

Human Rights and Children

17th Informal ASEM Seminar on Human Rights

7-9 NOVEMBER 2017 | SOFIA, BULGARIA



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Human Rights & Children : Seminar Proceedings of the 17th Informal ASEM Seminar on Human Rights

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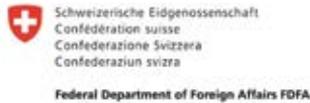
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Seminar Proceedings
of the
17th Informal ASEM Seminar on Human Rights (ASEMHRS17)

7-9 November 2017

Sofia, Bulgaria

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ACKNOWLEDGMENTS

As the fundamental human rights of young people gain more global recognition, the challenge of the widespread implementation of the rights of children must be addressed. Over 100 participants from different backgrounds across Asia and Europe participated in free dialogue on “*Human Rights and Children*” at the 17th Informal ASEM Seminar on Human Rights (ASEMHRS17). By employing an informal, multilateral approach, the Seminar enabled participants to formulate recommendations for the promotion and implementation of the human rights of children. The Asia-Europe Foundation (ASEF) was honoured to co-organise this Seminar and facilitate participants’ discussion and debate on Human Rights and Children.

On behalf of ASEF, I would first like to thank all of the participants in ASEMHS17. Without the exemplary expertise of these attendees, the success of this Seminar and its findings would not have been possible. We sincerely hope that the Seminar has enabled the formation of networks among participants across both regions for future endeavours on the topic of human rights and children.

We would also like to express our deep appreciation to the generous hosts of ASEMHS17, the Ministry of Foreign Affairs of the Republic of Bulgaria and the State Agency for Child Protection, Bulgaria. In particular, we want to thank Minister of Labour and Social Policy, Mr Biser PETKOV, and Deputy Minister of Foreign Affairs, Mr Georg GEORGIEV, for their informative opening speeches. We also extend our thanks to all of the experts from the State Agency for Child Protection, who generously participated as organisers of the Seminar.

Our immense gratitude also goes to our keynote speaker, Ms Mikiko OTANI, from the UN Committee on the Rights of the Child. Her expert knowledge on the topic was greatly appreciated and aided in strengthening the overall relevancy of the Seminar.

We were very thankful to have Ms Amihan ABUEVA, Dr Bina D’COSTA and Prof Ton LIEFAARD as our rapporteurs. Our 2 main rapporteurs, Dr D’COSTA and Prof LIEFAARD, provided their extensive knowledge on children and human rights in the comprehensive background paper, which was utilised by participants throughout the Seminar to form a basis for discussion.

Our appreciation must also be conveyed to the 3 moderators, Prof Harkristuti HARKRISNOWO, Prof Philip JAFFÉ and Ms Xiao’an ZHANG. The moderators brought valuable knowledge and insights to the Seminar that aided tremendously in the facilitation of the working group discussions.

We would also like to extend our gratitude to the co-organisers of the Seminar Series, the Raoul Wallenberg Institute, the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, and the Federal Department of Foreign Affairs of Switzerland, who continue to provide their invaluable assistance and advice at each Human Rights Seminar. Every year our co-organisers, along with the Steering Committee members, offer indispensable and unwavering support and recommendations, without which the Seminar Series would not be as effective. Finally, our special thanks to Mr Rolf RING from the Raoul Wallenberg Institute and Ms Valerie WAGNER from the Federal Department of Foreign Affairs of Switzerland, for their invaluable time and support extended during the seminar.

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Ambassador Karsten WARNECKE

Executive Director

Asia-Europe Foundation (ASEF)

KEYNOTE ADDRESS BY MS MIKIKO OTANI MEMBER OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

The international human rights regime emerged in the aftermath of the World War II. It has developed by setting norms and establishing enforcement mechanisms both at the universal and regional levels. The regional human rights systems originated in Europe, as you know. The European Convention on Human Rights was the first legally binding regional human rights treaty of this kind with the European Court of Human Rights for its enforcement. Similar regional systems have spread to America and Africa, but not to Asia. At the universal level, the United Nations (UN) has adopted the Universal Declaration of Human Rights and 9 “core international human rights treaties” with their monitoring bodies. The Convention on the Rights of the Child (CRC) is one of those treaties and the Committee on the Rights of the Child was created as its monitoring body, of which I am a member.

The UN and regional human rights systems have complemented and interacted with each other. Regional human rights treaties filled some gap in norm setting. The UN human rights system has also benefited from the development of the jurisprudence of the regional human rights courts. The General Comment No. 8 of the Committee on the Rights of the Child on corporal punishment is a notable illustration. The general comments provide States Parties with authoritative guidance for implementing the CRC on specific articles or themes. The General Comment No. 8 clarified that States Parties have obligation to eliminate corporal punishment, although the CRC does not explicitly mention it. In doing so, the General Comment extensively referred to the jurisprudence of the regional human rights systems, including a series of judgments of the European Court of Human Rights.

The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, recognising significant roles of the regional human rights systems, endorsed efforts to strengthen those systems and increase their effectiveness. It also reiterated the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.

In the Asia-Pacific region, the UN started regularly organising workshops in 1990 to explore the possibility of developing a regional human rights system. The tangible outcome was the “building block” and “step-by-step” approach focusing on the national level strategies. In 2010, the 15th Workshop held in Bangkok assessed the developments and welcomed the establishment of the ASEAN Intergovernmental Commission on Human Rights, the first sub-regional intergovernmental human rights body in the Asia-Pacific. Since then, however, the UN Workshop has not been held and the efforts to develop a regional human rights system in the whole Asia-Pacific region have slowed down.

Today, we have the European model of regional human rights system. It is structural. It is featured by the legally binding power on the states and the judicial enforcement. The Asian model of regional human rights system is more flexible and diverse. It is featured by the emphasis on cooperation and strengthening national capacities. On some focus areas such as trafficking and violence against children, sub-regional intergovernmental frameworks have developed. Both the South Asian Association for Regional Cooperation (SAARC) and the ASEAN adopted the Convention on Trafficking in Women and Children. While the SAARC established the South Asia Initiative to End Violence Against Children, the ASEAN adopted the regional plan of action to end violence against children. In the Asia-Pacific, non-state stakeholders such as the national human rights institutions and their networks are playing important roles. In particular, I would like to highlight the increasingly growing movement of civil society. The ASEAN Civil Society Conference/ASEAN People’s Forum was created as a broad

strategic platform for diverse civil society organisations to engage with ASEAN Member States and mechanisms. In the area of children, the Child Rights Coalition Asia was created. It is providing an active regional platform for networking and information-sharing among the child rights NGOs from the countries across the Asia-Pacific region. I am very pleased to see my friend, Ms Amihan ABUEVA, Regional Executive Director of Child Rights Coalition Asia, here with us.

This current Asian model of regional human rights system has grown out of the social context and will continue while increasing its own dynamics.

I would like to emphasise this. At the end of the day, the ultimate goal of the whole system of international protection of human rights is to realise human rights of each and every individual at the national level. For children's rights, all regional, legally binding instruments and cooperation frameworks relevant for children will contribute the effective implementation of the CRC, which will in turn lead to realisation of the human rights of all children in their daily lives – in family, school, community and society. This complementary role that the regional human rights treaties and frameworks can play for effective implementation of the CRC is already installed both in the European Convention on the Exercise of Children's Rights and the Term of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.

What is needed then is to strengthen the partnership between the regional human rights systems relevant for children and the United Nations Committee on the Rights of the Child. This argument is not new as the Vienna Declaration and Programme of Action already called for the cooperation of the regional human rights systems with the UN human rights system. Indeed, the interplay between the regional human rights systems and the Committee on the Rights of the Child has occurred as I mentioned earlier, in particular, in the development of jurisprudence by mutual reference. However, more vigorous interaction will enhance the realisation of children's rights and I would like to highlight 2 areas, which I think deserve our special attention.

The first area is follow-up on the recommendations of the Committee on the Rights of the Child. This is one of the major challenges common to all UN human rights treaty bodies. Issuing recommendations to States Parties after the review of their periodic reports and dialogue with their delegations is the core work of the Committee. Follow-up on the recommendations at the national level is extremely critical for this review procedure to have real impact on the lives of children.

The UNICEF country offices have played a special role in assisting the States Parties to implement recommendations of the Committee. Additionally, the regional human rights systems including networks of non-state stakeholders have potential to contribute in this area. While the responsibility to implement the recommendations of the Committee rests on the states, national human rights institutions and civil society can also play important roles. The regional systems and networks are closer to the national level and have better understanding of the national context. This unique position of the regional human rights systems can be utilised more effectively in the follow-up on the Committee's recommendations to the States Parties in the region. The ASEAN workshop on the CRC held in July this year is interesting to note. Supported by the Embassies of Germany and Switzerland, the workshop pulled together all relevant stakeholders, ASEAN human rights bodies, governments, civil society, Committee on the Rights of the Child, UNICEF and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Such positive initiative should be continued and expanded to cover specifically follow up on the recommendations of the Committee.

The other area I would like to highlight is child participation. Child participation is embedded in Article 12 of the CRC, which establishes the right of the child to express the views freely in all matters affecting the child, and the views of the child given due weight in accordance with the age and maturity of the child. The Committee on the Rights of the Child started integrating child participation in its own work, in particular, the dialogue with States Parties. However, the real practice of child participation at the

international level is limited and remains a challenge. Because of the physical and cultural proximity to children, the regional human rights systems may be more accessible to children. They can provide opportunities for the children from the countries of the region to participate in decision-making at the regional level and interact with children from neighbouring countries. Such experiences will empower children and develop their capacities to participate in the decision-making at the international level.

The theme of this ASEM Seminar, "*Human Rights and Children*", is absolutely timely and relevant in the broader context of the peace of our world today.

On 7 September this year, a very important event was held at the UN Headquarters in New York. It was the 6th UN High Level Forum on the Culture of Peace convened by the President of the 71st Session of the General Assembly. Human Rights is one of the 8 areas of actions identified by the United Nations Declaration and Programme of Action on Culture of Peace. Children are particularly mentioned to be involved in the activities. This year, the High Level Forum specifically focused on children, setting the theme with "*Sowing the Seeds of the Culture of Peace: Early Childhood Development is the Beginning*".

The President of General Assembly, Ambassador Peter THOMPSON of Fiji described the complex global security challenges confronting our world and the global changes at an unprecedented pace with exponential technological advancement and other factors. He emphasised that to meet these challenges and sustain peace "*We must equip children with the skills and education they need to peacefully resolve disputes; to confront injustice and intolerance; and to reject all forms of discrimination and hate.*" Betty WILLIAMS, Nobel Peace Laureate, calling herself advocate for the children of the world, appealed to the Member States and civil society who gathered in the General Assembly Hall that the children of the world has inalienable right to be heard and to have a political voice at the United Nations and at the highest levels of governments worldwide. I had an honour to be invited to speak at the panel discussion of the High Level Form and I would like to end my speech today with my own quote from the High Level Forum.

"The UN Convention on the Rights of the Child is a powerful tool for the building of the culture of peace through early childhood development preparing children as agents of change for peace and non-violence and recognising their evolving capacities as active participants in our global village."

OPENING SPEECH BY MR BISER PETKOV MINISTER OF LABOUR AND SOCIAL POLICY, BULGARIA

Thank you, Your Excellency, for giving me the floor to open this ASEM seminar, dedicated to the rights of the child – to our future, I would say, as the future belongs to our children. And warm thanks to all co-hosts and organisers for their efforts, including in respects to the comprehensive concept paper, which we have in front of us as a basis for the Working Groups' discussions tomorrow.

Allow me to start with the importance which we, at the Ministry of Labour and Social Policy, attach to the rights and protection of children at the national level. It is not by chance that the Governmental Programme for the period 2017–2021 has within the sphere of Social and Demographic Policy – which is among the main priorities – the phrase, “guaranteeing the rights of all children”; and I emphasise “all”, not only children at risk. For that to be a reality we need to implement an integrated and comprehensive child policy, as well as targeted and systematic efforts of all relevant stakeholders in view of guaranteeing access of all children to their rights.

At the European Union level and more specifically within the current EU Council of Ministers Presidency Trio, which comprises Estonia, Bulgaria and Austria for the period from July 2017 to December 2018, children, of course, are not forgotten:

- When talking about a European Union that empowers and protects its citizens we have, within its priorities, the “fight against poverty and social exclusion, including a focus on reducing child poverty”;
- When talking about a European Union of freedom, security and justice, we have within its priorities, “to enhance the legal framework to better protect the best interests of the child.”

You might be aware that such Presidency Trio programmes are elaborated in close consultations between the respective 3 consecutive Presidencies. In this process Bulgaria has insisted for a strong focus on the problems in respect to children. This is the reason why among the 4 priorities in the social field that the Bulgarian EU Council Presidency will have within the first semester of next year, one is focused on “early childhood development”. By itself, this is a relatively new concept but with a big potential, being supported and promoted by the relevant stakeholders, with UNICEF among its strongest supporters. We plan to put forth a Europe-wide discussion on the need for an integrated approach to childcare, targeted at the prevention of the respective risks from the very birth of the child, including early intervention for securing a family or family-like environment for every child.

With that understanding, here in Bulgaria, we actively work on that concept during the last several years for the development of a new model of integrated services in the early childhood, by a mix between the health, social and educational elements in one service. We will not spare efforts for the widest recognition of the concept of early childhood development and the adoption of policies and other political instruments, which guarantee family support and child welfare from the earliest age.

Reducing child poverty has always been in the European agenda, including, as I already mentioned, in the joint programme of the current EU Presidency Trio. It could be identified as one of the greatest challenges we are facing. The multifaceted dimension of child poverty needs an integrated approach to tackle it. This requires a synergy between the respective sectoral policies, especially those relating to health, education, employment, better-targeted and efficient social assistance, and social services for the families and care services for the children. Those are the main avenues for our efforts to reduce poverty and social exclusion of our children.

Mentioning families, we strongly promote the principle that the family is the best environment for child-bearing and child development, which is the reason for our continuous efforts in the de-institutionalisation of children. The reform in this respect is linked with bringing children out of specialised institutions and the respective preventive measures against further placement of children in such institutions. It is also linked with the necessary family support, with the aim of preventing risks and having conditions that best meet the individual needs of the children and best guarantee their interests and rights, including through the development of alternative community-based social services.

Allow me to share with you some figures in this respect. Since 2010 Bulgaria has implemented a consistent and targeted policy on deinstitutionalisation of children, which has led to the following essential results:

- Reduction of children in specialised institutions with almost 90% (from around 7,600 children in institutions in 2010 to less than 1,000 in September this year).
- Reduction in the number of such institutions by almost 75% (137 institutions then and 36 now), including closure of all institutions for children with disabilities.

And we will not stop until we implement all measures and reach all goals of our national strategy in this respect, which has been elaborated in line with the Guidelines for Alternative Childcare, adopted by the United Nations Committee on the Rights of the Child.

In conclusion, allow me to recall that this is not the first time we have an ASEM event in our sphere of activities. In December 2015, Sofia was host of the 5th ASEM Labour and Employment Ministers' Conference, which adopted the Sofia Declaration on the Sustainable Social Development in Asia and Europe.

In our continuous efforts we are always trying to emphasise that child development is an essential part of sustainable development, including within the New York-based Group of Friends of Children and Sustainable Development Goals, comprising 24 UN Member States, of which Bulgaria is a permanent Co-Chair, so that children were put in the focus of Agenda 2030 – and we have succeeded.

Now we are actively taking part in the informal European Union Group of Friends of Children; and during the Bulgarian EU Council Presidency next year we will organise an important event in Brussels, dedicated to children's participation in the elaboration of policies that concern them.

I wish you fruitful discussions in the working groups tomorrow.

Thank you for your attention.

OPENING SPEECH BY MR GEORG GEORGIEV DEPUTY MINISTER OF FOREIGN AFFAIRS OF BULGARIA

Your Excellencies, Distinguished Guests, Dear Colleagues,

On behalf of the Ministry of Foreign Affairs of the Republic of Bulgaria it is a pleasure to welcome you to Bulgaria and to our capital, Sofia. Being a country situated at the crossroads between Europe and Asia, Bulgaria has long been a mingling spot of many different civilisations and has therefore developed strong tradition of tolerance and mutual understanding between people of different cultural backgrounds.

A member of the Asia-Europe Meeting (ASEM) for 10 years, Bulgaria attaches great importance to the role of that unique forum in the informal dialogue between the countries of Europe and Asia, and to the exchange of information and views on issues of common interest. Although we speak of Europe and Asia as two separate continents, in terms of geography the two are actually a single landmass. With this in mind ASEM is a relevant forum to discuss in a profound way the multiple prospects for cooperation ahead of us. It is our understanding that strengthening the ties and cooperation among the ASEM partners in the political, economic, and socio-cultural spheres is of significant benefit to our common stability and prosperity.

I am glad to share with you that increasing Bulgaria's visibility and engagement in ASEM is among the priorities of our multilateral diplomacy. Bulgaria has been participating regularly in the ASEM dialogue at different levels. Thanks to the good collaboration with other partners we have hosted several major events, including the 5th ASEM Labour and Employment Ministers' Conference that took place in December 2015 and the 12th ASEM ClassNet a month earlier. We believe that owing to these developments, Bulgaria has become a more visible player in the ASEM process. We are determined to continue our proactive policy in ASEM by hosting the meetings of the Ministers of Finance and Culture in the first half of 2018.

In line with Bulgaria's firm commitment to the ASEM process, we have joined some tangible areas of cooperation – "promotion and protection of human rights" being one of them, which is among the topical issues on the agenda of the political dialogue and cooperation between Europe and Asia. The commitment to promote and protect human rights and the important role of governments, international and national human rights institutions and regional organisations in this regard have been consistently included in the Chair's Statements of the ASEM Summits and Foreign Ministers' Meetings.

To this end, we attach great importance to the Informal ASEM Human Rights Seminars, co-organised by Asia-Europe Foundation (ASEF), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, and the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs). These seminars provide ample opportunities for interactive and straightforward discussions of a wide range of topics relating to human rights.

It is our great honour to host this year's Seminar, not only because 2017 is crucial for the development of ASEM as it marks the 20th anniversary of ASEF – the single most permanent body of the forum – but also because the Seminar offers an excellent opportunity to further develop and strengthen the policies on the rights of the child through open and inclusive dialogue between partners from Asia and Europe. The themes of the Working Groups are designed to cover the entire spectrum of the rights of children and present possibilities to focus on challenges and offer new cutting-edge solutions.

The Republic of Bulgaria is firmly committed to the comprehensive implementation of its human rights priorities, and among them the protection of the rights of the child. In this respect, we are striving for higher standards, both nationally and internationally, and for a good level of communication among relevant stakeholders – the government on the one hand, and the civil society and the international partners on the other hand. Let me also mention that during the forthcoming Bulgarian Presidency of the Council of the European Union, further emphasis will be put on 2 specific topics, namely, early child development and the equal access to education and culture.

As a candidate for joining the Human Rights Council for the period 2019–2021 and hopefully as its member, Bulgaria is resolved to strengthen its policies aimed at promoting children’s rights, to increase its cooperation with all stakeholders and to pursue its priorities in the field of human rights. In this context, during the 36th session of the Human Rights Council, Bulgaria held a side event, on “*Empowering children with disabilities through inclusive education, building on diversity*”, which attracted many guests, members of diplomatic missions, NGOs, representatives of the civil society, students, etc.

Ladies and gentlemen, at the end of my remarks, please allow me to express our gratitude and appreciation for the strenuous efforts and time dedicated to prepare this seminar by ASEF and the other co-organisers, as well as by the Bulgarian hosts – the Ministry of Labour and Social Policy, the State Agency for Child Protection and my colleagues from the Ministry of Foreign Affairs.

I would like to wish you every success in your deliberation and I look forward to a fruitful outcome of the Seminar.

WELCOME ADDRESS BY MR HENRI PLAGNOL MEMBER OF THE NATIONAL ASSEMBLY OF FRANCE

Your Excellencies, ladies and gentlemen,

As a representative of the French Ministry of Foreign Affairs I have the honour and pleasure to open the 17th Informal ASEM meeting on Human Rights on behalf of the organisers. I want first to express our gratitude to Bulgaria, our host. Thank you for your wonderful welcome, and to the team at ASEF that did their best to welcome all of the participants in good condition.

I don't have the pretension to summarise in a few minutes the huge challenges Europe and Asia are facing to ensure better protection of children's rights in our countries. I invite you to carefully read the remarkable background paper, which is an excellent introduction to our debates. I myself learned many things reading it. I just want to draw your attention to a few key points.

First, I would like to underline a paradox: on one hand, there is no doubt that huge progress has been made in the past 40 years in the recognition of children's rights by the international community with the introduction of the Convention on the Rights of the Child, the CRC, and its optional protocols. On the other hand, the number of children who are victims of exploitation and deprived of their basic rights has increased tragically, and we are still very far from reaching gender equality. A girl dies every 5 minutes in the world as a result of violence. 1 in 4 girls is married as a child, and more than 70 per cent of known trafficking victims are females.

We must not conclude from these dramatic figures that the CRC is useless. On the contrary, we must find ways to better implement its excellent principles, taking into consideration the multiple factors – economic, social, cultural, and even religious – which create barriers that are difficult to overcome. The diversity of our traditions has to be respected, but this cannot be a justification for not implementing basic human rights of children, which are universal.

Civil societies and NGOs, which are well represented today, have a major role to play in holding states responsible. The richness of the ASEF seminar is precisely that it is a forum of dialogue and experience-sharing to promote these values – values we all have in common. My conviction is that we will succeed or fail together, because in the present world, there is no doubt that the challenge is global. I will give, briefly, 3 illustrations – children on the move, child trafficking, and children's rights in the digital environment.

According to UNICEF – and I want to underline the remarkable role played by UNICEF all over the world – nearly 50 million children have been on the move in 2016, which means that they are vulnerable and are exposed to grave human rights violations. In Europe, more than a third of asylum seekers – arriving mostly in Greece and Italy – come from Asian countries, so sharing experience between Asia and Europe is crucial in this field. This demonstrates the absolute necessity of permanent dialogue between Asia and Europe. Co-operation is crucial for legal documentation, preservation of family links for these children, access to critical services, health and, first and foremost, education, especially for unaccompanied children.

Concerning child trafficking, some 152 million children worldwide are believed to be engaged in child labour, with nearly half engaged in its worst forms – that is to say, slavery, commercial and sexual exploitation, recruitment in armed forces, etc. Asian and European Member States have to increase co-operation in this field in order, first, to deter criminal networks and, second, to develop protective measures from the state to protect high-risk children. This needs partnerships between civil society and NGOs to promote the best interests of the children.

Lastly, children's rights in the digital environment is an emerging issue. The extraordinary developments in the Internet create big opportunities for children, specifically for children at risk or on the move. It can help in the preservation of familial links, in promoting education and integration for their entertainment and for free expression — that is obvious. But it also creates new risks — online recruitment and radicalisation, access to pornography, and many other issues. A tragic example that we all have in mind, that concerns nearly all our countries, is the online recruitment of children by ISIS.

To face this issue, it is crucial to develop global cooperation. In France, my country, we really don't know how we will be able to welcome back these poor children who have been forced to follow their families into or, been recruited by this monstrous organisation. These children have been traumatised, have been brought up in terror and awful environments, so we are looking for good practices as to how to manage and secure their futures, to help them to go back to better lives and environments, and also how to enact the de-radicalisation process, because it is necessary for the safety of our societies, and is strongly demanded by public opinion. I think on this specific point, the exchanges you are going to have can be very useful.

To conclude, many interesting debates await us. The richness of the seminar is to promote exchanges of experience, to listen to one another and to examine how, given the extraordinary diversity of our experiences and backgrounds, we may work together for the promotion of the universal rights of children. Our common challenge is to put the children at the centre of a protected system, to ensure the child's involvement in decision-making and to systematically promote child-friendly attitudes that are respectful of their roots and cultures, and promote their best interests.

I wish everybody a very frank and fruitful dialogue, and I thank you for your attention.

SEMINAR REPORT

For building a brighter future for the coming generations of Asians and Europeans: Human Rights and Children were addressed at the 17th Informal ASEM Seminar on Human Rights.

Introduction

International recognition and support for the rights of the child has evolved through the decades. From the initial humble beginnings of the United Nations International Children's Emergency Fund (UNICEF) that helped young victims of World War II, to children's rights being mentioned in the Universal Declaration of Human Rights¹, journeying through related human rights declarations, and finally to 1989 Convention on the Rights of the Child (CRC). More than 190 countries assembled in the United Nations to formalise the Convention and pledged to work towards children's rights in November 1989.

A novel international framework for addressing the rights of the child, the CRC adopted a "3 Ps" approach, wherein "provision" sought to secure access to all available state resources for children's survival and their full development; "protection" was deemed important to save children from exploitation or abuse; while "participation" of children in key processes directly affecting their future was thought to be necessary. The Convention successfully put the children's agenda centre stage for governments' and their justice systems to take action and react accordingly.

In Asia and Europe, multiple local efforts have been made to further strengthen the mechanisms for safeguarding the rights of the child, such the Association of South East Asian Nations' (ASEAN) Plan of Action on Children (1993); the Declaration on the Commitments for Children in ASEAN (2001) that drew heavily from the CRC²; and a year later with the other Asian regional block of the South Asian Association for Regional Cooperation (SAARC) formulating their own Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia (2002). Whereas in Europe, children's well-being is maintained both at the European Union institutional level by the EU Guidelines on Children and Armed Conflict (2003), the EU Guidelines on the Protection and Promotion of the Rights of the Child (2007) and the EU Agenda for the Rights of the Child (2011); as well as the Council of Europe through the European Convention on Human Rights, and particularly, the European Social Charter. Yet, children's rights have been found to be routinely infringed, their bodies violated, and their development stunted in both regions.

To promote an enabling environment for the sharing of best-practices among experts and stakeholders from Asia and Europe, and an exchange of ideas about strategies to counter the exploitation of children and ensuring their welfare, the 17th Informal ASEM Seminar on Human Rights focused on the topic of "*Human Rights and Children*". It was co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs, and the Federal Department of Foreign Affairs of Switzerland (FDFA), and hosted by the Bulgarian Ministry of Foreign Affairs of the Republic of Bulgaria and the Ministry of Labour and Social Policy and the State Agency for Child Protection, Bulgaria. The seminar brought together over 100 experts, professionals, academics, civil society and government officials representing 33 ASEM Partners in Europe and Asia, to discuss the status of rights of children, in particular child protection, development and empowerment, on 7–9 November 2017 in Sofia, Bulgaria. The seminar was opened by the Minister of Labour and Social Policy of Bulgaria, Mr Biser PETROV, who called for reducing poverty and social exclusion of children. While the attending Deputy Minister of Foreign Affairs of Bulgaria, Mr Georg GEORGIEV, highlighted the need for open 3-way communication between the government, civil society and international bodies to better serve and protect the best interest of children.

Additional events at the seminar included a side-event “*Children & the Media*”, a 2-day academic conference that gathered young people and academics from Sofia University St Kliment Ohridski working in the fields of education, law, psychology, media, journalism, communication, and information technology. Complementing the seminar, the State Agency for Children Protection, Bulgaria, conducted a “*Human Rights Seminar for Children*” with adolescents, underscoring the importance of children not being silent actors but, instead, active participants in the political and decision-making process.

The closed-door working groups deliberated upon 3 broad themes: “International Partnership and State Provision for Survival and Development of Children”; “Protection of Vulnerable Children”; and “Participation and Involvement of Children in Decision-Making”. The 2 main rapporteurs of the seminar, Prof Ton LIEFAARD of Leiden University and Dr Bina D’COSTA from the UNICEF Office of Research-Innocenti, advocated for an interconnected 4-pillar approach of recognition, participation, protection and empowerment of children’s rights in their background paper, which formed the basis of the discussion at the working groups in the seminar.

The following key messages below is an outcome of the discussions and debates that occurred at the seminar, which are meant to help and improve the capacity of ASEM Partners to promote human rights in their work, and maintain the conversation with their counterparts in Asia and Europe.

Key Messages

Children’s rights have never been in sharper focus than during the last several years, due to the increasingly visible impacts of social exclusion, violence, disasters, conflict and forced displacement on children and the realisation of their rights.

States have a moral responsibility to protect the rights of all children without discrimination, in particular the most vulnerable. This is also a **legal responsibility** for states, with the overwhelming majority of countries in the world, and in particular all ASEM Partners, being a party to the **UN Convention on the Rights of the Child**. There is a **distinct need to have a national plan of action** in individual countries for the ownership, the leadership, the assistance and the coordination of the implementation of children’s rights. Differences in legal age of children in countries, lead to inconsistencies in the protection of children. With regard to the justice system, it should be recognised that this system does not only relate to children who (allegedly) have committed crimes, but, also, to those children who witnesses or are victims themselves.

An emerging legal and social problem is the **protection of children caught up in state counter-terrorism related activities**. Instead of prioritising post-terrorist act public interventions, **States need to focus on preventive methods**. Countries should have in place, numerous state-driven programmes to target vulnerable populations and prevent social exclusion and the lure of radical ideologies. In addition, one should be aware of the impact of anti-terrorism legislation on children and should take into account the best interests of children when drafting, applying and enforcing such legislation.

Never have the questions on the **protection of children in forced migration** been more pertinent. Differences in the scope and practical application of **laws affecting refugee and migrant children by state officials enables marginalisation** of vulnerable children as they find themselves stuck in a limbo. Political and media narratives on migrant and refugee children too often portray them in a negative light, undermining their integration, protection and well-being. **Unaccompanied minors** are particularly vulnerable, devoid of adult care during their long and often dangerous journey to destination countries. It is important for **States to establish an effective cross-border family-tracing system** and **facilitate an enabling protective environment**, in cooperation with civil society organisations, for timely reunification and interim support measures. Moreover, **children must above all be seen and treated as children**.

Rapid **urbanisation** has seen a fast-paced growth in **internal migration**. The movement from the periphery to the core has also involved children, putting more pressure on urban resources like school facilities, available healthcare, etc. Urban policies of cities need to factor in the growth in city population, and accordingly build on their infrastructure so that migrant children are not disadvantaged or marginalised.

Migrant and refugee children, in particular, are more exposed to other risks, such as the **exploitation of children in the labour market and early marriage**. Children, who do not have avenues to access education, enjoy extracurricular activities or secure family environments are at heightened risk of exploitation and abuse.

Child marriages have no place in modern society. Despite law and policy commitments, this practice remains prevalent in several ASEM Partners. States, civil society, religious leaders and communities themselves need to work more closely together to implement evidence-based prevention methods and better ensure the best interests of predominantly girl children are met.

The **digital age** has heralded a new era of opportunities and challenges. Stakeholders do acknowledge that the Internet is an essential learning tool even in the development of children, the idea of limiting this access to mitigate the vulnerability is fraught with difficulties. **States can have tougher laws** on cyber bullying and paedophiles, and at the same time must **strengthen their intervention policies** through community awareness programs or the school curriculum. **Parents or other caregivers** must be involved as well.

International partnerships, including all 3 parties – governments, businesses, and the civil society (i.e., NGOs, religious leaders and academics); should listen to the voice of the children. States should not underestimate the experiences and opinions of children, as they have an equal stake in their well-being and future, and thus should be provided with the right platform to air their views. These views should be given due weight and consideration.

States should concentrate on collecting best practices from different countries, in the form of databanks or steering groups, which allow for sharing both examples of successes and failures (including bad practices, problems, abusive organisations). State, thus, could build a better organisation or make use of existing platforms.

The shortage of financial resources has inhibited progress, thereby highlighting the importance of greater international partnerships. States should look at partnership and cooperation **for setting minimum standards for the protection of children**, and also encourage interfaith and interreligious dialogues to promote protection of children from early marriage, political misuse and other rights violations.

States should look at the **alleviation of poverty** as a key step to preventing the violation of children's rights and supporting a protective environment. The necessity for a good social protection system — such as inclusion of a conditional cash transfer programme — is particularly higher for poorer children whose risk of abuse is greater. There needs to be **specific national action plans for children across the country including vulnerable caseloads**, where local governments and communities should be involved, including indigenous and minority children, children in residential or institutional care, refugee, migrant and stateless children and HIV-infected children, among others. **Poverty, gambling and alcohol are often interrelated with drug-trafficking, and state regulation and international cooperation among states** is required to fight against these social evils.

State provision should come in the form of sharing responsibilities between families, governments, schools and local communities. Governments should encourage a family-based approach to alternative care in line with children's best interest, avoiding the creation of new institutions, and where institutions are present ensuring strict regulation and oversight. **The sequence of approach should look to the immediate family, relatives and then to the larger community.** Recognising the technical expertise available from specialised child protection actors including UNICEF and NGOs, **states should be more proactive and open to collaborate in order to achieve the best results for these vulnerable children and their families.** In addition, donors should support the national advocacy efforts so that action can be aligned and streamlined.

While most countries have ratified the Convention on the Rights of the Child (CRC), their national legislation has been found wanting. In cases where states have been found willing, lack of knowledge on the ground has hampered progress. **Multi-stakeholder** dialogue with **academics, the judiciary, NGOs, government officials, etc.,** yields better results. However, the embedding of children's rights in domestic legislation, followed by adequate planning and budgeting, remains vital for their implementation.

States have to provide the necessary support mechanisms, with help of NGOs or academia, for children in need such as children facing domestic abuse or the practice of corporal punishment in schools. **States could sponsor media campaigns to empower children with knowledge about their rights**, and report their rights violations. Effective response mechanisms like hotlines, services and professionals should be put in place. States could also adopt the use of smartphones in reporting violence against pupils by people in authority.

Quality education forms another key part of human rights for children. There is a need for inclusive and equal education of all children including those with disabilities. States must work in conjunction with civil society members to construct stimulating and targeted education modules for their future citizens.

The **participation and involvement of children in decision-making** is essential in ensuring that the opinions of the children are heard. **Article 12** of the CRC provides that “state 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.” States should work out viable solutions or tools with relevant actors to ensure children participation, particularly in decision-making affecting their lives. This includes the development of legislation and policies.

States need to be aware that the **structure, institutions and public caregivers working with children need to be constantly evolving**, as it is difficult to sustain constant contact. In addition, migration will continue and centralised institutions would lose their meaning. It is important to look at the methods of working with children. To do this, adults would have to be trained to understand children better by not only focusing on what children are saying, but also by understanding their non-verbal ways of communicating.

