street children and girls are particularly often victims of this criminalisation. Concerning the principle of the best interest of the child (art. 3), the Committee specifies that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

As regards the specific provisions set out in the CRC on the issue of juvenile justice, the Committee recalls first of all the principle set out in article 40(1) that the treatment has to be consistent with the child's sense of dignity and worth. In particular, the Committee urges States to prevent violence occurring in the different phases of the juvenile justice process, while, on the contrary, reports received by the Committee indicate that such violence is present in all phases of the juvenile justice process.

Then the Committee indicates the following core elements for a comprehensive policy for juvenile justice: "the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the upper age-limits for juvenile justice; the guarantees for a fair trial; and deprivation of liberty including pre-trial detention and post-trial incarceration."¹⁴⁵

The Committee emphasises that a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency has serious shortcomings. In line with the Riyadh Guidelines, the Committee underlines the importance of prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. In relation to this, specific attention should be devoted to vulnerable families and young persons at risk.

As regards the issue of measures used by States in dealing with children in conflict with the law, there are two kinds of measures: measures without resorting to judicial proceedings and measures in the context of judicial proceedings. In relation to this point, the Committee reminds the States that according to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. The Committee also indicates that, given that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice to be used in most cases. These measures are important to prevent stigmatization of children and they have also proven to be cost-effective. Even though it is left to the discretion of the States parties to identify such measures, the Committee lists a number of community-based interventions that are commonly used, such as community services, supervision and guidance by, for example, social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims.

Furthermore, the Committee indicates a number of elements about the carrying out of diversion measures. Among other points, it underlines that the completion of the diversion

¹⁴⁵ CRC/C/GC/10, para. 15.

by the child should result in a definite and final closure of the case. Even if confidential records can be kept of diversion for administrative and review purposes, they should not be regarded as “criminal records” and a child who has been previously diverted must not be regarded as having a previous conviction.

Concerning the issue of the minimum age of criminal responsibility, the Committee notes that this can vary widely from the age of 7 or 8 to the age of 14 or 16 according to the State. On the basis of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”) the Committee concludes that a minimum age of criminal responsibility below the age of 12 years cannot be considered internationally acceptable and recommends States to continue to increase this age. The Committee also notes that some States set two minimum ages of criminal responsibility which is regarded as confusing and leaving much discretion to the court/judge which may result in discriminatory practice. Moreover, the Committee also focuses on the upper-age limits recommending to those States that fix this limit to 16 or 17 years to extend it to 18. The Committee also notes with appreciation the fact that some States have extended this limit to 21 years of age.

As regards the guarantees for a fair trial, the Committee recalls the CRC provisions and emphasises the relevance of training of professionals in this field as well as the right of the child to be heard in any judicial or administrative proceedings affecting the child. It also specifies that the child should be given the possibility to express his/her views concerning the (alternative) measures that may be imposed and that his/her specific wishes or preferences should be given due weight. The child should also be given prompt and direct information of the charges and this may also imply a “translation” of the formal legal jargon that is normally used in these cases. The Committee further recommends that States that have made reservations against the guarantee that children may communicate with their assistant in a confidential manner, should withdraw this reservation.

As regards the importance that decisions be taken without delay, the Committee recommends that the States parties identify time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) and the final adjudication and decision by the court or other competent judicial body. The Committee further notes that these time limits should be much shorter than those set for adults. The Committee recalls the importance of the presence of parents or legal guardians at the proceedings, unless judged inappropriate by the judge or competent authority. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offences committed by their children.

The Committee also draws the attention of the States to the importance of the principle of freedom from compulsory self-incrimination, namely that a child must not be compelled to give testimony or to confess guilt. The Committee explains that the term “compelled” should be interpreted in a broad manner. It also recalls the provision about the right to appeal noting that quite a few States have made reservations to this provision by limiting this right to the more serious offences and/or imprisonment sentences. On the contrary, the Committee urges States to withdraw such reservations so that this right is interpreted in a broader manner.

The Committee also highlights the principle of full respect of privacy during all phases of the proceedings. This is deemed as particularly important in order to avoid the harm caused by undue publicity. In particular, the Committee recommends that no information that may lead to the identification of a child offender shall be published, in order to avoid a stigmatisation effect, as well as to prevent negative consequences concerning his/her access

to education, work, housing or safety.

The General Comment also indicates that journalists who violate the right to privacy of a child in conflict with the law should be sanctioned. States parties are then recommended to introduce provisions for an automatic removal from the criminal records of the name of the child offender when s/he reaches the age of 18 or for serious offences in case of specific conditions.

The Committee reaffirms the prohibition of the death penalty for a crime committed by juvenile offenders. Moreover, it also strongly recommends the abolishment of life imprisonment for juvenile offences. As regards the issue of deprivation of liberty, the Committee expresses its concern about the issue of children who are kept in pre-trial detention for months or even years. It states that this amounts to a grave violation of article 37(b) of the CRC. On this point the Committee recommends that pre-trial detention is revised regularly, preferably every two weeks and that a final decision on the charges is made not later than six months after they have been presented. The Committee also specifies that a child deprived of his/her liberty shall not be placed in a prison or other facility for adults. Moreover States are reminded of the importance of the fact that even when children are deprived of their liberty, they are entitled to the enjoyment of a number of rights, including the right to education, the right to be in contact with the wider community, to receive adequate medical care, to make requests or complaints.

Finally, as regards the general organization of the juvenile justice system, the Committee states that the latter requires the establishment of specialized units within the police, the judiciary as well as specialised defenders of the child. It also recommends that NGOs be involved in the implementation of a comprehensive juvenile justice system. The importance of training all professionals involved is also underlined.

As a last point, the Committee raises attention about the lack of data on this subject, including on the number and offences committed by children, the use and the average duration of pre-trial detention, the number of convicted children and the typology of sanctions imposed on them, the number of children dealt with by resorting to measures other than judicial proceedings (diversion). The Committee urges states to collect disaggregated data on these issues as well as to conduct an evaluation of their juvenile justice system, which include the involvement of children themselves.

Comment on the Committee's Concluding Observations on articles 37, 39 and 40

In its Concluding Observations, the Committee considered the issue of juvenile justice for 14 States¹⁴⁶. This area is one of the main areas of concern for the Committee.

The Committee noted with appreciation the adoption of **specific legislation** in the field for two States¹⁴⁷ as well as the setting up of **specific institutions** in this area for two States,¹⁴⁸ or more generally the various achievements in this area in one case.¹⁴⁹

The Committee also appreciated the provision of **specific training** for professionals working with the juvenile justice system on children's issues for two States¹⁵⁰ as well as the effort of one State¹⁵¹ to make sections of criminal courts dealing specifically with children

¹⁴⁶ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Romania, Spain, Sweden, the Netherlands, The United Kingdom.

¹⁴⁷ Belgium, Bulgaria.

¹⁴⁸ Estonia, Romania.

¹⁴⁹ Sweden.

¹⁵⁰ Estonia, Spain.

¹⁵¹ Czech Republic.

under the age of 18 available throughout its territory.

On the issue of **raising the minimum age of criminal responsibility** the Committee appreciated the reforms made by two States.¹⁵² It also noted the emphasis **on alternative measures and reintegration** in the juvenile justice system of one State party¹⁵³ as well as the increase in human and financial resources allocated to the juvenile justice system, including an increase in the number of children's courts in one case.¹⁵⁴

As regards general measures about the legislation and the resources employed, the Committee recommended to 10 States¹⁵⁵ **to ensure that juvenile justice standards are fully implemented, by bringing the juvenile system into line with the CRC**. The Committee also recommends to 4 States¹⁵⁶ to make a **clear definition of the legal age of criminal responsibility** in order to guarantee that children under the age of 14 years are treated totally outside the criminal justice system on the basis of social and protective measures. More specifically, in one case¹⁵⁷ the Committee asked the State to establish a minimum age of criminal responsibility not below the age of 13, while in another case¹⁵⁸ it asked to raise the minimum age of criminal responsibility in accordance with the CRC provisions. For 2 States¹⁵⁹ the Committee recommended that States set up an adequate system of juvenile justice, including juvenile courts with specialised judges for children throughout the country. The Committee also addressed a recommendation to two States¹⁶⁰ to increase and ensure sufficient and **adequate allocation of financial, human and other resources** for the criminal justice system. In one case¹⁶¹ it also recommended that these resources be used to ensure continued focus on diversion and other alternative measures. In one case,¹⁶² the Committee recommended that states assess the compatibility of administrative penalties with the CRC Convention. In another case,¹⁶³ the Committee recommended reform of the relevant legislation in order to withdraw the notion of anti-social behaviour.