General Recommendations to ASEM Partners

1. There is a need to strengthen child rights implementation mechanisms by moving away from the “law in books” to “law in practice”.
2. It is important to ensure support and *enable* children to participate in all decision-making affecting them, including legal proceedings.
3. Additional training should be provided to stakeholders in the juvenile justice system to ensure legal and other assistance to children, even in remote communities, is provided and readily available and accessible.
4. Social procedures and interventions should be established for vulnerable children in conflict with the law, especially for those below the minimum age of criminal responsibility (MACR), and these procedures and interventions should respect the human rights of children.
5. States should invest in multi-agency coordination and cooperation to centralise the approach to juvenile justice issues; this should be part of a national plan of action.
6. It should be recognised that children from marginalised communities are more vulnerable to manipulation by radical groups and terrorism, and therefore need urgent and targeted assistance.
7. States should work on anti-discrimination strategies, where children are discriminated against or stigmatised, including LGBTIQ adolescents. These strategies could be in the form of legal, education, and raising awareness interventions. Governments and the civil society should also initiate targeted programmes to enhance solidarity, tolerance, and acceptance of the migrant and refugee children in society.
8. International cooperation should be enhanced. The Global Compact on Migration should be taken into consideration, and States should look into reconsidering the reservations to the Convention on the Rights of the Child and the Refugee Convention.
9. It should be acknowledged that children can be exploited in the labour market, even in a family business.
10. States should have a national strategy on the protection of vulnerable children’s rights. Cross-national cooperation on prevention of trafficking and sexual exploitation, including refugee, migrant and stateless children, is also necessary, and can be more effective if nations create a common understanding about the topic.
11. The digital age has heralded many opportunities for children, particularly in the field of information-gathering, education, growth and learning; however, it can also come with hazards and risks, with very serious consequences, notably the degradation of the image of women and the potential incitation to sexual abuse and rape. There is a need to work on preventive actions to avert the risks associated with the online environment, including the risk of addiction to internet among children, especially to pornography among young teenagers, besides access to violent videos and explicit sexual content. States should create programmes on educating parents, caregivers, school staff and children on responsible Internet usage among children, which aims to enable children to engage with the digital environment and to protect them from possible harm.
12. States should include children in drafting policy designs in order to incorporate their experiences and advice.
13. Training of all stakeholders in childcare on the sensitivity and vulnerability of children is imperative, and States should allocate adequate financial resources.
14. International partnerships and technical cooperation between ASEM Partners can be strengthened by creating an (ad hoc) Steering Committee and online platform or database where good practices and experiences can be shared within and across regions.
15. Governments should strive for greater partnerships across all layers of society (one of the three Ps) to further facilitate funding and implementation of programmes tailored to meet children’s rights and needs.
16. International alliances can also aid local NGOs in balancing children and parents’ rights.

17. Children should be actively encouraged to participate in potential national plans, such as implementing the UN 2030 agenda.
18. National school curriculum should include human rights of children.
19. The 4 main steps to handling children's rights are recognition, participation, protection and empowerment of children.

Working Group 1 Report:

International Partnership and State Provision for the Survival and Development of Children

While there were many questions to address, the working group focused on 4 main issues: **child poverty** (how to take an integrated approach and realise the 2030 SDG goals); **child education** (how to ensure the right of the child to education); **child protection** (how to ensure the right of the child to be protected, including all against all forms of violence, exploitation and abuse, including children on the move in migration); **international partnership** (how to strengthen the implementation of the CRC).

The aim of discussion was to identify achievements and challenges, as well as recommendations for administrative, legislative, social and educational measures, and how to enhance partnership. The recommendations of this working group go to the seminar report and to governments of ASEM.

Key Discussion Points

The participants acknowledged the very broad nature of the topic, and the conceptual challenges with separating the topic into respective sub-categories, given the interconnectedness of child poverty, access to education and child protection issues, for example.

1. International partnership and state provision

An expanded approach to international partnership was taken following participants' inputs that ranged from CRC implementation, to international development cooperation, sharing of good practices, and expanding and strengthening regional organisations including ASEAN and ASEF.

The critical importance of international partnership was observed by all present as well as the universal nature of child rights, with the CRC remaining the most widely ratified human rights convention to date. While there is international commitment to the CRC guiding principles, survival and development, and protection and participation rights, there remain significant gaps in the implementation and enjoyment of these rights by children across ASEM Member States. In this context there were important discussions on CRC General Comment No. 5 (2003), general measures of implementation, and in particular Article 4 which requires States "to undertake all appropriate legislative, administrative and other measures for implementation" as well as to ensure adequate planning and budgeting for economic, cultural and social rights "to the maximum extent of their available resources and, where needed, within the framework of international cooperation." The challenges for less developed countries were discussed, as well as the issue of de-prioritisation in budgeting and planning. Several participants requested consideration of the **suitability of conditional international development assistance for child rights compliance**, and that respect for child rights should be included in regional alliances and organisations, noting some sensitivities with this approach.

The important role of Member States in CRC implementation, and the nurturing and supporting of civil society were discussed. The significant pressure and expectations placed on civil society in leading advocacy and providing services for highly vulnerable caseloads, particularly when state services are weak or absent, necessitates more support both domestically and internationally. Within this context it was suggested **ASEF should consider support national and regional NGO initiatives for advocacy and information-sharing on different child rights practices.**

In terms of regional partnership, the issue of ASEAN not being inclusive of all of the Asia-Pacific was discussed and the need to involve the North-East Asian countries was recommended as a next step, i.e. ASEAN +3. The importance of ASEAN more broadly as a platform for human rights in the region was noted and the agreement between ASEAN and the CRC on information-sharing. The need for a legally binding agreement on the right to environment and disaster risk reduction initiatives that ensure children's participation was highlighted. The particular vulnerabilities of displaced children and children on the move, including those moving due to disasters as well as conflict was noted, as well as the need to ensure children are consulted and their voices heard. The need for multi-layered partnerships within and across Asia and Europe regions was also discussed.

On a very practical level, practitioner participants in particular expressed frustration on the many different information products out there on child rights issues and difficulty for people to access quality-reviewed resources in a central location. It was recommended that relevant quality surveys, studies, policies and other good practices be gathered in one centrally available repository for ASEF Member States (e.g., country-to-country and region-to-region sharing of good practice policy responses, legislation and service delivery). Recognising the significant amount of information available and the nature of the task, there was concurrence for a **database and steering group**. The material review process should clearly identify poor practices and related lessons as well as the good. Online platform modalities were discussed, including possibility to link existing platforms. Main objective is to facilitate evidence-based interventions sharing across ASEF Member States and ultimately improve child rights and service delivery for children in the spirit of the CRC.

In terms of state provision and enabling a protective environment for children, the importance of meaningful partnerships between the state (including security actors, justice, education and social welfare ministries) communities, families, civil society, religious leaders, business actors and children themselves recurred as essential for a holistic approach. The importance of engaging and training judiciary actors in the CRC and child-friendly processes was raised several times by practitioners. Implementation concerns were recurrent, and greater partnerships across layers of society and actors, including religious leaders, seen as important part of the solution. In terms of specific caseloads, the challenges of refugee and migrant children on the move in Asia and Europe highlighted in background paper reinforced the significant gap between legal and policy commitments and practice by agents of the state, including border officials and security actors. The research evidence and discussions reinforced the essential role of the state in dis-incentivising institutional care through legal and policy actions, including enabling family-based care solutions. In terms of solutions for reducing the implementation gap, participants called for greater impact assessment of national action plans, policies and legislation, including consultations with impacted children.

One of the good practices raised include Child Rights Study on Children in South Asia that covered preventing trafficking, violence, early marriage and enhancing access to education. Working groups have been established with Member States, NGOs, regional organisations (e.g., SAARC), there have been legislative achievements for the region, as well as the development and strengthening of local and regional NGOs. The importance of international partnership is significant, given that change is slow, with the key challenge being lack of funding. Another good practice can be seen in the bilateral initiatives on juvenile justice between Norway and Indonesia. There is a strong partnership between the Council of Europe (CoE) and EU, noting the CoE has a good practice tool for assessing child participation.

2. Child poverty

As outlined in the background paper, there is a strong correlation between child poverty and child rights violations. Child poverty and the subsequent denied access to critical services necessary for their protection, survival, well-being and development violates core principles and provisions within the CRC. The issue of 61 million children left behind in China while parents migrate to cities in search of work was highlighted as a serious concern. There is a need for Member States to ensure national action plans are in place that engage national and local governments, civil society and communities, as well as consulting and providing for the needs of different vulnerabilities including but not limited to migrant and refugee children, urban and rural children, children with disabilities, children in alternative care, indigenous and ethnic minorities, HIV-infected children, for example (this is a non-exhaustive list that requires country contextualisation). Participants highlighted drug, alcohol and gambling addiction as factors influencing family violence, too often in poor families, and the need for international cooperation, as well as evidence-based state regulation measures.

In terms of good practice in child poverty reduction participants highlighted cash transfers, including conditional and those targeting mothers, that have delivered results for poor children who are more vulnerable to violations. Unacceptable rates of child poverty highlight the need for state investment in their social protection system and ensuring associated minimum standards.

The challenges of push and pull factors for adoption, including inter-country adoption targeting poor families, were discussed. Poor parents are often tricked into believing they are providing their children with access to education and food, when in reality orphanages are either deliberately (through connections with organised crime) or through negligence, exposing these children to unacceptably high levels of exploitation and abuse, including sexual abuse. The need for strong state regulation and oversight on adoption and children in institutional care was stressed. The primacy of the best interest of the child in reviewing alternative care options, including the reality that the overwhelming majority of children in institutions have a living parent or relative that could be supported to take care of the child. Children's best interests are not served by placement in orphanages, instead alternative care arrangements based on best interest determination processes by suitably trained social workers must be sought and provided.

3. Child protection including violence, exploitation and abuse against children

This sub-issue could have been a stand-alone topic in itself, and as a result the below touches on some key concerns but should not be taken as exhaustive.

Children are at risk of violence, exploitation and abuse in their homes, at school, in their communities and in displacement. Violence in the home, including corporal punishment and other forms of abuse, is a key challenge requiring significant investment in evidence-based legislation and policy initiatives, implementation capacity proportionate to needs and behaviour change campaigns targeting parents and caregivers. The issue of corporal punishment in schools is also a key challenge. In both cases advanced evidence-based behaviour change initiatives are required. At present there is a ban on corporal punishment in 24 Council of Europe (CoE) countries. However, to date there has been no survey on this prohibition and its results, and there remains a gap between legal provision and effective implementation.

The critical importance of sharing evidence-based good practice and robust civil society-government partnerships, including the judiciary, preventing and reducing violence against children, as well the very real challenge of changing adult and community knowledge, attitudes and practices towards non-violent discipline methods, were emphasised in discussions. The Working Group agreed on the importance of taking steps to empower children including through tools such as adequately resourced and staffed helplines and response services.

The issue of the unacceptably high risk of violence, exploitation and abuse, including sexual abuse, against children in institutional care and also separated and unaccompanied children on the move was reinforced by participants. The critical need for effective monitoring, reporting and response mechanisms, including legislation and state oversight was reinforced. The importance of alternative family-based care options based on best interest determination processes was restated. Finally, several participants called for a paradigm shift in how state and civil society actors respond to violence in the home, from removing victims to removing perpetrators.

In terms of gender, participants discussed discrimination against girls in access to education, bullying and discrimination against non-confirming Sexual Orientation and Gender Identity (SOGI) adolescents and youth, and gendered child marriage and child labour pressures and risks. In terms of solutions for harmful social practices such as child marriage, participants emphasised the critical importance of engaging community and religious leaders.

4. Quality education

The critical importance of access to quality and inclusive education for all children recurred throughout the Working Group's discussions. This included issues outlined in the background paper on child rights in the digital age highlighted inequitable access to new technology, and in particular the Internet. The critical need and right for children from different socio-economic background to have equal access to quality education was emphasised. More specifically, in terms of inclusive and equitable access to education, information technology provides significant opportunities for advancing access for children with disabilities as well as children from migrant backgrounds. Further, participants agreed on the need for child rights literacy in education curricula that empowers and promotes inclusion and diversity. The preventive and restorative role of access to education for child at risk of or engaged in the worst forms of labour was highlighted.

The denial of access to education and attacks on schools, along with the many other child rights violations discussed today stem from conflict which highlights the need to invest in peace and conflict prevention efforts. There is the need for an international partnership for peace; denial of access to education is not always about financial barriers.

Recommendations:

The robust discussion, broad topic and diversity of opinions and backgrounds provided for a rich discussion, culminating in agreement on the following concrete and prioritised recommendations that were presented in the plenary:

- Establish a Steering Committee, Mapping and Online Platform for sharing good practices across regions and countries
- Integrate child rights literacy in education curricula
- Consider including conditional assistance promoting the respect for child rights in regional alliances and organisations
- Need for information, education and communication campaigns on child rights, including corporal punishment, for parents, teachers and communities
- Strengthen support for vulnerable families and family-based care approaches; and commit to deinstitutionalisation
- Consider expanding ASEM's human and child rights mandate and functions, including funding for civil society, training, good practice sharing

Working Group 2 Report:

Protection of Children in Vulnerable Situations

There was consensus in the Working Group that the concept of “vulnerability” should be understood broadly, reflecting the realities and challenges of children in low-, middle- and high-income countries across Europe and Asia. Thus, children in vulnerable situations may include, among others, children in conflict with the law, children in migration, children in care, children with disabilities, and children who are exploited in various settings.

The discussion was based on selected questions drafted by ASEF in the seminar’s concept paper, and was focused on 3 main topics. The first topic was **juvenile justice** addressing many issues impacting children in conflict with the law, and children as victims and witnesses in the criminal justice system. The working group also highlighted the issue of children and radicalisation as an emerging legal and social issue. The second topic was **children “on the move”** addressing the challenges related to children and migration, and the “invisibility” of children in migration contexts. In this regard, the Working Group paid particular attention to the importance of enhancing solidarity and tolerance in society, and the importance of recognising and treating children in migration as *children* (citing UNICEF’s “a child is a child” campaign). The third topic was **child exploitation in various settings** addressing variety of issues, including children’s economic exploitation, sexual exploitation, children and armed conflict, and the impact of the digital environment. In this regard, the Working Group also discussed the issue of age limits and how to balance protection and evolving capacities of children.

Throughout the discussions, the participants raised current and emerging challenges, expressed critical and thought-provoking views on the issues, and shared positive examples and good practices with the group. As will be described, each topic was concluded with recommendations for government and non-government actors to strengthen the protection of children in vulnerable situations, in ASEF countries and beyond.

1. Juvenile justice

At the beginning of the discussion, the participants reflected on the differences in the European and Asian legal systems and approaches to children in conflict with the law, and children in the criminal procedure as victims and witnesses. It was acknowledged that various legal systems within Europe and in Asia had different approaches on how to treat children and realise their rights in practice. Briefly, the participants raised such notable differences – for example, the variations in the minimum age of criminal responsibility (MACR), the use of diversion mechanisms, and the difference between a welfare based and a criminal justice based model of juvenile justice systems.

Recognising the different legal systems and approaches in the respecting countries, there was a strong consensus in the Working Group that children’s rights in juvenile justice should be safeguarded from the outset of proceedings, and that measures need to be taken in order to ensure the criminal system is friendly towards children, and that they are able to effectively participate in the proceedings. Relating to this, some of the participants raised the importance of ensuring the child has the same lawyer during the different stages of the criminal process, in order to facilitate trust and familiarity. Also, it was agreed that the discussion should address all relevant actors in the juvenile justice system, including state authorities, police, prosecution, prosecutors and defence lawyers, social workers, institutions, the family and the child. The ultimate objective of juvenile justice should be the child’s reintegration into society, according to Article 40 (1) of the CRC.

1.1 Minimum age of criminal responsibility

The discussion began with a focus on the CRC. It was highlighted that while the CRC does not require a specific minimum age [CRC, Art. 40(3)(a)], the Committee on the Rights of the Child (CRC Committee) found that the age of 12 is the absolute minimum age that is internationally accepted, and guided State Parties to raise the MACR to at least 12, and to continue to increase it to a higher level (CRC General Comment No. 10, Paragraph 32, 2007).

In relation to the MACR, some participants of the Working Group said there is a need to develop more educational-oriented procedures for children below the MACR who commit an offence, and provide them with better assistance and support. Children below the MACR can still pose a risk to others, society and themselves, and may be involved in serious crimes. This requires adapted (non-criminal) procedures to rehabilitate, treat and guide the child and his or her family, outside of the juvenile justice system, but with adequate legal protection.

The Working Group also expressed concern over the upper age limits for juvenile justice, in particular regarding the separation of children and adult prisoners. In particular, the Working Group discussed the issue of children deprived of their liberty and how they should be addressed once they turn 18. There is, on the one hand, a problem in keeping them with very young offenders in a separate juvenile detention facility; and on the other hand, moving them immediately to adult detention facilities, which can place them at increased risk of violence and may negatively impact their rehabilitation process.

1.2 Child victims and witnesses

The Working Group briefly discussed the issue of child victims and witnesses, and their experience in the criminal proceedings. Some of the participants suggested that there are no sufficient measures for such children, in particular with regard to psychological support. Also, it was noted that in many countries there is no consistency of contact persons for child victims and witnesses to accompany them in the different stages of the criminal procedure (i.e., social workers, child interrogators, etc.)

1.3 Coordination, cooperation and training of professionals in juvenile justice

The Working Group also discussed issues of coordination, multi-agency cooperation, and professional capacity in relation to juvenile justice.

For coordination and cooperation, there was a consensus that national, federal, regional and local coordination is important, and that it is particularly complex in light of decentralisation measures. Some participants also highlighted the importance of cooperation between public and private actors (i.e., lawyers, social workers, civil society organisations, etc.) Some participants also held that while multi-agency cooperation and coordination is key, there should be *one* entity that can take the lead and be responsible for children in juvenile justice. This coordination could take place at the national level, although this may differ across countries.

The participants also highlighted that cooperation between relevant agencies and actors is crucial in order to tackle the root causes of criminal behaviour of children, such as marginalisation and social and economic inequalities, and to introduce prevention measures. Multi-agency cooperation can also assist in recognising particularly vulnerable and over-represented groups of children in the juvenile justice system (such as children in alternative care, radicalised youth, children from minority groups, etc.), and devising particular prevention and reintegration measures.

In addition, many participants pointed out that there are sufficient and adequate legal standards at the international and national level, but that there remains a problem in relation to their effective implementation on the ground, “from law in the books to law in practice.” This requires investment in human and financial resources to promote implementation measures and to realise children’s rights.

Finally, the Working Group discussed the need to invest in professional training and capacity in relation to juvenile justice. The issue of child participation was also discussed, and the need for child-friendly information and adapted communication techniques. Specifically relating to lawyers, it was noted that in some countries there are not enough trained lawyers, especially in rural and remote areas, and this makes children in conflict with the law more vulnerable. This requires additional training on how to work with children, and it was recommended that such training will be introduced in law schools, and through the bar association on a national level.

1.4 Special focus: Children and radicalisation

The Working Group paid particular attention to the issue of children and radicalisation in the juvenile justice context. There was a consensus that this is an emerging legal and social challenge in many European and Asian countries, and that it can have a grave impact on the lives of children.

Participants discussed the issue of children being charged with terrorism-related offences. It was agreed that children are particularly vulnerable to manipulation and exploitation by terrorist groups and that they are often targeted in (online) propaganda, or are influenced by family, close friends and community members.

It was noted that in many countries terrorist-related laws are broad in scope, and that further analysis is required in relation to how these laws may apply to children and what measures and safeguards are required in that regard. In particular, participants discussed the issue of children returning to their home countries after having been involved in fighting, whether they returned to their parents or chose to leave independently.

In the discussion, there was a consensus that there is a need to tackle the root causes of radicalisation (such as economic and social inequalities, marginalisation, etc.), and focus on prevention measures for children (i.e., educational measures, online tools to address propaganda by terrorist groups, ensuring after-school programmes for youth, etc.)

Selected Recommendations

- Establish social procedures and interventions for children in conflict with the law, who are below the MACR.
- Ensure support and enable children to participate throughout the stages of the criminal proceedings by:
 - Providing child-friendly information
 - Training in communication techniques adapted to children
 - Ensuring that children are accompanied by parents or a trusted adult.
- Strengthen implementation mechanisms (from “law to books to law in practice”), and ensure that the relevant actors, at all levels, have sufficient human and financial resources to operate.
- Recognise that multi-agency cooperation and coordination is key. National governments should take the lead in facilitating this cooperation.
- Recognise the groups of children that are particularly vulnerable or over-represented in the juvenile justice system, and invest in prevention strategies and in their treatment, guidance and rehabilitation
- Provide additional training for actors in the juvenile justice system (i.e., lawyers, social workers) and ensure legal and other appropriate assistance to children, also in remote communities
- Special focus: Children and radicalisation
 - Study the connection between marginalisation and economic and social inequalities to radicalisation
 - Analyse how terrorism laws apply to children and what measures and safeguards are required to safeguard their rights

2. Children “on the move” (children and migration)

At the beginning of the discussion, it was acknowledged that children and migration is a universal concern, impacting both European and Asian countries. It is a complex issue, which includes interaction between different actors within the state (i.e., governmental authorities and civil society organisations) and between states (host, origin and transit states). While it was acknowledged that there are significant political, social, legal and resource-related problems regarding migration, the Working Group commented that children in migration are often found *in limbo* situation, and are invisible to the systems and society. There was a strong consensus that children’s rights and vulnerabilities should be recognised and that also in the migration context, it should be recognised that “a child is a child”.

The discussion reflected on the European and Asian migration movements, and while these are different, there are common challenges and good practices from which to learn. The Working Group also addressed the root causes of migration: conflict, poverty, climate change, violations of human rights, pursuit of a higher standard of living, etc. — and that, therefore, there needs to be an investment and emphasis on peace and economic development as a prevention strategy to mass migration. Some of the participants also mentioned issues relating to migration within countries (i.e., internal migration), and in particular challenges relating to urbanisation. It was commented that the movement from rural to urban areas also impacts children, and that this needs to be taken into consideration (for example, in relation to health care provisions, labour regulations, living conditions, etc.)

Some of the notable issues discussed relate to vulnerable groups of children in the migration context, challenges in relation to migration procedures and their impact on children, and the need to invest in raising awareness in society as to the image of the migrant, and promote non-discrimination, social inclusion and tolerance.

2.1 Vulnerable children in migration

As described, there was a strong consensus that children's rights and vulnerabilities should be recognised in the migration context, i.e., "a child is a child". The issue of migration should also be assessed from the children's rights framework of recognition, protection, participation and empowerment; and States should ensure that child migrants and asylum seekers are specifically guaranteed their right to education, health-care, participation and non-discrimination, and that deprivation of liberty should be prevented.

The Working Group also addressed the different categories of children in the migration context – for example, unaccompanied children, children travelling with family, children who suffered trauma, children with disabilities, children who were trafficked, etc. Also, the Working Group briefly addressed the issue of child marriage in the migration context, due to economic pressures among others, and how to tackle this in practice.

2.2 The legal standards and the migration procedures

The Working Group addressed the fact that the legal framework relevant for migration does not allow migrants to work and support themselves, and thus places financial obligations on the state itself. This can create conditions for social marginalisation and resentment in society. In many cases, migrants are pressured to work illegally, and this can negatively impact their residence.

It was also commented that some States that have not ratified the UN Refugee Convention or set reservations to certain articles in the CRC relevant to migrants. This allows these States to be "passive" in relation to children in migration, and results in different standards for assisting children in migration across the globe. On the other hand, some of the EU regulations relating to asylum seekers seeking international protection (i.e., Dublin Regulation) were discussed, and it was noted that these have provisions that relate to the situation of children.

In addition, the Working Group briefly touched upon some of the unique challenges for children in asylum-related procedures. This included the issues of age assessments, guardianship and custody of unaccompanied children. The Working Group also mentioned the importance of enabling child participation and empowerment in the migration procedures. The particular issue of child detention in the migration context was also addressed, and participants shared from their experience and country-related examples in this regard.

2.3 Raising awareness and social programmes

The Working Group in particular commented on the discrimination and stigmatisation faced by migrants in the host countries, and that this can result in marginalisation and social exclusion. It was noted that many actors express negative and discriminatory attitudes towards migrants (i.e., politicians, community leaders, media, etc.) As a result, migrants are portrayed as either (complete) offenders or as (complete) victims of their situation, and never as "normal" human beings. Such public perception does not allow for social integration of migrants, including migrant children.

There was consensus in the Working Group that this situation requires investment in social programmes to promote integration, tolerance, prevent radicalisation and increase solidarity in the public. It was acknowledged, however, that achieving this can be problematic as negative opinions towards migrants are not only found within the general public, but are actually "promoted" by politicians and in the media.

2.4 Migration and trafficking

Finally, and as a “bridge” towards the third topic of discussion (“children subjected to exploitation”), the Working Group briefly addressed the relationship between migration movement and trafficking in persons. Some of the participants said it is difficult to distinguish between movement and trafficking, and that therefore they believe the focus should be on identifying and responding to exploitation of children.

Selected Recommendations:

- Ensure a children’s rights framework (recognition, protection, participation and empowerment) for child migrants and asylum seekers (“a child is a child”)
- Focus on the most vulnerable groups of children in the migration context (i.e., unaccompanied children)
- Connect to the international community: ratify international standards, reconsider reservations to the CRC and foster international cooperation in relation to migration
- States, as well as civil society organisations, should invest in programmes to enhance social solidarity and tolerance, and promote education and understanding, towards migrants, and in particular migrant children
- Address root causes of migration through international cooperation and support

3. Exploitation of children in various settings

The final part of the discussion was devoted to exploitation of children in various settings. It was acknowledged that exploitation of children should be understood broadly, covering many different settings, including economic exploitation, child labour, sexual exploitation and children in armed conflict. In addition, it was recognised that the digital environment poses specific challenges with regard to the protection of children against exploitation.

3.1 Child labour

First, the group discussed economic exploitation and the issue of child labour. This seems relevant for all ASEF countries (i.e., low-, middle and high-income countries). It was discussed that work as such is not necessarily problematic, but that it can relate to or result in hazardous forms of labour that are on strained terms with children’s rights. If work places children at risk of accidents or injuries, jeopardises children’s education or disregards the right to leisure and play of children, it must be regarded as problematic. The Working Group discussed examples of specific forms of problematic work for child at the domestic level and also touched upon the thin line between “helping hands” (e.g., children working within the family business) and “child labour”. The Working Group noted that there is generally less supervision in a family or private context, which may put children at a higher risk. It was also noted that while laws may be in place, countries are struggling with their implementation. The International Labour Organization has developed manuals that may be helpful in this regard. It was further noted that the eradication of worst forms of child labour has been included in the Sustainable Development Goals, in Target 8.7, which reads that States should “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”

3.2 Sexual exploitation

The Working Group briefly discussed the issue of child prostitution. One felt that there is big need to invest in treatment and reintegration of children who are victims of sexual exploitation. This requires ongoing attention, and the training of state actors, such as law enforcement, is critical. They should be sensitive to the specific needs of child victims; also if the latter engage with the criminal justice system, for example, as witnesses. They should also be trained in identifying children as victims of sexual exploitation.

It was furthermore noted that children belonging to minorities or placed in alternative care require special attention with regard to sexual exploitation. The issue was further addressed in relation to digitalisation and digital technologies. The negative impact of digital technologies and the need for international cooperation were discussed.

3.3 Children in armed conflict

The position of children in relation to armed conflict was briefly discussed. It was noted that there are differences in international standards, particularly with regard to age limits. It was also observed that the international community is moving towards a “straight 18” approach (see for example, the Optional Protocol on the Involvement of Children in Armed Conflict, in addition to the CRC standard in Article 38), as an attempt to rule out the involvement of children in armed conflict, in its various forms. This also has implications for voluntary recruitment in armed forces. It was reiterated that the ending of recruitment and use of child as soldiers has become part of the sustainable development agenda.

3.4 Digital environment

While there was recognition that online environment can hold risks and threats for children, there was a consensus that it also has a great positive effect on their lives, through access to information, education, communication with peers, play, and more. The issue of cyber bullying was discussed, which is an issue of concern in many countries. Some participants argued that a child should not be left alone in his or her online environment. There is reason to communicate with children about their online activities (e.g., through parents and schools). It was observed that access to Internet is very easy and globally pervasive. As it is an important factor for children’s development, it therefore does not seem realistic to limit access to the Internet. Problems with the online environment are often connected to the offline world. For example, cyber bullying rarely occurs without a connection with offline bullying. Some examples of legislation and specific projects to address bullying and other problematic online behaviour of children (e.g., sexting) were discussed. It was agreed that governmental and community leadership is needed in implementing the right strategies. Parenting in the digital age was also discussed. It was noted that many parents find it difficult to keep up with the digital developments, and that in the end children are more connected to the digital world than their parents. It was felt that parents need support in order to be prepared to engage with their children about their online worlds and to recognise what the digital era brings in terms opportunities and risks. It is up to governments to step in and provide parents (and schools) with support. It was suggested that governmental support could be achieved through public campaigning or through the provision of information to parents soon after the birth of the child. Digital technologies develop fast, so it is important to keep up. A final issue that was mentioned concerned the involvement of non-state actors, including the private sector (e.g., telco and IT companies). There are examples of countries where the private sector plays an active role in informing children about the risks of online activities.

3.5 Special focus: Age limits and the balance between exploitation and evolving capacities

The Working Group paid some attention to children's evolving capacities in relation to the right to be protected against exploitation (in its many forms). Although it may be regarded necessary to categorically exclude children from situations in which they run the risk of being exploited or subjected to harmful circumstances (e.g., in armed forces, prostitution, labour, etc.), it was felt by some participants that one should not overlook children's agency and right to have decision-making powers and the right to participate. Protection of children against sexual exploitation, for example, should not disregard "normal" sexual behaviour of adolescents. The Working Group discussed the issue of age limits, which include context, culture, particular subjects and consequences of decisions. The age limits are very different and also inconsistent among and within different countries. Lowering the voting age, for example, could be seen as positive in light of children's right to participate, it was argued. The question was raised if there is a need for the international normative framework to reconsider the legal age of children or that this is something that should be determined at the national level. Children on the move, for example, may be confronted with different age limits providing different levels of protection. Other issues relating to age limits that were mentioned included medical decision-making, for example gender modification and child marriage, which can also be a form of exploitation. Some participants commented that if children are not allowed to have decision-making powers, they should at least be able to participate in relation to policymaking on the issue.

Selected Recommendations:

- In labour regulation, consider also children working at home and within families
- Invest in the reintegration of child victims of sexual exploitation
- Support parents, community and schools on how to educate and join children online
- Balancing participation and protection in the online and offline world:
 - o Draft a national policy or strategy on children's rights protection, including online protection
 - o Support child participation in policy design — at the level of government, communities, schools and private sector
- Support more stringent law enforcement at national level, in relation to all forms of exploitation
- Facilitate cross-national cooperation for online child pornography, trafficking and prostitution
- Training of state actors (e.g., law enforcement) on child-sensitivity (child-victims)

Working Group 3 Report:

Participation and Involvement of Children in Decision-Making

Members of the Working Group started the discussion by reacting to the background paper, and progressed to the exchange of views, questions, and experiences on different concepts and areas of child participation. The Working Group looked at the prepared questions, though the flow of the discussion moved according to the interests and concerns of the Working Group participants.

Throughout the discussion, the Working Group participants identified key points, which include the concepts of age, evolving capacities, and competencies of children in understanding and upholding child participation; the capacities of adults to respect, protect, and fulfil the right of the child to be heard; the link between access to information and child participation; the special circumstances of and consideration for the participation of children in vulnerable situations; and the role of governance and planning in ensuring child participation in decision-making. The child participation challenges and recommendations were also identified as these key points were raised.

Key Discussion Points

1. Understanding the concepts of age, evolving capacities, and competencies

The participants agreed that upholding child participation requires understanding that all children, no matter what age, should have the right to express their views. There should not be an age limit for children to express their views. Their opinions and views must be given due weight, and giving due weight to children is closely tied to the perceived capacities of the children.

The concept of children's evolving capacities is important and relevant in ensuring the right of the child to express their views, but identifying the level of children's capacities requires considerable work in actual practice, such as in situations involving judicial procedures. Judges have to make decisions on determining the evolving capacities of the child.

Nonetheless, adults need to presume that children are competent, until proven otherwise, and not the other way around. All legislators, judges, adults, and other decision-makers should recognise that children are competent and they should accept the consequences that go along with this recognition. For instance, in setting up helplines, the adults should be ready to receive prank calls from children because these are age-appropriate responses. Depending on how adults respond to the prank calls, the children will call back again once they have a real problem. Thus, if the adults are not ready for these consequences, they should rethink their plans or actions regarding hearing children's voices.

2. Developing the capacities of adults to uphold the children's rights to be heard

The evolving capacities of the child are always discussed, but there should also be a discussion on the capacities of the adults to understand what the children are saying. Most of the time, child rights specialists have a mindset to zero in on children, but there should be a holistic approach to upholding the right of the child to be heard. The national contexts of the child, including the family, schools, community, should be taken into consideration. The efforts should not just be about focusing on children, but on bringing the mindset to create the possibility for everybody to collaborate around the child. The right to be heard should be treated as an important factor for the child's holistic development.

Moreover, building the skills of the adults and building the trust of the children to talk to the adults require time. Adults should understand that the intended results could not be achieved immediately. In relation to this, professionals and adults working with children should learn about the standards on working with the children. Their training should start at the university and should extend to daily practice. This is especially important for cultural and linguistic mediators in cases involving refugee children or asylum-seeking migrant children. The filter of the interpreters may hinder the child's right to participate, so the interpreters need to be trained about the language and culture of the children they are serving.

Adults also need to understand that there is difference between the child's right to express their views and the right to decide. They need to explain to children that final decisions, such as in judicial proceedings, may be different from what the children wanted because of different factors.

Additionally, there are instances when adult themselves do not know about their rights, making it more difficult for them to uphold children's rights. Adults need to be empowered in order for them to support the empowerment of children.

3. Ensuring children's access to information

The right to access to information is closely linked with the right of children to express their views. Increasing access to information increases the capacity of children to participate. Children need to know about the United Nation Convention on the Rights of the Child (CRC), bearing in mind the children's cycle of growth and developmental stages. Human rights education can start in school, even at kindergarten level, and at home.

In explaining the CRC to the children, adults have the responsibility to translate the rights on concrete practical issues for the children, using child-friendly tools and methods. There are ways to make the children understand public budgeting or to make the children be informed about the child rights-related actions and efforts of regional bodies, such as ASEAN. Adults can also explore different approaches to teaching human rights to children, depending on the children's needs, cultural situation, and other factors. For instance, adults could explore partnerships with different stakeholders, educate through training, disseminate information through school textbooks, or use commemorative days to talk about children's rights.

Moreover, children should be informed about laws that could affect them. These laws should be understood by children through audience-specific and child-friendly means. To ensure this, adults themselves should also be able to have a clear understanding of the law.

4. Facilitating the participation of all children, including children in vulnerable situations

The Working Group agreed that efforts should be made to reach out to the invisible children, including children on the move, children out of school, and children who are not performing best. The gender component of child participation should also be taken into consideration.

In relation to children on the move, state parties must recognise that all children have the right to participate, even those who are non-citizens. Also, even with the challenge of remaining in contact with them, children on the move should not be viewed as one category. They have different needs and, thus, require different interventions.

Creating child-friendly documents, tools, and spaces facilitate child participation. This can be in the form of child-friendly reading materials or child-friendly police and judicial proceedings. Digital media should also be viewed as a means to uphold the children's right to participate. One way to do this is by having an e-government or electronic platform for the participation of children in decision-making.

Child participation should empower the children to become their own advocates. In addition, consulting with children should be standard, and to the greatest extent possible, children should be involved in the execution of decisions that pertain to them. Nonetheless, part of upholding child participation is also making the children understand that not all decisions are equally important. In order to avoid false expectations, children can be told to prepare for disappointment or to be aware that change takes time.

5. The role of governance and planning in ensuring child participation

States have the institutional responsibility to ensure child participation. In doing so, child participation should be recognised as a right, and not as an option. It also means that children have the right not to participate.

Child participation should be linked with the efforts to achieve Sustainable Development Goals, especially Goal 16 on peace and justice. Children should have a say in the implementation and monitoring of these Goals. Child participation should also be implemented at all levels of society and governance. In some countries, 16-year-old children can vote in the local elections. This can be viewed as a good practice, but caution must be exerted because it may also open issues on children's right to protection.

The government also has the responsibility to monitor child participation at all levels. The monitoring mechanisms do not have to be rigid. They can be qualitative data, such as using report cards to track the commitments of governments. Moreover the government has an important role in applying due diligence. Professionals should be accountable if they perform poorly, which may result in emotionally harming the child.

Challenges

During the discussion of key points, the following challenges emerged:

- Not all decision-makers, whose roles are very crucial, are knowledgeable on children's rights. The best plans and best national strategies will not move forward if the decision-makers do not fully understand the rights of children.
- Fear creeps up on adults when children are assumed competent because adults perceive this as a disruption of the balance of power.
- Improper implementation of child participation may be used as a way to manipulate children. For instance, youth councils were being used as "breeding grounds" of political dynasties and training grounds for corruption.
- Adults fail to recognise that they lack constant meaningful contact with groups of children.
- There are few child-friendly materials on children's rights for younger children because most of the information about CRC is designed for older children.
- In making child-friendly information about child rights and laws, there is danger of misinformation or oversimplification.
- Determining the "evolving capacities" of children and defining "due weight" remain difficult.
- Deciding which issues, concerns, or actions that affect children is difficult, especially because not all issues may be equally important to the children.
- Explaining to children their role in decision-making will always be challenging, especially since the final decision may not be up to the children.
- There is limited understanding on the difference between the children's right to decide and the right to express their views.
- Among the states, there is uneven cooperation between government and civil society.
- Follow up actions after consultations and other child-participated international or regional activities are not given enough attention or action.

Key Recommendations

The following recommendations came up during the discussion of the Working Group:

- The CRC should be translated or explained to children using concrete practical issues that the children can relate with.
- Children should be included in the national strategies to monitor and evaluate the implementation of the SDGs.
- Innovative methods of involving children should be explored, especially since the structure of working with children is changing
- Good practices on child participation should be shared not only with the child rights advocates, but also with all the other stakeholders dealing with children.
- Different mechanisms, such as the special rapporteurs and other human rights mechanisms and process, should be utilised to keep CRC in the agenda.
- State Parties should consider ratification of the CRC Optional Protocol on the Communications Procedure, which is a mechanism for the children to participate.

Conclusion

Children are essentially vulnerable and innocent victims of events that are often not under their control. Problems that afflict the world of today like poverty, food shortages, global warming, and increasingly ominous internal strife and war, creates fertile ground for further infringement of children's rights and their mistreatment. Given the current climate of turmoil, mass movement of people and children, the seminar emphasised the need for states, policymakers, adults and children alike, to acquire an understanding of children rights, appreciation of children's needs and psychology, and conduct more awareness campaigns in the wider community. There was general consensus that the circumstances and broader contexts under which exploitation of children occurs should be identified so that effective responses and actions could be taken to tackle the challenges posed to procuring a healthy and secure environment for children. Moreover, adequate support to the children's family or communities was found to be crucial to ensure the welfare of the children.

Children need to be in the know-how of the available mechanisms for redress, the CRC itself and their rights in the national context. The seminar overwhelming called for the necessity to include children in the decision-making process, as children are individuals in their own rights whose voices should be heard, and their views should be incorporated into the laws that affect their lives. Empowerment of the defenceless, in this case, children, will go a long way in reducing the likelihood of the abuse of their rights.

Thus, better results could be achieved if the legislative development process included the participation of civil society members and relevant social actors; and combined it with effective implementation of those laws. Another good working formula could be to merge preventive measures with post-event after care of violated children, such as providing them with easy access to justice, concerted reintegration efforts, etc.

It was recognised that States require more legislation to plug the loopholes in their system permitting the contravention of children's rights. For States to be able to maintain their commitment, a larger regional support within Asia or Europe or both, would help national agencies to keep-up their momentum.

In other words, all relevant arms of society; be, it, states, non-governmental organisations, international organisations, and private stakeholders must come together to confront the neglect of children's rights, improve the criminal justice system, and address the conditions that adversely impact children's lives.

Endnotes:

- 1 "About Us," UNICEF, http://www.unicef.org/about/who/index_faq.html
- 2 "Child Rights Situation Analysis Within the ASEAN Region," Save the Children, 2016, https://resourcecentre.savethechildren.net/sites/default/files/documents/crsa-asean_region_250416.pdf

BACKGROUND ON HUMAN RIGHTS & CHILDREN

This background paper has been prepared by Dr Bina D’COSTA, UNICEF Office of Research – Innocenti, Florence, Italy, and Prof Dr Ton LIEFAARD, Leiden Law School, Leiden University, the Netherlands. Both served as the Main Rapporteurs for the 17th Informal ASEM Seminar on Human Rights: Human Rights and Children, Sofia, Bulgaria, 7–9 November 2017.

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Chapter 1: Introduction to Children's Rights

Chapter 1 of this paper provides an introduction to children's rights at the international and regional levels, focusing mainly on the developments in Europe and Asia.

The chapter will begin with an overview of children's rights at the international level (part 1.1), with specific focus on the United Nations (UN) Convention on the Rights of the Child (CRC) and its Optional Protocols (OPs).¹ This part will include some remarks on the emergence of children's rights during the twentieth century and will offer a brief account on the drafting of the CRC (including associated controversial issues), the main features of the CRC and its general principles and, finally, the role of the UN Committee on the Rights of the Child (CRC Committee). Attention will also be given to the stakeholders relevant to the implementation of the CRC and the interaction of the CRC and the CRC Committee with other international organisations. This part will conclude with observations on the impact of the CRC at the regional and national levels, focusing on Africa and the Americas. The remaining parts of the chapter (parts 1.2 and 1.3, respectively) will offer a closer look at the background and developments of children's rights at the regional level, focusing on Europe and Asia.

1.1. Children's Rights at the International Level

1.1.1. Emergence of the Rights of the Child: A Historical Perspective

World War I had a devastating impact on children. Millions of children had lost their parents and were living on the streets or on the move without health care, education, protection or food. Civil society organisations (CSOs) or individuals took action to address the needs of these children. One such initiative, which lasts to this day, was the establishment of the organisation Save the Children Fund by Eglantyne JEBB in May 1919. To support this initiative, JEBB, together with others, drafted a 5-point declaration. This declaration was unanimously adopted by the General Assembly of the then existing League of Nations (49 Member States) on 24 September 1924 as the Geneva Declaration on the Rights of the Child (1924). It was the first milestone in the recognition of child rights at international level.

A well-known quote from this declaration is that "mankind owes the child the best it has to give", a moral standard that is still valid today. The Declaration deals, as is understandable given the situation in Europe at that time, with humanitarian issues: "the child that is hungry must be fed; the child that is sick must be nursed (...) and the orphan and the waif must be sheltered and succoured; The child must be the first to receive relief in times of distress." But there was more: "The child must be given the means requisite for its normal development, both materially and spiritually" and also be put in a position to earn a livelihood.

The second milestone in the recognition of child rights at the international level was the unanimous adoption of the 1959 Declaration of the Rights of the Child by the UN General Assembly on 20 November 1959. The Declaration contains 10 principles. It starts with the principle of non-discrimination, further elaborated in Principle 10. Furthermore, it holds that the child shall be given opportunities and facilities to enable him or her to develop 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 (Principle 2). Other principles provide, inter alia, the right from birth to a name and nationality; the right to enjoy the benefits of social security; the right of children with disabilities to special treatment, education and care; the right to receive education, free and compulsory at the primary level; and the right to be protected against all forms of neglect, cruelty and exploitation, and against employment which would prejudice the child's health and education or interfere with physical, mental or moral development.

Due to a lack of systematic research, little is known about the impact of this Declaration at the national level. However, children's rights consequently received much attention in the United States, resulting in a children's rights movement (Gross and Gross 1977). Radical proposals were made based on the right of the child to self-determination, such as the right to vote and participate fully in political affairs, the right to work for money, the right to financial independence and responsibility, the right to direct and manage his or her own education, and the right to travel and live away from home (Farson 1974; Holt 1975). These proposals did not gain much support because they were simply too radical. However, they showed that children's rights had become a matter of public debate and development.

The Declaration on the Rights of the Child and the movement for children's rights influenced the decision of the UN General Assembly to proclaim 1979 the International Year of the Child. It resulted in many activities devoted to the rights and well-being of children and in the proposal of the Polish government to turn the 1959 Declaration on the Rights of the Child into a convention.

1.1.2. The Drafting of the CRC and Some of Its Controversial Issues

The Polish proposal for a convention on the rights of the child was presented at the 34th session of the UN Commission on Human Rights in March 1978. The responses to the proposal were anything but enthusiastic. Very few respondents expressed doubts about the need for a separate treaty on the fundamental rights of children, but concerns were raised regarding the proposed draft. For a legally binding instrument, it did not deal with the whole range of rights, and was silent on matters of implementation (Detrick 1992).

At its 35th session, the UN Commission on Human Rights decided to establish an informal open-ended working group to consider the question of a convention on the rights of the child. It goes beyond the scope of this background paper to summarise the discussions, the proposed amendments and the new draft articles that arose from the meetings of the Working Group, which began in 1979 and continued well into 1989 (Detrick 1992). However, some general observations are necessary in order to understand the drafting process:

- a. The drafting process was very slow at the beginning, with few articles adopted. The main reason was the political climate at the time due to tensions in East-West relations, often resulting in purely political statements and negotiations by US and Soviet representatives. After Mikhail GORBACHEV took power in the USSR, the political climate changed significantly and, from 1985 onwards, good progress was made. The Working Group met only once a year for 1 week at the end of January, prior to the session of the UN Commission on Human Rights. Calls were increasingly made to complete the drafting in order for the CRC to be adopted in 1989, 10 years after the International Year of the Child and 30 years after the adoption of the 1959 Declaration on the Rights of the Child. This resulted in 2 meetings, each lasting 2 weeks, being held in 1988 (Cantwell 1992).
- b. The Working Group operated on the basis of consensus, meaning that all 53 representatives of the Member States of the Working Group needed to agree on the proposed text.² Small working groups were often formed to produce a compromise text acceptable to all members of the Working Group. In that regard, the chairperson of the Working Group, Adam LOPATKA, played an important role, strengthened by the fact that he was the chairperson throughout the entire drafting process.

Although consensus was reached relatively easily for most of the articles, there were 4 highly controversial issues:

- a. **The definition of the child (Article 1):** The upper age limit (18 years) was not the problem but rather the question of whether the child was entitled to the protection of the CRC from birth or from conception. This question was (and still is) related to the phrase found in the Preamble that the child needs appropriate protection before as well as after birth, as repeated from the 1959 Declaration. The Working Group finally agreed not to reopen the debate on the moment at which life begins and whether the CRC was applicable to the unborn child (Detrick 1992, 1999). Thus, it can be argued that the CRC can neither be used to support nor prohibit abortion (Alston 1990; Fox 1995; Sloth-Nielsen 1995).
- b. **The right to freedom of religion (Article 14):** Draft Article 14 was taken from Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which states that freedom of religion includes the freedom to have or adopt a religion of choice. During discussions on this draft article, it was pointed out that under Islam a child does not have the right to choose another religion; Article 18 of the ICCPR could only apply to adults. Finally, the proponents of retaining the full right to freedom of religion as expressed in Article 18 of the ICCPR agreed to drop the reference to choice (Detrick 1992).
- c. **Adoption (Article 21):** The first draft of Article 21 stated: “the States parties (...) shall undertake measures, where appropriate, to facilitate the process of adoption of the child”. The concern discussed was the fact that adoption of a child is not possible under Islamic law. This discussion led to a text that avoids any obligation to introduce adoption. Article 21, paragraph 1, expresses this as follows: “States parties that recognize and/or permit the system of adoption shall ensure (...)” (Detrick 1992).³
- d. **The protection of children in armed conflict:** At the time of drafting, the existing international standard was that children below the age of 15 were not to be recruited or allowed to participate directly in the hostilities (Article 77 of Protocol I and Article 4 of Protocol II to the Geneva Conventions of 12 August 1949). Many non-governmental organisations (NGOs) and governments wanted to raise this standard to all children below the age of 18, at least concerning the direct participation of a child in hostilities. After a rather intense discussion, the chairperson of the Working Group concluded that consensus had not been reached on raising the age of 15, noting that no delegation had argued for a lower age limit, which implied that there was consensus on the age of 15. The discussion was closed accordingly (Detrick 1992). A number of delegations were (very) unhappy with this result and considered reopening the debate and elevating it to the UN Commission on Human Rights, or even the General Assembly. Delegations quickly realised though that this could open the door for demands to reconsider other draft articles, jeopardising the adoption of the CRC. This, however, explains why the CRC Committee devoted the Day of General Discussion in 1993 to children and armed conflict. The important spin-off of this event was the UN Study on Children and Armed Conflict (1996) and the adoption in 2000 of the Optional Protocol to the Committee on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), which raised the age for recruitment and direct participation in hostilities to 18.⁴

1.1.3. The CRC

1.1.3.1. Why is there a separate treaty on the human rights of children?

In 1966, the UN General Assembly adopted the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵. These 2 covenants entered into force in 1976 and are the core international instruments on human rights. Together with the Universal Declaration of Human Rights (UDHR),⁶ they are often called the International Bill of Rights.⁷ The human rights enshrined in these documents are the rights of all human beings, and thus for all children. States Parties shall respect and ensure to all individuals the rights recognised in these covenants without distinction of any kind (ICCPR Art. 2, para. 1; see also ICESCR Art. 3). So why did we need a separate human rights treaty for children? Did the covenants not adequately cover the rights of children and, if so, which rights were missing?

With the submission of its proposal for a convention on the rights of the child, Poland did not present any kind of assessment highlighting the shortcomings of the existing covenants nor present a solid justification for its proposal. According to the records of its meetings, the Open-Ended Working Group did not raise or discuss the question as to why a separate children's rights treaty was necessary, with a small exception. Some governments' delegates questioned the need to reaffirm the fundamental rights and freedoms in the CRC because they were already covered by existing human rights treaties. They wanted to limit the convention to rights specific to children, although without identifying these rights.⁸ However, the drafting went beyond the initial, rather simple, idea (i.e., to turn the 1959 Declaration into a convention) and resulted in a very comprehensive legal instrument: the CRC.

During the drafting years, and thereafter, various reasons were mentioned for having a separate treaty on the human rights of children. For example:

- a. The attention given to the position of children in the 2 covenants was limited to care and protection.⁹ During the debates, it became clear that the drafters of the covenants had, by no means, considered that children might automatically be beneficiaries, alongside adults, of the rights that the covenants contain. (e.g., Article 25 of the ICCPR provided "every citizen" the right to vote). Most members of the Open-Ended Working Group were in favour of incorporating the fundamental rights and freedoms in the CRC. This cemented even more firmly the human rights foundation of the convention.¹⁰
- b. A separate treaty obliges to take children's rights more seriously,¹¹ inter alia, by recognising children's inherent dignity and worth. The comprehensive nature of the CRC not only provides children with the rights to be protected from all forms of violence and exploitation, but also with rights that are critical for their health and harmonious development, and for the recognition of their evolving capacities and participation in all decision-making processes relevant to them regarding family, courts, schools, children's institutions and their communities and societies. In short, the CRC explicitly recognised the child as a rights holder, a perspective that is missing from the other human rights covenants.
- c. The drafting of the CRC also allowed for the introduction of innovations, specifically relevant to children, such as the best interests of the child as a primary consideration (Art. 3), the right to preserve their identity (Art. 8), the right to express their views (Art. 12), protection from narcotic and psychotropic substances (Art. 33), the right to recovery and social reintegration (Art. 39) and rights in the process of juvenile justice (Art. 40). The CRC also includes important child-centred improvements in various areas, e.g., the need to take measures to abolish harmful practices in health care (Art. 24) and, in education, the introduction of the rule that discipline should be administered in a manner consistent with the child's human dignity.¹² The provisions of the CRC can be categorised into 3 distinct categories: protection, provision and participation.

Whatever the answers to the “why” question may be, the reality is that 196 States Parties have committed themselves to the implementation of the separate treaty on the human rights of children, and are obligated to respect, protect and fulfil these rights.¹³

1.1.3.2. Ratifications and reservations

After the UN General Assembly unanimously adopted the CRC, it entered into force on 2 September 1990.¹⁴ Despite criticism that the CRC was drafted with the limited participation of developing countries,¹⁵ which could have resulted in few ratifications by these countries, it is worth noting that out of the first 20 countries to ratify the CRC, only 1 was a developed country (Sweden).¹⁶ By 5 September 1991, 33 African states, 16 countries in Asia, 27 in Latin America and 20 Western countries (Europe and elsewhere) had ratified the CRC.¹⁷ The ratification continued thereafter with unprecedented speed. Today, 196 countries have ratified the CRC, including 2 States that have the status of an observing member of the UN: the Holy See and Palestine. The USA is the only country that has not yet ratified the CRC.

States can make reservations at the time of ratification or accession. The reservations must be compatible with the object and purpose of the CRC and can be withdrawn at any time (CRC Art. 51). Quite a number of States made reservations, varying from 33 to 64, depending on whether the statements or declarations, not formally presented as reservations, were due to their content being considered to be reservations. The CRC Committee has systematically recommended, with some success, that States Parties withdraw their reservations. A total of 6 States have withdrawn their rather general reservations (e.g., Pakistan’s reservation regarding “provisions of the Convention shall be interpreted in the light of the principles of Islamic law and values” was withdrawn in July 1997) and 23 States Parties have withdrawn specific reservations.¹⁸

1.1.4. The CRC: Structure, Content and Some Critical Notes

1.1.4.1. General

The CRC consists of 3 sections: Section I contains the substantive articles (Arts. 1–41), Section II consists of provisions relating to the reporting and monitoring of the implementation of the CRC by the CRC Committee (Arts. 42–45) and Section III concerns the ratification of the CRC, reservations and amendments of the CRC. The substantive articles do not have a simple structure (e.g., one section concerning civil and political rights and another pertaining to economic, social and cultural rights). The order in which the articles appear is, to a large degree, influenced by the revised Polish proposal for the CRC that became the working document in the drafting process.

1.1.4.2. Clustering of CRC provisions

The CRC Committee clustered the articles of the CRC for the purpose of facilitating the reporting on the implementation by States Parties. A total of 8 clusters were established: 1) general measures of implementation; 2) the definition of the child; 3) general principles; 4) civil rights and freedoms; 5) family environment and alternative care; 6) basic health and welfare; 7) education, leisure and cultural activities; and 8) special protection measures (CRC Committee 1991, 1994; Vučković Šahović et al. 2012).

This clustering reflects, to a certain degree, the comprehensive nature of the CRC and the interdependence of the rights. The reporting guidelines have been reviewed over the years, and the most recent one on periodic reporting (2015) indicated development. The review included 3 new clusters: one on violence against children and 2 on the follow-up to the Optional Protocols to the CRC (CRC Committee 2015). These clusters are also used to structure the country-specific Concluding Observations issued after meeting with the States Parties. The clustering facilitates their efficient use because it allows the reader to quickly find recommendations of the CRC Committee in her or his area of interest (e.g., health and welfare or special protection).

1.1.4.3. General principles of the CRC

Perhaps the most important decision of the CRC Committee was to qualify 4 provisions of the CRC as General Principles: Article 2 on non-discrimination; Article 3, paragraph 1, on the best interests of the child as a primary consideration in all actions concerning children; Article 6 on the inherent right to life and the right to survival and development; and Article 12 on the right to express views and have them taken into account (Doek 2007; CRC Committee 2009). In making this decision, the CRC Committee was criticised for using the word “principles” because it undermines the concept of rights and misrepresents each State’s legal obligation. Furthermore, it was initially unclear what the Committee meant by the qualification and why these 4 provisions were included as opposed to others, e.g., Article 4 (Abramson 2008; Hanson and Lundy 2017).

However, over the course of time, it became clear that the CRC Committee is of the view that the General Principles should be taken into account when implementing the other articles of the CRC. However, when examining the implementation of the other articles, a systematic assessment of the impact of the General Principles is lacking, excluding the assessment of the General Principles in the General Comments (Doek 2015). In order to provide guidance to the States Parties and others in the implementation of the CRC, the CRC Committee issued General Comments on Article 12 and Article 3, paragraph 1 (CRC Committee 2009, 2013).

1.1.4.4. Recognition of the position of parents

An important element of the CRC is the recognition of the responsibilities, rights and duties of parents. This is important because it acknowledges that the child is not an isolated individual, but part of a family and that States Parties have the obligation to provide all parents with appropriate assistance in the performance of their child-rearing responsibilities “for the purpose of guaranteeing and promoting the rights set forth in the present Convention” (CRC Art. 18, para. 2). It underscores the key role that parents play in the realisation of the rights of the child. This is confirmed in Article 5 of the CRC: “States Parties shall respect the responsibilities, rights and duties of parents [...] 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” (Lansdown 2005). Furthermore, parents have the primary responsibility to secure, within their abilities and financial capacities, the living conditions necessary for the child’s development. States Parties also have the obligation to assist parents with this responsibility and, when needed, provide material assistance, particularly nutrition, clothing and housing (CRC Art. 27; see also CRC Committee 2017). From these provisions, it is clear that there is a kind of triangle – the child, the parent(s) and the State – with an ongoing challenge to balance the interests of all three (Seymour 2005; Tobin 2005).

It goes without saying that the exercise of these rights and duties will not always be fully practised and realised. Articles 19, 32 and 36 state that the child should not be subject to physical or mental abuse or other forms of maltreatment, neglect or exploitation. If that is the case, the State should take appropriate action to protect the rights of the child (see, for instance, Articles 9 and 19 of the CRC).¹⁹ However, it can be considered a serious shortcoming of the CRC that it does not contain specific provisions to ensure that child protection proceedings are conducted in a manner that guarantees the rights of the child and his or her parent(s). The State can interfere with family life and privacy, and the child and the parents should have the right to legal or other assistance and the right to have the decision reviewed by a higher authority or judicial body, for example. The rules of the CRC are limited to the right of the child to have an opportunity to participate and make their views known (Art. 9, para. 2, and Art. 12, para. 2).

In light of Articles 5, 18 and 27 of the CRC, it is incomprehensible that the opponents of US ratification of the CRC portray the CRC as anti-parent and as a treaty that will undermine the role of parents in raising their children (Guggenheim 2005; Todres 2006; Freeman 2007).

1.1.4.5. The evolving capacities of the child

Another important feature of the CRC is the recognition of the potential and growing autonomy of the child. This is reflected in the concept of evolving capacities (CRC Art. 5) and in the rule that due weight must be given to the views of the child in accordance with her or his age and maturity (CRC Art. 12). This recognition is not free from problems, to say the least. Questions arise as to how much weight should be given to the views of the child, not only in court proceedings but also in the family, at school, in the provision of health care and in children's institutions. Adults have to answer this question and a certain degree of paternalism may play a role. But the concepts of maturity and evolving capacities imply that, in general, the views of older children (adolescents) are given more weight, to the point that their views can be decisive. However, it is unavoidable that the weight given depends on the assessment of the child's maturity, which is ultimately made by an adult. This may lead to very different decisions (e.g., in court proceedings or regarding health treatment). In that regard, following the views of the child may result in a decision that is contrary to the child's best interests. We may have to protect the child from an irrational decision that would harm the development of the child (Freeman 2011).

Despite the questions that can be raised, the recognition of the child's potential and growing autonomy has been an important factor in the development of what is called "the right to participation" (Cantwell 2011). This right can be seen as the result of not only Article 12 but also Articles 13 to 16 of the CRC. The right of the child to express their views implies an active participation in the decision-making processes in all kinds of settings, including the family, at school, in the provision of health care, in court and in the community and/or society (CRC Committee 2009; Parkes 2013). In the field of children's rights, the participation of children garners a lot of attention and is often seen as a key element in the recognition of the child as a rights holder and agent of social change.²⁰

1.1.4.6. Cultural sensitivity of the CRC

Finally, and in relation to criticism that the CRC is largely influenced by Western culture, Alston asserts: "In cultural terms, the Convention, while by no means perfect, is probably more sensitive to different approaches and perspectives than most of the principal human rights treaties adopted earlier" (Alston 1990). But culture can never be a justification for not implementing the basic human rights of children (or of others), such as the right to a name, the right to alternative care as well as the right to protection from all forms of violence and exploitation, including child marriage and female genital mutilation.

Nevertheless, the CRC provides room for interpretation and implementation with respect to cultural, or other, diversity. For instance, the word "appropriate", which is used 48 times in the treaty, is a key provider of space for accommodating cultural, and other types of, diversity because it requires consideration of what would be suitable in a given cultural context (Arts 2014). It means that the CRC Committee cannot prescribe in detail the measures that each State Party will find appropriate to ensure effective implementation of the CRC (CRC Committee 2003). In General Comment No. 11 (2009), the CRC Committee observed that States Parties are invited to come up with contextual interpretation and stipulates that consultation with indigenous communities is required when determining how the best interests of indigenous children can be decided in a culturally sensitive manner (CRC Committee 2009).

1.1.5. The Optional Protocols to the CRC

The CRC is the only human rights treaty with 3 Optional Protocols. 2 are of a substantive nature and one provides for the possibility to file complaints about violations of the rights of the child. The 2 substantive Optional Protocols were adopted by the UN General Assembly in May 2000 (A/RES/54/263 of 25 May 2000). The third one was adopted in December 2011 (Resolution of the UN General Assembly A/RES/66/138 of 19 December 2011).

The first Optional Protocol – the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – raises the very low standard for prohibiting the recruitment of children and the direct participation of children in hostilities. The new standards ensure that no child directly participates in hostilities (Art. 1) and that no child shall be compulsorily recruited into armed forces (Art. 2). Voluntary recruitment is however possible for children aged 16 and above with specific safeguards (Art. 3). States Parties shall take all feasible measures to prevent the recruitment and use of children by armed groups (Art. 4). OPAC entered into force on 12 February 2002, in accordance with Article 10, and is currently ratified by 168 States. This Optional Protocol was the direct result of the Day of General Discussion organised in 1993 by the CRC Committee and the ensuing UN study on children and armed conflict led by Graça MACHEL. Important elements of the implementation of OPAC are the appointment by the UN Secretary General of a Special Representative on Children and Armed Conflict and the involvement of the Security Council, which takes action, if necessary, on the basis of reports by the Special Representative. Children and armed conflict is the only children's rights matter that is a permanent item on the agenda of the Security Council.²¹

The second Optional Protocol – the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) – was, to a large degree, the result of the first World Congress on Commercial Sexual Exploitation of Children (CSEC) held in 1996 in Stockholm; the second was held in Yokohama in 2001 and the third in Rio de Janeiro in 2008.²² OPSC entered into force on 18 January 2002, in accordance with Article 14, and is currently ratified by 175 states. It can be seen as an elaboration of Articles 34 and 35 of the CRC. Among others, it defines “sale of children”, “child prostitution” and “child pornography” (Art. 2)²³ and requires States Parties to criminalise various acts of sexual exploitation as specified in Article 3. Furthermore, States Parties should establish extraterritorial jurisdiction (Art. 4), special rules for extradition (Art. 5) and rules for the protection of child victims when involved as witnesses or otherwise in criminal law proceedings (Art. 8).²⁴ One of the developments in the implementation of the OPSC is the emergence of new terms, such as “transactional sex”, “sexting”, “grooming” and “sexual extortion of children”, and changes in the use of traditional terms like “child prostitution” and “child pornography” (Greijer and Doek 2016; Hessick 2016). The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, appointed by the UN Commission on Human Rights in 1991 and confirmed in 2008 by the Human Rights Council (HRC), plays an important role in the implementation of the OPSC.²⁵

In addition, NGOs play a very active role in the implementation of both the first and second Optional Protocols. For example, Child Soldiers International (formerly the Coalition to Stop the Use of Child Soldiers) and others advocate the OPAC, while End Child Prostitution and Trafficking International (ECPAT) and others are instrumental in promoting, supporting and following up on the OPSC.

The third Optional Protocol – the Optional Protocol to the Convention of the Rights of the Child on a Communications Procedure (OPCP) – was adopted by the UN General Assembly in 2011 (UN General Assembly Resolution A/RES/66/138 of 19 December 2011). OPCP entered into force on 8 March 2014, in accordance with Article 18, paragraph 1, and is currently ratified by 42 States. This Optional Protocol provides children in countries that have ratified it with the right to file a complaint with the CRC Committee about violations of their rights. This can be done on behalf of the child or by herself or himself and the complaint should meet certain requirements in order to be admissible.²⁶ The CRC Committee issued rules of procedure under OPCP (CRC Committee 2013).

1.1.6. The CRC Committee

The CRC Committee is the most important international body for monitoring the implementation of the CRC. Therefore, some core information about the mandate, composition and activities of this Committee is appropriate (Vučković Šahović et al. 2012).

The CRC Committee was established for the purpose of examining the progress made by States Parties in achieving the realisation of their obligations undertaken in the CRC (Art. 40, para. 1). In order to make that examination possible, States Parties have to submit regular reports to the CRC Committee. The CRC Committee has, from the start of its activities in 1992, invited and encouraged specialised UN agencies, such as the United Nations International Children's Emergency Fund (UNICEF), the Office of the United Nations High Commissioner on Refugees (UNHCR), the International Labour Organization (ILO) and the World Health Organization (WHO), national and international NGOs, children and others to submit reports on the implementation of the CRC in various countries. These reports are usually called alternative or supplementary reports and are important sources of information.

The Committee invites NGOs, UN agencies and children who have submitted reports to discuss them in so-called pre-sessional meetings, which take place about 6 months before a meeting with a delegation of the States Party concerned. This is a question-and-answer session behind closed doors. If children are present, the CRC Committee has a separate meeting with them. It should be noted that the participation of children in the monitoring process is limited and measures should be taken to improve this (Doek 2011). After this pre-sessional meeting, the CRC Committee sends a list of issues to the States Party concerned, requesting further information, to which the States Party should respond well before the meeting with the Committee.

On the basis of these reports and other information available to the CRC Committee, such as reports of special rapporteurs, Concluding Observations of other human rights treaty bodies and the results of the Universal Periodic Review (UPR) conducted by the Human Rights Council, the Committee invites the States Party for a dialogue in a public meeting. After 6 hours of questions and answers, the CRC Committee issues Concluding Observations. In this document, the Committee acknowledges, often with appreciation, the progress made via the various legislative measures, policies and programmes that the States Party has undertaken and presents its concerns on the lack of or insufficient implementation of specific articles of the CRC followed by rather concrete recommendations for further actions that should be taken.

The CRC Committee also examines the progress made by States Parties in regard to the Optional Protocols (OPAC and OPSC), using the same method that is used for monitoring the CRC. The initial reports on the implementation of the Optional Protocols are subject to a separate examination and the subsequent periodic reports are included in the States Party's report on the CRC (OPAC Art. 8; OPSC Art. 12). With a view to assist the States Parties in following the CRC and the Optional Protocols, the Committee has produced guidelines on how issues should be reported (not per article but per cluster) and what is expected in terms of content.²⁷

It is obvious that monitoring the implementation of the CRC in 196 countries, and of OPAC and OPSC in 168 and 175 countries respectively, creates an immense workload for the CRC Committee. Problems that have to be addressed include instances of late or non-reporting and the backlog in processing the reports of the States Parties. In 2005, the CRC Committee decided to work with 2 chambers in order to increase the number of reports it could deal with per session and to reduce the backlog. Since then, the Committee has worked with 2 chambers from time to time and currently one session per year is a 2-chamber session.²⁸ Most recently, the CRC Committee has started to implement a simplified reporting procedure (SRP). The core of this procedure is that the current 3 steps (Report, List of Issues, Responses) will be reduced to 2. The CRC Committee will send the States Party a List of Issues Prior to Reporting (LOIPR). The States Party will then prepare its report, which is limited to addressing the List of Issues. That report will become the document that is discussed in the public meeting with the States Party. This SRP will be followed by the States Parties that have agreed to this procedure (UN General Assembly 2012).

The CRC Committee is composed of 18 members elected by the States Parties. Every 2 years, an election takes place for 9 vacancies. Each States Party can nominate a candidate, who must be a national of that State, for these elections. Candidates have to be experts of high moral standing and with recognised competence in the field covered by the CRC. Members serve for a period of 4 years and can be re-elected if renominated (CRC Art. 43, paras. 2–6). When voting, States Parties should give consideration to equitable geographical distribution as well as to principal legal systems (CRC Art. 43, para. 2). The members are expected to attend the sessions of the CRC Committee in Geneva. There are 3 sessions per year, each lasting 4 weeks. The remuneration for this quite demanding work has been set by the UN General Assembly at US\$1 per year (Art. 43, para. 12). There is no employment compensation for the member for the 12 weeks that he or she dedicates to the work of the Committee. This, unfortunately, hinders the eligibility of many individuals with excellent competence in the field of children's rights.