The Committee also addressed the issue of detention of children in a number of cases. In particular it recommended to 7 States¹⁶⁴ that they review their legislation with the aim of **eliminating the possibility that children can be tried as adults and detained with adults** and that they immediately remove children from adult prisons. Seven States¹⁶⁵ were requested to use detention, including police custody and pre-trial detention and placement in correctional-educational institutions, only as a measure of last resort and for the shortest possible period of time and, when used, to regularly monitor and review it taking into account the best interests of the child.

To one State¹⁶⁶ the Committee recommended that it should **eliminate life imprisonment**

¹⁵² Estonia, Romania.

¹⁵³ Italy.

¹⁵⁴ Spain.

¹⁵⁵ Austria, Belgium, Bulgaria, Cyprus, Estonia, Italy, Romania, Spain, The Netherlands, The United Kingdom.

¹⁵⁶ Bulgaria, France, Greece, The United Kingdom.

¹⁵⁷ France.

¹⁵⁸ The United Kingdom.

¹⁵⁹ Bulgaria, Cyprus.

¹⁶⁰ France, Italy.

¹⁶¹ Italy.

¹⁶² Belgium.

¹⁶³ Bulgaria.

¹⁶⁴ Austria, Belgium, Cyprus, Estonia, Romania, the Netherlands, The United Kingdom.

¹⁶⁵ Austria, Bulgaria, Czech Republic, Estonia, France, Romania, The Netherlands.

¹⁶⁶ The Netherlands Antilles.

sentence of children and to another State,¹⁶⁷ that it should review as a matter of priority the current practice of solitary confinement and limit the use of this measure to very exceptional cases, reduce the period for which it is allowed and seek its eventual abolition. One State¹⁶⁸ was asked to explore ways of ensuring that children deprived of their liberty are **held in facilities close to their place of residence** and to ensure that all such centres are served by public transport. Another State¹⁶⁹ was recommended that children should no longer be subject to de facto isolation. Finally one State¹⁷⁰ was requested to continue to strengthen efforts to improve conditions inside prisons, while another State¹⁷¹ was asked to proceed with the feasibility study for the construction of a new centre for juveniles deprived of their liberty with a view to reducing overcrowding in existing facilities.

The Committee further raised the attention of States on the issue of the right to a fair trial and legal guarantees in arrest, trial and detention. Four States¹⁷² received the recommendation to ensure **independent monitoring of detention conditions and access to effective complaints, investigation and enforcement mechanisms**. Three States¹⁷³ were requested to ensure that children have a lawyer and a trusted adult present in all phases of a proceeding, including during questioning by a police officer. Two States¹⁷⁴ were recommended to ensure that when arrest or pre-trial detention is carried out, it is done in compliance with the law and respects the rights of the child under the Convention, and that children are detained for as short a time as possible and separately from adults.

The Committee then recommended a number of measures addressed to one specific State: to ensure that persons below 18 years of age in conflict with the law have access to free legal aid;¹⁷⁵ to refrain from treating children between 16 and 18 years of age differently from children below the age of 16;¹⁷⁶ to provide a legal basis for children to start legal proceedings with the assistance of a juvenile law attorney;¹⁷⁷ to ensure that sentences are reviewed on a regular basis;¹⁷⁸ to ensure that the review of criminal cases concerning children is conducted with respect for the child's right to privacy and by judges, legal and psychological councils trained accordingly;¹⁷⁹ to provide juvenile detainees with adequate access to medical and psychological treatment;¹⁸⁰ to ensure that, when children in the Overseas Territories are subjected to deprivation of liberty in another country, all the guarantees enshrined in article 40 of the Convention are respected and that this respect is duly monitored; to minimize harsh sentences for children, even in the event of having committed serious criminal offences.¹⁸¹

On the issue of alternative sanctions, the Committee recommended to 6 States¹⁸² to develop as a matter of priority **a comprehensive policy of alternative sanctions** for juvenile

¹⁶⁷ Sweden.

¹⁶⁸ Belgium.

¹⁶⁹ Belgium.

¹⁷⁰ Estonia.

¹⁷¹ Austria.

¹⁷² Bulgaria, Estonia, France, Italy.

¹⁷³ Belgium, Estonia, Sweden.

¹⁷⁴ Czech Republic, France.

¹⁷⁵ France.

¹⁷⁶ France.

¹⁷⁷ Belgium.

¹⁷⁸ Belgium.

¹⁷⁹ Romania.

¹⁸⁰ Austria.

¹⁸¹ Spain.

¹⁸² Belgium, Bulgaria, Cyprus, France, Greece, Spain.

offenders to ensure that children are held in detention only as a measure of last resort and for the shortest period of time.

Concerning the topic of preventive measures, 3 States¹⁸³ were asked to strengthen **preventive measures**, such as supporting the role of families and communities in order to help eliminate the social conditions leading children to enter into contact with the criminal justice system and take all possible measures to avoid stigmatisation. On the issue of **reintegration** two States¹⁸⁴ were recommended to take the necessary measures to provide juvenile detainees with prospects for their future, including their full reintegration into the society.

The Committee also raised the topic of **training**, in particular it recommended to 4 States¹⁸⁵ to train judges and all law enforcement personnel who come into contact with children from the moment of their arrest to the implementation of administrative or judicial decisions taken against them. In one case¹⁸⁶ the Committee recommended the institution of specialized judges for children to be introduced in all the regions and that such specialized judges receive appropriate education and training. Finally, one State¹⁸⁷ was asked to train professionals in the area of social recovery and reintegration of children.

On the issue of **child victims and witnesses of crimes**, the Committee recommended to 7 States¹⁸⁸ to ensure that all children victims and/or witnesses of crimes are provided with the protection required by the Convention and that they take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

The Committee also addressed the issue of **Roma and foreign children**, recommending to two States¹⁸⁹ to conduct a thorough analysis of their **overrepresentation** in the juvenile justice system. Two States¹⁹⁰ were requested to ensure that children deprived of liberty have access to education.

The Committee also referred to a number of specific measures, in particular it recommended that States: **collect data**, including on the victim's age, offences committed and offender, with a view to including this in its next periodic report and using it to evaluate the effectiveness of its current criminal witness or victim protection program;¹⁹¹ to increase specialized interventions on issues of juvenile offenders that have committed sexual aggressions,¹⁹² to review the application of the Counter Terrorism Bill to children;¹⁹³ to conduct an independent review of ASBOs (anti-social behaviour orders), with a view to abolishing their application to children;¹⁹⁴ to decriminalize begging by children while taking steps to ensure that such a change would not be exploited by adults who may use children to beg.¹⁹⁵ Finally two States¹⁹⁶ were asked to seek technical assistance from the UN Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and relevant NGOs.

¹⁸³ Bulgaria, Romania, Spain.

¹⁸⁴ Austria, Spain.

¹⁸⁵ Bulgaria, Czech Republic, France, Spain.

¹⁸⁶ Romania.

¹⁸⁷ Estonia.

¹⁸⁸ Bulgaria, Cyprus, France, Greece, Romania, Sweden, The United Kingdom.

¹⁸⁹ Greece, Italy.

¹⁹⁰ Romania, The United Kingdom.

¹⁹¹ Cyprus.

¹⁹² Spain.

¹⁹³ The United Kingdom.

¹⁹⁴ The United Kingdom.

¹⁹⁵ Greece.

¹⁹⁶ Bulgaria and Czech Republic.