In addition to the examination of the progress made, usually called monitoring, the CRC Committee regularly issues General Comments.²⁹ These documents provide States Parties and other actors in the field of children's rights with information on the interpretation and implementation of one or more articles of the CRC. Some General Comments deal with a specific article, e.g., No. 1 on Article 29; No. 12 on Article 12; No. 13 on Article 19; No. 14 on Article 3, paragraph 1; and No. 15 on Article 24. Others are of a thematic nature, e.g., No. 3 on HIV/AIDS and the rights of the child, No. 4 on adolescent health and development in the context of the CRC, No. 7 on implementing child rights in early childhood and No. 11 on indigenous children and their rights under the CRC. Also, for the first time in the history of human rights treaty bodies, a Joint General Comment was issued by the CRC Committee and the Committee on the Elimination of Discrimination against Women (CEDAW) in 2014 (CEDAW and CRC Committee 2014). General Comments are non-binding documents but, given the fact that they are issued by a body that is elected by States Parties, the interpretations and recommendations should be taken into account when developing and implementing laws, policies and programmes.

The CRC Committee also organises regular Days of General Discussion. Participation is possible for all States Parties and other actors in the field of children's rights (no fee is charged). These days are meant as an opportunity for the CRC Committee to engage all stakeholders in the field of children's rights in discussions on important issues related to the implementation of the CRC. The outcomes provide further guidance in that regard and are sometimes the basis for a General Comment. They have twice resulted in a recommendation to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues related to the rights of the child (CRC Art. 45 (c)): first, the 1993 Day of General Discussion led to the recommendation to undertake a study on children and armed conflict and the drafting and adoption of OPAC (see also above); second, the Days of Discussion in 2000 and 2001 led to the recommendation to undertake a study on violence against children. This study, led by Paulo PINHEIRO, produced a report in 2006 with many overarching elements and established specific recommendations (regarding family, school institutions, the workplace and the community) that remain on the agenda for national and international efforts to prevent and end all forms of violence against children (Pinheiro 2006). An important part of these efforts is the international campaign to introduce a comprehensive prohibition by law of all forms of corporal punishment.³⁰ In May 2009, the UN Secretary-General appointed a Special Representative on Violence against Children to promote the implementation of the recommendations made in the report of the UN study.

Finally, since March 2014, the CRC Committee has been charged with receiving and considering complaints from children about violations of their rights under OPCP (see above). Although the number of cases has been limited so far, it can be expected that such claims will further increase the workload of the Committee.

We may conclude that the CRC Committee is playing an active leadership role in monitoring the implementation of the CRC and providing important guidance, not only via its country-specific Concluding Observations but also via its General Comments. However, the Committee continues to face many challenges (Vučković Šahović et al. 2012): late or non-reporting by States Parties; the backlog in the examination of reports on the CRC, OPAC and OPSC, addressed by holding occasional sessions in which 2 chambers deal with reports; the very limited participation of children in the reporting and monitoring process; and the lack of sufficient follow-up to the Concluding Observations (Doek 2011).

1.1.7. The CRC Committee's Interaction with other International Organisations and Stakeholders

The CRC Committee is part of the wider world of human and humanitarian international law. It interacts with the other human rights treaty bodies, in particular through the regular meetings with the chairpersons of these bodies. These meetings provide the opportunity to exchange experiences in relation to the monitoring of human rights treaties and discuss the possible improvements and harmonisation of their working methods. The CRC Committee has used this interaction to establish cooperation with other treaty bodies in order to develop and adopt General Comments. So far, this cooperation has resulted in the previously mentioned Joint General Comment with CEDAW on Harmful Practices and the Joint General Comment with the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on the rights of children in the context of migration.

The Committee also interacts with specialised UN agencies such as UNHCR, e.g., in the development of General Comment No. 6 (2005) on Treatment of Unaccompanied and Separated Children Outside their Country of Origin; WHO, e.g., on the development of General Comment No. 4 (2003) on Adolescent Health and Development in the context of the CRC; and the Office of the High Commissioner for Human Rights (OHCHR), e.g., in the development of General Comment No. 2 (2002) on The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child. These agencies, including ILO and the United Nations Educational, Scientific and Cultural Organization (UNESCO), submit, when appropriate, country-specific reports in the context of the monitoring activities of the Committee (see Article 45 of the CRC for the role of specialised UN agencies). The key role of UNICEF is acknowledged by the fact that it is the only specialised UN agency to be explicitly mentioned in Article 45 of the CRC. There is no other human rights provision in which a specialised UN agency is explicitly mentioned.

The CRC Committee has regular meetings with UNICEF representatives to discuss and improve cooperation, wherever possible. UNICEF has a representative in Geneva who attends all sessions of the Committee. The role of UNICEF in monitoring the CRC is of extraordinary importance. First, all UNICEF country offices submit supplementary reports to the CRC Committee regarding its monitoring work. These supplementary reports not only provide valuable information on the implementation of the CRC in the country, but also identify progress and shortcomings, with recommendations on how to address these shortcomings. Second, each UNICEF country office takes the recommendations made by the CRC Committee in the Concluding Observations very seriously. The country office follows up many of these recommendations, inter alia, by taking them into account when discussing the next country programme with the government. Using the recommendations of the Committee, UNICEF country offices have significantly contributed to law reform and the development of programmes and policies for the realisation of the rights of the child, inter alia, in the areas of health care, education and protection.

The CRC Committee has no formal working relation with the HRC but takes into account the annual resolution of the HRC on the rights of the child and the country-specific outcome of the UPR, e.g., by referring to and/or supporting recommendations made in the context of the UPR. Finally, the Committee has a well-established link with the UN General Assembly. It is the only human rights treaty body with a standing invitation from the Third Committee of the UN General Assembly to report on the activities of the Committee once a year.

The CRC Committee also interacts with other (non-state) stakeholders, such as NGOs, universities, professional associations (e.g., social work, psychology, medicine, etc.) and individuals, including children. An example of this can be found in the drafting process of General Comments. Before publishing General Comments, the CRC Committee undertakes consultations with relevant stakeholders and receives submissions and responses to draft General Comments. For example, in the drafting process of General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the CRC Committee conducted consultations and received responses from business associations and trade unions (Gerber et al. 2013).

1.1.8. The Impact of the CRC at Regional and National Levels

There is no comprehensive and/or comparative global overview of the impact of the CRC at the national level. Yet the impact of the CRC at the national level is reflected in the country-specific Concluding Observations issued by the CRC Committee. In addition, some comparative studies have been done on the issue, e.g., in 2007 a comparative study was carried out on law reform and the implementation of the CRC in 52 countries from around the world. This particular study concluded, among others, that nearly all of the countries had made substantial changes in their legislation to better protect the rights of children.³¹ A different study on harmonising laws in 19 countries in Eastern and Southern Africa found that a complex patchwork of existing legislation poses a significant barrier for the harmonisation of laws with the provisions of the CRC. However, it also found that 13 of the 19 countries had established children's courts to deal with children in conflict with the penal law.³² Recent literature has also extensively reviewed and analysed the impact of the CRC in relation to various regional and national contexts, and noted its impact on legislation, policy design, legal procedures, jurisprudence and more (see Liefwaard and Doek (eds) 2014; Liefwaard and Sloth-Nielsen (eds) 2017).

An assessment of the impact of the CRC at the regional level is equally difficult. The following section will briefly present developments in Africa and the Americas. A focused review of the developments in Europe and Asia will be presented in the next part of this chapter.

1.1.8.1. Africa

From the perspective of children's rights, Africa is a very special region. Not only because this continent faces many challenges in the implementation of the rights of the child due to natural and manmade disasters, but also because it is the only region in the world with its own comprehensive children's rights treaty: the African Charter on the Rights and Welfare of the Child (ACRWC). ACRWC was adopted in July 1990 and entered into force on 29 November 1999. The Charter complements the CRC and addresses a number of issues missing from the CRC and specific to Africa. In that sense, the ACRWC goes further than the CRC in some areas. For instance, the situation of children living under apartheid is dealt with in Article 26 and protection against harmful practice is more concretely dealt with in Article 21 (including the prohibition of child marriage and setting the minimum age for marriage at 18 for boys and girls). Explicit attention is given to the responsibility of the child (Art. 31). The Charter prohibits all forms of recruitment or use of children (defined as persons below the age of 18 without the exception in Article 1 of the CRC) in armed conflict (Art. 22); in the rule for the protection of refugees, it includes internally displaced children (Art. 23); children who become pregnant shall have an opportunity to continue their education (Art. 11, para. 6); it also provides special protection for children of imprisoned mothers (Art. 30). The implementation of ACRWC is monitored by a committee of 11 experts, elected by the States Parties (currently 45), and has the mandate to receive and consider complaints about violations of the rights enshrined in the Charter (Sloth-Nielsen 2008; Viljoen 2012). A good source of information on the implementation of the CRC and the ACRWC are the reports of the African Child Policy Forum. These reports provide the only systematic regional analytical assessment of the progress made and the remaining challenges, with an interesting ranking of African countries.³³

1.1.8.2. The Americas

The American Convention on Human Rights (also known as the Pact of San José) contains only one specific provision (Art. 19) on the rights of the child, stating that every minor child has the right to measures of protection required by his condition as a minor. However, all rights contained in that Convention are, in principle, applicable to children. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also known as the Protocol of San Salvador) contains a more elaborated Article 16 and includes the right to free and compulsory education, at least at primary level. The Convention also established the Inter-American Commission and the Inter-American Court on Human Rights. These 2 bodies have played, and continue to play, an important role in promoting and enforcing the rights of the child. One of the members of the Inter-American Commission is the Rapporteur on the Rights of the Child and conducts country visits to assess the implementation of the rights of the child and issues thematic reports. In its judgment, the Inter-American Court recognises the CRC as an important leading document and makes references to the General Comments of the CRC Committee and its country-specific Concluding Observations (Feria-Tinta 2015).

1.2. Children's Rights at the Regional Level: Europe

1.2.1. Children's Rights in Europe from a Regional Perspective

Europe has a developed regional human rights system, with various actors that are relevant in the field of children's rights, and the implementation of the CRC at the regional level. Focusing on European children's rights, this part will review the role of the European Union (EU) and the Council of Europe (CoE), explore the main legal instruments relevant for children in Europe and their developments, and consider the role of the European courts in enforcing and safeguarding the rights of children. This part will also note other non-state stakeholders involved in children's rights at the regional level, focusing on the European Network of Ombudspersons for Children (ENOC) as an example.

The issue of children's rights features prominently in Europe. The CRC has been ratified by all countries in Europe, and a majority of European countries have also ratified its Optional Protocols: OPAC, OPSC and OPIC.³⁴ The fact that all EU and CoE Member States are party to the CRC "gives the convention important standing at the European level".³⁵ While neither the EU nor the CoE is party to the CRC (as the CRC can only be ratified by States), the obligations of European States Parties to the CRC influence the development and application of children's rights in/by European institutions: the provisions and general principles of the CRC have been incorporated in binding and non-binding legal instruments, including case law, thus making the CRC the "touchstone for the development of European children's rights law".³⁶

1.2.2. European Regional Institutions and Children's Rights: The EU and the Council of Europe

1.2.2.1. The EU

The EU is a political and economic union comprising 28 Member States. The EU establishes an internal market within Europe, ensuring the free movement of people, goods, services and capital within, and enacts legislation and policies in relation to trade, justice, regional development and other areas.

At the policy level, the promotion of children's rights has been addressed as part of a coordinated EU agenda. In 2006, the European Commission adopted its first action plan on children's rights in the communication "Towards an EU Strategy on the Rights of the Child".³⁷ The communication called for the development of a comprehensive EU strategy to promote and safeguard the rights of children in the EU's internal and external policies, and to support Member States in doing so. The strategy's objectives are, among others, to mainstream children's rights in EU external and internal actions,

enhance capacity and expertise on children's rights issues, identify priorities for future EU action and establish coordination and consultation mechanisms.³⁸ The strategy explicitly refers to the CRC and its Optional Protocols, and establishes children's rights as a priority for the EU.³⁹

The EU has continued publishing communications relating to children's rights in its internal and external actions. In 2007, the Council of the European Union adopted the "EU Guidelines for the Promotion and Protection of the Rights of the Child"⁴⁰ and, in 2017, the revised EU guidelines were adopted.⁴¹ In 2008, the European Commission adopted another communication entitled "A Special Place for Children in EU External Action". The communication aims to promote and mainstream the right of children in the EU's external policies, i.e., with non-EU Member States.⁴² In 2011, the European Commission adopted "An EU Agenda for the Rights of the Child", which sets out priorities and actions for the development and implementation of children's rights in law and policy in EU Member States, such as adopting relevant legislation, supporting training, etc.⁴³ The agenda also stated that the CRC should guide the EU in its policies and actions relating to children.⁴⁴ The "EU Action Plan on Human Rights and Democracy (2015–2019)" also contains several actions relating to children.⁴⁵

It is also worth mentioning that, in 2014, the European Parliament passed the European Parliament Resolution on the 25th anniversary of the UN Convention on the Rights of the Child.⁴⁶ The resolution stated that "children's rights are at the heart of EU policies" and called for "full implementation in policy and in practice" of the CRC by Member States.⁴⁷ While the resolution and communications are not legally binding, they reflect the EU's rights-based approach to children's rights, and establish a blueprint for the EU in relation to children that is underpinned by the CRC.⁴⁸

Relating to legislation, the entry into force of the Treaty of Lisbon⁴⁹ has made important institutional, procedural and constitutional changes in the EU, and has enhanced its competence in relation to issues impacting children.⁵⁰ Whereas in the past, children's rights were only addressed in a "piecemeal fashion", they have now become embedded in a structured and coordinated fashion in EU legislation and policymaking.⁵¹ After the Treaty of Lisbon came into force, the Charter of Fundamental Rights of the European Union gained the "same legal status as the EU treaties" and obliges the EU and its Member States to safeguard the rights enshrined in the Charter when implementing EU law.⁵² The Charter contains the first reference to children's rights at the EU constitutional level. It anchors important children's rights, such as the right to protection and care, to express views freely, to have children's best interests taken as "primary consideration" in all actions relating to them and to maintain contact with both parents (Art. 24). It also specifically prohibits child labour (Art. 32) and anchors general human rights, with particular importance for children (i.e., Article 13 on the right to education).⁵³ These provisions are inspired by the CRC and the European Convention on Human Rights (ECHR).⁵⁴ Initially, the Charter was merely a declaration of fundamental rights and principles and did not have any binding force. As a consequence of the Lisbon Treaty coming into force in 2009, the provisions became more visible and legally binding for the EU and its Member States. When failing to comply with the standards of the Charter, Member States and EU institutions can directly be held accountable.⁵⁵ Still, the Charter is limited in its application as it relates only to matters arising under EU law (Art. 51(1)).

The EU has also enacted several legislative measures (e.g., directives and regulations) in relation to children. These include, among others, Directive 2011/93/EU on combatting sexual abuse and sexual exploitation of children, and child pornography; Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; and Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime, which also relates to child victims. The EU is also competent to legislate in other matters that can impact children, such as asylum and migration.⁵⁶ In addition, the EU Fundamental Rights Agency (FRA) provides expert advice to EU institutions and Member States on issues involving children. One of its main themes of work concerns the rights of the child, and it publishes reports on immigration and detention of children, child-friendly justice, children deprived of parental care and European law relating to children.⁵⁷

The Court of Justice of the European Union (CJEU), established in 1952, is the highest court in matters relating to EU law. The CJEU interprets EU law to ensure its uniform application across EU Member States and it also settles legal disputes between national governments and EU institutions. With regard to children's rights, the CJEU has mainly reviewed preliminary references, procedures in which a national court or tribunal approaches the CJEU with a question of interpretation of primary or secondary EU law that is relevant to a pending case at the national level.⁵⁸ The CJEU has delivered most of its judgments concerning children's rights in the context of free movement and EU citizenship.⁵⁹ Regarding its interaction with the CRC, the CJEU has directly referred to the CRC (Art. 17) to determine the interpretation of EU law.⁶⁰ In addition, the CJEU has also referred to the general principles of children's rights in its decisions (e.g., the best interests of the child, the right to be heard), specifically in relation to cross-border child abduction cases.⁶¹ It should be noted that, until recent years, the CJEU had only adjudicated a few children's rights cases, but with the adoption of more explicit legislative measures pertaining to children's rights and a more prominent children's rights agenda, it is likely that children's rights will feature more prominently in future decisions of the court.⁶²

1.2.2.2. The CoE

Established in 1949, the CoE is an international organisation that aims to uphold human rights, democracy and rule of law in Europe.⁶³ It has 47 Member States in Europe (and beyond), including all the Member States of the EU.

The primary instrument of the CoE is the ECHR. The ECHR address issues that are of particular importance for children, such as prohibition of torture, inhuman or degrading treatment (Art. 3), deprivation of liberty (Art. 5(1)(d)), fair trial (Art. 6), respect for private and family life (Art. 8) and education (Art. 2, Prot. 1). The European Court of Human Rights (ECtHR) enforces the ECHR, and is the competent body to interpret and apply the ECHR and its protocols.⁶⁴ The ECtHR has developed a large body of case law dealing with children's rights, covering issues such as adoption, child abuse and neglect, child protection, juvenile justice, migration and asylum, health, education and more.⁶⁵ While the ECtHR has been known to refer to and incorporate the CRC in its case law, it "does not systematically attach decisive weight to it".⁶⁶ There is also criticism that some of the ECHR provisions are taken from a parental perspective (i.e., Art. 8), and that the approach of the ECtHR can vary from that of the CRC and the CRC Committee in certain matters.⁶⁷

The CoE's other main human rights treaty is the European Social Charter (ESC). The ESC entered into force in 1965, and was revised in 1996 ((R)ESC). It provides protection of social rights at the European level, and includes provisions that are of particular importance to children. These include the right of children to "special protection against the physical and moral hazards", particularly in the context of employment (Art. 7) and the right to appropriate social, legal and economic protection, including care and education, and protection from negligence, violence and exploitation (Art. 17(1)-(2)). The implementation of the (R)ESC is overseen by the European Committee on Social Rights (ECSR). The Committee comprises 15 independent experts who are elected by the CoE Committee of Ministers. It monitors the compliance of national law and practices with the (R)ESC under 2 complementary mechanisms.⁶⁸

The first mechanism is a reporting system (Part IV) that requires contracting States to regularly submit a report on the implementation of the charter in law and practice. The report is then examined by the ECSR who publishes its findings as "conclusions".⁶⁹ The second mechanism is a collective complaint procedure on alleged non-implementation of the (R)ESC in the contracting States. The procedure was introduced by the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995) which, to date, has been signed and/or ratified by 23 States. The mechanism enables certain actors (social partners and NGOs) to directly lodge a complaint before the ECSR.⁷⁰ ECSR decisions are binding, and require the State, in instances when a violation is found, to take measures to remedy the situation. This mechanism was established in order to increase the

effectiveness of the charter and enhance its implementation in practice. Some of the ECSR's decisions have concerned the violation of children's rights on various issues, including economic exploitation of children, the physical integrity of children, health rights of migrant children, access to education for children with disabilities, etc.⁷¹

The CoE has also drafted conventions and treaties that address issues impacting the rights of children. These include, among others:

1. The European Convention on the Exercise of Children's Rights (1996). The Convention is particularly guided by Article 4 of the CRC which requires States Parties to undertake appropriate legislative, administrative and other measures to implement the rights enshrined in the CRC. The European Convention establishes procedural measures to safeguard the rights of children, such as the right of the child to be informed and express views in proceedings (Art. 3) and the duty of judicial authorities to act speedily in cases involving children (Art. 7).
2. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (2007). The Convention aims to prevent and combat child sexual exploitation and abuse, protect the rights of child victims and promote national and international cooperation in that regard. It requires States to take necessary legislative or other measures to prevent "all forms of sexual exploitation and sexual abuse of children and to protect children" (Art. 4), and requires States to take educational, awareness-raising and preventative intervention measures to address the issue (Arts. 5–7). The Convention explicitly refers to the CRC, particularly Article 34, and to the OPSC, and is meant to enhance the protection afforded under the CRC and complement its standards (Art. 42).

At the policy level, in 2006, the CoE launched the programme "Building a Europe for and with children", a plan of action to address children's rights issues. The programme aims to support the implementation of international children's rights standards, in particular the CRC.⁷² The programme resulted in the drafting of 2 strategy papers: "Strategy for the Rights of the Child (2012–2015)" and the more recent "Strategy for the Rights of the Child (2016–2021)". These papers have set the priorities for the CoE with regard to children's rights, identifying main challenges, and noting areas and actions to meet those challenges. The more recent strategy, in particular, states that the CoE's work in the field of children's rights is based on the CRC and its general principles.⁷³ The strategy identifies 5 priority areas to focus on, all of which are also addressed in the CRC: equal opportunities, participation of children, protection from violence, child-friendly justice and rights of the child in the digital environment.⁷⁴

In addition, the programme has overseen the adoption of legal instruments relating to children. These instruments offer practical guidance to Member States to complement binding European legal measures and standards⁷⁵ and include, among others, CoE guidelines on child-friendly justice,⁷⁶ CoE guidelines on child-friendly health care,⁷⁷ the CoE recommendation on integrated national strategies for the protection of children from violence,⁷⁸ the CoE recommendation on participation of children and young people under the age of 18,⁷⁹ etc. The implementation of the CoE's strategies for the rights of the child is overseen by the Ad hoc Committee for the Rights of the Child (CAHENF). CAHENF operates under the supervision of the CoE Committee of Ministers and works to promote the mainstreaming of children's rights at the CoE and Member State levels, provide expertise and advice on children's rights issues as well as facilitate knowledge exchange in relevant fields.⁸⁰ The CoE also commissions various research studies relating to children in order to guide its actions and policies. For example, it recently commissioned 2 studies on the rights of children in biomedicine: "The Rights of Children in Biomedicine: Challenges posed by Scientific Advances and Uncertainties" (2017)⁸¹ and "From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine" (2017).⁸² Thus, Europe is a key player in relation to standard-setting children's rights.⁸³

1.2.3. Other Stakeholders in European Children's Rights: The Example of ENOC

In the European context, there are other (non-state) stakeholders involved in the implementation of the CRC and the protection of children's rights at the regional level. One such prominent stakeholder is ENOC. Established in 1997, ENOC is an association of independent children's rights institutions (ICRI) and includes national ombudspersons, commissioners for children and other relevant bodies.⁸⁴

Today, ENOC includes 41 institutions (from 34 CoE Member States) and works to link ICRI in Europe, enable information sharing and the gathering of best practices, and ensure the protection and promotion of children's rights and the CRC.⁸⁵ Among its activities, ENOC holds annual meetings (the most recent being on equal opportunities in education) and conferences to provide professional training and address pressing matters in the European context.

1.3. Children's Rights at the Regional Level: Asia

1.3.1. Children's Rights in Asia from a Regional Perspective

Asia is the largest and most populated continent in the world, with the number of children estimated at over a billion. Asia comprises many countries, both developed and developing, with diverse economic, social, cultural, religious and linguistic environments across the region.

The CRC has been ratified by all countries in Asia.⁸⁶ The vast majority of Asian countries have also ratified its first two Optional Protocols – OPAC⁸⁷ and OPSC⁸⁸ – but only a few have ratified the third – OPCP⁸⁹. Following the ratification of the CRC, and in order to fulfil their international obligations, Asian countries have initiated policy changes and incorporated legal reforms at the domestic level. Yet, at the regional level, unlike in the European context, Asia does not yet have a common political or legal regional body or court, although such processes are under consideration.⁹⁰

One of the most prominent regional bodies in Asia is the Association of Southeast Asian Nations (ASEAN), a regional intergovernmental organisation, comprising 10 Southeast Asian countries, that promotes political and economic cooperation, regional peace and stability and facilitates mutual assistance on various issues.⁹¹ While ASEAN was not initially designed to be a human rights body, in recent years, the issue of children's rights has been prominent in its agenda. Consequently, binding and non-binding legal instruments have been developed to address some of the main issues impacting children in the ASEAN region. These developments will be addressed hereinafter.

1.3.2. The Background and Development of Children's Rights: The Example of ASEAN

This part will briefly present the background and developments of children's rights in the Asian context from a political and legal perspective, focusing on ASEAN. It will then provide a legal review of selected ASEAN legal instruments that relate to children, and reflect on their principles, scope and compatibility with the CRC.

Established in 1967, ASEAN is tasked with promoting cooperation in economic, social, cultural, technical, educational and other issues in the region, as well as enhancing peace and stability.⁹² In recent decades, the human rights discourse has become more prominent. In 1993, the ASEAN ministerial meeting adopted a communiqué stating that ASEAN should “coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights”.⁹³ In 2008, the ASEAN Charter was published, which officially recognised the promotion and protection of human rights and fundamental freedoms as a purpose and committed to the creation of a human rights body.⁹⁴ This led to the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009, and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in 2010.

At the political level, an example of ASEAN activities is the plan of action against trafficking in persons, especially women and children. The plan explicitly refers to the CRC as a relevant international instrument and reiterates the importance of strong international cooperation and a comprehensive regional approach in relation to the trafficking of persons, especially children.⁹⁵ The plan states that trafficking is not adequately addressed within ASEAN Member States, that further legislation is required⁹⁶ and that despite regional differences, all ASEAN Member States share a common interest in and commitment to battling trafficking.⁹⁷ The plan notes challenges and presents different action plans to both address these challenges and progressively prevent, suppress and punish all forms of trafficking in persons, protect and assist victims and work towards an enhanced comprehensive and coordinated regional approach.⁹⁸

At the domestic level, the AICHR and the ACWC also conduct training workshops for professionals to promote the rights of children and address regional challenges. A noteworthy example is their recent jointly organised CRC workshop. The workshop, the first of its kind, brought together AICHR and ACWC representatives, representatives from ASEAN Member States and civil society organisations to work on the implementation of the CRC in the national context and report to the CRC Committee as part of the periodic reporting processes.⁹⁹

ASEAN has also developed several legal instruments relevant to children. Most notably is the ASEAN Convention against Trafficking in Persons Particularly Women and Children (ACTIP). ACTIP is the only binding legal instrument on children in ASEAN. The Convention was signed in 2015, and entered into force in 2017. It addresses a pressing issue in Asia and obligates Member States to adopt legislative and other necessary measures to criminalise trafficking in persons (Art. 5), establish policies and programmes to prevent and combat trafficking, as well as protect victims, especially women and children (Arts. 11, 14–15), and enable and promote cross-border and regional cooperation in relation to trafficking in persons (e.g., Arts. 12–13, 18–21). The Convention is compatible with the CRC, covering all kinds of trafficking and exploitation (e.g., forced labour, prostitution, etc. See Art. 2).¹⁰⁰

In addition, ASEAN has also established several relevant declarations that deal with the rights and interests of children in the ASEAN region. These are neither legally binding instruments nor do they establish a body to interpret or monitor the application of the declarations. Yet, it can be argued that these instruments reflect the influence of the CRC and the political commitment of ASEAN to issues relating to children, as well as provide guidance for Member States. The following outlines briefly some of the most relevant declarations:

- a. The ASEAN Human Rights Declaration, adopted in 2012, details the Member States' commitment to human rights. Article 4 of the Declaration concerns, among others, the position of children and states that the rights of children are "an inalienable, integral and indivisible part of human rights and fundamental freedoms".¹⁰¹ The Declaration further prohibits the subjection of children or young persons to economic and social exploitation and child labour (Art. 27(3)), recognises childhood as a period entitled to "special care and assistance" and states that children, whether born in or outside of wedlock, are entitled to the same social protection (Art. 30(3)).
- b. The ASEAN Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children, adopted in 2013, expresses ASEAN Member States' "common resolve to eliminate violence against women and violence against children in the region" and outlines particular measures to be taken to further that end, including enacting legislation, establishing policies and strengthening a multidisciplinary and child-sensitive approach to eliminate violence against children.¹⁰² The Declaration specifically acknowledges the commitment of ASEAN Member States to the CRC¹⁰³ and calls to strengthen the role of the national mechanisms, also assisted by the ACWC, in implementing, monitoring and reporting the implementation of the CRC Committee's concluding observations in Member States.¹⁰⁴ Thus, this Declaration, although non-binding, provides a progressive and broad approach to the issue of violence against children and recognises the important role of the CRC and the CRC Committee in that regard.¹⁰⁵

- c. The Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children, adopted in 2010, aims to ensure women and children fully benefit from the process of ASEAN integration and community building.¹⁰⁶ It establishes different means to enhance the welfare and development of women and children including, among others, promoting a child-centred approach in planning, programming, budgeting, implementation, monitoring and evaluation processes.¹⁰⁷ The Declaration acknowledges the CRC and aims to strengthen the ability of ASEAN Member States to fulfil their commitments under the Convention.¹⁰⁸ It also addresses specific child-related issues, such as child mortality, health, protection of children, housing, adequate living environment, education, protection from violence, etc.¹⁰⁹
- d. The Declaration on the Commitment for Children in ASEAN, adopted in 2001, aims to “promote regional cooperation for the survival, development, protection and participation of ASEAN children, as an integral part of ASEAN’s efforts to improve the lives of people in the region”.¹¹⁰ The Declaration is guided by the CRC and recognises and encourages respect for children’s rights.¹¹¹ In particular, the Declaration notes different issues impacting children in the region, such as poverty, hunger and homelessness,¹¹² protection from violence,¹¹³ family support and alternative care,¹¹⁴ health care¹¹⁵, education¹¹⁶ and child participation.¹¹⁷

1.3.3. The Challenges and Potential of a Regional Approach to Children’s Rights in Asia

As described above, Asia is the only region without a human rights court or commission to address the lives of children in the region. Thus, to date, there is no competent body to issue binding legal standards for States, provide guidance or gather best practices on specific issues, and/or monitor and evaluate the implementation of the CRC at the national level. In addition, Asia does not have a human rights court or other regional judicial body that is competent to receive communications from individuals and/or groups concerning alleged violations of children’s rights in the region.

Yet, after taking a closer look at the situation, it can be argued that the developments and increased cooperation at the regional level signal the emergence of a human (and children’s) rights system. In recent years, there has been increased regional cooperation in matters relating to economy and security in Asia, and OHCHR also established and promoted regional and sub-regional cooperation, human rights mechanisms and regional offices.¹¹⁸ Scholars have also noted a change in the political will of Asian countries, evident, for instance, in the establishment of ASEAN.¹¹⁹ In particular, the ASEAN Human Rights Declaration can be viewed as an initial step to establish a formal (sub-)regional human rights system.¹²⁰

In addition, there is a growing variety of activities and initiatives for human rights at the regional and sub-regional levels in Asia.¹²¹ A noteworthy example is the Asia Pacific Forum of Independent National Human Rights Institutions (NHRI). The forum is independent, working in several partner states across Asia and the Middle East. Its activities are directed towards supporting members by providing training programmes, capacity building and other activities. The forum also works with a range of partners (e.g., CSOs and governmental and international organisations) on issues relating to the rights of children and the implementation of the CRC.¹²²

That being said, while there are signs of progress and cooperation at the regional level, in relation to the protection of children, there is currently no formal regional human rights system in Asia.¹²³ This limits the ability to monitor and evaluate the implementation of the CRC in practice, as well as address pressing issues impacting children at the regional level.

Chapter 2: Children’s Rights – A Thematic Focus

This second chapter aims to shed light on key thematic issues affecting children’s rights, with particular relevance to the regions of Asia and Europe. 3 key themes, with corresponding sub-themes, will be explored. Part 2.1 will explore the critical issue of children in vulnerable situations and their rights, reviewing the challenges faced by children in armed conflict, juvenile justice, trafficking and on the move, including unaccompanied minors and separated children, and those at the intersection of different determinants of vulnerability (namely, gender, indigenous and minority children, children with disabilities and children in contact with the law). Part 2.2 will focus on the participation and involvement of children in decision-making from a child rights’ perspective (including access to justice and children’s rights to be heard). Part 2.3 will conclude by discussing international partnerships that may help further advance children’s rights while readdressing some of the issues and challenges raised in the previous sections, for example, the protection of displaced, refugee and stateless children, mechanisms for international cooperation on missing children and separated children as well as monitoring mechanisms against the CRC.

2.1. The Protection of Children in Vulnerable Situations

2.1.1. Emergence of an Agenda: A (Brief) Historical Perspective

Although charitable action has long given widespread support to child survival and development,¹²⁴ for some years prior to the adoption of the CRC, advocates for children and their rights observed that there were glaring gaps. Therefore, the premise for a child rights agenda grew around children who had been made vulnerable because of a range of “especially difficult circumstances”.¹²⁵ “Reducing mortality among infants and young children” was indeed recognised to be a “hollow and insufficient victory” if those children had no opportunity to grow and develop specifically because of the circumstances in which they were born or lived.¹²⁶ As this agenda began to emerge in the 1980s, the “especially difficult circumstances” that concerned those who would soon work towards drafting the CRC included themes such as armed conflict and disasters, children in circumstances of exploitation and neglect as well as children who were “abandoned, institutionalized, disabled, from migrant or nomad families, or from groups suffering serious discriminations”.¹²⁷ While the language may have changed, the issues that were of concern then are still many of the challenges that children continue to face today. Children remain exposed to violence, exploitation and abuse – in the home, at school and in their communities. However, a further change is the recognition that those “especially difficult circumstances” are interconnected, with child rights’ actors shifting away from issue-based approaches to a “systems approach”.¹²⁸ While the rest of this section surveys those different themes, this overarching principle always needs to be kept in mind.

2.1.2. A Walk through some of the Thematic Issues

2.1.2.1. Overview: themes and intersections

Throughout Asia and Europe, risks faced by children cross socio-cultural-economic divides and require robust child protection systems that include prevention and response measures. There is, for example, a strong correlation between child poverty and abuse, neglect and exploitation.¹²⁹ Children with disabilities and indigenous children suffer higher rates of poverty than non-disabled and non-indigenous children, and are more vulnerable to marginalisation and exclusion.¹³⁰ Humanitarian crises, fragile contexts,¹³¹ social exclusion and extreme poverty then further exacerbate exposure to protection and exclusion risks. Such phenomena particularly affect refugee, migrant, stateless and internally displaced children and those who are unable to flee, with vulnerabilities compounded for children from ethnic minorities and children with disabilities. There is a clear link between conflict, systemic discrimination, displacement and exploitation. Denied protection and basic services essential for their survival, children in such especially difficult circumstances are highly vulnerable to exploitative smuggling and trafficking networks, which further increase their exposure to sexual and

physical exploitation. In other cases, migration-producing and hosting states can drive vulnerability by failing to implement the necessary protection and assistance measures contained in their international and domestic commitments. Such interconnections exacerbate further protection risks, such as arbitrary detention, trafficking and the worst forms of child labour (WFCL), including children in street situations and children associated with armed forces and armed groups (CAAFAG). There are additional gendered risks exacerbated by sociocultural norms, including child marriage, female genital mutilation and discrimination targeted at non-conforming sexual orientation and/or gender identity (SOGI) and lesbian, gay, bisexual, transgender and intersex (LGBTI) adolescents.¹³² Current examples of the above nexus can be seen through the migration paths of Syrian, Iraqi, Pakistani, Afghan and other child refugees and migrants¹³³ crossing the Mediterranean into Europe, in the plight of Rohingya children and their families attempting to seek safety in neighbouring Asian countries or among children trapped in protracted situations of internal or external displacement due to conflict and natural disasters, for example, in countries including Pakistan, Ukraine, India, the Philippines and others.