9. Comparative conclusions

This paragraph provides an overview of the main results of the review carried out on the concluding observations of the Committee on the Rights of the Child. These outcomes are here presented with a comparative poach in relation to the main findings of the first version of this review issued in 2006. They are presented following the thematic structure of the Concluding Observation formulated by the CRC Committee with the final aim of providing a general idea about the evolution of the CRC implementation procedure in the EU Member States.

A. GENERAL MEASURES OF IMPLEMENTATION

General measures of implementation - Coordination and national plans of action

As a whole, it seems that the observations made by the Committee are not so different from those made in the former survey report of 2006. This is particularly true with regard to both positive achievements identified and Committee's recommendations, which refer on one hand to recognition of the efforts made to strengthen the coordination policies in the implementation of the CRC and the adoption of national strategy for children, the various sectorial plans, policy programmes adopted and on the other side the recommendations to further encourage coordination among central government departments and between central and other levels of government and between Government and civil society and the need to ensure adequate budget allocation guaranteeing and enhancing the implementation of the plan of action including human and material resources.

General measures of implementation - Dissemination and training

The observations made by the Committee are not so different from those made in the former reports of this survey in 2006. The main Committee recommendations remain those related to the need for the dissemination of the CRC through systematic awareness-raising campaign, the incorporation of the Convention in the school curricula in primary and secondary education. The only remarkable innovation refers to increasing the attention dedicated to involvement in the organisation and dissemination of non-governmental organizations (NGOs), other stakeholders and the mass media, to reach the public at large.

General measures of implementation - Independent monitoring institutions

As regards the positive achievements, first of all the Committee expressed its satisfaction about the establishment or appointment at the national and local level of the children's rights commissioner and appreciated the status and the range of activities undertaken by the children's Commissioner and Ombudsman.

As regards the Committee's recommendations, differently from what noticed in the occasion of the first edition of this survey in 2006, the least frequent recommendation has been to establish independent human rights institutions at the national level accessible to children in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and the Committee's General Comment No. 2. The committee seems to have turned its attention more

frequently to the issue of the mandate of independent institutions and the resources dedicated to these institutions, emphasising the necessity to empower these bodies by expanding the mandate of the Ombudsman for Children with the power to receive and investigate complaints of violations of children's rights in a child-sensitive manner and to address them effectively.

General measures of implementation - Data collection

As a whole, it seems that the observations made by the Committee are not so different from those made in the examination of former reports. This is particularly true with regard to the positive achievement identified by the Committee, the establishment of specific instruments, programmes or organisms dealing with the collection of statistical data, the conscious effort made to improve data collection. However, there is a shift in the recurrence of the recommendations; those related to the setting up of data collection mechanisms are more frequent in 2012 than in 2006.

Concerning key recommendations, the first outstanding point is that in the first edition of the survey in all observations a stronger emphasis was placed on the concern that the disaggregated data don't cover all children up to the age of 18 years in general or in specific issues. In this second edition the Committee's attention seems to turn more frequently to two aspects:

- the absence of a nationwide and comprehensive system of disaggregated data incorporating all the territories of a Country and the related need to strength the coordination and the development of regular and systematic collection
- the insufficient evaluation and development child-specific indicators to inform and evaluate policies, legislations and outcomes of interventions, resource allocation and monitoring of the implementation of the CRC.

B. GENERAL PRINCIPLES

General principles - Non-discrimination

In 2012 an increase of positive achievements identified by the CRC Committee is reported. Some of these positive practices refer to the adoption of equality legislation incorporating the principle of non-discrimination, the undertaking of more structured intervention through the implementation of national plans and establishment of national or cantonal institutions combating discrimination.

Notwithstanding, it can be noticed that there are some recurring issues of concern for the CRC Committee on the implementation of article 2 of the CRC. Firstly, the issues related to equal access to education, health and other services for children of migrant families, families living in poverty or in less developed areas, Roma children, foreign children in detention and children with disabilities. Secondly, the implementation of the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Another constant element seems to be the request to develop a national framework of measures including: a comprehensive national action plan; the harmonization and amendment of the domestic legal framework and strengthening the mandate of the national office dealing with the subject.

A new requirement is the invitation to collect disaggregated data on child discrimination to enable effective monitoring of de facto discrimination and to adopt and implement a comprehensive strategy addressing all forms of discrimination.

General principles – Best interest of the child

In 2012 a slight increase of positive achievements identified by the CRC Committee is reported in particular for those referring to the integration of the principle of the best interests of the child in national legislation of ordinary or constitutional level and the acknowledging of the direct applicability of article 3.1 by some national Courts.

It seems that in 2012 recognition in the national legal order of the best interest of the child has been achieved. Therefore the Committee focuses its attention more on effective implementation in the child's daily life. In fact even though the Committee recommends the identification and use of appropriate and efficient measures meant to ensure that the principle of the best interests of the child is adequately integrated into all legal provisions, specific emphasis is placed upon the urgency to implement this principle in judicial and administrative decisions and in projects, programmes and services which have an impact on children. This seems to be possible for the Committee only through the providing of regular training for judges, public officials, legislative bodies and social workers involved in the decision making procedures and by undertaking appropriate measures in particular through concrete procedural rules ensuring that the principle of the best interests of the child guides all central and autonomous government actions.

Finally, a new aspect is introduced; the evaluation of the impact of government and civil society actions on the best interests of the child is required to further enhance institutional and public understanding of what constitutes the child's "best interests."

General principles – Right to life, survival and development

In 2012 as far as the positive achievements are concerned, more attention is dedicated to the introduction of statutory child death reviews and the establishment of authorities mandated to set up new assessment instruments and procedures for the prevention of suicides of children in places of detention and custody.

As regards the recommendation some recurring issues prove to be elements of constant concern for the Committee, in particular those related to the protection of children from death and injuries due to traffic and home accidents, the necessity to develop a framework of institutional attention dedicated to this problem at the national level through the introduction of 'a systematic, independent and public review of any unexpected death or serious injury involving children in particular in institutions of care and custody or detention.

A new element of concern emerging in 2012 worthy of mention, not for its recurrence, but for the innovative reflection that it introduced into the committee's debate is the one related to the invitation to conduct assessment of the effects of the crisis on life prospects and development of children, especially adolescents, with the intention of minimizing risks to their survival and development.

General principles – Respect for the view of the child

In 2012 as in 2006 the recurrence of recommendations and their content are found to be unchanged. The rights recognised in article 12 of the CRC remain an element of particular concern for the Committee and the adoption of General Comment no. 12 in 2009 seems to have clarified aspects of this right already well entrenched in the Committee approach and understanding of this right. The Committee concern remains essentially focused on three aspects: the necessity to reinforce the awareness raising of the public in general and the systematic training of professionals; the adoption of procedures facilitating and ensuring the

respect of the view of the child; and the adoption of specific legislations and regulations governing procedure in courts and administrative proceedings ensuring that children capable of forming their own views have the rights and the possibility to express them and that due weight is given to opinions expressed on the basis of the age and their maturity.

C. CIVIL RIGHTS AND FREEDOM

Civil rights and freedom – Right to identity

Since 2006, progress has been made with regard to promoting children's rights to birth registration both through legal provisions and actions targeting vulnerable groups such as ROMA families (3). However, there are still legal and administrative barriers jeopardizing the right to birth registration for ROMA children, out of home children and children of undocumented migrant parents (6). A new element of concern was reported as the Committee noted that when registered, minority children may be identified with discriminatory names (1).

The issue of gathering information about biological parents of out of home children and making the information available to the child at a later stage of his or her life continues to emerge as an important matter (4) despite positive legal provisions developed in certain countries since 2006 (2).

Civil rights and freedom – Freedom of religion

Ensuring religious freedom concerns many of the same countries that were addressed in the previous release of concluding observations.¹ While some positive achievements (2) have been accomplished with one country softening its approach as regards the manifestation of one's religion through the wearing of religious symbols in public, the Committee repeated its call to end all forms of discrimination on the basis of children's religious affiliation (4).

Civil Rights and Freedom – Right to access appropriate information

Looking at the analysis provided by the 2006 Survey on the same matter, it is possible to draw similarities in the observations made at the time as well as identify new areas of action that are emerging. Similarly to the findings elaborated in 2006, the negative effects of information contents appear as a priority that needs to be regulated through codes of conduct and legislative acts. In that sense, it seems that the efforts pursued until now have only partially succeeded in protecting children from harmful content. The risk of abuse and sexual violence deriving from the use of the internet and mobile phones, already identified in 2006, seem to be on the rise. The need to build children's and adults' capacity to interact with electronic media remains constant. While violent content is seen to be of less concern in the observations disseminated up to 2012, children's appearances in TV shows and the portrayal of child victims as well as children involved in criminal proceedings have become an urgent matter for States Parties to consider.

¹ See Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 37.

Civil rights and freedom – Corporal punishment and abuse

Looking at the analysis provided by the 2006 Survey, similar issues are highlighted as far as both positive achievements and recommendations are concerned. Up to 2006, in fact, corporal punishment had been prohibited in 6 countries;² as of 2012, 3 more nations have adopted a ban of this type of abuse, but that continues to be a priority area of political action. The analysis also shows that States Parties ought to continue to invest in providing families and caregivers with alternatives to corporal punishment such as non-violent education approaches. This type of preventive work extends to awareness raising activities that are still seen as relevant tools to sensitize people the right violation. Furthermore, compared to the result of the previous edition of the survey, new elements emerge following the United Nations Secretary -General study on violence, which informs the institutional dialogue on article 19 and the scope of the violations that follow its inappropriate application.

Civil rights and freedom – Torture, degrading treatment and deprivation of liberty

There have been a few achievements in the past six years, with surveilling mechanisms being established to monitor children's treatments in institutions. However, following up on allegations with investigations and prosecutions is still a priority for European states as the committee had found in the observations analyzed in the previous survey. Moreover, the specific legislation currently adopted by countries ought to be more effectively implemented. States Parties should also beware of different practices violating article 37 such as female genital mutilation.

D. EDUCATION

Education

Comparing the findings of the Survey with the ones from the edition of 2006, it is possible to acknowledge a step forward made by States with regard to the inclusion of human rights in school curricula. While legal developments to ensure equal access to and in education have been pursued, as well as actions aimed at contrasting drop-out trends in two countries, ensuring equal access to education across different socio-economic and ethnic background continues to be an issue calling for further investments. At the same time, bullying and violence in schools seem to be an issue concerning more countries; as such, they require multiple States Parties to develop effective strategies and school policies capable of ensuring security and safety of the school environment while promoting non-violence and tolerance. Lastly, early childhood care and pre-schooling emerge as a new realm of governments intervention deserving investments and political attention, as promoting inclusive education at an early stage is understood to be a powerful tool to ensure equal opportunities to and through education.

² See Bernacchi, E., Moyersoen, J., Ruggiero, R., *Survey on the CRC Committee's Concluding Observations on the last EU Countries' Reports*, Florence, Istituto degli Innocenti, 2006, p. 126.

E. FAMILY ENVIRONMENT

Family environment – Parental guidance and the protection owed to families by the State

By analysing the most recent Concluding Observations made by the CRC in 2012 for the 16 EU Countries in question, it can be noted that there are some recurring issues related to articles 5 and 18.

While the question of the need for providing economic and social support to vulnerable families and that of supporting a parental education programme are recalled once more in the last Observations, two new issues have been underlined by the Committee. Firstly, the importance of strengthening preventive services and early support and intervention measures, that are essential for preventing separation of children from their family and thus their institutionalisation. Secondly, the Committee recommended states to undertake comprehensive research on the reasons for long waiting lists on which children requiring urgent assistance are put in order to obtain appropriate social services.

Family environment – Family reunification

Since 2006, some progress has been made and the Committee expressed positive comments on the efforts of countries in better complying with the provisions of article 10 of the CRC. However, the same concerns already underlined in the 2006 survey are persistent also in this new edition. In particular, in some countries the length of family reunification procedures remains one of the major problem coupled with the fact the other countries have adopted laws imposing restrictive criteria for family reunification procedures.

Compared with the results of the 2006 survey, a new issue emerged in the most recent Concluding Observations of the Committee: the need to have an adequate and systematic training of law enforcement and immigration officials, while issues of the quota system and the age limit as conditions for family reunification have not appeared anymore.

Family environment – Violence, abuse and neglect

The most striking aspect emerging from comparing the previous recommendations with the new ones is that the Committee issued the same type of recommendations. Despite some countries having undertaken actions to fulfil their engagements under article 19 and 39, few real improvements have been made. EU States are encouraged to work harder in eradicating and preventing the problem of violence against children in family settings.

Family environment – Children deprived of their family environment

Comparing it with the previous edition of this survey, one can notice that the Committee has issued the same type of recommendations. Indeed, in spite of the existence of the United National Guidelines for the Alternative Care of Children to help and guide governments and care bearers in implementing article 20, few improvements have been made. Regrettably, institutions continue to take precedence over family-based alternative care, and still few efforts have been made by States to support and increase the number of foster families. In some cases, poverty and a difficult economic situation continue to be the major issue for removing children from their families.

Family environment – Adoption

By comparing the outcomes on adoption highlighted in the 2006 survey, it can be noticed

that in its last Concluding Observations, the Committee has given more attention to the issue of inter-country adoption than domestic adoption and that the preoccupation of the Committee is to recommend States to give the maximum effectiveness of the guarantees set out in the 1993 Hague Convention.

F. HEALTH

Health – Children with disabilities

As a whole, it seems that the observations made by the Committee are not so different from those made in the examination of former reports. This is particularly true with regard to the positive achievement identified by the Committee, which refers to the efforts made to integrate children with disabilities in the education system. In the new edition of the survey, some positive comments are also made in relation to the approval of measures concerning equal opportunities.

Concerning key recommendations, the first outstanding point is that in this second edition of the survey not all observations concerning ADHD/ADD syndrome diagnosis and treatment have been placed under this chapter by the Committee in its Concluding Observations, but they have rather been placed under a specific chapter on mental health. It can be supposed that, following the increasing diffusion of this phenomenon, the Committee has intended to put its related observations more in evidence. It is more difficult to say if this change also reflects a socio-cultural shift in the consideration of the phenomenon of ADHD/ADD itself.

Furthermore, only in this second edition have many recommendations addressed the issue of families with disabled children, underlining the importance of supporting them both from a socio-economic and from an educational point of view. Another issue which did not figure under the key recommendations in the first edition of the survey is the necessity to improve data collection and analysis concerning children with disabilities.

Health – Child's right to health and health services

While in 2006 the prevention of malnutrition was one of the Committee's main concerns, now the focus has shifted towards the prevention of overweight and obesity, this underlining a growing alarm concerning over nutrition and the consumption of hyper caloric and junk foods by children and adolescents in Europe. To confirm once more the link between health and nutrition, which starts from early childhood, the Committee seems to focus even more than before on the importance of promoting breastfeeding. Furthermore, this time it also stresses the necessity to introduce a strict regulation and a continuous monitoring of the market of breast-milk substitutes, in order to safeguard children's health.

Health – Adolescents health

Compared to the first edition of the survey, this second analysis shows how the main concerns expressed by the Committee in relation to adolescents' health, generally speaking, remain quite unchanged. The only important difference worthy of notice is the very high number of recommendations regarding the issue of substance abuse (alcohol, tobacco and drugs), which did not appear to be amongst the Committee's main concerns some years ago.

Health – Standards of living

The recommendations made by the Committee in more recent years and analysed in this second edition of the survey seem to reflect the growing alarm raised in Europe about the increasing number of children living in poverty. The strategy suggested by the Committee seems now to be more clear cut, including – from a general point of view – measures intended to prioritize the fight against child poverty and, from a practical point of view, two kinds of measures: on the one hand, income-support measures for families, in particular to poor or vulnerable ones and, on the other, material support to provide for basic necessities of children (like food and clothing). These measures are of fundamental importance to fulfil children's rights and to safeguard the right of all children to grow and develop to their fullest potential.

G. SPECIAL MEASURES OF PROTECTION

Special measures of protection - Street children

The Committee continues to focus on the importance of providing children with protection measures including adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training. It also emphasises the importance of family reunification. In its latest recommendations the Committee has also requested States to provide an adequate compensation or alternative housing whenever forced evictions take place, with special attention to young children and their families.