2.1.2.2. Children and armed conflict

Armed conflict has long been recognised for dramatically increasing children’s vulnerability to human rights and humanitarian law violations,¹³⁴ from impeded access to education, health and humanitarian assistance, family separation and displacement to more acute risks of killing and maiming, recruitment and sexual violence. “Asymmetric attacks” by non-state actors have been reported as particularly impacting children while air strikes by multiple entities and international coalitions were also a “particular concern” in the Secretary-General’s latest report on children and armed conflict.¹³⁵ In Asia, the situation in Afghanistan is of particular concern, with 3,512 child casualties verified by the UN in 2016, the highest number recorded to date.¹³⁶ Recruitment into armed forces and groups is a particularly egregious violation with multiple implications rippling through a child’s life. In some cases, CAAFAG may be forced by their commanders “into perpetrating atrocities, such as killing, torturing and looting – sometimes against their own families and communities”.¹³⁷ This opens complex questions with respect to their reintegration upon release, what forms of accountability may apply to these children and what mechanisms can be used to ensure accountability in ways that can still preserve children’s best interests. Juvenile justice systems do not always have the proper safeguards in place to best handle CAAFAG fully in line with their protection and reintegration needs. An oft-seen practice instead is administrative or security detention of children associated with armed groups, often under counterterrorism legislation and notably when children are associated with non-state actors.¹³⁸ The same applies to child witnesses who are asked to testify, with gaps in the systems aimed to protect child witnesses “both inside and outside the courtroom”.¹³⁹ The impact of armed conflict in triggering displacement also increases push and pull factors for harmful coping mechanisms including early marriage¹⁴⁰ and the worst forms of child labour, as well as impeded freedom of movement, lack of access to essential services and legal documentation, and heightened risk of detention and refoulement.

2.1.2.3. Children uprooted and on the move

Nearly 50 million children have migrated across borders or been displaced.¹⁴¹ Children are at heightened risk of violence, exploitation and abuse while on the move, particularly unaccompanied minors and/or those separated in transit. While children represent less than a third of the overall global population, they constitute over half of refugees under the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR).¹⁴² Migrant children face the deprivation of rights in their countries of origin and similar risks in transit and receiving countries, with the notable exception being their different legal status under international law compared to refugee children’s required access to a durable solution.¹⁴³ Both refugee and migrant children are exposed to grave human rights violations throughout all stages of their migration paths, including exposure to trafficking and other forms of exploitation,¹⁴⁴ arbitrary detention, death, the worst forms of child labour and sexual exploitation and abuse. They can be denied access to critical services, including safe shelter, health and education, as well as impeded access to critical legal documentation necessary for birth registration and proving

their identity. Within these broader risks, unaccompanied children are at unacceptably higher risk of these violations.

The failure of legislative measures to address the specific circumstances and vulnerabilities of children, the lack of sincere commitment of parties, particularly those caught up in conflicts, and a failure to form strong and unified regulatory regimes capable of dealing with child migrant rights are among some of the major challenges in protecting children. Legal systems focus on protection from the most egregious violations of children's rights and fall short in providing for children's well-being and development. The reach of laws is often poor due to a lack of awareness, respect and enforcement and because children are uniquely susceptible to exploitation. Children are often harmed by those who should be protecting them. Child migrant agencies are frequently ignored or manipulated in the interest of States Parties.¹⁴⁵

States must ensure humane and appropriate legislative, administrative, social and educational measures to protect children seeking sanctuary. We need to recognise that one of the most inhumane ways of assessing a child's refugee status is housing children in detention facilities. Advocacy and evidence-based research reveals the harmful consequences of detention on children. The outputs of such research need to be communicated effectively to States Parties.¹⁴⁶

There are alternatives to prolonged and mandatory detention. Children could be provided with community care following appropriate assessments of risks and benefits. Usually, community care is far easier and cheaper, and involves fewer risks to the mental health and well-being of children.

Case Example: Greece – and Far Beyond

Of the estimated 1.2 million asylum seekers passing through Greece due to a range of conflict and fragile contexts, 480,000 were children. Of the 62,375 remaining in Greece, 21,300 are children while an estimated 2,300 are unaccompanied, with numbers likely to be higher as older children tend to present themselves as adults or accompanied.¹⁴⁷ A common bottleneck experienced by authorities in Greece, international actors and partner countries in the EU was caused by the serious underestimation of time needed for family reunification and insufficient resources (in budgets and adequately trained staff) to proceed with identification, family tracing and reunification. Insufficient priority was also put on the issuing of emergency documentation for people and children alike. While the attention on Greece is warranted, particularly in light of the Turkey-EU deal aimed to control and reduce the flow of people from Turkey, it should not detract from spillover effects in neighbouring countries. Alternate migration routes between Asia, the Middle East and Europe, going through Serbia, Croatia, Macedonia, Bulgaria and Italy, are evidence of this spillover. Italy, for example, has seen arrivals not only from countries in Africa but also increasing numbers of people (including children) arriving from Asian countries such as Bangladesh, Afghanistan and Pakistan.¹⁴⁸ Beyond those countries, a sharp focus needs to be maintained on the migration routes, protracted displacement and phenomena of forced returns (for example, between Pakistan and Afghanistan,¹⁴⁹ with increased cases of returns or onward migration from Afghanistan), the recent surge of Rohingya refugees arriving in Bangladesh and the continuing practice of returns and refoulement of such refugees across the region (from Thailand, Malaysia, Indonesia, India and beyond). It is also important to note that attempts to forcibly stop population movements inadvertently led to smuggling and trafficking networks in Greece.¹⁵⁰

2.1.2.4. Stateless children

According to the UNHCR, the Asia Pacific region is home to 3.5 million refugees, 1.9 million internally displaced persons and 1.4 million stateless people. The majority originate from Afghanistan and Myanmar. Although both voluntary and involuntary migration occur in Asia, the prevalent flows are of temporary labour migrants. Migration is a major driver of social and economic change in Asia. Asia hosts some of the largest numbers of child migrants under the age of 18, who migrate internally and across national borders, with or without their parents.¹⁵¹

Rohingya Children

There are 8 major national ethnic groups that could be broken down into another 135 ethnic groups. Myanmar, through its 1982 Citizenship Law recognises the Kaman and Bamar Muslims in its Muslim populations. Its population also includes Chinese Muslims and Indian Muslims. However, the largest Muslim population living in the Rakhine State, the Rohingya, are not recognised in the list—this has effectively rendered them stateless.

Systematic persecution, extreme poverty and alienation have led Rohingya to seek asylum in other countries. An OHCHR report estimates that 2,000 Rohingya and Bangladeshis died at sea between 2012 and 2015 (submitted to the Human Rights Council, 32nd session, 2 June 2016). While there are no reliable figures, there are reports that many of them are children.

Children are also vulnerable when they are crossing treacherous borders to seek refuge. On 25 August 2017, ARSA (Arakan Rohingya Salvation Army), a Rohingya insurgent group, which according to the International Crisis Group was formed after the 2012 violence, attacked police posts and attempted to raid an army base in 25 locations. The disproportionate counter-offensive carried out by Tatmadaw forced Rohingya population to flee across the border to Bangladesh.

Nearly half of the newly displaced are children. Up to 60% of the new arrivals are children and 30% are children under 5 years old. 7% are infants less 1 year old. 3% of the newly arrived refugees are pregnant, and 7% are breastfeeding women. They narrate stories of violence that tell a tale of international crimes. UNICEF estimates that there are over 1,600 unaccompanied children who are at particular risk of human trafficking, sexual abuse, child labour and child marriage. There are 720,000 Rohingya children (both from previous and current displacement statistics) who remain vulnerable and require urgent support. Up to 1 in 5 refugee households are headed by women, and 5% by children. Over 45,000 children are malnourished.;

UNFPA stated that the horrific accounts of rape and sexual assault against Rohingya women and girls could be “just the tip of the iceberg”, and that 120,000 of the recent displacement in Cox’s Bazar since 25 August are women of reproductive age and 24,000 are either pregnant or breastfeeding. About 60% of Rohingya girls were married before the age of 18. It is worth noting here that a UNHCR Report published in 2016 on mixed movements in Southeast Asia noted that 1 in every 3 women and girls said that they were victims of domestic violence.

Excerpt from: Bina D’COSTA “No Place to Hide: Life and (Death) of Rohingya Children,” *Daily Star*, 13 October 2017, <http://www.thedailystar.net/star-weekend/the-shadow-violence/no-place-hide-1475062>.

Some of the key concerns raised by humanitarian actors who work with migrant children in Asia are incitement to violence; sexual and gender-based violence (SGBV) and impunity; child labour and trafficking; extortion, arbitrary arrest and torture; humanitarian needs; statelessness and identity; segregation and property rights; discriminatory restrictions on family life; freedom of movement; and crimes against humanity.¹⁵² A child is born stateless somewhere in the world every 10 minutes.¹⁵³ UNHCR estimates that at least 10 million people do not have a nationality and warns that the problem is growing.¹⁵⁴ Statelessness and lack of associated civil documentation present significant discriminatory barriers in proving identity and access to essential services, including health and education, as well as increasing vulnerability to gross human rights violations. While birth registration is an essential prevention measure, lack of this documentation alone does not necessarily render a child stateless. Statelessness can be the result of gender-discriminatory nationality laws, with 27 states globally preventing women from transferring their nationality to their children.¹⁵⁵ Particularly high-risk caseloads for statelessness include “children born to women of ethnic and religious minorities, undocumented migrants, refugees and asylum seekers, and trafficking survivors”.¹⁵⁶

2.1.2.5. Child trafficking and the worst forms of child labour

Armed conflict, situations of fragility and the subsequent breakdown in the protective environment and the rule of law facilitate transnational crime, including the trafficking of children. Furthermore, significant risks of trafficking arise during displacement and subsequent onward movement of refugee, asylum-seeking and migrant children. This is often due to restricted legal movement options, lack of trust in authorities (and resulting push and pull factors with smugglers/traffickers), lack of access to accurate information on their rights and asylum processes, unacceptably slow family reunification processes and the opportunism of smugglers/traffickers. The 2016 Global Report on Trafficking in Persons highlighted an increasing number of trafficking victims from Syria, Iraq and Somalia in destination countries in Europe, Asia and the Middle East.¹⁵⁷ Meanwhile, some 152 million children worldwide are believed to be engaged in child labour, with nearly half engaged in its worst forms.¹⁵⁸ Reliable data, however, is difficult to come by given the nature of the work children are engaged in (e.g., slavery and situations similar to slavery, commercial sexual exploitation and recruitment in armed forces and groups, among others). Nevertheless, Member States need to ensure adequate prevention and response measures are in place to protect the vulnerable, disrupt and prosecute criminal and other exploitative networks and provide appropriate responses, which are all too often lacking, to child survivors.

2.1.2.6. Indigenous and minority children and children with disabilities

Indigenous and minority children and adolescents face discrimination and added barriers in accessing basic rights. The insufficient recognition of and support for minority and indigenous adolescents manifests itself in “discrimination, social exclusion, marginalisation and non-inclusion in public spaces”. It also drives “poverty, social injustice, mental health issues, including disproportionately high suicide rates, poor educational outcomes and high levels of detention within the criminal justice system”.¹⁵⁹ A number of situations testify to such patterns, such as the abnormally high detention rate of indigenous children in Australia,¹⁶⁰ the persecution and reproduction of stateless status for Rohingya people in Myanmar and neighbouring countries,¹⁶¹ and persistent intersectional discrimination with stateless Roma populations across Europe and Eastern Europe.¹⁶² Meanwhile, of the estimated 500 to 650 million persons with disabilities globally, 150 million are children and over 80% live in developing countries with limited to no access to services.¹⁶³ Children with disabilities face unacceptable levels of social exclusion and discrimination in access to essential services, including education and health, while adolescents face disproportionate vulnerability to physical and sexual violence and child marriage.¹⁶⁴ Their access to services is even further restricted in conflict contexts and while on the move, as witnessed in both Europe and Asia, with the lack of accessible services in response to refugee arrivals.¹⁶⁵

2.1.2.7. Justice for children

Children can come into contact with the justice system through a range of pathways: as victims or witnesses, in conflict with the law and/or in need of judicial protection.¹⁶⁶ Too often, children who should not come into contact with the law do due to accompanying a parent to detention, seeking asylum or being removed from an abusive environment.¹⁶⁷ Certain caseloads are at disproportionately higher risk of detention, including street children as well as indigenous and minority groups. For children in contact with the law, detention should only be a measure of last resort, in exceptional circumstances and only for the shortest period of time.¹⁶⁸ This applies to all children, including migrant, refugee and asylum-seeking children, children trafficked into forced criminality and CAAFAG.¹⁶⁹ Wherever appropriate, States should provide alternatives to judicial proceedings and detention, including diversion procedures, community-based alternatives and restorative justice.¹⁷⁰ CRC General Comment No. 10 (2007) on Children's Rights in Juvenile Justice further outlines the need for domestic laws to specify situations where diversion is possible and the need to have the regular review of decision-makers' applications of such provisions to prevent discrimination in practice.¹⁷¹

Longstanding concerns have been expressed over the arbitrary detention of refugee, asylum-seeking and migrant children, with the principle that detention of children on the basis of their immigration status should never happen.¹⁷²

Case Example: Refugee and Indigenous Children in Detention in Australia

While Australia supports an environment conducive to promoting and upholding the best interests of the child, the issue of refugee children held in offshore detention and the disproportionate representation of indigenous children in the juvenile justice system are 2 serious causes for concern.¹⁷³ Refugee and asylum-seeking children are being held in offshore processing centres, most notably Nauru.¹⁷⁴ Some are with families, some are unaccompanied while some were born on Nauru and are, in effect, stateless.¹⁷⁵ There have been widespread reports of sexual assault and alleged sexual harassment against children,¹⁷⁶ and alarms have been raised that “post-traumatic stress disorder and depression” are reaching epidemic proportions, including among children.¹⁷⁷ Despite attempts to refute legal responsibility, the involvement of Australian authorities in the apprehension, detention and transfer of refugees, in refugee status determination procedures and in financing those centres meets the standard of “effective control” under international law, thereby assigning Australia international responsibility for refugee and asylum seekers, including children, held in these centres.¹⁷⁸ A further challenge in Australia involves how indigenous children are overrepresented in the juvenile justice system,¹⁷⁹ face substantially lower levels of access to health, education and child welfare and are also confronted with endemic discrimination.¹⁸⁰ In some Australian states, indigenous children are 52 times more likely to spend time in detention than their non-indigenous counterparts, and are also less likely to receive bail or benefit from diversion programmes.¹⁸¹

Article 40(3) of the CRC requires Member States to have a minimum age of criminal responsibility (MACR). General Comment No. 10 (2007) of the CRC considers the MACR for children below the age of 12 years to be unacceptable internationally and encourages States to increase this age to 14 to 16 years. Several Member States in Europe and Asia currently have legislation, exemptions and/or practices inconsistent with this norm.¹⁸²

2.1.2.8. The cross-cutting lens of gender dimensions of vulnerability

Sexual and gender-based violence and related gender-based discrimination is a key area where challenges to child rights intersect. SGBV “refers to any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys.”¹⁸³ For children, unfortunately, all too common SGBV risk exposure includes child marriage, sexual exploitation and abuse, trafficking including the worst forms of child labour, female genital mutilation, infanticide and prenatal sex selection. Children are exposed to various forms and risks of SGBV in their homes, communities, at school, in crises and displacement. While the overwhelming number of known victims and survivors are female, increasing evidence is being gathered on the experiences of boys and how their exclusion from critical sexual and reproductive health information and service provision in the past has prevented an accurate understanding of their experiences.¹⁸⁴

One particularly acute issue in Asia and Europe is child marriage. A violation of both human and child rights, child marriage violates the 4 core CRC principles of discrimination, best interests, survival and development, and participation by fundamentally limiting the health, development, education and well-being outcomes of child brides and their children. Child marriage disproportionately affects female children, resulting in increased maternal mortality, an increased risk of contracting HIV/AIDS, an increased risk of domestic violence, impeded access to education and fundamentally unequal power dynamics due to the often significant age gap between the parties.¹⁸⁵ Child marriage is a phenomenon of particular criticality in South Asia, which is home to 42% of all child brides globally.¹⁸⁶ Bangladesh has the highest rate of child marriage in the region (52%), followed by India (47%), Nepal (37%) and Afghanistan (33%).¹⁸⁷

A further dimension not to be overlooked revolves around discriminations faced by people, including SOGI and LGBTI adolescents. Such persons face high levels of discrimination, social exclusion and violence.¹⁸⁸ Finally, in the intersection across issues, it is important to remember that child labour, including in its worst forms, has a gender bias. Although boys and girls are equally likely to be involved in child labour, there is a disparity in the work being carried out. Girls are, for example, far more likely to be involved in domestic work.¹⁸⁹ While absolute data on the worst forms of child labour is scarce because of the hidden nature of WFCL, girls are also at higher risk of trafficking for commercial sexual exploitation¹⁹⁰ and are at higher risk of hazardous work from 5 to 11 years (58%) while boys are at higher risk from 15 to 17 years (81%).¹⁹¹

2.1.3. A Walk through the Normative Frameworks

2.1.3.1. Children and armed conflict

The international regime around children and armed conflict grew from the initial impetus of the 1996 study by pioneering child rights advocate Graça MACHEL¹⁹² on the impact of conflict on children. Seized of the issue, the Security Council began considering children and armed conflict as a recurring thematic item, and the unanimous adoption in 2005 of UN Security Council resolution 1612 ushered in a new era¹⁹³ with the establishment of a Monitoring and Reporting Mechanism (MRM) on children and armed conflict (CAAC). The MRM focuses on 6 grave violations of children’s rights in conflict: recruitment and use of children, attacks on schools and healthcare facilities, sexual violence, abduction, denial of humanitarian access and killing and maiming. It also concentrates on monitoring progress (or lack thereof) in the implementation of Action Plans signed to by different parties setting out commitments to put an end to the grave violations. In monitoring the situation of children in armed conflict, the Security Council follows various country contexts and situations on a regular basis, and of 14 situations/countries before the UN Security Council at the time of writing, the situation of one ASEM Partner was, and still is, under consideration (Myanmar) while, in Asia, Afghanistan was also under consideration.¹⁹⁴ Furthermore, the MRM was also monitoring the impact of conflict on children (without the situation being on the Council’s agenda) in India, Pakistan, the Philippines and Thailand.

In these countries, monitoring efforts take place through the office of the Secretary-General's Special Representative for Children and Armed Conflict.¹⁹⁵ The sum of these monitoring efforts is captured on a yearly basis by the UN Secretary-General, who issues a report that includes a "name and shame list" of parties who commit grave violations affecting children in situations of armed conflict. In Asia, parties to conflicts in Afghanistan, the Philippines and Myanmar have been listed as committing one or more of the 6 grave violations. These are almost exclusively non-States Parties, with the exception of the Tatmadaw, or armed forces (including border guard forces), in Myanmar and the Afghan National and Local Police forces in Afghanistan.¹⁹⁶

In addition to the Children and Armed Conflict agenda, the Convention on the Rights of the Child was expanded in 2000 with the adoption of an Optional Protocol on the Involvement of Children in Armed Conflict. The Optional Protocol entered into force in 2002, with currently 168 States party to the Protocol.¹⁹⁷ The only countries in Asia and Europe that are not full parties are Myanmar (signatory only), the Democratic People's Republic of Korea and Papua New Guinea (non-signatories). The Optional Protocol establishes 18 as the minimum age for compulsory recruitment and participation in hostilities.¹⁹⁸ More recent initiatives, including the Countering Violent Extremism (CVE)/Preventing Violent Extremism (PVE) agenda which is being pursued through the UN Security Council and General Assembly by several Member States, can present challenges in practice for ensuring the continued protection of children affected by armed conflict (see below).¹⁹⁹

2.1.3.2. Children on the move

Refugee and migrant children (including unaccompanied and separated): The 1951 Refugee Convention and its 1967 Protocols relating to the Status of Refugees "define a refugee regardless of age, and make no special provision for the status of refugee children".²⁰⁰ There is long-established recognition of the challenges related to unaccompanied and separated refugee children, particularly the search for "an appropriate durable solution [...] regard should be given to the principles of family unity and the best interests of the child".²⁰¹ Meanwhile, the framework for migrant children is weak, with the main convention being the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, drafted in 1990 but only entering into force in 2003 upon reaching 20 ratifications. Its focus is on migrant workers' rights (and rights applicable to their families); so while it does have provisions for children of migrant workers, it does not focus or guarantee any rights for child migrants per se. Broadly speaking, there is "no single international instrument that clearly and explicitly enshrines the protection of a core baseline of rights (and corresponding set of minimum state obligations) [that] applies to all migrants, regardless of the cause of their migration",²⁰² with children falling through that crack in international legal and rights frameworks.

An attempt at fixing a number of such gaps was initiated in September 2016 when the UN General Assembly adopted the New York Declaration for Refugees and Migrants. The Declaration provides the basis for the negotiation and adoption of 2 global compacts in 2018, the first on refugees and the second on safe, orderly and regular migration. The Declaration includes some important commitments to children's rights, recognising their significant representation among displaced populations, as well as their particular needs and vulnerabilities. Ultimately across both compacts, the aim is to achieve a common approach to protecting refugee and migrant children as well as building on the 6 key areas of child rights included in the Declaration: non-discrimination and integration, prioritising the best interests of the child, children's access to services, ending child immigration detention, promoting durable solutions and child protection.²⁰³ Meanwhile, older CRC General Comments such as GC 6 in 2006 on Treatment of Unaccompanied and Separated Children outside their country of origin remain critically relevant for unaccompanied asylum-seeking children (UASC) on the move. The more recent General Comment No. 21 (2017) on Children in Street Situations provides important guidance for ASEM Partners on a rights-based response for a complex caseload, which often involves refugee and migrant children. In addition, the Joint General Comment of the CRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) was intended to address the "double deficit" in migration policies, referring to the absence of inclusion of child rights in current migration policies as well as the failure of national child protection policies and systems to

support the specific needs of migrant children.²⁰⁴ The latter has come about despite the obligations of all Member States to protect all children within their territories and jurisdiction, regardless of the child's nationality or immigration status.²⁰⁵ Further, the 2016 UN Sustainable Development Goals (SDGs) reflect commitments from Member States that relate to the protection of refugee and migrant children, including but not limited to SDG 10.7, 1.2, 3.2, 4.1, 4.2, 4.5, 4.a, 5.2, 8.6, 8.7, 8.8, 16.1 and 16.2.²⁰⁶

Trafficked children: Complementing the UN Convention against Transnational Organized Crime adopted by General Assembly resolution 55/25 of 15 November 2000 is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol as it opened for signature in December 2000 in Palermo, Italy. The Protocol defines “trafficking in persons” as “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”. Forms of exploitation include prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The Protocol makes it clear that “the consent of a victim” is irrelevant where any of the means of coercion were used and afford extra protection for children, on the consideration that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any coercion (Art. 3 (a);(b);(c)).

Stateless children: In 1948, the (UDHR) stipulated in Article 15 that every person has a right to a nationality. The issue of statelessness was meanwhile the subject of a specific convention adopted in 1961 on the “Reduction of Statelessness” (known as the 1961 Convention). As noted in UNHCR’s Guidelines on Statelessness “*Ensuring Every Child’s Rights to Acquire a Nationality*”,²⁰⁷ Articles 1 to 4 of the 1961 Convention focus on preventing statelessness among children through a “safeguard contained in Article 1 of the 1961 Convention [which] gives a child who would otherwise be stateless the right to acquire the nationality of his or her State of birth” either through a State granting its nationality automatically by law to children born in its territory who would otherwise be stateless, or through a State granting its nationality to such individuals later upon application. The Convention also includes provision for nationality acquisition by descent. The safeguard is strong in the sense that contracting States are not permitted to make reservations to Articles 1 to 4, though some may choose different methods and legal routes available to prevent statelessness. Meanwhile, the protection against statelessness is reinforced with the importance of a child’s right to a nationality as reflected in Article 7 of the CRC.²⁰⁸

2.1.3.3. Other intersecting dimensions: gender, disability, indigenous, child labour and detention

Gender and Child Marriage: Article 16 of CEDAW prohibits child marriage and the CRC Committee has set the minimum age for marriage at 18 years.²⁰⁹ The SDGs further require all countries to end child marriage by 2030. Regarding gender identity and sexual orientation, a key framework comes from CRC General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, referring to Article 12 of the CRC which provides that States Parties should “guarantee adolescents the right to express views on all matters of concern to them, in accordance with their age and maturity, and ensure they are given due weight, for example in decisions related to their education, health, *sexuality*, family life and judicial and administrative proceedings.”(emphasis added).²¹⁰

Children with disabilities: CRC General Comment No. 9 (2006) outlines the rights of children with disabilities and provides guidance for states to achieve their realisation, including prohibitions of all discriminations on grounds of disability, and promotion of measures for the maximum integration of children with disabilities. The CRC’s General Comment on children with disabilities also includes recommendations for review of domestic legal frameworks to ensure CRC provisions can apply in full to all children, including children with disabilities. These rights are also to be considered within the

overarching framework of the Convention on the Rights of People with Disabilities (CRPD), adopted in 2006 using a “broad categorisation of persons with disabilities” and reaffirming “that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms”, including children (CRPD Art. 7). The CRPD has been adopted and ratified by all ASEM Partners.

Indigenous and minority children: General Comment No. 11 (2009) of the CRC turns its attention to the situation of indigenous children, underlining that the CRC was, in fact, “the first core human rights treaty to include specific references to indigenous children in a number of provisions” (CRC GC 11, Art. 1). The General Comment notes the specific vulnerability of indigenous children and explains how children of indigenous background require special protective measures in order to enjoy their full rights, providing guidance for States on how to implement their obligations under the CRC with respect to indigenous children. Once again, these recommendations are to be considered within the overarching framework set out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which includes a number of special provisions for children (for example, around access to education in their own language and culture, and against forcible removal) and indigenous children with disabilities. However, a number of countries in Asia and Europe either voted against the Declaration’s adoption in 2007 (Australia and New Zealand) or abstained (Azerbaijan, Bangladesh, Georgia, the Russian Federation, Samoa and Ukraine).²¹¹

Worst forms of child labour: WFCL are defined according to Article 3 of ILO Convention No. 182, also known as the Worst Forms of Child Labour Convention 1999, (No. 182), as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; 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; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” As recently noted by ILO, the “Worst Forms of Child Labour Convention, 1999 (No. 182), with 181 ratifications, is the most rapidly ratified Convention in the history of the ILO” and “more than 99.9% of the world’s children aged 5 to 17 years are now covered by it”.²¹² It is almost universally in force in the ASEM region.²¹³

Children in contact with the law and deprived of liberty: The CRC enjoins States Parties to use deprivation of children’s liberty only as a measure of last resort, and only for the shortest appropriate period of time (Art. 37(b)). Children must also have a fair trial (CRC Art. 40). The position of children in conflict with the law is regulated by the CRC as well as by a number of UN resolutions. Article 40 of the CRC is the core provision addressing juvenile justice. It recognises the right of every child alleged of, accused of or recognised as having infringed the penal law to be treated with dignity and in a manner that takes into account the child’s rights, and promotes his or her reintegration into society (Art. 40(1)). The provision further recognises several procedural rights for children in conflict with the law, also known as fair trial rights, such as the prohibition of retroactive punishment, presumption of innocence or right to appeal and review decisions (see 40(2)(a); 40(2)(b)(i); 40(2)(b)(v)). Article 40 of the CRC also provides child-specific procedural rights, including the right to procedures without delay, to legal or other appropriate assistance, and the right to parental involvement in the proceedings (see 40(2)(b)(ii); 40(2)(b)(iii)). The provision also requires States to establish “laws, procedures, authorities and institutions” to specifically address children in conflict with the law (Art. 40(3)), and the CRC Committee has underscored States’ obligations to establish a specialised juvenile justice system.²¹⁴ Such a system builds on the determination of a MACR and the development of diversion and alternative dispositions for children (Art. 40(3); Art. 40(4)). In particular, the use of diversion (i.e., out-of-court settlement) is considered highly significant in light of the educational or pedagogical notion of juvenile justice.

In addition to the CRC, the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the Beijing Rules)²¹⁵ addresses the establishment of a specialised justice system for children. In 1990, the UN General Assembly adopted the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),²¹⁶ presenting a child-centred approach to the prevention

of delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)²¹⁷, which set standards for the protection of children deprived of liberty. These 3 UN instruments, along with the CRC, provide a comprehensive legal framework on the rights of children in international juvenile justice. It is also important to note that specific legal instruments at regional levels, as well as the case law of regional human rights courts, have also shaped the field of juvenile justice and further augmented it as an international children's rights issue.

Even though international standards provide a comprehensive and rights-based approach to juvenile justice, there are significant implementation challenges at the national level. Across the globe, juvenile justice systems vary in their structures, their treatment of children and their financial and human resources. The administration of juvenile justice, in its complexity, is also affected by cultural, social and political considerations; children in conflict with the law belong to the most stigmatised groups in society, and it turns out to be difficult to raise political will or public support in issues relating to the rights and interests of these children.²¹⁸

For children who are in detention, there are international legal safeguards protecting them from violence, abuse and exploitation and safeguarding their human rights.²¹⁹ The CRC prohibits the use of torture, cruel, inhuman or degrading treatment or punishment while international law prohibits the death penalty for crimes committed by persons below 18 years of age. The CRC has, however, recently expressed concerns that deprivation of liberty remains far too widespread, with children all too often being “detained illegally, arbitrarily and unnecessarily”. Such widespread deprivation of liberty is being used not only against children in contact with the law, but also against children with disabilities, children exposed to drug abuse, children detained with their parents, children in immigration detention and children treated as “threats to national security”.²²⁰ Another salient issue where frameworks are lacking revolves around children kept in administrative detention, i.e., held by an executive branch of government or authority as opposed to the courts system, even if rectified a posteriori through the courts.²²¹ In Europe, the issue of administrative detention is given a large interpretation as to what can constitute deprivation of liberty, including that “where alternatives to deprivation of liberty are put in place and continue to place restrictions on a child’s liberty, for instance, where a child is placed in an educational institution rather than a prison, this may nevertheless still amount to deprivation of liberty”.²²² Globally, child rights advocates have argued for administration detention never to happen, particular on the basis of a child’s immigration status.²²³ The UN Secretary-General has meanwhile commissioned, with the support of a General Assembly resolution, a global study on children deprived of liberty²²⁴ with the hopes to develop a better understanding of the situation, assess the level of implementation of existing standards and frameworks and identify good practices to curb deprivation of liberty for children.²²⁵

2.1.4. What Solutions: Emerging Good Practices, Gaps and Priorities

Recognising the holistic and interrelated nature of children’s rights, solutions and examples of good practice from Asia and Europe are outlined below, not theme by theme, but rather around key priority areas where children’s vulnerability intersect and where further investments are needed to safeguard and advance children’s rights.

Children on the move: With respect to children on the move, noting that this applies through the lens of gender, disability, minority and indigenous rights, concrete steps that can be taken in Asia and Europe include delivering on the commitments made in the New York Declaration of 2016, subscribing to the core principle that a “Child is a Child” and applying the CRC to all children, no matter their migration status, the way they migrated or lack of nationality. Moreover, efforts to protect uprooted children need to be integrated into existing domestic child protection legal frameworks and systems, including providing for the specific needs of unaccompanied and separated children. Parallel protection systems for refugee children (including UASC and child-trafficking victims) are not recommended,²²⁶ a principle recognised as an emerging good practice through, for example, the 10 principles for Integrated Child Protection Systems (ICPS) within the European Union.²²⁷ In practice, this entails more systematic cooperation between immigration officials and child protection actors to better identify and assist

child victims, strengthening the capacity for alternative care and guardianship arrangements to ensure that unaccompanied children have their best interests considered and due consideration for the agency and voice of children on the move in designing responses to better identify and support children at risk. By nature, better protection for children on the move requires enhanced cross-border cooperation amongst child protection mandated services of governments and related authorities as well as key humanitarian actors like the International Committee of the Red Cross (ICRC) and UNHCR. Child protection systems, and international agencies supporting them, need to be in constant contact with their counterparts across borders. This includes putting in place designated authorities and liaison officers, as well as procedures for the handover of guardianship across jurisdictions in the case of unaccompanied and separated children, and strengthening cooperation on family tracing to make informed decisions on durable solutions. Cooperation across borders needs to go beyond a law enforcement focus to truly encompass the best interests of the child. Child protection systems need to take a holistic and coordinated view, with clearer roles and responsibilities between key ministries (ministries mandated for social welfare, justice, education and interior/home affairs). Coordination finally needs to be strengthened in conducting timely best-interest determinations and family reunifications and triggering timely interim care and access to services.

Child trafficking: Specifically with regard to issues of child trafficking, Asian and European Member States should consider measures such as operational domestic legislation and convictions to deter criminal networks,²²⁸ enhanced regional and international cooperation, holistic support packages to survivors, the deployment and sufficient numbers of capacitated officials and proactive measures from the State to protect children at high risk, including unaccompanied refugee and migrant children, while always ensuring compliance with the best interests of the child.²²⁹ It is important for Member States to continue the progress made in anti-money laundering and counterterrorist financing tools, as well as sanctions regimes, to disrupt human trafficking connected to conflict.²³⁰ In addition, given the high patterns of official complicity in trafficking, there is a need for transparency and accountability initiatives, together with strategic partnerships with civil society networks. A recent good practice example from ASEAN is its signature of ACTIP. A regional and legally binding agreement, signed at the end of 2015, ACTIP was envisaged and developed together with an associated Plan of Action with concrete measures outlined for its implementation.

Juvenile justice and children deprived of liberty: More attention is needed to promote the use of and ensure the meaningful implementation of diversion programmes²³¹ to curb deprivation of children's liberty, whatever the type of detention (i.e., judicial or administrative). Legal frameworks can be reinforced in this regard, however as a 2015 study on juvenile justice in ASEAN²³² found, even when the legal framework is in place, diversion is not always used because decision-makers lack adequate knowledge and resources to implement such diversion programmes. One useful framework here is CRC General Comment No. 10 (2007) on children's rights in juvenile justice, which proposes, as good practice, that domestic legal frameworks contain specific provisions indicating in which cases diversion is possible, noting that the powers of the police, prosecutors and/or other agencies to make decisions should be regulated and reviewed, in particular to protect the child from discrimination. Immigration detention of children should be systematically ruled out and community-based alternatives systematised. Adequate diversion programmes are also key for CAAFAG, with the need to explore diversion options at all possible stages of the judicial process, including if a trial has already started.²³³ Additional specific training and protocols are needed for state actors interacting with children caught up in CVE/PVE measures, ensuring both practical diversion measures and the children's treatment is in line with international and national obligations. It is important in this regard to recognise that the CVE/PVE agenda has the potential to inadvertently, yet significantly, undermine over 20 years²³⁴ of hard fought advocacy to better protect children exploited during armed conflict, also rolling back or placing constraints around women's engagement in peace and peacebuilding.²³⁵ CVE/PVE-related measures have tended to be intimately linked with legislation that overrides rule of law and due process principles in practice, giving state actors far-reaching powers at the detriment of human rights obligations, especially for children detained, charged and tried under such legislation.²³⁶ As provided in Human Rights Council resolution 30/15 in 2015 on human rights and preventing violent extremism, the Council makes clear the need for any CVE/PVE measures to comply with State

obligations under international human rights, refugee and humanitarian law, including human rights education and training capacity building for State and local entities involved in implementing such measures.²³⁷

Child marriage: Regarding child marriage, some countries such as Afghanistan (see case example below) have made significant legal and policy progress on paper. However, child marriage remains entrenched in practice due to sociocultural norms both in Afghanistan and across many countries within the region of Asia. In some countries, protective measures against child marriage have been or are being eroded, with concerning legal developments. For example, recent legislative changes in Bangladesh now permit girls below 18 years to marry in “special circumstances” following the approval of the parents and a court.²³⁸ This exemption to minimum age clauses is not unique to Bangladesh, with over 117 countries having some form of exemption. This is a significant step back and a worrying trend.²³⁹ Further challenges lie in lower ages for girls than boys, as well as differences based on religious affiliation such as in the Philippines.²⁴⁰ Operationalising commitments to end child marriage through in-country task forces with dedicated resources and concrete action plans that engage community and religious leaders can help realise aspirational legal and policy frameworks.

Case Example: Curbing Child Marriage in Afghanistan

The minimum age for marriage in Afghanistan is 15 to 16 years, well below the international standard of 18 years.²⁴¹ In practice, the average age is likely much lower, though difficult to verify due to very low birth registration and associated civil documentation. Internally displaced²⁴² and returnee girls are at high risk of child marriage due to lack of civil documentation and harmful coping mechanisms. In April 2017, the Afghan government launched a National Action Plan to end child marriage in line with SDG commitments.²⁴³ However, as is the case with other plans and legislation aimed at ending child marriage, there is concern that this too will have a negligible impact on vulnerable girls on the ground. Child rights-related national plans and strategies require sufficient budgeting, planning and coordination between relevant ministries and international donors, as outlined in CRC General Comment No. 19 (2016) on public budgeting for realising child rights/Article 4 of the CRC. Child marriage is also a sociocultural norm, requiring community-level and religious-leader mobilisation. The Kabul-based UN taskforce on early marriage is thus working with communities, religious leaders and youth using creative methods to communicate risks associated with early marriage to predominantly illiterate communities.²⁴⁴ These measures and their results should be documented to inform other countries in the region that are tackling high rates of child marriage including Bangladesh, India, Pakistan and Nepal.

Specific gender dimensions: With regard to the critical dimensions of gender, and particularly sexual orientation, more progress is needed to repeal discriminatory laws and practices and take proactive measures to protect LGBTI adolescents from discrimination across all levels of society. This includes prohibiting unethical sexual orientation “treatments”, as well as better identifying and responding to the protection and inclusion needs of LGBTI adolescents at school, in the family, in the community and in broader society.²⁴⁵

Finally, whatever the gap in frameworks for realising child rights, even if international, regional and national legal and policy frameworks do provide an important basis for protection, in practice these do not protect children without empowered, capacitated and accountable government officials, civil servants, civil society and ordinary citizens (including children and their caregivers). This means the need for sufficient budgeting, planning and human resourcing of authorities and bodies with mandates for child protection, timely flexible and adaptive government response and a culture that strives for continuous improvement and learning from other countries’ experiences in advancing the realisation of all rights set out in the CRC.

2.2. The Participation and Involvement of Children in Decision-Making

2.2.1. The Participation and Involvement of Children in Decision-Making

This part will explore the issue of participation and the involvement of children in decision-making processes from a children's rights perspective. Part 2.2.2 will begin with an overview of Article 12 of the CRC, which enshrines the right of the child to be heard in matters affecting him or her, and to have those views given due weight in accordance with the child's age and maturity. It will provide a legal analysis of Article 12 as well as explore the meaning of scope of "participation". Part 2.2.3 will centre on the child's freedom of expression and the right to access information, both of which are strongly linked to participation. It will explore how these rights and freedoms are viewed as "prerequisite" for the exercise of effective participation and what the obligations of States are in that regard.

The following parts will then offer a specific look at different arenas for child participation, their scope and challenges: child participation in health care (part 2.2.4), child participation in education (part 2.2.5), child participation in the family (part 2.2.6) and participation in criminal proceedings (part 2.2.7). Finally, the chapter will conclude with a focus discussion on the CRC-OPCP (part 2.2.8) as a legal instrument to promote child participation and access to justice at the international level.

2.2.2. Article 12 of the CRC and the Concept of Child Participation

Article 12 of the CRC

"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."

Article 12 of the CRC is a unique provision in international human rights law, and is considered a "fundamental value" of the CRC.²⁴⁶ The provision enshrines the right of a child (or group of children) who is capable of forming views to express those views freely in all matters affecting him or her, and holds that the views of the child must be given due weight in accordance with the child's age and maturity.²⁴⁷ The Article further holds that children should, in particular, be provided with the opportunity to be heard in judicial and administrative proceedings affecting them, either directly or through representation.²⁴⁸ It should be noted that the right to be heard is also found in other provisions of the CRC in relation to specific contexts and issues (such as Arts. 9, 21, 37 and 40). This reflects that the right to be heard is an underlying principle of the CRC.²⁴⁹ As previously discussed in chapter 1, the right to be heard has also been recognised as a general principle of the CRC,²⁵⁰ and the CRC Committee considers the right to be heard, and in particular Article 12, to be a central issue in its dialogues with States Parties, observations and General Comments.²⁵¹

Article 12 was considered a controversial provision in the CRC as it signals a departure from the previously understood role and perception of children in society. This ties to the notion that children should be "seen but not heard", and it was generally believed that children lack capacity and agency to form valuable views. Also, the right to be heard (still) raises concerns in relation to undermining the authority of parents and educators as well as challenging the political, social, religious and other norms.²⁵² Yet, the CRC presented a new image of the child, as a subject of rights, with his or her own

voice and views. Furthermore, the CRC Committee has noted that the views expressed by children “may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures as well as their evaluation”.²⁵³

The legal analysis of Article 12 of the CRC reflects a clear and broad legal obligation.²⁵⁴ The provision applies to children who have the capacity to form views, but this should not be viewed as a limitation. The CRC Committee did not set age limits, nor does it require that children have comprehensive knowledge on the matter in order to be heard. Moreover, children with difficulties to exercise their right to be heard, such as children with disabilities, are entitled to assistance.²⁵⁵ Article 12 of the CRC also grants children the right to be heard “in all matters” that affect them, and before “any judicial and administrative proceedings”. These elements should be understood broadly to apply in all fields and contexts impacting children. Article 12 also goes beyond “hearing” the child and requires States to ensure that the views of the child are given due weight in practice. In that regard, it should be stated that Article 12 imposes a legal obligation on the State to ensure the right for children to be heard, without threat of violence or ill-treatment, taking into account the child’s background and needs. Yet, the CRC does not obligate the *child* to express his or her views, and considers this to be a choice of the child.²⁵⁶

The implementation of Article 12 of the CRC has been broadly conceptualised as “participation”.²⁵⁷ According to the Council of Europe Recommendation on the Participation of Children,²⁵⁸ participation is defined as the right, means, space and opportunity to express views freely, to be heard and to be able to contribute to decision-making, with the views given due weight in accordance with the child’s age and maturity. Lundy (2007) has also explored the concept of participation and presented a (chronological) model to conceptualise the different elements of Article 12.²⁵⁹ These elements include:

- **Space:** In order to enable meaningful participation of children, there needs to be a *space* to encourage such participation. Lundy reiterates that the space offered to children to participate must be a safe space,²⁶⁰ meaning that children will not be exposed to threats, violence or ill-treatment when speaking up and offering their views. The space should also be inclusive and diverse to allow all children to participate without discrimination of any kind.²⁶¹
- **Voice:** This element refers to the opinion and views of children. The right to be heard is dependent on the child’s ability to form a view. The term “age and maturity” refers to the weight that the child’s views should receive and, in any case, should not be regarded as a limitation on the right of children to express their views freely.²⁶² Lundy recognises that children may require assistance to be heard, such as child-friendly information, guidance, sufficient time, etc.²⁶³
- **Audience:** This element refers to the persons and/or decision-makers who are hearing children. Lundy holds that in order to effectively and fully implement Article 12 of the CRC, the decision-makers themselves (i.e., those individuals or bodies with the responsibility to listen) should be listening to children to guarantee that their views are considered (“right of audience”).²⁶⁴ These decision-makers should also be trained and educated on how to communicate with children, and how to adapt to their preferred ways and manners of communications.²⁶⁵
- **Influence:** This element refers to the weight that children’s views are given in decision-making. The requirement of Article 12 of the CRC extends beyond “hearing” children and requires decision-makers to regard and give due weight to the views expressed by children. The views of children, then, are meant to have influence and impact, and should not be considered “tokenistic” or “decorative”. This requires States to establish procedural safeguards to ensure that decisions will reflect and regard the opinion of the child, and will not consider such opinion “tokenistic” or “decorative”.²⁶⁶

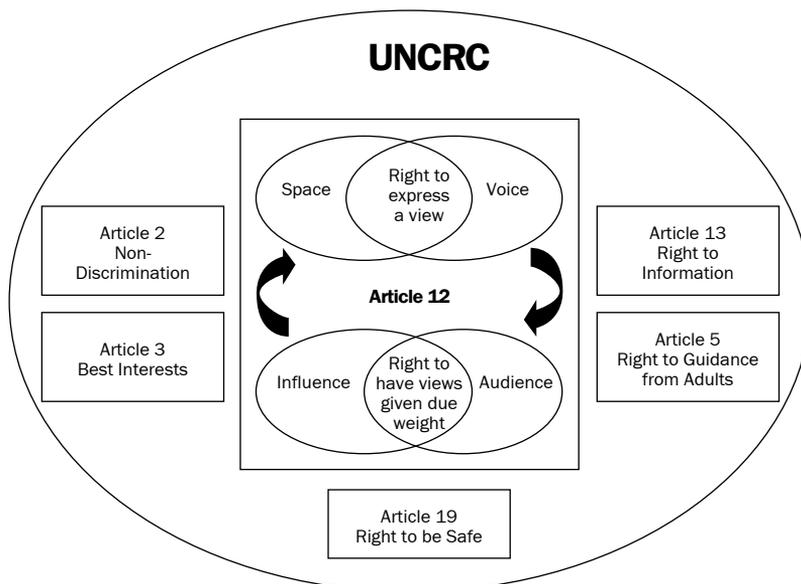


Figure 1. Conceptualising Article 12

The CRC Committee held that participation should be ensured in various settings, at local, national and international levels.²⁶⁷ Yet, there remain significant challenges in implementing children’s participation in practice. These can stem from either systemic issues, relating to long-standing practices, and political, social and cultural attitudes towards children and their capacity, or from practical problems, such as institutional and resource-related barriers.²⁶⁸ Due to the scope of this paper, parts 2.2.4, 2.2.5 and 2.2.6 will tackle specific contexts of child participation: health care, education and family.

2.2.3. Participation, Freedom of Expression and the Right to Information

The right to be heard, as anchored in Article 12 of the CRC, should not be viewed in isolation. In fact, many provisions in the CRC are linked to child participation, and are considered “crucial prerequisites” for the effective exercise of the right by children. These provisions include Article 13 of the CRC, which anchors the right of the child to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds;²⁶⁹ Article 14 of the CRC, which anchors the child’s freedom of thought and conscience;²⁷⁰ Article 15 of the CRC, which anchors the child’s freedom of association and peaceful assembly;²⁷¹ and Article 17 of the CRC, which anchors the child’s right to access information and materials from a diversity of national and international sources.²⁷²

Articles 13 and 17 of the CRC, in particular, have been recognised by the CRC Committee as essential elements for exercising child participation.²⁷³ While Article 12 of the CRC provides children with a right to express views on matters affecting *their lives*, freedoms of expression under the CRC are broader, covering all fields and issues, and serve as a basis for Article 12 of the CRC. The ability to form views first requires the freedom to hold and express views, as well as the right to access information from diverse sources, for example, information on their rights, local services, legislation proposals, etc.²⁷⁴

Access to information covers all forms of media, including the online world, in which children (particularly adolescents) interact, learn and participate. Yet, access to information should be made available in formats appropriate for children’s ages and capacities. This requires States, as well as other relevant stakeholders (i.e., healthcare institutions, schools, media, NGOs, etc.), to create child-friendly information and materials that are accessible to children. This may require using simpler language, incorporating visual images and developing creative ways to impart information. Information for children should also be available in an understandable language that displays gender and cultural sensitivity, and should be provided to children directly.

2.2.4. Child Participation in Health Care

Child participation is pivotal in the context of health care. The CRC Committee has addressed and applied the right to be heard in 2 dimensions. First, in relation to individual health and treatment-related decision-making processes, such as consenting to medical interventions and/or research. Second, in relation to general healthcare policies and services at the national and local levels.²⁷⁵

2.2.4.1. Child participation in health- and treatment-related decision-making

Children have the right to be informed, consulted and heard, give their opinions independently from parents and have them taken into account in health- and treatment-related decision-making, in accordance with their evolving age and capacities. This recognises children as “active stakeholders” in this issue.²⁷⁶

Child participation in health care is closely related to the issue of consent to medical treatment, procedures and research. Age of consent to medical treatment varies across the globe, and depends on the type of decision and its potential implications for the child. Thus, while there are considerable variations on age of consent to medical care between national contexts, the age of consent for certain medical treatment and procedures in a particular State may also be different. Some countries have a fixed age of consent for children below the age of 18, and this has been welcomed by the CRC Committee which strongly recommends States to give due weight to the views of children who have the capacity to express their views on treatment.²⁷⁷ However, it should be noted that European standards, notably in the context of biomedicine, provide additional protection and safeguards for those unable to consent, including but not limited to children.²⁷⁸ But if children are able to consent under national law and practice, they should still be entitled to special assistance and safeguards in exercising this right.²⁷⁹ This requires more guidance and comparative legal research at international and regional levels. Even if children are legally able to consent, medical professionals are required to provide clear and accessible information for children on their rights concerning participation in research and care.²⁸⁰ It holds that children, including young children, should be included in decision-making processes in a manner consistent with their evolving capacities, be provided with information on proposed treatments, their effects and outcomes, in accessible child-friendly formats.²⁸¹ States are also required to introduce legislation or regulation to ensure children have access to confidential medical counselling and advice without parental consent, irrespective of the child’s age, when this is needed for the child’s safety and well-being. For example, in instances of violence or abuse at home or the need for reproductive health education or services. A right to counselling and advice is distinct from medical consent and should not be limited by age.²⁸²

It is important to distinguish between child participation and the ability of the child to provide consent to treatment. In relation to biomedical research and care, while the age of consent can differ under national law, the views of the child, regardless of his or her legal ability to consent, should always be sought and taken into account as an increasingly determining factor, in accordance with his or her age and maturity.²⁸³ To enable meaningful participation in relation to their own health, children and their parents need to be provided with all relevant information, and be offered support. Children, in particular, are entitled to receive child-friendly and age-appropriate information, in understandable language. In order to encourage children to effectively participate in health care, professionals need to be trained on how to communicate with children, and the process in which children are heard should be child friendly, transparent, informative, voluntary and respectful of their rights, needs and interests. In a recent study concerning biomedicine and children’s rights, it was found that the existing international and European standards in the field overemphasise the child’s right to protection and do not sufficiently recognise the principle of evolving capacities and the child’s right to be heard and participate in decision-making.²⁸⁴

Example: Child-Friendly Healthcare Survey (2011)

The CoE guidelines on child-friendly health care provide a framework to ensure healthcare systems operate in line with international children's rights. As part of the guidelines, thousands of children and young people across Europe took part in a survey to share their experiences and views on health care. The findings of this survey show how important a child-friendly healthcare system is, highlighting children's own high awareness of their treatment and experience with healthcare systems. For more information, see https://www.each-for-sick-children.org/images/2015/EU_Council_Child_Friendly_Healthcare_Final_Report__English_version__1.pdf.

2.2.4.2. Child participation in healthcare policies and programmes

Healthcare services are not (necessarily) designed to accommodate the needs of children or adolescents and, for this reason, the CRC Committee found that children should also be consulted in relation to healthcare-related plans, policies, administration and legislation and be able to contribute their own experiences as patients and/or family members of patients.²⁸⁵

This requires government bodies to develop adapted procedures and mechanisms to hear children, from diverse backgrounds, of differing ages and with varying health conditions, and ensure their views are given due weight and consideration in policy design. In addition, States should require relevant stakeholders, such as healthcare providers, to establish procedures under which children can be heard and participate.

2.2.5. Child Participation in Education

School is central to the lives of children, and they also have a right to participate and be heard within the context of education.²⁸⁶ The CRC Committee found that the aims of education need to be child-centred and friendly, and highlighted the importance of collaborative and participatory education.²⁸⁷ In particular, the CRC Committee considered participation to be “fundamental to the realization of the right to education”,²⁸⁸ and held that States are required to build opportunities for children to express views and have them given due weight, in all educational environments, and promote a participatory learning environment for all children.²⁸⁹

In that regard, Goal 4 of the SDGs calls upon States to ensure “inclusive and equitable quality education”,²⁹⁰ and it has been recognised that quality education is closely tied to student participation in academic and non-academic activities.²⁹¹ Participation is also a crucial element in the “child-friendly schools” policy developed by UNICEF, which specifically examines “how far child participation is encouraged as standard practice in classroom interaction as well as in the broader operation and management of the school”.²⁹²

Student participation is associated with many advantages. Thus, it is considered important to create a social climate in the classroom that stimulates cooperation and mutual support, and the CRC Committee found that giving weight to children's views can assist in eliminating discrimination, preventing bullying and violence, and reducing the use of and need for disciplinary measures.²⁹³ Participation in education can take various forms, and be implemented at different levels. Thus, while individual children should be heard directly in decisions relating to their education and schooling (such as choice of tracks or education programmes, decisions on next level schools, school disciplinary procedures, etc.),²⁹⁴ children as a group should also be consulted on all aspects of education policies and substance at school, local and national levels.

Student participation can be achieved by student councils or other forms of student representation on school boards and committees. Student councils are the official representative body that can express views on school policies, and make decisions and take actions on behalf of the student body. Such institutions, as well as independent student organisations, should be supported by the State and the school administration in order to allow children to have a participatory role in the education system.²⁹⁵ This requires, among others, the need to ensure that such bodies are inclusive of all students, reflect the student population without discrimination, enjoy certain decision-making powers and are able to speak out freely and express views on school policies and codes without threat of ill-treatment or punishment.²⁹⁶

There exist many studies on student councils as an institution, and to what extent they allow for effective and genuine student participation.²⁹⁷

2.2.6. Child Participation in the Family

Child participation also plays a role within family matters. In cases of separation and divorce, for example, children are affected by decisions on the issues of maintenance, custody and access. Many jurisdictions include an obligation of the judge to consider the best interests of the child in decision-making but, in order to understand best interests, children should have a right to be heard in decision-making and mediation processes.²⁹⁸ The CRC Committee also refers to participation and finds a legal obligation in relation to separation from parents and alternative care systems: on decisions to remove a child from his or her family, the view must be taken into account in order to determine the best interests (see also CRC Art. 9(2)).²⁹⁹ The best interests of the child should also be heard when a child is placed for adoption or in kafalah.³⁰⁰ The best interests of the child are also a main consideration in the context of relocation and in cases concerning international child abduction.

In addition to these family matters and legal disputes, the question remains as how to involve children in decision-making in a non-conflict situation, for example. The CRC Committee holds that a family in which children can express views and be taken seriously from the earliest ages provides an important model in preparing the child to exercise this right in the wider society, and that this approach promotes the child's individual development and enhances family relations and support.³⁰¹ The CRC recognises the rights and responsibilities of parents, or other guardians, to provide direction and guidance to allow the child to exercise his or her rights, but this needs to be consistent with the evolving capacities.³⁰² States should encourage parents to listen to their children and give due weight to their views through legislation and policy and education programmes.³⁰³

2.2.7. Child Participation in Criminal Proceedings

The child's ability to effectively understand and participate in the proceedings is considered a prerequisite of the right to fair trial. At the international level, the concept of participation in the context of (juvenile) criminal justice proceedings was introduced in the Beijing Rules, stating that proceedings should take place in "an atmosphere of understanding" which allows the child to participate and express himself or herself freely (Art. 14.2). In the context of juvenile justice, it is not required that the child understands every point of law but that he or she has a broad understanding of the procedures, their structure and their potential consequences.³⁰⁴ A child's legal representative, as well as other stakeholders involved in the criminal proceedings (e.g., police, judges), should explain these elements to children and ensure that they can understand and are (en)able(d) to participate. This approach has been further developed by jurisprudence at the regional level, particularly in Europe. The European Court of Human Rights has brought the child's effective participation under the right to a fair trial.³⁰⁵ Later on, the Council of Europe adopted guidelines on child-friendly justice, to support children in the justice system and enable their effective participation.

The right to participate requires that law enforcement and judicial authorities take measures to ensure children are able to participate effectively during justice procedures. Such measures include adapting procedures for children, establishing specialised units and providing the child with information about the charges in understandable and age-appropriate language. In addition, judicial procedures should be accessible, child appropriate and child friendly. Law enforcement, prosecution and judicial officials should also undergo specialised training on child development, learn how to communicate with children and make them feel safe to participate in proceedings. Participation should be respected in every stage of criminal procedures. There has, however, been increasing attention to protecting children and ensuring their right to participate in the initial stages of investigation, including during police interrogations, when children are particularly vulnerable. Among others, a child's right to legal representation before and during police interrogations (explicitly recognised in the case law of the European Court of Human Rights) and the right to have his or her parents involved as well have been developed further in this regard.

2.2.8. Special Focus: The OPCP and Child Participation

As previously discussed in part 1.1.5., the CRC has 3 Optional Protocols. The third Optional Protocol, the OPCP, was adopted by the UN General Assembly in 2011 and entered into force in 2014.³⁰⁶ The OPCP enables individual children, groups of children and States to file communications to the CRC Committee concerning alleged violations of their rights under the CRC and/or its Optional Protocols.³⁰⁷ The adoption of this Protocol has been welcomed as an important milestone in recognising children's rights, particularly the child's right to participate and access justice at the international level.³⁰⁸

2.2.8.1. OPCP: Background and development

The initiative to develop an Optional Protocol to the CRC on communication procedures began in the early 2000s and was led by NGOs working in the field of children's rights.³⁰⁹ In 2009, an open-ended working group was established in order to explore the possibility of drafting an Optional Protocol,³¹⁰ and the final text of the Protocol was adopted in 2011.³¹¹

The OPCP is consistent with other UN-level communication procedures, but it also takes into account the specific needs and vulnerabilities of children, and addresses child participation and access to justice.³¹² Thus, the OPCP offers adapted and child-friendly procedures that are guided by the principles of the best interests of the child and child participation.³¹³

2.2.8.2. Child participation under OPCP

The OPCP enables the CRC Committee to better address and enforce children's rights at the international level, and can play a critical role in relation to child participation. The OPCP anchors the right of the child to be heard in the procedures by requiring that the CRC Committee shall "have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child". It can be argued that this "illustrates the intention of involving children in the proceedings".³¹⁴ The rules of procedures also set particular safeguards for child applicants, including adapted and child-sensitive procedures, the requirement to publish decisions in an accessible manner and in child-friendly language, safeguards to ensure children's protection and privacy, etc.³¹⁵

However, there remain challenges for the effective participation of children under the OPCP.³¹⁶ For example, the OPCP establishes that non-written communications are inadmissible,³¹⁷ and this can have implications for (young) children who may be better able to express themselves through other means (i.e., drawings, film, etc.). In addition, filing a communication requires legal assistance for child applicants. For this reason, it is unclear to what extent the CRC Committee will communicate directly with children in practice or offer them child-friendly explanations and information when they are represented by a lawyer.³¹⁸ Also, it should be noted that the OPCP permits the CRC Committee

to receive communications on behalf of children, even when they do not consent to the claim, if the author “can justify acting on their behalf without such consent”.³¹⁹ In light of the child’s right to be heard and have his or her views be given “due weight” in decision-making, it is unlikely that the CRC Committee will interpret this provision broadly. Yet, this provision may have negative consequences for the child’s right to participate.

2.3. International Partnerships and State Provisions for the Survival and Development of Children

2.3.1. Overview: Frameworks for Partnering to Advance Child Rights

The realisation of child rights requires strategic mobilisation, coordination and partnership across the community, national, regional and global levels as well as the meaningful engagement of key stakeholders across those levels. This work involves engaging government duty-bearers and mandated ministries covering social welfare and protection, health, education, justice and interior, civil society actors, religious authorities, non-state actors and business actors towards a shared purpose of ensuring children’s protection, access to services and rights as provided in the CRC, its Optional Protocols and other human rights instruments. Most importantly, this national level system needs to deliver protection and services for children at the community level and meaningfully engage community-level stakeholders and individuals, including enhancing the engagement of fathers and other paternal family members. Engagement of religious and other community leaders is particularly critical for tackling harmful social practices, including child marriage and child labour.³²⁰ The limits of national-level policy efforts alone to shift deeply entrenched social practices however is well established, for example in Afghanistan³²¹ and throughout numerous ASEM Partners. Some factors include lack of meaningful engagement of other key actors and necessary budgets falling short. The value of partnerships – local, national and *international* – then becomes critical in advancing solid child protection systems that deliver across the full spectrum of child rights and work for every child, with the need to strike the right balance of involvement, investment and leadership by all actors at all levels.

2.3.1.1. The Sustainable Development Goals as a framework for partnerships on child rights

The SDGs are grounded in the UDHR and international human rights treaties, including the CRC. This is demonstrated by the fact that all 17 goals have a direct link to 1 or more CRC provisions.³²² Goal 17 is specifically dedicated to strengthening means of implementation and revitalising global partnerships, focusing on creating local, regional and interregional partnerships for the implementation of the SDG framework and Agenda 2030. At the interregional level, there is significant potential to strengthen technical assistance exchanges and cooperation as well as proactive protection measures, particularly for victims of transnational crime and children on the move. An Asia-Europe partnership could select core thematic concerns of common interest in order to enhance protection for children, while also explore more opportunities to learn from different country perspectives and experiences, under the overall banner of SDG 17 and with a focus on child rights. For example, enhancing cooperation, protection and assistance to prevent and respond to asylum-seeking and refugee children and child victims of trafficking, as well as respond to new questions raised around children’s lives and experiences in the digital world.

2.3.1.2. Leveraging regional organisation for partnerships on child rights

At the regional level, ASEAN, the South Asian Association for Regional Cooperation (SAARC), the CoE and the EU play key roles in facilitating the implementation of the CRC, responding to issues requiring regional cooperation, such as children on the move, missing children and trafficking. Regional bodies

can facilitate good practice sharing and technical cooperation.³²³ Further opportunities for facilitation by means of a protection approach rather than a purely law-enforcement approach are needed. The evaluation planned for the CoE Strategy for the Rights of the Child (2016–21) will provide helpful guidance for other regional bodies in this regard. In terms of standard and target setting, where existing internationally agreed standards and targets exist such as the CRC General Comments and SDGs,³²⁴ these can provide helpful baselines and help set targets that regional groupings can agree and pursue collectively. The creation of the AICHR in 2009 and the ACWC in April 2010 are significant achievements in this regard.

2.3.1.3. Mobilising the private sector in support for child rights

Business actors, both national and transnational, have a responsibility to ensure children are not exploited through the conduct of their operations.³²⁵ Practically, this involves having a publicly available zero-tolerance policy on exploitative activities involving children, including those classified as the worst forms of child labour. A second responsibility for business actors is to take proactive voluntary measures to support the realisation of children's rights. There is significant potential to expand and innovate the proactive role of business actors in positively contributing to children's rights through corporate social responsibility initiatives.³²⁶ For example, this could entail offering work placements, training, scholarships and other capacity-building support to vulnerable caseloads including children in alternative care and ethnic minorities.³²⁷ Good practice needs to be distilled from innovative private sector initiatives, such as the Myanmar Mobile Education Project (myMe) that brought mobile flexible education and assistance to over 1200 children working across 53 tea shops.³²⁸ The project received corporate sponsorship from Telenor, Ooredoo, Baydin and Samsung and brought the classroom to vulnerable children's workplaces and homes.³²⁹

2.3.2. Areas for International Partnerships: Good Practices, Priorities and Gaps

2.3.2.1. Better protecting refugee, migrant and trafficked children

Given the clear interrelationship between refugee, migrant and stateless children and heightened vulnerability to smuggling, trafficking and sexual and labour exploitation, enhancing regional and international partnerships and technical cooperation is essential for timely solutions, including family reunification and supporting ASEM Partners to scale up integrated child protection response services. Documented lessons learned from the recent experience in Europe from both Save the Children and UNHCR-UNICEF-the International Rescue Committee (IRC) provide informed guidance for ongoing and future influxes of unaccompanied children and other children on the move.³³⁰ Learning from country experiences and sharing good practices to promote predictability and clarity in procedures and practices is essential, and should aim to improve timely identification, referral and age assessments, appointment of legal guardians and access to legal representation, participation, interim care and access to services as well as best interest determination (BID) processes and solutions.³³¹ Regional partnerships are particularly needed as there remain far too many gaps and variations in how frameworks are applied in practice. In the case of the EU, where asylum frameworks are relatively robust for unaccompanied children, state and government official practice was nevertheless often inconsistent regarding obligations, with officials turning a willing blind eye and/or encouraging unaccompanied minors to move on to avoid registering them.³³² This is despite the Dublin Regulation which requires that when a child is first registered in an EU state, the authorities of that state identify whether the child has family in another EU state and, if so, the child is then sent to that state for asylum claim processing.³³³ A further gap and worrying trend is the multiplication of "migration sensitive" aid agreements between countries and regional organisations (for example, between the European Union and Afghanistan under the "Joint Way Forward" agreement), which hints at aid being conditional on countries accepting more and more (potentially forced) returns, with limited protection or safeguards against the returns of unaccompanied and separated children.³³⁴

Case Example – 2012 Study on Unaccompanied and Separated Children in Malaysia, Indonesia and Thailand:

In Malaysia, Indonesia and Thailand, the concept of UASC and the understanding of their specific needs versus³³⁵ broader refugee, migrant, stateless and trafficked children caseloads remains poorly understood, preventing appropriate identification and response measures. Among the challenges faced by UASC were lack of documentation and “illegal” status, marginalisation in detention³³⁶ and refugee camps and restricted freedom of movement, which all individually prevent UASC from accessing the necessary protection and assistance they need and are guaranteed³³⁷ under the CRC. Moreover, the study found a gap between rhetoric and reality regarding international commitments to child rights based on an assessment of domestic legal and policy implementation. Identification measures were found to be weak, trafficked children were particularly fearful/at risk due to irregular entry and a number of officials were found to be complicit in exploitation. In addition, there was weak coordination between government agencies and international organisations, and over-reliance on insufficiently resourced civil society organisations. Some good practices, however, were also identified, including the establishment of multidisciplinary teams to determine child victims of trafficking in Thailand, with similar taskforces being set up in Indonesia and Malaysia. Furthermore, family tracing programmes were initiated by government agencies with the support of UN agencies and national civil society, as well as interim care solutions and some legal representation and assistance being provided. What still remains to be improved is full ratification of all instruments that afford protection to UASC, coordination³³⁸ and cooperation between the various actors dealing with UASC, including clarifying their roles and responsibilities, as well as better cross-border coordination for the protection of UASC. This needs to be prioritised in the political agenda of countries in the region as there is very limited awareness of the rights to which UASC are entitled, especially among government officials. This needs to be addressed through consistent and specialised training for social workers, police, immigration officers, judges and other frontline actors who come into direct contact with UASC.

Meanwhile, specifically with regard to child trafficking, a number of existing regional partnership initiatives need to be better leveraged, expanded or revitalised. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is one such platform. Co-chaired by Indonesia and Australia, this initiative includes 48 members within and beyond the ASEM region. Advancing implementation of some of its commitments is the main challenge ahead, together with moving the Bali Process beyond cooperation on law enforcement and towards a more proactive protection/survivor-centred approach for victims in line with international and regional commitments. Good practice and partnerships in Europe include closer collaboration between INTERPOL and regional networks, such as the European Union Agency for Law Enforcement Cooperation (EUROPOL), EUROJUST (the EU’s judicial cooperation unit), the European Border and Coast Guard Agency (Frontex) and the Police Cooperation Convention for Southeast Europe on child trafficking, and the establishment of specialised networks, such as the Nordic Network against Child Trafficking.³³⁹ These practices can be distilled to assist Asian Member States.