Special measures of protection - Unaccompanied, refugee and asylum-seeking children

The condition of unaccompanied, refugee and asylum-seeking children is a rather complicated one, which requires the setting up of a comprehensive intervention that holistically could take into consideration the peculiarity of the case addressed and the different aspects that the intervention imply in order to fulfil the rights of the person involved.

In 2012 an increasing of positive achievements is registered by the CRC Committee. Some of these positive practices refer to effort to discuss and/or approve national legal reforms to improve the legal situation of asylum-seeking children and unaccompanied children in order to pay more attention to their needs, the regulation by law of the age determination procedures by means of medical examination in particular when it is disputed and the increased the number of refugees and asylum-seeking children accepted and the increasing of the standards of the reception centres for unaccompanied children seeking asylum, the access to a legal representative following a negative decision on their asylum

Notwithstanding, it can be noticed that there are some recurring issues of concern for the CRC Committee on the implementation of article 22 of the CRC. Firstly, the detention of children during the evaluation of their request of asylum and the issues related to the equal access to education, health and other services for children of migrant families. In comparison to the first report of this review issued in 2006, the detention of unaccompanied or separated children results to be an increasing issue of concern for the Committee. Secondly, the attention be given to the training of personnel working with separated and unaccompanied children and dealing with their cases and collection of data for the better understanding of the phenomenon. Another constant element seems to be the request to develop structured procedures for the follow up of family reunification processes in respect

of the best interest of the child. However, in comparing the 2012 findings with those of 2006 a shift in the characteristics of the recommendations can be noted from a more general formulation towards a more detailed one, better oriented to address the national specific context addressed.

Furthermore, in 2012 the issues of the prevention of the disappearance emerges as a new matter of concern. It is raised in relation to the necessity to undertake a systematic survey on the disappearance of unaccompanied asylum-seeking children and integrate findings in the formulation of the State party's policies for ensuring that the rights of children in such circumstances are fully respected and to ensuring that all unaccompanied asylum-seeking children are provided with a trained guardian and, if necessary, legal aid.

Special measures of protection - Children of minorities or of indigenous peoples

There are no major differences in relation to the Survey conducted in 2006. The Committee continues to dedicate a particular attention to the situation of Roma children.

The Committee raised the issue of the prevention of early marriages for indigenous and minority children that hadn't been addressed before.

Special measures of protection – Economic exploitation

Since the analysis of the previous edition, most of the European countries have ratified ILO Conventions n. 138 and n. 182. Thus, in the last Concluding Observations, the Committee focused more on the need to provide more adequate protection of working children. An interesting issue emerging by this analysis is the importance of providing a framework for prohibiting use of children in European companies engaged with businesses abroad and multinational companies headquartered in European countries.

Special measures of protection - Drug abuse

The Committee did not address the issue of drug abuse in the concluding observations of EU Countries in the relevant period of this publication. Therefore, it is not possible to make a comparison with the previous issue.

Special measures of protection – Sexual exploitation, abuse and trafficking

By comparing the outcomes underlined by the Committee in its last Concluding Observations, it is worth mentioning the similarity of issued recommendations. In spite of World Congresses against commercial sexual exploitation of children, concluded with several international commitments and the ratification of the main international standards on this issue by the countries analysed in this edition, the Committee continues to address similar recommendations, especially in terms of a recurrent need for carrying out in-depth studies assessing causes, nature, victim and perpetrator typology, although this time with a more specific focus on the use of the Internet, and in terms of the lack of data on the phenomena of child trafficking and child exploitation.

Two new outcomes emerged in the Committee's last Concluding Observation:

1. the need to strengthen cooperation with the authorities of countries from or to which children are trafficked in order to combat the phenomenon;
2. the need to strengthen cooperation with non-governmental organizations and the tourist industry.

Special measures of protection – Administration of juvenile justice

The area of the administration of juvenile justice remains one of the most relevant areas of concern for the Committee. Since 2006, the Committee has continued to note with appreciation the approval of specific legislation and setting up of specific institutions in the field.

As regards the recommendations indicated by the Committee to the Member States, there are no substantial differences in relation to the 2006 survey. However, the Committee strengthened its position on the issue of the age of criminal responsibility, by recommending States that children under the age of 14 years are treated totally outside the criminal justice system. Moreover, the Committee continues to underline the importance that States bring their juvenile justice system into full compliance with the standards indicated in the CRC and other relevant instruments. Attention is also raised in relation to alternative measures and States are recommended to use detention only as a measure of last resort. Training of all professionals involved continues to be a focus of the Committee's recommendations, as well as the increase of resources, although for a smaller number of States than in the 2006 report. The over-representation of foreign and Roma children in the juvenile justice system remains a concern for the Committee. Finally, States continue to be asked to increase their prevention efforts to avoid the involvement of children in the juvenile justice system as well as their efforts to reintegrate juvenile offenders in society.

10. Executive summary

GENERAL MEASURES OF IMPLEMENTATION – COORDINATION AND NATIONAL PLANS OF ACTION

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (14)

- The multitude of actors involved in the implementation of the CRC and adoption of national strategy for children, the various sectorial plans, policy programmes for the well-being of children, youth and families and the children plans and national strategy for the protection and promotion of children's rights (10)
- The establishment and review of the role of government bodies such as: inter-ministerial conferences for the protection of child rights and observatories to deal with the welfare of children at the national and local municipality levels and in charge of coordinating and monitoring the implementation of the Convention (6)
- The establishment of coordination on the policy for the rights of the child, departments for monitoring on the rights of the child, high commissions for youth, national council on child protection responsible for monitoring the implementation of the Convention (6)
- The value of the preparation process of some national strategic plan for children and adolescents with the inclusion of public institutions and social organization (2)

What are the key recommendations? (16)

- To encourage further 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 (16)
- To ensure adequate budget allocation guarantying and enhancing the implementation of the plan of action including human and material recourses (11)
- To allocate sufficient financial and human resources for the effective functioning of such a mechanism in order to allow the effective implementation of the coordination role (10)
- To prepare and implement a coherent and comprehensive right-based national plan of action for the implementation of the Convention (9)
- To strengthen coordination between the various government mechanisms involved in children's rights, at both the national and local levels (8)
- To ensure that the National Plan of Action develop a policy for children in compliance with the Plan of Action "A world fit for children" as well as the "World fit for children + 5" review declaration (8)
- To develop follow-up and evaluation mechanisms per each national action plan for the full implementation of the plans of action to regularly assess progress achieved and allowing a more strategic selection of objectives and measures and the definition of time-bound goals and impact indicators, and improved processes for the participation of children and civil society in plan preparation, monitoring and evaluation (7)

GENERAL MEASURES OF IMPLEMENTATION – DISSEMINATION AND TRAINING

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (10)

- The efforts to make the principles and the provisions of the Convention widely known (9)
- The implementation of compulsory training of professionals working with or for children on the principles and provisions of the Convention, with a particular focus on children at risk (6)
- To make the CRC known in particular in schools with the support of youth organization, NGOs and the media (3)
- The inclusion of human rights and democracy as a specific thematic focus of the school curricula at both primary and secondary school levels (3)

What are the key recommendations? (15)

- To strengthen or further implement their activities in relation to the dissemination of the CRC through systematic awareness-raising campaign (7)
- To involve in the promotion of knowledge on the CRC with the public at large through the involvement of mass media (4)
- The incorporation of the Convention in the school curricula in primary and secondary education (5)
- To organise activities of dissemination of the CRC in close cooperation with non-governmental organizations (NGOs) and other stakeholders, to reaching vulnerable groups and by paying particular attention to the remote and rural areas and children out of school (4)

GENERAL MEASURES OF IMPLEMENTATION – INDEPENDENT MONITORING INSTITUTIONS

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (12)

- The establishment or appointment at the national and local level of the children's rights commissioners, ombudspersons for children or national councils for children (7)
- The status and the range of activities undertaken by the children's Commissioner and Ombudsman (3)

What are the key recommendations? (15)

- To be equipped with the necessary human and financial resources in order to carry out their mandate in an effective manner (9)
- To empower these entities by expanding the mandate of the Ombudsman for Children in particular by including in it the power to receive and investigate complaints (9)
- To establish independent human rights institutions at the national level, accessible to children in accordance with the Principles relating to the status of national

institutions for the promotion and protection of human rights (“The Paris Principles”) (General Assembly resolution 48/134, annex) and the Committee’s General Comment No. 2 (3)

- To strengthen the role of the Ombudspersons for children to ensure adequate coordination and cooperation of the ombudsmen’s institutions at Community level, as well as between ombudsmen’s institutions operating at federal and Community levels (3)

GENERAL MEASURES OF IMPLEMENTATION – DATA COLLECTION

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (10)

- The establishment of specific instruments, programmes or organisms dealing with the collection of statistical data (5)
- The conscious effort made to improve data collection (2)
- The extensive quality and quantity of statistical data provided by EU Countries in the report and/or with the list of issues and in the written replies (1)

What are the key recommendations? (15)

- The absence of a nationwide and comprehensive system of disaggregated data incorporating all the territories of a Country and/ or all the areas covered by the Convention (13)
- The lack or the need to strength the coordination and the development of regular and systematic collection (5)
- The insufficient evaluation of data to devise policies and programmes and the insufficient attention dedicated to this aspect (5)
- The development child-specific indicators to evaluate policies, legislations and outcomes of interventions, resource allocation and monitoring on the implementation of the CRC (4)

GENERAL PRINCIPLES – NON-DISCRIMINATION

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (12)

- The adoption and strengthening of the equality legislation which incorporates the principle and mainstream children’s rights to non-discrimination (7)
- Approval of national action plans or strategy dedicated to action against discriminatory practices and promoting equal opportunities (3)
- The establishment of national or cantonal institutions such as ombudsman on equal treatment, council for combating discrimination, agency Roma and gender equality (3)
- Education and awareness-raising programmes, including inter-cultural and civic education at school (1)

What are the key recommendations? (16)

- Segregation of children of Roma origin, especially the discriminatory practices against them in the education system, and the provision of essential services and housing (8)
- To include specific information on the measures undertaken by the State to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (7)
- To collect disaggregated data to enable effective monitoring of de facto discrimination and to adopt and implement a comprehensive strategy addressing all forms of discrimination (3)
- To adopt general measures such as: a comprehensive national action plan on the prevention of racism, racial discrimination, xenophobia and intolerance; amendment of the domestic legislation so as to ensure prohibition of discrimination on the grounds of disability; and strengthening the mandate of the National Office against Racial Discrimination (5)

GENERAL PRINCIPLES – BEST INTEREST OF THE CHILD

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (9)

- The integration of the principle of the best interests of the child in national legislation (8)
- The inclusion of art. 3 in some national Constitutional law (1)
- The acknowledging of the direct applicability of article 3.1 by some Courts of Cassation (1)

What are the key recommendations? (12)

- Appropriate and efficient measures be taken in order to ensure that the principle of the best interests of the child, ‘in accordance with article 3 of the Convention, is adequately integrated into all legal provisions and applied in judicial and administrative decisions and in projects, programmes and services which have an impact on children (9)
- Legal reasoning of all judicial and administrative judgments and decisions should also be based on the principle of the child’s best interests(4)
- Providing regular training to staff at the Migration Board and the social welfare authorities and to all decisions makers (judges, public officials, legislative bodies etc.) (3)
- A stronger implementation of article 3 by taking appropriate measures in particular through substantive procedural rules, to ensure that the principle of the best interests of the child guides all central and autonomous government actions and decisions with regard to legal provisions as well as in judicial and administrative decisions which have an impact on children (2)
- Assessment of the impact on the best interests of the child of government and civil society actions, in order to further enhance its own understanding – and therefore its guidance – of what constitutes “best interests”(2)
- Procedures and criteria to provide guidance for determining the best interests of the

child in every area, and to disseminate these practices to public or private social welfare institutions (2)

GENERAL PRINCIPLES – RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (3)

- Introduction of statutory child death reviews and the establishment of a working group that elaborated a new assessment tool for the prevention of suicides of children in places of detention and custody (2)
- Measures taken to reduce the overall number of fatalities and injuries (1)
- Abolition of the use of plastic baton as a means of riot control (1)

What are the key recommendations? (6)

- Protection of children from death and injuries due to traffic and home accidents, outlining that the main cause of this problem is the lack of attention dedicated to this point at the national level (3)
- The introduction of a systematic, independent and public review of any unexpected death or serious injury involving children in particular in institutions of care and custody or detention (2)
- To conduct assessment of the effects of the crisis on life prospects and development of children, especially adolescents, with the intention of minimizing risks to their survival and development (1)
- To intensify efforts to address the causes of child and infant mortality and malnutrition, in particular those associated with poor access to health care services, poverty and lower levels of education (1)
- The regulations and monitoring procedures with respect to the termination of life on request, in order to ensure that children, including newborn infants with severe abnormalities, enjoy special protection (1)

GENERAL PRINCIPLES – RESPECT FOR THE VIEW OF THE CHILD

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (14)

- Welcoming the efforts made by the States amending, reviewing and harmonising the national legislation at the ordinary and constitutional level (10)
- The establishment of national and local Youth Parliaments and Councils (3)
- The involvement of national and local Youth Councils and Parliaments in public discussion (3)
- Article 12 has been declared by the national Constitutional Court as directly applicable in the domestic legal system (1)

What are the key recommendations? (16)

- To provide the reinforcement of awareness raising campaigns to facilitate families and

- adults understanding and respecting article 12 (14)
- To enhance child participation and respect for the opinions of the child by supporting the setting up of youth parliaments and councils (11)
 - To adopt provisions to ensure that article 12 of the Convention is fully implemented in courts, administrative bodies, institutions, schools, childcare centres and in the family (8)
 - To adopt governing procedure in courts and administrative proceedings, including in civil and penal matters, and in administrative proceedings in order to hear the child and give due weight to his/her opinion (4)
 - To develop education and training of professionals to implement this general principle in daily life, in particular in the juridical, welfare and other sectors dealing with children (3).
 - Systemic training with the intention of improving skills in hearing and taking into account children's views in all decisions affecting them and in accordance with the child's age and maturity (3).
 - To take measures to ensure that children are included in the development of national and regional legislation and policies relevant to them (3)
 - Skill-development in children's rights, in a community setting for parents, teachers, professionals working with and for children, local officials, community leaders (2).
 - To support children's participation in the reporting process in front of the CRC (2).

CIVIL RIGHTS AND FREEDOM – RIGHT TO IDENTITY

(8 EU Countries)

Have any positive achievements been identified? (4)

- Legal efforts to secure children's rights to access information on their origin (2)
- Legal amendments to simplify naturalization processes (1)
- Increase in birth registration of Roma children (1)

What are the key recommendations? (8)

- Enforce children's rights to access information on biological parents (4)
- Overcome obstacles to birth registration and access to nationality/citizenship (6)
- Focus attention on the right of identity of children in relation to the principle of non-discrimination with regards to parents ethnic background, legal status or past activities (5)
- Access and implement the convention on the reduction of statelessness (2)

CIVIL RIGHTS AND FREEDOM – FREEDOM OF RELIGION

(3 EU Countries)

Have any positive achievements been identified? (1)

- Measures to mitigate the effects of national Laws banning the wearing of religious clothing/symbols at school (1)
- Use of mediation to promote religious and intercultural dialogue (1)

What are the key recommendations? (3)

- Eliminate all forms of discrimination on the basis of children's religious affiliation (2)
- Provide alternatives to religious classes in schools that centre their curriculum on one specific religion (1)
- Underline the non-obligatory nature of religious classes (1)

CIVIL RIGHTS AND FREEDOM – RIGHT TO ACCESS APPROPRIATE INFORMATION

(8 EU Countries)

Have any positive achievements been identified? (5)

- Establishment of monitoring institutions (3)
- Establishment of self-regulatory codes for print and broadcast media (2)
- Awareness raising campaigns and parental control software (1)

What are the key recommendations? (8)