2.3.2.2. International cooperation on missing children

There is a clear correlation between missing children and exploitation, with missing, runaway and abducted children at high risk of sexual exploitation, trafficking, WFCL, physical and sexual assault, and death.³⁴⁰ However, the international legal framework for missing children is weak. While the CRC, the UN Convention for the Protection of Enforced Disappearance and the 1980 Hague Convention on the Civil Aspects of International Child Abduction cover important elements, the absence of a universal definition of “missing children” hinders reporting and investigating missing and abducted child cases.³⁴¹ One example of good practice and regional partnership in this regard revolves around

work in response to children on the move in Europe, including the development and dissemination of a missing children hotline number, advocacy and response services. “The Missing Children in South-East Asia Model Framework and Regional Review” identified a good practice model for better responding to missing children (and one which could inform response services and practice in Europe where there are high caseloads of unaccompanied children on the move). The report gave recommendations for national legislation to adopt a clear definition of a “missing child”, establish a reporting mechanism, ensure the capacity for immediate investigation of missing children and put in place regulations regarding cross-border travel with children, develop a case management system to organise and record case information (combined with a photo distribution system in line with privacy and consent requirements). It also recommended enabling the ability to trigger responses and investigative procedures underwritten by formal agreements between agencies involved in missing children, providing community engagement programmes and implementing a rapid emergency child alert system and prevention framework.³⁴² While the model framework focuses on domestic-level responsibilities, at the regional level, ASEAN is well placed to lead and coordinate a regional response to the issue of missing children,³⁴³ as well as link with existing regional initiatives that may have crossover such as trafficking.

2.3.2.3. National frameworks to protect children overseas

Domestic legal reforms in one country can bring about or represent significant advances abroad for the protection of vulnerable children. 2 areas in which this particularly applies and which present opportunities for closer collaboration between States in Asia and Europe are efforts to prevent child sex tourism and child exploitation in “faux orphanages”. With respect to child sex tourism, ECPAT International³⁴⁴ has played a key role in bringing the issue to global attention, and a number of States have enacted reforms to their Criminal Code in order to protect children overseas from child-sex tourists. Such legal reforms including extraterritorial legislation and related measures have now been enacted in over 40 countries including Australia, Cambodia, France, Italy, the Netherlands, New Zealand, Ukraine, the United Kingdom and the United States.³⁴⁵ In June 2017, Australia took further steps and passed legislation to prevent registered sex offenders with reporting obligations from travelling abroad.³⁴⁶ Further progress is also being made through the current drive to end the unintentional, yet significant, harm caused by well-intended foreign tourists involved in facilitating orphanage tourism abroad. Orphanage tourism, including voluntourism, exploits the good intentions of foreign tourists, uses poor children as a commodity and deceives families into believing that their children will be given a better life and access to education. The overwhelming majority of children in these so-called orphanages have at least one living parent,³⁴⁷ as well as extended family networks. Children placed in such orphanages are at higher risk of trafficking, child labour, physical and sexual abuse and poverty.³⁴⁸ Legislative and other measures, including closer partnerships and coordination between the countries of origin and the countries in which these faux orphanages are located, can help stop this practice and have a significant impact on children’s protection and survival.

2.3.2.4. Better monitoring and accountability through partnerships and consultations

Monitoring and accountability is critical for the realisation of children’s rights and treaty monitoring bodies play an instrumental role in this effort. In this regard, ASEM Partners should consider closer cooperation in jointly monitoring General Comments issued by the CRC and scale up work with key partners, including civil society, to ensure full compliance with treaty obligations. The UPR also provides a structured opportunity to track Member State progress on CRC implementation and promotion. Civil society organisations, both domestically and internationally, play a critical role in contributing to UPR consultations by submitting reports and recommendations to OHCHR and advocating and lobbying Member States in the lead up to, as well as in accepting, UPR recommendations.³⁴⁹ Regional organisations, including the EU, CoE, ASEAN and SAARC, can play an instrumental role in strengthening CRC implementation and monitoring by aligning their strategies and targets for child rights with the CRC, the standards set by the General Comments and SDG targets and facilitating good practice sharing and technical cooperation across States. Regional strategies can include targets for good practice compliance on children on the move (reunification, documentation and interim care),

support to survivors of trafficking and justice for children, among other key child rights concerns. Wider consultation is a further avenue to enhance treaty monitoring, with Article 12 of the CRC particularly in mind for its focus on guaranteeing children the right to participation and expression of views in all matters affecting the child, in accordance with their age and maturity. CRC General Comment 20 (2016) on the implementation of the rights of the child during adolescence and General Comment 21 (2017) on Children in Street Situations provide good practice³⁵⁰ examples of consultation with children and civil society that should be systematised for all future General Comments, and expanded to country-level reporting on the CRC. These consultations should be representative of diversity factors such as age, gender and geography and conducted by suitably qualified child protection specialists. Further, OPCP provides ASEM Partners, and their respective regional organisations, the opportunity to strengthen their accountability to children and the implementation of the CRC. It is recommended that States and, where relevant, regional mechanisms should consider setting targets for ratification and concrete domestic implementation measures.

Chapter 3: Emerging Issues

The 3rd chapter explores some new and emerging trends such as children's rights in a digital environment, including both the opportunities and grave risks that new technology and tools present to the advancement of child rights. Ongoing challenges related to privacy, freedom of speech and radicalisation will be discussed. Next, the role of several key non-state actors in advancing and/or undermining the fulfilment of children's rights will be outlined. This non-exhaustive list includes non-state armed actors, national and transnational businesses, religious and community leaders, and civil society. The chapter concludes with recommendations from the rapporteurs.

3.1. Children's Rights in a Digital Environment

Rapid advancements in information, communication and technology (ICT) have radically altered the way children interact with each other, and access and share information. These changes have opened up significant opportunities for advancing how children learn and connect with their peers and the wider world. However, alongside this advancement has come the exacerbation of pre-existing risks, as well as the creation of new risks, in a largely unregulated world wide web. There are further relevant development and child right concerns in ensuring equitable access to digital platforms given the significant advantages they play in facilitating learning and educational outcomes.

Access to new ICT triggers several core child rights guaranteed in the CRC, including non-discrimination, participation, access to information, freedom of expression, access to education and privacy. Further, as "Access to internet and digital literacy is gradually being considered as dimensions of the rights of the child to freedom of expression, to participation and to education."³⁵¹ there is increased pressure to facilitate equitable access to these resources both within and across countries. In 2015, the International Telecommunication Union (ITU) estimated that an additional 2 billion people from developing countries would have access to the internet by the end of 2015.³⁵²

Before outlining the risks, it is important to highlight the positive opportunities presented by the unprecedented growth in ICT. Research has demonstrated positive outcomes from children's access to the internet beyond learning and social connection to also encompass and facilitate entertainment.³⁵³ ICT can further advance education, learning and inclusion outcomes for children with special needs,³⁵⁴ children with language needs as well as gifted and talented students.³⁵⁵ It is important to balance the positives generated by these opportunities against some of the key risks outlined below.

The rise in ICT has created new, as well as exacerbated pre-existing, protection risks for children. These risks include cyberbullying, social media addiction, online privacy and data protection concerns, online recruitment and radicalisation, online grooming and sexually explicit content involving children as well as children's largely unregulated access to online adult pornography. Regarding the latter, studies are showing that children's exposure to online pornography has changed norms related to first sexual experiences and respectful relationships in alarming ways.³⁵⁶

Some of the above concerns are a new platform for pre-existing risks such on bullying and radicalisation, although the ready accessibility and lack of regulation of the internet have significantly escalated the risk. Examples include the phenomena of Islamic State of Iraq and Syria (ISIS) brides lured online and the role of female British online radicalisers/propagandists.³⁵⁷ According to a RAND report, the internet has been an enabler for radicalisation, acting as an echo chamber, accelerating the process, not requiring physical contact and increasing opportunities for self-radicalisation.³⁵⁸ While the issue of online recruitment of children by ISIS has attracted significant media attention, equally alarming is the online recruitment and indoctrination of impressionable adolescents, including less visible females,³⁵⁹ by alt-right populist movements. Policy responses involving education and media prevention campaigns need to take a holistic approach to the wide range of propaganda movements and their associated exploitation risks online.

The CoE Strategy for the Rights of the Child (2016–21) includes child rights in a digital environment as 1 of its 5 strategic priorities. The strategy calls for investing in education and intercultural dialogue to prevent the radicalisation of children as well as the need to respond to the reintegration needs of radicalised minors.³⁶⁰ The CoE commitment to produce guidance and support for Member States to ensure children’s participation, protection and provision of rights in the digital environment will be helpful for the broader ASEM partnership.³⁶¹

Further guidance and tools are needed to better mitigate, prevent and respond to the wider range of challenges presented online. A 2016 Australian Senate Inquiry into the harm being done to Australian children through access to pornography on the internet received several helpful harm minimisation strategies and good practice from other countries.³⁶² Basic tools include internet filters, education campaigns in schools and online, a UK and EU initiative to work with internet providers as well as innovation in sexual and reproductive health education and information to prevent harmful consequences of early online pornography consumption. Regarding the latter, the Commissioner for Children and Young People Western Australia noted that the primary harm minimisation tool is education on healthy and respectful relationships. In terms of protecting children online, the research and findings³⁶³ of EU Kids Online should be considered for contextualisation to non-EU countries. There is a need to implement evidence-based responses to prevent online grooming and predatory behaviour in high-risk countries such as the Philippines and Thailand in particular.³⁶⁴ Finally, “The extent to which children feel that they can rely on and seek help from social agents around them is indicative of their ability to cope with risky situations and engage with the protective factors from their environment.”³⁶⁵ This reinforces the importance of investing in peer-to-peer networks, parents and teachers in prevention activities.³⁶⁶

In terms of the future and children’s rights in a digital environment: “Future policy and practice... needs to be holistic but also integrated and mainstreamed in other national policies that a) deal with children’s rights in general and b) are aimed at the development of the ICT services and the information society.”³⁶⁷ Further, recognising the uneven rate at which access has been realised compared with the North, global South actors can benefit from lessons learned and research initiatives such as the Global Kids Online international research partnership.³⁶⁸

3.2. Children’s Rights and the SDGs

The SDGs are grounded in the UDHR and international human rights treaties including the CRC. This is demonstrated by the fact that all 17 SDGs have a direct link to one or more of the CRC provisions.³⁶⁹ One of the SDGs is to create partnerships for implementation. Given how children’s rights are closely intertwined with the SDGs, what are the examples of partnerships and initiatives that demonstrate good practice? What would an Asia–Europe partnership on protecting children’s rights look like? At the interregional level, there is significant potential to strengthen technical assistance exchanges, cooperation and proactive protection measures, particularly for victims of transnational crime for example. An Asia–Europe partnership could select core thematic concerns of common interest to enhance the protection of children. For example, enhancing cooperation, protection and assistance to prevent and respond to asylum-seeking and refugee children and child victims of trafficking, as well as responding to new concerns posed through online digital platforms.

The 2017 International Day of the Girl highlighted the grossly inequitable status quo for girls across the world and the significant challenges that lie ahead for reaching the gender equality-related SDGs.³⁷⁰ For instance, a girl dies every 5 minutes as a result of violence, 1 in 4 girls is married as a child, 71% of known trafficking victims are female, 63 million girls have undergone female genital mutilation, 130 million girls are out of school and girls are twice as likely to be infected with HIV.³⁷¹

3.3. The Role and Involvement of Non-State Actors

While the State has primary responsibility for implementing the rights enshrined in the CRC, there are, in practice, a multitude of actors that significantly influence the protective environment for children and the realisation of their rights. This includes children themselves, individual citizens, families, community and religious leaders, teachers and healthcare workers, government officials, armed actors, businesses, national civil society and international civil society, including UN agencies and other Member States. This section will focus on business actors, non-state armed actors and religious and community leaders due to persistent challenges as well as the need for more strategic and meaningful engagement to advance child rights in practice.

3.3.1. Business Actors

Business actors, both national and transnational, have a dual responsibility. The first is to ensure that children are not exploited through the conduct of their operations. Practically, this entails having a publicly available zero-tolerance policy on exploitative activities involving children, including those classified as the worst forms of child labour.³⁷² The second is to take proactive voluntary measures to support the realisation of children's rights. In 2012, UNICEF, Save the Children and the UN Global Compact released the Children's Rights and Business Principles (the Principles), which have been designed to guide both responsibilities.³⁷³ There is significant potential to expand and innovate on the proactive role of business actors in positively contributing to children's rights through corporate social responsibility initiatives. For example, offering work placements, training, scholarships and other capacity-building support to vulnerable caseloads including children in alternative care and ethnic minorities.³⁷⁴

The Children's Rights and Business in Myanmar "Linked Initiatives" paper documents and aligns existing initiatives to the 10 children's rights and business principles that cover the full spectrum of engaging businesses to uphold and promote child rights. This includes respecting children's rights; child labour; decent work for young workers, parents and caregivers; the protection and safety of children in business activities; safe products and services; respecting children's rights in marketing and advertising; children affected by emergencies; and reinforcing community and government efforts. Good practice and lessons need to be distilled from the wide range of initiatives documented, including the innovative private sector initiative myME (as discussed in chapter 2).³⁷⁵

3.3.2. Non-State Armed Actors

The changing nature and patterns of contemporary armed violence have resulted in a significant shift from conflict between states to within states, as well as a substantial increase in the number of non-state armed actors. Strategic engagement with non-state actors in armed conflict and other situations of violence³⁷⁶ is essential for safeguarding the child rights outlined in the CRC and its Optional Protocol on Children in Armed Conflict. UNICEF, among other humanitarian mandated actors, has used such strategic engagement to secure humanitarian access to vulnerable children in need of protection and assistance as well as secure the release of CAAFAG. A recent example includes UNICEF's indirect engagement with the Taliban to gain humanitarian access to otherwise inaccessible areas, thus enabling a subsequent successful immunisation campaign.³⁷⁷ UNICEF negotiations have further secured the release of children from armed groups in Uganda, Sri Lanka and Nepal. UNICEF and other humanitarian and human rights actors need to be afforded this space to continue work critical for the realisation of child rights in Member States' territories. CAAFAG remain children in need of protection, in conflict and peace, regardless of the designation of the non-state actor.

Successive UN Secretary-General reports on the protection of civilians in armed conflict have restated the need for more consistent engagement with non-state armed actors to strengthen compliance with international humanitarian and human rights standards, including those associated with the recruitment and use of children. Further, non-state actors are well-represented in successive annexes to the Report of the Special Representative of the Secretary-General for Children and Armed Conflict,

which mandates listing parties to armed conflict that recruit and misuse children in conflict as well as those that do not have measures to protect children from death or injury, sexual violence, abduction and attacks on schools and hospitals as provided under the UN Security Council's adopted resolutions in 2009 (1882), 2011 (1998) and 2015 (2225). Effective implementation of these measures requires dialogue to prevent as well protect children from grave rights violations.

Member State counterterrorism measures and security-related CVE/PVE³⁷⁸ activities can, in practice, significantly undermine children's right to life, survival and development as provided under Article 6 of the CRC. This includes through grave rights violations such as arbitrary detention, torture, death and injury, attacks on school and hospitals, as well as failure to follow due process and implement diversion measures for children caught up in counterterrorism measures such as raids. Additional specific training and protocols are needed for state actors interacting with children caught up in these measures, ensuring practical diversion and children's treatment in line with international and national obligations, including those under the CRC.

It is important to recognise that the CVE/PVE agenda and associated measures used by Member States in situations of conflict, as well as peace, have the potential to inadvertently, yet significantly, undermine over 20 years³⁷⁹ of hard fought advocacy to better protect children exploited during armed conflict, as well as roll back or place constraints around women's engagement in peace and peacebuilding.³⁸⁰ CVE/PVE security-related measures have tended to be intimately linked with legislation that overrides rule of law and due process principles in practice, giving state actors far-reaching powers at the detriment of human rights obligations, especially for children detained, charged and tried under such legislation.³⁸¹ As provided in Human Rights Council resolution 30/15 in 2015 on human rights and preventing violent extremism, the Council makes clear the need for any CVE/PVE measures to comply with State obligations under international human rights, refugee and humanitarian law, including human rights education and training capacity building for State and local entities involved in implementing such measures.³⁸² Further work is needed to reorient the CVE/PVE agenda to address the root causes and drivers of social exclusion and youth marginalisation in development, as well as establish the necessary firewalls with humanitarian action.

3.3.3. Religious and Community Leaders

The strategies, advocacy and programming of humanitarian and development child rights actors continue to prioritise community-based interventions. Central to the effectiveness of these is the ability to meaningfully engage religious and community leader gatekeepers, recognising the critical role they play in either facilitating or undermining the advancement of child rights, including those aimed at addressing gender inequality. Community-level attitudes and practices not only significantly impact children's right to life, development and survival but also influence the prevalence of harmful sociocultural practices such as early marriage and female genital mutilation. It is important to acknowledge the positive role religion and religious communities can and do play in promoting the rights of the child, with key religious texts across faiths referring to the need to protect and provide special care for children.³⁸³ Further, religious leaders have a strategic advantage "with moral standing and broad platforms" to reach a wide spectrum and diverse members of society with messages on children's rights to protect them from violence, exploitation and abuse.³⁸⁴ In conflict and other situations of violence, religious leaders can play an even more critical role through their access to affected populations, including children, and support their rights to life, survival and development.

Interfaith dialogue plays a significant role in advancing child rights including through conflict prevention and peace-building activities. In the lead up to Myanmar's historic elections in 2015, Interfaith for Children, an inter-religious platform for children, brought together religious leaders from the country's 4 main faiths to promote peace and tolerance and urged "parents and guardians of any faith to bring peace, harmony, understanding and cooperation without discrimination towards any race, religion nor culture."³⁸⁵ While a positive step in 2015, recent events highlight the need for continuous robust interfaith dialogue to promote peace and tolerance in high-risk contexts, as well as prevent discrimination and grave rights violations against children and their caregivers. Positive

interfaith community-level interventions from Indonesia, a multi-ethnic and religious society, could assist Myanmar and other countries in reducing ethnic and/or religious tensions, proactively promote harmony and inclusive communities as well as facilitate reconciliation processes necessary for peace. Finally, inter-faith dialogue initiatives need to ensure the meaningful engagement of children and youth, in addition to their caregivers and other key stakeholders, such as through youth interfaith leadership and networks.³⁸⁶

3.3.4. Civil Society Plays a Central Role in Advancing Child Rights and Holding States Accountable

Domestic and international civil society have and continue to play a central role in advancing the rights of the child. From filling critical gaps in service provision, leading public advocacy on behaviour change campaigns and lobbying governments through private advocacy and treaty-based mechanisms. UN agencies and various other international humanitarian actors have made it abundantly clear that contemporary identity-based domestic armed conflicts abuse and consciously target children, leaving them physically scarred and psychologically traumatised. UNICEF, ICRC, Save the Children and Plan International have referred to the lack of accountability of those wielding military, economic and political power as the root cause of violence against children. International advocacy to resolve children's vulnerability in conflicts, for example, has adopted 4 specific approaches: publicly naming those who target children, establishing children's peace zones, lobbying for a more rigorous normative framework and establishing international alerts to ensure that States and non-state actors comply with existing humanitarian and human rights norms.³⁸⁷ At the international level, NGOs have become significant actors and norm-shapers. The experience of NGOs, especially child rights organisations at local levels, has become crucial for ensuring the compliance of State and non-state actors during times of conflict. The mainstreaming of children's concerns through the UN protection agenda for children affected by armed conflict has focused on 4 specific elements that define the specificities and the scope of application of its campaign.³⁸⁸ These 4 elements are the systematic monitoring and reporting of grave violations against children as a basis for action to end the impunity of those committing abuses; the mainstreaming of CAAC concerns into the policies, priorities and programmes of the entities and institutional processes of the UN and beyond; the strategic advocacy, awareness raising and dissemination of CAAC norms and standards; and the recognition, support and enhancement of local civil society actors, organisations and networks who represent the front-line protection and rehabilitation of CAAC.³⁸⁹ Children's visibility is also raised in both global and local advocacy by drawing attention to their vulnerabilities and marginalisation. However, this strategy also includes initiatives to integrate children's voices into advocacy programmes, and from early 2000 encouraging children's peace movements.³⁹⁰

While images of children have historically been used to frame advocacy measures, children's direct participation has been almost non-existent in advocacy and activism until comparatively recently. The rationale was that while it was critical to advocate for children's agency and empowerment, ultimately it was adults who framed the policies. Such an advocacy approach was universal in global governance, including transnational movements, anti-trafficking networks and in state governance mechanisms. Children as participants in political movements, both peace and protest movements, have different kinds of roles in activism and advocacy. Children's representations in global and local advocacy strategies – their participation and the political framing of their identities – illustrate that the multifaceted and sometimes paradoxical engagement of civil society in child protection and child rights discourse is an ongoing and significant factor that must be recognised in order to understand and properly accede to the rights of children globally.³⁹¹

EPILOGUE: RECOMMENDATIONS FROM THE RAPPORTEURS – A 4-PILLAR APPROACH

One way to subject the reinvigorated children’s rights analytical framework to critical scrutiny is to ask how the framework can improve articulating the concerns of children. In this context, we propose that the deliberations focus on a 4-Pillar Approach regarding children’s rights. Drawing insights from the recognition, participation, protection and empowerment of children must be central to a rights-based agenda for children’s well-being and development.

As we noted earlier, the CRC, which was adopted by the General Assembly on the 20 November 1989, was the first comprehensive and legally binding instrument to cement the **recognition** of a wide range of children’s rights, including civil, political, social, economic, health and cultural rights. In striking the balance between investing in children today for their well-being in the future and their fundamental right to participate and be well today as children, children themselves can and must help define what that successful balance should be. Now is the time for us to meaningfully recognise the importance of involving them in defining indicators and the vision that will hold the community to account in achieving the SDGs.

The CRC explicitly recognises children as bearers of human rights and fundamental freedoms, and particularly underscores that children have the right to protection against non-discrimination (CRC Art. 2), the right to have his or her best interests taken into account as a primary consideration (CRC Art. 3(1)), the right to life, survival and development (CRC Art. 6) and the right to be heard (CRC Art. 12). Children’s **participation** rights are reflected under Articles 12, 13, 14, 15, 16, 17 and 31 of the CRC. Children’s right to participation has proven to be one of the more innovative and controversial aspects of children’s rights, pushing the boundaries of many societies’ socially constructed ideas of children and their agency. General Comment No. 12 of the CRC Committee (2009) on the right of the child to be heard provides helpful guidance to States and other parties on interpreting and applying this right, which, as already stated, has been identified as one of the 4 general principles of the CRC. In practice, the right to be heard is commonly qualified, particularly in best-interest determination procedures such as family care arrangements, judicial proceedings and medical decision-making, with children’s views to be taken into consideration in accordance with their age and maturity.³⁹²

Children’s right to **protection** and its many interrelated elements are provided under multiple articles of the CRC including Article 4 (protection of rights), 11 (kidnapping), 19 (protection from all forms of violence), 20 (children deprived of a family environment), 21 (adoption), 22 (refugee children), 32 (child labour), 33 (drug abuse), 34 (sexual exploitation), 35 (abduction, sale and trafficking), 36 (other forms of exploitation), 37 (detention and punishment), 38 (armed conflict), 39 (rehabilitation of child victims) and 40 (juvenile justice). Article 4 of the CRC provides for the protection of children’s rights and the responsibility of Member States to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention” as well as the supportive role of international cooperation when Member States’ available resources are constrained. Children’s right to protection from all forms of violence and consequent responsibilities of Member States are outlined under Article 19 of the CRC. This also relates to the child’s relationship with his or her parents and family, and it deserves to be mentioned that the CRC protects the child-parent relationship and their right to family life (CRC Art. 9), which builds on the recognition of the position of parents and the extended family in the CRC (CRC Arts. 18 and 5). Recognising the additional special protection needs of refugee children, Article 22 confirms their protection under the CRC as well as their need for additional special protection measures. In this regard, it is also relevant to mention Article 41 of the CRC, which considers the CRC in relation to both international and national legal frameworks and provides that the CRC does not affect provisions that are more conducive to the realisation of the rights of the child.³⁹³

The transformative potential of the straightforward language of **empowerment** should not be underestimated. Children are right bearers and they are the future of this world. Empowerment is embedded in a participatory approach, focuses on the individual child and his family and community, and emphasises both global and local understanding of children's rights. Empowerment must be seen as a prerequisite for the enjoyment of rights and implies different positive obligations for States and an active involvement of non-state actors.

While acknowledging the complexity and difficulties of this 4-Pillar Approach, it is important to consider it in order to better understand and implement children's rights across the globe. The 4 pillars are interrelated and they must be included in the processes that allow and enable children to enjoy their rights irrespective of where they are located. For children's rights, *recognition, participation, protection and empowerment* are personal, relational and collective. The key to effectively addressing the challenges faced by children lies in addressing violations of their rights meaningfully, whereby this 4-Pillar Approach is interconnected and perceived as a single goal.

Endnotes

- 1 Part 1.1 is partly based on Jaap E. Doek, “The Human Rights of Children: An Introduction,” in *International Human Rights of Children*, ed. Ursula Kilkelly and Ton Liefwaard (Singapore: Springer, 2018), 1–27.
- 2 The members of the Working Group were representatives of States that were members of the UN Commission on Human Rights. The membership of this Commission rotated and thus affected the continuity of the membership of the Working Group. However, some countries, such as Finland, the Netherlands, Norway, Portugal, the UK and the USSR, were represented by the same person throughout, with this person often having expertise in the field of children’s rights. This resulted in what was described as a “family atmosphere” that made working together much easier (Cantwell 1992). An example of this atmosphere was the “pea-soup” meeting organised by Simone Ek (a representative of Save the Children) during the meetings of the Working Group, attended by representatives of States and NGOs, and a welcomed opportunity to discuss informally the draft articles under consideration.
- 3 Langlaude (2008) provides a critical analysis of the CRC Committee’s monitoring of the implementation of Article 14.
- 4 CRC OPAC, Arts. 1–3.
- 5 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
- 6 UN General Assembly, “Universal Declaration of Human Rights,” 10 December 1948, A/RES/217 (III).
- 7 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. The ICCPR was adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976 in accordance with Article 49; ICESCR was adopted by the same resolution on the same date and entered into force on 3 January 1976 in accordance with Article 27. UDHR was adopted and proclaimed by the UN General Assembly resolution 217A (III) of 10 December 1948.
- 8 Detrick (1992, 239–40 and 250–51) dealing with the current Articles 14 and 13, respectively.
- 9 See ICCPR Art. 10, para. 2(b) and Art. 14, para. 2 on juvenile justice; Art. 24 on the right to protection, birth registration and nationality; ICESCR Art. 10 on the protection of children.
- 10 Nigel Cantwell, “Are Children’s Rights Still Human?” in *The Human Rights of the Child: From Visions to Implementation*, ed. Antonella Invernizzi and Jane Williams (Farnham: Ashgate Publishing, 2011), 41–42.
- 11 Michael Freeman has been and still is the most consistent advocate for the importance of children’s rights and the need to take these rights seriously. See, inter alia, Freeman (1997), Freeman (2007) and Freeman (2011).
- 12 Nigel Cantwell, “The Origins, Development and Significance of the United Nations Convention on the Rights of the Child” in *The United Nations Convention on the Rights of the Child: A Guide to the “Travaux Préparatoires”*, ed. Sharon Detrick (Dordrecht: Martinus Nijhoff Publishers, 1992), 28–29.
- 13 On the timing of the drafting process of the CRC, see Van Bueren (1998).
- 14 The CRC entered into force after being ratified by 20 States (CRC Art. 49, para. 1).
- 15 For the full record of participation by States and others to the meetings of the Working Group, see Sharon Detrick, ed., *The United Nations Convention on the Rights of the Child: A Guide to the “Travaux Préparatoires”* (Dordrecht: Martinus Nijhoff Publishers, 1992), 644–57.
- 16 Cynthia Price Cohen, Stuart N. Hart, and Susan M. Kosloske, “Monitoring the United Nations Convention on the Rights of the Child: The Challenge of Information Management,” *Human Rights Quarterly* 18, no. 2 (May 1996): footnote 7.
- 17 Jaap E. Doek, “The Current Status of the United Nations Convention on the Rights of the Child,” in *The United Nations Convention on the Rights of the Child* (see footnote 12), 633.
- 18 Karin Arts, “Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges,” *Netherlands International Law Review* 61, no. 3 (Dec. 2014): 275 and 276.
- 19 For the implementation of the article, see UN CRC, “General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence,” 18 April 2011, CRC/GC/13.
- 20 For examples and more information on this topic, see, for example, Tali Gal and Benedetta F. Duhamy, eds., *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child-Inclusive Policies* (Oxford: Oxford University Press, 2015) and “Special Issue: Children as Social Actors,” *International Journal of Children’s Rights* 15, no. 1 (2007).
- 21 This involvement started in 1999 (see UN Doc S/RES/1261) and, in 2005, the Security Council established the Working Group on Children and Armed Conflict to monitor grave violations such as recruiting and using children in armed conflict, rape and other forms of sexual violence against children and attacks against schools and hospitals. For more, see <http://www.un.org/children/conflict/english/securitycouncilwg.html>.
- 22 For the Third Congress, see http://www.ecpat.org/wp-content/uploads/legacy/ECPATWCIIIReport_FINAL.pdf.
- 23 For emerging new terms and changes in existing terms in the field of sexual exploitation and sexual abuse of children due, in particular, to the rapid increase in the use of information, communication and technology (ICT), see Susanna Greijer and Jaap E. Doek, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse* (Bangkok: ECPAT International, 2016).

- 24 For more about this protection, see also Economic and Social Council, “Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime,” ECOSOC Resolution 2001/20, 22 July 2005. For more information on the content of the OPSC, see UNICEF, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (Florence: UNICEF Innocenti Research Centre, 2009).
- 25 For information about the work of the special rapporteur, see Najat Maalla M’jid, “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography,” UN Doc. A/HRC/25/48, 23 Dec 2013.
- 26 For more about this Optional Protocol, see, inter alia, Yanghee Lee, “Communications Procedure under the Convention on the Rights of the Child: 3rd Optional Protocol,” *International Journal of Children’s Rights* 18, no. 4 (Nov. 2010): 567–583 and Rhona Smith, “The Third Optional Protocol to the UN Convention on the Rights of the Child? – Challenges Arising Transforming the Rhetoric into Reality,” *International Journal of Children’s Rights* 21, no. 2 (2013): 305–22.
- 27 For CRC guidelines, see “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,” 3 March 2015, CRC/C/58/3, https://digitallibrary.un.org/record/789762/files/CRC_C_58_Rev.3-EN.pdf; for OPSC guidelines, see “Revised Guidelines Regarding Initial Reports to be Submitted by States Parties under Article 12, Paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,” 29 September 2006, CRC/C/OPSC/2, https://digitallibrary.un.org/record/589517/files/CRC_C_OPSC_2-EN.pdf; and for OPAC guidelines, see, “Guidelines Regarding Initial Reports to be Submitted by States Parties under Article 8, Paragraph 1,” 8 November 2007, CRC/C/OPAC/2, <https://digitallibrary.un.org/record/611677?ln=en>.
- 28 This 2-chamber practice requires additional budgeting which must be approved by the UN General Assembly. This is not easy and requires extensive lobbying.
- 29 The Committee issued its first General Comment in 2001 and has issued, to date, a total of 23 General Comments. The two most recent were published on 16 November 2017 and are Joint General Comments on international migration between the CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/GC/3-CRC/C/GC/22; CMW/C/GC/4-CRC/C/GC/23)
- 30 For more information, see Global Initiative to End All Corporal Punishment of Children, <http://www.endcorporalpunishment.org>.
- 31 UNICEF Office of Research – Innocenti, “Law Reform and the Implementation of the Convention on the Rights of the Child” (Florence: UNICEF Office of Research – Innocenti, 2007).
- 32 African Child Policy Forum, “In the Best Interest of the Child: Harmonising Laws in Eastern and Southern Africa” (Addis Ababa: The African Child Policy Forum and UNICEF, 2007).
- 33 The first in its series, “The African Report on Child Wellbeing 2008: How child-friendly are the African governments?”, “The African Report on Child Wellbeing 2011: Budgeting for children”, “The African Report on Child Wellbeing 2013: Towards greater accountability to Africa’s children” and “The African Report on Child Wellbeing 2016: Child Rights Implementation in Africa: Beyond rhetoric, towards practical actions and results”.
- 34 See “View the Ratification Status by Country or by Treaty,” OHCHR, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en and “Status of Ratification Interactive Dashboard,” OHCHR, <http://indicators.ohchr.org/>. For more information on the decisions made under the OPCP, see <http://juris.ohchr.org/en/search/results?Bodies=5&sortOrder=Date>.
- 35 European Union Agency for Fundamental Rights, *Handbook on European Law Relating to the Rights of the Child* (Luxembourg: Publications Office of the European Union, 2015), 26 (hereinafter *FRA Handbook 2015*).
- 36 *Ibid.*, 26–27.
- 37 EC, “Communication from the Commission: Towards an EU Strategy on the Rights of the Child,” COM (2006) 367 final, (Brussels: European Commission, 2006).
- 38 *FRA Handbook 2015*, 7–10.
- 39 *Ibid.*, 2.
- 40 EC, “Guidelines for the Promotion and Protection of the Rights of Children – 2017,” https://ec.europa.eu/anti-trafficking/eu-policy/guidelines-promotion-and-protection-rights-child-2017_en.
- 41 *Ibid.*
- 42 *FRA Handbook 2015*, 22; EC, “Communication from the Commission: A Special Place for Children in EU External Action,” COM (2008) 55 final, (Brussels: European Commission, 2008), 1.
- 43 EC, “Communication from the Commission: An EU Agenda for the Rights of the Child,” COM (2011) 60 final, (Brussels: European Commission, 2011); *FRA Handbook 2015*; Helen Stalford, “Journeys to European Justice: (How) Can the EU Enable Children to Enforce their Rights?” in *The EU as a Children’s Rights Actor: Law, Policy and Structural Dimensions*, ed. Ingi Iusmen and Helen Stalford, 32 (Opladen: Barbara Budrich Publishers, 2016).
- 44 COM (2011) 60 final, 3.
- 45 The “EU Action Plan on Human Rights and Democracy (2015–2019)” was adopted at the Foreign Affairs Council on 20 July 2017.