- Regulate children's access to violent and/or pornographic content (5)
- Educate children and adults about secure browsing and risks of misuse of electronic media (4)
- Protection and respect of privacy of children – especially victims and agents of abuse and sexual violence episodes – in media in news reporting and TV shows (4)
- Ensure access to information of diverse cultural source, available in minority languages and combating intolerance (2)

CIVIL RIGHTS AND FREEDOM – CORPORAL PUNISHMENT AND ABUSE

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (12)

- Positive legal developments (7)
- Ban of corporal punishment (3)
- National Plans tackling violence against children (4)
- Awareness campaigns (2)

What are the key recommendations? (16)

- Implement the recommendations contained in the report from the independent expert of the United Nations' study (16)
- Prohibit corporal punishment of children in all settings (10)
- Seek partnerships with civil society and children's involvement (8)
- Promote nonviolent values through awareness raising (7)
- Prioritize the elimination of all forms of violence against children (7)

CIVIL RIGHTS AND FREEDOM – TORTURE, DEGRADING TREATMENT AND DEPRIVATION OF LIBERTY

(5 EU Countries)

Have any positive achievements been identified? (4)

- Monitoring and surveilling mechanism are being pursued (2)
- Mechanisms are established for children to file complaints in institutions (1)

What are the key recommendations? (5)

- Enhance mechanisms available for children to file complaints (2)
- Need to follow up allegations with investigations and prosecutions (3)
- Awareness raising among law enforcers and institutions staff (2)
- Enhance implementation of legislation abolishing degrading and cruel treatment and female genital mutilation (2)

EDUCATION

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (8)

- Legal provisions to ensure equal opportunities to and in education (4)
- Inclusion of Human and Children Rights studies in schools curricula (3)
- Government actions tackling drop-outs (2)

What are the key recommendations? (16)

- Strengthen protective measures to tackle bullying and violence in schools (10)
- Achieve better standards of inclusive education (10)
- Include teaching of human rights and children's rights in school curricula at all levels (7)
- Refrain from use of punitive measures to tackle drop out (7)
- Develop early childhood care and pre-schooling (5)
- Overcome de facto ethnic segregation of schools or special programming schools (5)
- Expand vocational training and coaching (5)

FAMILY ENVIRONMENT – PARENTAL GUIDANCE AND THE PROTECTION OWED TO FAMILIES BY THE STATE

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (3)

- Laws on public services of social security and assistance to families in vulnerable socio-economic situations (3)
- Boost of the range of social services for family and children (8)

What are the key recommendations? (14)

- To provide economic and social support to vulnerable families (8)
- To support parental education programmes (8)
- To strengthen preventive services and early support and intervention measures (5)
- To train all professionals working with children (5)
- To conduct comprehensive research (2)

FAMILY ENVIRONMENT – FAMILY REUNIFICATION

(4 EU Countries)

Have any positive achievements been identified? (1)

- Adoption of new legislative measures dealing with family reunification (3)

What are the key recommendations? (4)

- Family reunification procedures fully comply with article 10 of the Convention or are dealt in a “positive, humane and expeditious manner” (3)
- Reduce the length of reunification procedure (2)
- Amend national legislation (3)
- Have in place an adequate and systematic training of all professionals (1)

FAMILY ENVIRONMENT – VIOLENCE, ABUSE AND NEGLECT

(12 EU Countries)

Have any positive achievements been identified? (6)

- Adoption of new laws on child protection and domestic violence and of specific plans of action aiming at preventing and combating domestic child abuse (3)
- Setting up a specific monitoring mechanism (1)
- Organisation of a nationwide awareness campaign on the issue of domestic violence and child abuse (2)

What are the key recommendations? (7)

- To develop a comprehensive national strategy to prevent and address all forms of violence (5)
- To establish monitoring mechanisms (6)
- To establish an adequate and systematic training of all professionals (7)
- To strengthen support and protection for victims of violence (6)
- to consolidate national systems of data collection (3)
- to provide for access to adequate services for recovery, counselling (7)
- to provide information on the implementation of the United Nations study on violence against children in the next

FAMILY ENVIRONMENT – CHILDREN DEPRIVED OF THEIR FAMILY ENVIRONMENT

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (3)

- Amendments of existing laws on social and legal protection (2)
- Measures to prioritize family care over institutional care (2)
- Establishment of Independent Reviewing Officers (1)

What are the key recommendations? (5)

- To refer to and use the Guidelines on Alternative Care as a landmark for national policies (7)
- To prefer and support foster care alternative to institutions (10)
- To provide adequate training for care givers at institutional child care facilities (5)
- To ensure access to effective complaints and remedy mechanisms (9)
- To periodically review children's placements (8)
- Periodic report (4)

FAMILY ENVIRONMENT – ADOPTION

(13 EU Countries)

What are the key recommendations? (4)

- To ensure and reflect the principle of the best interest of the child in all steps of the adoption procedures (6)
- To sign bilateral agreements with non-Hague Convention countries (4)
- To penalize and prevent cases of illegal adoptions (3)
- To apply the 1993 Hague Convention in the Overseas Territories (3)

HEALTH – CHILDREN WITH DISABILITIES

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (14)

- The approval of national action plans or laws concerning protection, equal opportunities and integration of persons with disabilities (4)
- The establishment of a national policy concerning the integration of children with disabilities in the education system (5)

What are the key recommendations? (16)

- Ensure inclusive education for children with disabilities, through the provision of programmes and specialized assistance, of special training for teachers, and by ensuring the provision of adequate financial, technical and human resources for schools (10)
- Provide support to families with children with disabilities, both from a socio-economic and from an educational point of view (5)

- Promoting awareness raising to favour inclusion and to eradicate negative social attitudes towards children with disabilities (6)
- To ratify of the International Convention on the Rights of People with Disabilities (4)
- To fulfil the principles set down in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities and to take into account the Committee's general comment No. 9 (CRC/C/GC/9) on the rights of children with disabilities (4)
- To adopt comprehensive national policy/to review existing policies on children with disabilities to protect them and ensure their equal access to social, educational and other services (4)
- Improve the collection of comprehensive and disaggregated data (4)

HEALTH – CHILD'S RIGHT TO HEALTH AND HEALTH SERVICES

(15 EU Countries)

Have any positive achievements been identified? (7)

- The recent progress made in the promotion of breastfeeding (2)
- The adoption of law reforms/national plans of action or programmes/measures concerning health (4)
- The high quality of paediatric services (1)

What are the key recommendations? (15)

- To ensure / facilitate the adequate and equal access of all children, without discrimination, to health care and services, with special attention to disadvantaged or vulnerable groups (8).
- To improve the provision of health services through, above all, the strengthening of health infrastructures and the recruitment and training of health staff (3)
- To strengthen efforts to prevent and combat overweight and obesity (4)
- To promote breastfeeding (10)
- To strengthen regulation/monitoring concerning the market of breast-milk substitutes (11)
- To develop/strengthen a comprehensive mental-health-care system and a mental-health policy for children and young people (7)

HEALTH – ADOLESCENTS HEALTH

(16 EU Countries - total of countries analysed)

Have any positive achievements been identified? (8)

- Introduction of a ban on the sale of alcohol/tobacco to persons under the age of 18 years (3)
- Progress made in the field of adolescents' sexual and reproductive health, including prevention of HIV/AIDS and sexually transmitted diseases (3)

What are the key recommendations? (16)

- To pay close attention to child and adolescent health and/or to ensure effective implementation for adolescents' health programmes (3)

- To improve adolescents 'sexual and reproductive health, in particular through making contraceptive services easily available, through the promotion of sex education targeted at adolescents, in schools and out of schools and the development of child-friendly programmes to assist teenage mothers and their children (6)
- To prevent alcohol, tobacco and drug abuse (11), through, inter alia: undertaking comprehensive studies in order to know the extent of this phenomenon or to understand its root causes (3); effective enforcement of the prohibition of the sale of such products to children and adolescents (2); awareness raising initiatives on negative impacts of alcohol and tobacco, also ensuring the contribution of the mass media (4)
- To strengthen mental health programs, policies and services for adolescents (7)
- (In relation to mental health) Ensure that youth/child-sensitive and confidential counselling services are available and accessible to adolescents and children who need them (4)

HEALTH – STANDARD OF LIVING

(12 EU Countries)

Have any positive achievements been identified? (9)

- Considering the fight against child poverty as a priority (4) and
- Adoption of specific policies/reforms/pieces of legislation designed to fight children poverty (7)

What are the key recommendations? (12)

- To design public policies aimed at addressing both in the short-term and in a sustained manner the problem of increasing child poverty (4)
- To conduct in-depth analysis of the complex determinants of children poverty (3)
- To increase income-support measures for families, prioritizing the most vulnerable ones (7)
- To provide material support to children living in poverty, with regard to nutrition, clothing, schooling and housing (5)

SPECIAL MEASURES OF PROTECTION - STREET CHILDREN

(4 EU Countries)

Have any positive achievements been identified?

No specific positive achievement has been identified

What are the key recommendations? (4)

- Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development (3)
- Develop and implement a national strategy for the prevention of, support to and social integration of children living and/or working on the streets (2)

- To undertake studies and assessment. More specifically it requests to undertake a systematic assessment of the situation of street children in order to obtain an accurate picture of its root causes and magnitude (2)
- Elaborate and implement programmes, on the basis of in-depth studies and analysis of the root causes, in order to prevent children from leaving families and schools for the street. (2)
- To support family reunification programmes or other alternative care, provided they are in the best interests of the child with the active involvement of children themselves.(2)

SPECIAL MEASURES OF PROTECTION – UNACCOMPANIED, REFUGEE AND ASYLUM-SEEKING CHILDREN

(8 EU Countries)

Have any positive achievements been identified? (8)

- efforts to discuss and/or approve national legal reforms to improve the legal situation of asylum-seeking children and unaccompanied children in order to pay more attention to their needs (8) through the refugee determination status (2) the regulation by law of the age determination procedures by means of medical examination in particular when it is disputed (2);
- increase in the number of refugees and asylum-seeking children accepted and decrease in the number of repatriated children and paying special attention to the needs of this category of children (3)
- enhancing the standards of reception centres for unaccompanied children seeking asylum and providing access to a legal representative following a negative decision on the children's asylum (2).

What are the key recommendations? (14)

- to provide enough special reception centres for unaccompanied minors with specific characteristics ensuring the good quality of the service provided and their constant assessment, and mechanisms to receive and address complaints from children (7)
- to facilitate access to basic services such as education and health (6)
- to ensure a legal status and a durable solution for children suffering from trauma and diagnosed with psychological or psychiatric problems, providing the social and health measures required for their mental rehabilitation (4)
- to recognise the 'benefit of the doubt' to the child when there is a doubt about the age of the asylum seeker and to treat him/her as a child (3) and the need of developing a uniform protocol for age determination methods (2).
- to ensure that detention of asylum seeking children is carried out as a last resort, for the shortest time possible, when no alternative measures can be applied either to children separated or together with their families (3).
- to widen the scope of the national legislation on asylum in order to include the international standards and the EU Asylum Acquis (3)
- to introduce the systematic appointment of guardians for unaccompanied asylum-seekers and migrant children (3)

SPECIAL MEASURES OF PROTECTION – CHILDREN OF MINORITIES OR OF INDIGENOUS PEOPLES

(8 EU Countries)

Have any positive achievements been identified? (3)

- Approval of specific legislation on children of minorities

What are the key recommendations? (8)

- Strengthen efforts to remove discrimination and to continue developing and implementing - in close collaboration with the minority communities and especially the Roma community - policies and programmes aimed at ensuring equal access to culturally appropriate services, including education (4)
- Initiate campaigns, at all levels and in all regions, aimed at addressing the negative attitudes towards the Roma in society at large, including among police and professionals (4)
- Develop curricula units for children at school level, including in relation to Roma history and culture, in order to promote understanding, tolerance and respect for the rights of Roma (2)
- Allocate adequate human, technical and financial resources to ensure sustainable improvement in the socio-economic conditions of Roma children (2)

SPECIAL MEASURES OF PROTECTION – ECONOMIC EXPLOITATION

(7 EU Countries)

Have any positive achievements been identified? (4)

- Raising of working age for children involved in light work (1)
- Strengthening legislation on child labour (3)
- Developing a national plan for combating the worst forms of child labour (1)
- Setting up a National Committee for prevention and combating child labour (1)

What are the key recommendations? (4)

- Providing adequate protection and safeguards to working children (5)
- Setting up a framework for prohibiting use of child labour by EU companies based abroad (2)
- Ratifying Convention No. 189 and Recommendation No. 201 concerning decent work for domestic workers (1)
- Collecting disaggregated data (2)

SPECIAL MEASURES OF PROTECTION – DRUG ABUSE

The Committee did not address the issue of drug abuse in the concluding observations of EU Countries in the relevant period.

SPECIAL MEASURES OF PROTECTION – SEXUAL EXPLOITATION, ABUSE AND TRAFFICKING

(15 EU Countries)

Have any positive achievements been identified? (14)

- Ratification of international standards (3)
- Strengthening national legislation (5)
- Developing a national plan for combating sexual exploitation and child trafficking (5)
- Setting up Observatories/Agencies specialised in fighting against these phenomena (2)
- Establishment of cooperation agreements with countries of origin of children trafficked for sexual or other exploitative purposes (1)

What are the key recommendations? (15)

- Adopt policy measures to combat violence in the digital media (6)
- Undertake in-depth studies on the causes, nature, victim and perpetrator typology, as well as extent of sexual exploitation and the use of the Internet (6)
- Increase awareness raising campaigns and public education on sexual exploitation, prostitution and child abuse on a large scale (4)
- Take into account the outcome documents adopted at the 1st, 2nd, 3rd World Congresses against Sexual Exploitation of Children (8)
- Collect data on the extent of sexual exploitation and sale of children (7)
- Provide special protective measures to prevent victimization and re-victimization of child victims (6)
- Strengthen cooperation with the authorities of countries from or to which children are trafficked (2)

SPECIAL MEASURES OF PROTECTION – ADMINISTRATION OF JUVENILE JUSTICE

(14 EU Countries)

Have any positive achievements been identified? (8)

- Adoption of specific legislation in the field (2)
- Setting up of specific institutions (2)
- Specific training for professionals working in the juvenile justice system (2)
- Raising the minimum age of criminal responsibility (2)

What are the key recommendations? (14)

- to ensure that juvenile justice standards are fully implemented, by bringing the juvenile system into line with the CRC (10)
- to review the legislation with the aim of eliminating the possibility that children can be tried as adults and/or detained with adults (7)
- to use detention, including police custody and pre-trial detention and placement in correctional-educational institutions, only as a measure of last resort and for the shortest possible period of time (7)

- to ensure that all child victims and or witnesses of crimes are provided with the protection required by the Convention and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (7)
- to develop a comprehensive policy of alternative sanctions for juvenile offenders (6)
- to make a clear definition of the legal age of criminal responsibility in order to guarantee that children under the age of 14 years are treated totally outside the criminal justice system (4)
- to ensure independent monitoring of detention conditions and access to effective complaints, investigation and enforcement mechanisms (4)
- to train judges and all law enforcement personnel who come into contact with children (4)
- to ensure that children have a lawyer and a trusted adult present in all phases of a proceeding (3)
- to strengthen preventive measures in order to help eliminate the social conditions leading children to enter into contact with the criminal justice system (3)
- to increase and ensure sufficient and adequate allocation of financial, human and other resources (2)
- to take the necessary measures to provide juvenile detainees with prospects for their future, including their full reintegration into the society (2)
- to conduct a thorough analysis of the overrepresentation of foreign and Roma children in the juvenile justice system (2)
- to ensure that children deprived of liberty have access to education (2)
- to seek technical assistance from the UN bodies and relevant NGOs (2)

ChildONEurope Secretariat

c/o Italian Childhood and Adolescence Documentation and Analysis Centre



Istituto degli Innocenti

P.zza SS. Annunziata 12 I-50122 Firenze

tel. 055 2037 342 / 366 / 305 - fax 055 2037 344

e-mail childoneurope@minori.it - website www.childoneurope.org