- 46 European Parliament resolution of 27 November 2014 on the 25th anniversary of the UN Convention on the Rights of the Child, 2014/2919(RSP). For more information, see also Margaret Tuite, “Child Rights Research for 2040: A European Commission Perspective,” in *The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead*, ed. Ton Liefaard and Julia Sloth-Nielsen (Leiden-Boston: Brill-Nijhoff Publishing, 2017), 461–488.
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- 48 *FRA Handbook 2015*, 22.
- 49 The Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community (2007/C 306/01) was signed on 13 December 2007.
- 50 For more information, see *FRA Handbook 2015*, 21.
- 51 *FRA Handbook 2015*.
- 52 *Ibid.*, 20.
- 53 The provisions are inspired by the CRC.
- 54 Helen Stalford, *Children and the European Union: Rights, Welfare and Accountability* (Oxford: Hart Publishing, 2012), 40.
- 55 Helen Stalford, “Journeys to European Justice,” 32; Helen Stalford and Mieke Schuurman, “Are We There Yet?: The Impact of the Lisbon Treaty on the EU Children’s Rights Agenda,” *International Journal of Children’s Rights* 19, no. 3 (2011): 397.
- 56 *FRA Handbook 2015*, 22.
- 57 See *FRA Handbook 2015*; FRA, “Guardianship Systems for Children Deprived of Parental Care in the European Union (Luxembourg: Publications Office of the European Union, 2015); FRA, “European Legal and Policy Framework on Immigration Detention of Children” (Luxembourg: Publications Office of the European Union, 2017); FRA, “Child-friendly Justice: Perspectives and Experiences of Children Involved in Judicial Proceedings as Victims, Witnesses or Parties in 9 EU Member States” (Luxembourg: Publications Office of the European Union, 2017). For more on FRA and its work in relation to children, see also <http://fra.europa.eu/en/theme/rights-child>.
- 58 See *FRA Handbook 2015*, 28–29, and Article 267 of the Treaty on the Functioning of the European Union (TFEU).
- 59 *FRA Handbook 2015*, 29.
- 60 CJEU 14 February 2008, C-244/06, *Dynamic Medien Vertriebs GmbH v. Avides Media AG* (ECLI:EU:C:2008:85).
- 61 *FRA Handbook 2015*, 30
- 62 *Ibid.*, 29.
- 63 *Ibid.*, 23.
- 64 Articles 32, 34–35 of the ECHR; *FRA Handbook 2015*, 30.
- 65 “Children’s Rights – Factsheet,” ECtHR, http://www.echr.coe.int/Documents/FS_Childrens_ENG.pdf.
- 66 *FRA Handbook 2015*, 23, 30–31.
- 67 *Ibid.*, 31.
- 68 *Ibid.*, 23–24.
- 69 For more information, see <http://www.coe.int/en/web/turin-european-social-charter/reporting-system>.
- 70 Article 1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints; for more information on the procedure, see <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>.
- 71 For particular examples, see *FRA Handbook 2015*, 31.
- 72 *FRA Handbook 2015*, 25.
- 73 CoE, “Council of Europe Strategy for the Rights of the Child (2012–2015)” (Strasbourg: Council of Europe Publishing, 2012); CoE, “Council of Europe Strategy for the Rights of the Child (2016–2021)” (Strasbourg: Council of Europe Publishing, 2016).
- 74 See CoE, “Strategy for the Rights of the Child (2016–2021),” 4, 10.
- 75 *FRA Handbook 2015*, 25.
- 76 CoE, “Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice” (Strasbourg: Council of Europe Publishing, 2011).
- 77 CoE, “Council of Europe Guidelines on Child-Friendly Health Care” (Strasbourg: Council of Europe Publishing, 2011).
- 78 CoE, “Recommendation CM/Rec(2009)10 of the Committee of Ministers to Member States on Integrated National Strategies for the Protection of Children from Violence” (Strasbourg: Council of Europe Publishing, 2009).
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- 83 *FRA Handbook 2015*, 26.
- 84 "What is ENOC," ENOC, http://enoc.eu/?page_id=8.
- 85 "Annual Meetings," ENOC, http://enoc.eu/?page_id=402.
- 86 OHCHR, "Status of Ratification Interactive Dashboard."
- 87 *Ibid.*
- 88 *Ibid.*
- 89 *Ibid.*; Only Mongolia and Thailand ratified the OPCP.
- 90 See, for example, the "Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting," para. 16, Singapore, 23–24 July 1993, http://asean.org/?static_post=joint-communique-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993; see also Vitit Muntarbhorn, "Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?" *Transnational Law and Contemporary Problem* 8, (1998): 417.
- 91 "ASEAN Overview," ASEAN, <http://asean.org/asean/about-asean/overview/>.
- 92 See The ASEAN Declaration, 8 August 1967, <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>.
- 93 ASEAN, "Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting," para. 17.
- 94 Article 1(7), 14 of the Charter of the Association of Southeast Asian Nations (ASEAN), 20 November 2007, available at <http://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>.
- 95 ASEAN, "Plan of Action against Trafficking in Persons, Especially Women and Children," 1, <http://www.asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>.
- 96 *Ibid.*, 2.
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- 98 *Ibid.*, 4–12.
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- 101 Article 4 of the ASEAN Human Rights Declaration.
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- 118 "Asia Region," OHCHR, <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/AsiaRegionIndex.aspx>; Baik Tae-Ung, *Emerging Regional Human Rights Systems in Asia* (Cambridge: Cambridge University Press, 2012), 3, <https://www.cambridge.org/core/books/emerging-regional-human-rights-systems-in-asia/emerging-regional-human-rights-systems-in-asia/F845C6B8DF61A882EC17F8BA4872D5A4>.
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- 370 End all forms of violence against girls, put all girls in school, end the AIDS epidemic and end child marriage.
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- 373
1. Meet their responsibility to respect children’s rights and commit to supporting the human rights of children.
 2. Contribute to the elimination of child labour, including in all business activities and business relationships.
 3. Provide decent work for young workers, parents and caregivers.
 4. Ensure the protection and safety of children in all business activities and facilities.
 5. Ensure that products and services are safe, and seek to support children’s rights through them.
 6. Use marketing and advertising that respect and support children’s rights.
 7. Respect and support children’s rights in relation to the environment and to land acquisition and use.
 8. Respect and support children’s rights in security arrangements.
 9. Help protect children affected by emergencies.
 10. Reinforce community and government efforts to protect and fulfil children’s rights.
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ANNEX 1: SEMINAR PROGRAMME

Day 1 – Tuesday, 7 November 2017

Transfer from Ramada Hotel to Conference venue (Inter Expo Center) organised by the Host.

13 h30 Transportation will be leaving the Ramada Hotel

14:00 - 16:00	Registration of participants	14:00 - 15:30	Rapporteurs and Moderators' Meeting <i>(Invitation only to rapporteurs and moderators)</i>
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Official Welcome

16:00 - 16:30 *Chair: Mr Angel ORBETSOV, Director for Asia, Australia and Oceania, Ministry of Foreign Affairs of Bulgaria*

Opening Remarks

Ambassador Karsten WARNECKE, Executive Director, Asia-Europe Foundation (ASEF)

Opening Speeches

On Behalf of the Host:

Mr Biser PETKOV, Minister of Labour and Social Policy (5 min)

Mr Georg GEORGIEV, Deputy Minister of Foreign Affairs (5 min)

On Behalf of the Organisers:

Mr Henri PLAGNOL, State Council (France) (10 min)

16:30 - 16:50 **Keynote Speaker**

Ms Mikiko OTANI, Member of the UN Committee on the Rights of the Child (15 min)

16:50 - 17:30 **Joint Presentation of Background Paper by Main Rapporteurs (40 min)**

Prof Ton LIEFAARD, Professor of Children's Rights/UNICEF Chair in Children's Rights, Leiden University

Dr Bina D'COSTA, Lead Research and Evaluation Specialist (Migration), UNICEF Office of Research- Innocenti, United Nations Children's Fund

Moderator: Mr Rolf RING, Raoul Wallenberg Institute, Sweden

17:30 - 18:15 **Plenary Discussion**

19:00 - 21:00 **Welcome Reception hosted by Mr Biser PETKOV**, Minister of Labour and Social Policy

(Transportation from the venue directly to the Archeological Museum)

Day 2 – Wednesday, 8 November 2017

7:45 **Leaving from the hotel to the venue**
08:00 - 09:00 Registration of Participants (continued) **Venue:** Inter Expo Center, Sofia

Simultaneous Working Groups

Working Group 1: International Partnership and State Provision for Survival and Development of Children

Rapporteur: **Dr Bina D’COSTA**, UNICEF Office of Research - Innocenti

Moderator: **Ms ZHANG Xiao’an**, United Nations Association of China

Working Group 2: Protection of Vulnerable Children

Rapporteur: **Prof Ton LIEFAARD**, University of Leiden

Moderator: **Prof Harkristuti HARKRISNOWO**, Human Rights Resource Centre

Working Group 3: Participation and Involvement of Children in Decision-making

Rapporteur: **Ms Amihan ABUEVA**, Child Rights Coalition Asia

Moderator: **Prof Philip D. JAFFÉ**, University of Geneva

(Note takers, G. Nenova, A. Dimitrova, A. Yuseinova)

11:00 - 11:15 Coffee Break

11:15 - 13:00 **Working Groups continued**

13:00 - 14:00 Lunch

14:00 - 15:00 **Working Groups continued & wrap-up**

14:45 - 15:00 Coffee Break

15:00 - 18:00 **Plenary Session – Closing Session**

15:00 *Chair:* **Ms Ludmila DIMITROVA**, Director, State Institute for Culture Ministry of Foreign Affairs, ASEF Governor from Bulgaria

Moderator: **Ms Valerie WAGNER**, Federal Department of Foreign Affairs, Switzerland

15:00 - 15:30 **Presentation from the Children’s Forum CHILDREN AND THE MEDIA**
organised by the State Agency for Child Protection, Bulgaria
Prof Maria SLAVOVA, Sofia University St. Kliment Ohridski

15:30 - 16:15 **Rapporteurs’ Summary on Each Working Group**
WG 1 Presentation: **International Partnership and State Provision for Survival and Development of Children - Dr Bina D’COSTA (15 min)**
WG 2 Presentation: **Protection of Vulnerable Children - Prof Ton LIEFAARD (15 min)**
WG 3 Presentation: **Participation and Involvement of Children in Decision-Making - Ms Amihan ABUEVA (15 min)**

Day 2 – Wednesday, 8 November 2017

16:15 - 17:30 **Q&A Discussion**

17:30 - 18:00 **Concluding Remarks**

on Behalf of the Host:

Ms Ophelia KANEVA, Chairperson, State Agency for Child Protection, Bulgaria

on Behalf of the Organisers:

Ambassador Antonio MORALES, Philippine Ambassador to Singapore, ASEF Governor for the Philippines

on Behalf of ASEF:

Ambassador Karsten WARNECKE, Executive Director, Asia-Europe Foundation (ASEF)

18:00 **End of Session**

19:30 - 21:00 **Seminar Dinner hosted by the State Agency for the Children Protection** (Ramada Hotel)

Day 3 – Thursday, 9 November 2017

Cultural Visit

09:00 – 13:00 Cultural Visit for Participants organized by the Hosts (*Optional*)

Afternoon End of the Programme Departure of Participants

Steering Committee (*by invitation only*) **(Ramada Hotel)**

10:30 – 11:30 Steering Committee Meeting with the host (Session I)

12:00 – 13:30 Lunch hosted by Bulgaria

13:30 – 15:30 Steering Committee Meeting (Session II)

ANNEX 2: CONCEPT PAPER

Introduction

Over the past 70 years, there has been a shift in the perception of children in international law: they are no longer seen as passive beneficiaries, but as rights-holders entitled to the same level of enjoyment of human rights as adults – and given their social, cultural, political and economic status, requiring an even higher level of safeguards and protection. Considered to be the “most rapidly and widely ratified international human rights treaty in history”,¹ the United Nations Convention on Rights of the Child (CRC) protects the rights of all children. The CRC defines a child as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”²

The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern. Identifying the exploitation of children as a major challenge for ASEM partners, leaders have expressed their intent on incorporating this issue into the ASEM cooperation framework at the 11th ASEM Summit (ASEM11) in 2016. The 17th Informal ASEM Seminar on Human Rights contributes towards the promotion and protection of human rights of children within the ASEM constituency.

Background

The inclusion of the rights of the child in the international human rights agenda began in the aftermath of World War II, when the United Nations International Children’s Emergency Fund, or UNICEF, was established to assist in the rehabilitation of young victims of the war. By 1953, its mandate was broadened to encompass addressing the long-term needs of women and children in the larger international context and scope.³ Children’s rights were first mentioned in the Universal Declaration of Human Rights⁴ and in 1959, the UN General Assembly adopted the Declaration of the Rights of the Child which held that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”⁵

Following the adoption of the UN Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW) in 1979, the same year was declared as the Year of the Child. A Working Group was set up to increase and augment the protection of children, which eventually culminated in the creation of the United Nations Convention on the Rights of the Child (CRC).⁶

The CRC is accompanied by 3 optional protocols, namely, the Optional Protocol on the Involvement of Children in Armed Conflict; the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

Regional Developments in Asia and in Europe

Asia

Among the Association of South East Asian Nations' (ASEAN) population, 35.4% is below the age of 19.⁷ While the ASEAN Human Rights Declaration (AHRD) includes children's rights in its general principles, and specifically under economic, social and cultural rights, the 1993 ASEAN Plan of Action on Children was the *first* policy document to address children's issues in this region. It was followed by the 2001 Declaration on the Commitments for Children in ASEAN which was guided by the CRC and child rights principles in general⁸ and the 2010 Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (Hanoi Declaration) which calls to "achieve the goals for children in the ASEAN region as regards the child's rights to survival, protection, development and participation in a comprehensive and systematic way."⁹ Children have been identified in the ASEAN Socio-Cultural Community Blueprint (2009–2015) as belonging to "disadvantaged, vulnerable and marginalised groups" for whom ASEAN should implement survival, development and protection programmes consistent with the CRC; it also calls to set up a monitoring mechanism on the implementation of the CRC.¹⁰

The ASEAN Intergovernmental Commission on Human Rights (AICHR) was set up in 2009 to promote regional co-operation on human rights; it was followed by the ASEAN Commission on the Rights of Women and Children (ACWC) in 2010 to specifically address the protection and promotion of children's rights.

The well-being and development of children has been a principal area of cooperation for the South Asian Association for Regional Cooperation (SAARC) since its formation in 1985. Ministerial Conferences on Children have been held at the regional level¹¹ and in 2002, SAARC adopted the SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia.¹² A regional mechanism known as the South Asia Initiative to End Violence Against Children (SAIEVAC) has been set up to reinforce regional cooperation to end violence against children and to realise children's rights in South Asia according to the CRC¹³. Identifying the need to provide better advocacy and programming for children affected by HIV/AIDS, in 2007 the SAARC Regional Strategic Framework for the Protection, Care and Support of Children Affected by HIV/AIDS was adopted.

Europe

The Treaty of the European Union sets out the obligation for European Union (EU) Member States to promote children's rights.¹⁴ Although the entire Charter of Fundamental Rights of the EU applies to children, there are also specific provisions on the rights of the child (Art. 24) and on child labour (Art. 31).¹⁵ The 2003 EU Guidelines on Children and Armed Conflict, the 2017 EU Guidelines on the Protection and Promotion of the Rights of the Child¹⁶ and the 2011 EU Agenda for the Rights of the Child are aimed not only to protect the rights of the child but also to:

... reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn it into concrete results. In the future, EU policies that directly or indirectly affect children should be designed, implemented, and monitored taking into account the principle of the best interests of the child enshrined in the EU Charter of Fundamental Rights and in the UNCRC.¹⁷

The EU Agenda contains 11 actions by which the EU can contribute towards children's well-being, including the continued implementation of the EU Guidelines on Children and Armed Conflict and the EU Guidelines on the Protection and Promotion of the Rights of the Child.¹⁸

At the wider Council of Europe (CoE) level, children are protected under the European Convention on Human Rights which applies to all individuals, the European Social Charter which safeguards the right of children to protection (Art. 7) and the right of children to social, legal and economic protection (Art. 17). The CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) seeks to protect children from sexual violence.¹⁹ In 2016, the CoE updated its Strategy for the Rights of the Child for 2016–2021. The new Strategy identifies 5 priorities: equal opportunities, participation of children, a life free from violence, child-friendly justice and children's rights in the digital environment.²⁰ The inclusion of *rights in the digital environment* as a priority was in recognition that:

*all children should be able to safely access ICTs [information communication technologies] and digital media ... to fully participate, express themselves, seek information and enjoy all the rights enshrined in the UNCRC and its Optional Protocols without discrimination of any kind.*²¹

It aims to secure both participatory rights such as access to information, freedom of expression and participation while protecting them “from potential risks to their safety, security and privacy in the digital environment.”

The Protection of the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) articles are generally categorised into 3 categories of provision, protection and participation articles (the “3 Ps” approach):

Provision: Also known as survival and development rights, these are children's rights to the resources, skills and services that are necessary to ensure their survival and the development of their full potential;²²

Protection: These are rights to protect children from exploitation or abuse, including protection in the criminal justice system and humanitarian protection in times of armed conflict;²³

Participation: The rights of children to express their opinions, and to actively engage in society and in the decision-making processes that affect their rights.²⁴

It is also important to note that the CRC identifies 4 basic principles which guide the rights of the child:²⁵

Principle of non-discrimination (Art. 2): All rights apply to all children without exception.

Principle of the child's best interest (Art. 3): A child's best interests precede that of an adult. The best interests of the child should be kept at the heart of all actions and policies for children [also refer to UNCRC General Comment No. 14 (2013)]

Rights to life, survival and development (Art. 6): Every child has the right to live, and it is the State's obligation to ensure the child's survival and development.

Respect for the views of the child (Art. 12): The child has the right to express an opinion and to have that opinion taken into account in any matter affecting him or her [also refer to UNCRC General Comment No. 14 (2009)].

In spite of the progress made both at the international and regional levels to safeguard the rights of the child, almost 47% of people living in extreme poverty are below 18 years of age.²⁶ There is a strong co-relation between **child poverty and abuse, neglect and exploitation**.²⁷ Although violence against children remains an under-reported issue, UNICEF estimates that more children experience violence in the form of discipline: 6 out of every 10 children between the ages 2 to 14 are subjected to corporal punishment by their caregivers on a regular basis.²⁸ The UN Study on Violence Against Children uses Art. 19 of the Convention on the Rights of the Child to define violence against children as “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.”²⁹ Following the report, the UN General Assembly established the post of Special Representative of the Secretary-General on Violence Against Children.³⁰

In addition to weakening their rights, poverty deprives children of the environment needed for survival and development. It reduces a child’s chances of gaining access to adequate **nutrition**³¹, **clean drinking water** and **sanitation** leading to micronutrient deficiencies, stunting and illnesses which can affect school performances, causing dropouts and reducing future earning potential.³² **Children with disabilities** and **indigenous children** suffer from higher rates of poverty than non-disabled and non-indigenous children; they are more vulnerable to marginalisation and exclusion.³³ The CRC protects the child’s rights to survival and development (Art. 6) and it is also 1 of the 4 basic child rights’ principles that guide all child-related programming³⁴; it also recognises the importance of providing special assistance to protect and promote the rights of children with disabilities and indigenous children.

Data shows that 59 million children of primary school age are currently without *access to education*.³⁵ Among out-of-school children, 36% live in conflict-affected countries³⁶ while refugees are 5 times more likely to be out of school than non-refugee children.³⁷ Children belonging to cultural and ethnic minority groups³⁸ and children with disabilities³⁹ are less likely to receive the same levels and quality of education as non-minority, non-indigenous and non-disabled children.

Gender discrimination is a major barrier to human rights. A cultural bias towards boys in many countries means girls are denied their rights at an early age: from access to education (nearly 31 million girls of primary school age worldwide are out-of-school⁴⁰) to **early marriage**. A UNICEF study shows that 1 in every 3 girls in the developing world is married by the age of 18; South Asia is home to 42% of all child brides worldwide.⁴¹ Child brides are at an increased risk of abuse, of contracting HIV/AIDS⁴² and of **maternal mortality**⁴³; girls who give birth between the ages of 15 and 19 are more likely to die in childbirth than women in their early 20s.⁴⁴ Girls are also more vulnerable to **sexual exploitation** and **gender violence**; one of the most extreme forms of discrimination is **female genital mutilation (FGM)** which is mostly carried out on young girls 0–15 years of age.⁴⁵

UNICEF estimates about 150 million children are engaged in **child labour** worldwide.⁴⁶ Since not all work is harmful, “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development.⁴⁷ The 1973 International Labour Organization (ILO) Convention No. 138 on the Minimum Age for Admission to Employment and Work and the 1999 ILO Convention No. 182 on the Worst Forms of Child Labour contain some of the main standards on child labour. Child labour mainly occurs in the informal economy which is difficult to regulate⁴⁸; children are often underpaid, working in hazardous conditions without any knowledge of their rights.⁴⁹ Minimum working ages differ from country to country making it difficult to protect children according to international standards. Recognising the important role of the private sector in protecting children’s rights, UNICEF, the UN Global Compact, and Save the Children launched the Children’s Rights and Business Principles, which seek to mainstream children’s rights considerations across all business activities. The principles are “the first comprehensive set of principles to guide companies on the full range of actions they can take in the workplace, marketplace and community to respect and support children’s rights.”⁵⁰ They address not only child labour but also child protection, security and welfare.

The ILO has identified the worst forms of child labour that require immediate elimination. These include slavery or practices similar to slavery including trafficking, the use of children for prostitution, pornography, illegal activities and hazardous work that can affect the health, safety and morals of children.⁵¹ A 2012 ILO estimate places 5.5 million children as being trafficked worldwide.⁵² Article 32 of the CRC prohibits trafficking in children for any purpose as well as the sexual exploitation of children and forced or exploitative labour; and in 2002, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography entered into force.

In 2000, the Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children was adopted. The Protocol provides a definition of trafficking⁵³ but it applies to children in a simplified manner:

*... trafficking in children will exist as a matter of international law in situations where a child is subject to some act such as recruitment or transportation, for the purpose of their exploitation ... [the] definition, that removes the requirement to also show means such as force, fraud or coercion, is intended to make the identification of child victims of trafficking and the identification of their traffickers easier.*⁵⁴

Recognising the vulnerabilities of children to trafficking and re-trafficking, international law requires States to take special measures to protect children and to follow children's rights' principles, especially the best interest of the child when combatting child trafficking.⁵⁵ Following the Protocol, regional efforts to combat trafficking strengthened via the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution; the ASEAN Convention Against Trafficking in Persons, Especially Women and Children; the Council of Europe Convention on Action Against Trafficking in Human Beings; and the EU Strategy on the Rights of the Child (2012–2016).⁵⁶ To prevent the sexual exploitation of children in the tourism industry, the child rights non-governmental organisation (NGO) End Child Prostitution and Trafficking (ECPAT) partnered with the tourism sector to launch the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.⁵⁷

Around 28 million children have been **forcibly displaced by conflict**; with 17 million displaced within their own countries and the remaining 11 million seeking asylum outside their countries' borders.⁵⁸ Nearly half of all refugees are children, with their numbers doubling between 2005 and 2015.⁵⁹ With an uncertain legal status, absent documentation, and fearful of potential deportation and detention, **stateless, migrant and refugee children**, especially **unaccompanied minors** are more susceptible to abuse and trafficking. A 2016 International Organization for Migration (IOM) study shows that the longer a migrant spends in transit, the more vulnerable they are to exploitation and human trafficking⁶⁰; Europol has estimated that in 2016, 10,000 refugee children seeking asylum in Europe went missing, some of whom most likely fell victim to traffickers.⁶¹ To ensure children remain safe, child protection has been included in the humanitarian and refugee response strategies of different international agencies.⁶²

Article 20 of the CRC entitles children who are deprived of their family environment to special protection by the State, with additional consideration to be given to refugee children in accordance with refugee and humanitarian law (Art. 22).⁶³ In 2005 the Committee on the Rights of the Child provided detailed guidance on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin (General Comment No. 6).⁶⁴ Identifying a number of protection gaps in the treatment of such children, it calls on States to respect their obligations under the CRC to protect all children within their territories and jurisdiction, irrespective of the child's nationality or immigration status.⁶⁵ It also requires States to take steps to assist former child soldiers who, following cessation of conflict or defection, are unaccompanied or separated, reintegrate into society.⁶⁶

States have the responsibility to protect **children in armed conflict**⁶⁷ and also to ensure that children who are below the age of 15 do not take direct part in hostilities.⁶⁸ The 2002 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict raises this age to 18 years.⁶⁹ The Special Representative of the Secretary-General for Children Affected by Armed Conflict has identified 6 grave violations against children in armed conflict, namely, killing or maiming; recruitment or use of child soldiers⁷⁰; rape and other forms of sexual violence against children; abduction of children; attacks against schools or hospitals and; denial of humanitarian access to children.⁷¹ The Paris Commitments to Protect Children Unlawfully Recruited or Used by Armed Forces or Armed Groups (Paris Commitments) and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles) provide operational guidelines on how to prevent the military recruitment of children and how to reintegrate children formerly associated with armed groups.⁷² Since 1999, the Security Council has adopted 11 resolutions recognising the deliberate targeting of children in armed conflicts as a threat to peace and security.⁷³ It has also established a comprehensive monitoring and reporting mechanism to collect timely and reliable information on violations committed against children affected by armed conflict.⁷⁴

For children in conflict with the law, **detention** should only be a measure of last resort, in exceptional circumstances and only for the shortest appropriate period of time.⁷⁵ This applies to all children, including migrant children, children trafficked into forced criminality, and children involved in armed conflict. Wherever appropriate, States should provide alternatives to judicial proceedings such as diversion procedures – but as a 2015 study on juvenile justice in ASEAN shows, even when the legal framework in place, diversion is not always used; decision-makers lack adequate knowledge and resources to implement the programmes.⁷⁶ Institutional care should be in line with children’s human rights and help reintegrate them with society.⁷⁷ Children have a right to privacy during all stages of criminal proceedings. For children who are in detention, there are international legal safeguards protecting them from violence, abuse and exploitation⁷⁸; the CRC prohibits the use of torture, cruel, inhuman or degrading treatment or punishment; international law prohibits the death penalty for crimes committed by persons below 18 years of age.⁷⁹

The CRC encourages States to establish a **minimum age of criminal responsibility** at which children can be held criminally responsible. In this respect, the Committee on the Rights of the Child has stated “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.”⁸⁰ Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) recommends that in setting a minimum age of criminal responsibility, it “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”⁸¹ Children who are at or above the minimum age but below 18 years can be charged and subject to prosecution but the procedures including the sentencing must be in compliance with the CRC.⁸² If it cannot be established that the child is at or above the minimum age, the child shall not be held criminally responsible.⁸³

Another important aspect of juvenile justice is the ability of children to get *access to justice*. The 2008 United Nations Common Approach to Justice for Children defines access to justice as “the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards.”⁸⁴ Effective access requires children to be able to enjoy their **rights to participate in proceedings, to express their views and be heard**. Yet a recent study found that:

*... a fifth of the world’s children do not have the right to be heard in legal proceedings that concern them. A little over a quarter of countries guarantee this right to children in all legal settings, 84 countries enshrine the standard in more limited circumstances while 58 countries do not recognise children’s right to be heard in their legislation.*⁸⁵

The right of children to participate is not limited to legal proceedings but extends to all matters that affect them.⁸⁶ At the Rio+20 Summit, it had been agreed that “sustainable development must be inclusive and people-centred, benefiting and involving all people, including youth and children.”⁸⁷ Furthermore, recognising the need to promote intergenerational dialogue and solidarity, States stressed “the importance of the active participation of young people in decision-making processes ... as the contribution of children and youth is vital to the achievement of sustainable development.”⁸⁸ Several of the Sustainable Development Goals directly include children⁸⁹; many of the goals seek to eliminate all forms of exploitation of children including eradicating the military recruitment of children, the use of child labour, trafficking and sexual exploitation, and ending harmful practices such as early marriage and female genitalia mutilation.⁹⁰ SDG 16 which promotes peaceful societies aims at ending violence against children promotes the rule of law and seeks to ensure equal access to justice for all; it requires accountability and inclusive participation in decision-making at all levels.

Monitoring and accountability are crucial for the realisation of the rights of the child.⁹¹ Treaty bodies that have been charged to monitor the implementation of certain human treaties such as the CRC, the Convention for the Elimination of Discrimination Against Women, and the Convention on the Rights of Persons with Disabilities, play an important role in ensuring that State Parties fulfil their treaty obligations. The Committee on the Rights of the Child reviews regularly the implementation progress made by Parties to the CRC and the Optional Protocols on the Sale of Children and Children in Armed Conflict, providing recommendations for improvement. In States that have ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, children and their representatives to directly address complaints to the Committee on the Rights of the Child if their national legal system has not been able to provide a remedy for the violation of their rights. The Universal Periodic Review (UPR) process also provides a key opportunity to track the efforts made by governments to promote and implement children’s rights. Civil society organisations play an important role in monitoring and accountability, not only domestically but also internationally, by participating in the Committee’s review process and the UPR mechanism.

17th Informal ASEM Seminar on Human Rights (2017)

The Informal ASEM Seminar on Human Rights series was launched in 1997 to deepen relations between civil society actors and governments in Asia and Europe on human rights issues. The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe and Foreign Affairs, the Philippine Department of Foreign Affairs and the Swiss Federal Department of Foreign Affairs.

The 17th Informal ASEM Seminar on Human Rights: “*Human Rights and Children*” is hosted in 2017 by the Ministry of Foreign Affairs of the Republic of Bulgaria (7 -9 November, 2017) in partnership with the Ministry of Labour and Social Policy and the State Agency for Child Protection of Bulgaria.

The host country will organise a side-event related to children and the media, as well as a special event with the participation of children, including the use of taglines proposed by children (detailed information will be provided by the host country):

- “Together is better”
- “Children’s rights beyond differences”
- “A future as bright as the eyes of a child”
- “Equality in the child’s eye”
- “The future is a fairytale”

Participation in the 17th Informal ASEM Seminar on Human Rights: “*Human Rights and Children*” will take place in 4 simultaneous Working Group discussions (on Day 2) on the following topics:

1. State provisions for the survival and development of children
2. Protection of vulnerable children and children on the move
3. Participation and involvement of children in decision-making
4. International partnership

In addition to the guiding questions specific to each working group, the following cross-cutting questions are valid across the 4 working groups.

The cross-cutting questions as well as the working group questions can be found below.

Cross-Cutting Questions

1. All policies and programming related to children are to ensure that the child’s best interest is the primary consideration in all cases, including for adoption. What has been done to implement the procedural safeguards in Section V of General Comment No. 14 of the UN Committee on the Rights of the Child on the right of the child to have his or her best interest taken as a primary consideration?
2. The right to participate is important. What are the best practices for ensuring that children’s participation is not tokenism, but informative and effective participation?
3. The intersectionality of identity can increase the vulnerability of children in different scenarios. What are the special considerations for girls, children from indigenous, cultural and ethnic groups, children with disabilities, etc.?
4. While the universal definition for a child is accepted as a person below the age of 18, the minimum working age and age for criminal responsibility varies from country to country. What are the implications for achieving policy coherence at the national and regional levels?
5. For children involved in armed conflict, how to ensure child rights’ principles are maintained?
6. What special considerations are needed to prevent the exploitation of children by the media? How do we provide protection to children in the media and online, against pornography, armed conflict, violence and extremism?
7. What can be done to improve international cooperation in criminal justice to implement the CRC principles, notably on juvenile justice, protection of children on the move or involved in armed conflict, trafficking, forced criminality, and radicalisation?

Working Group Questions

I. State provisions for the survival and development of children (Working Group 1)

1. What can be done to improve the capacity of national institutions (such as human rights institutions and *ombudsman* offices) in receiving complaints from children and their representatives – accountability and monitoring processes/participation in the Optional Protocol?
2. What types of national coordinating mechanisms are included in State-level policies for children? And how can their effectiveness be increased?
3. Preventing and responding to violence against children require the active involvement of multiple stakeholders. What are the best strategies to ensure State agencies, educators, guardians and community members are committed to child protection standards especially when violence can have cultural and social sanction (e.g., gender violence, physical violence)?
4. What has been done to implement guidance in General Comment No. 13 of the UN Committee on the Rights of the Child, on the rights of children to be protected from all forms of violence, in particular with regard to a national coordinating framework (Section VI)?

5. Child labour is mostly prevalent in the informal sector, so how can States push for standard setting and regulations? Around 17.2 million children are in paid or unpaid domestic work; 67.1% of all child domestic workers are girls. Since domestic work is excluded from regulation, what can be done to protect children?
6. What action may be taken to counter the so-called “social exploitation” of children, including the exploitation of gifted children, the exploitation of children by the media, and the involvement of children in scientific and medical experiments? How can the protection of children, who are talented in sports, cultural, educational, and other areas, be stimulated at the international level?
7. Under the 2030 Agenda for sustainable development, States have an obligation to provide equitable and quality education to all children, yet universal enrolment is falling. Why? And what can be done to reverse this?
8. What does a child rights’ perspective into poverty alleviation strategies mean? Any regional or national examples of successfully addressing child poverty, e.g. by way of integrated approaches, e.g., parents’ access to the labour market combined with access to quality and affordable services, etc.?
9. Respect for family life and family reunifications. What systems are in place to ensure separation is the last resort; that families are supported in their role as primary caregiver, and family reunification is prioritised?
10. How can the State and the private sector work together in protecting children? What are best practices for child-friendly public procurement systems?

II. Protection of vulnerable children and children on the move (Working Group 2)

1. The minimum age of criminal responsibility varies from country to country. How do we encourage standardisation so that the minimum age is not lowered? What are the implications for cross-regional cooperation on juvenile justice? What efforts have been made to establish programmes for diversion from criminal justice proceedings?
2. Given the challenges involved in providing all children with access to justice, how can States channel their resources to ensure that children’s access to justice is maximised (both judicial and non-judicial access to justice)?
3. The evidence base on the harmful effects of detention on children continues to evolve and the UN has mandated Prof Manfred Nowak⁹² to conduct a global study on this. What are good practices on alternatives to detention?
4. For children who are nevertheless in detention, what are the best practices to ensure that they are prepared for reintegrating with society?
5. What kind of training and support should be given to judges, prosecutors and law enforcement officials to protect the best interests and rights of children? How do they ensure that children understand their rights, the legal procedures involved, and the implications of their participation?
6. What are the difficulties and risks for children studying in a country other than their country of origin and who are deprived of direct parental care?
7. What protection measures should States have to protect “children on the move”, in particular unaccompanied migrant children? What are the best practices for inter-country cooperation for family reunification for unaccompanied minors? How can their access to education, health, social services, and justice be secured?
8. What are the special child protection principles that need to be afforded to child trafficking victims?
9. What provisions should be made for children returning from armed conflict? What are the best practices to rehabilitate child soldiers/abducted children? How about children returning from radicalisation?

III. Participation and involvement of children in decision-making (Working Group 3)

1. What are the national, regional and international mechanisms of providing children with the right to participate and the right to be heard?
2. Children in many countries do have the legal right to be heard. In such situations, what efforts need to be undertaken to ensure the right to be heard and participate? What role do guardians place in improving a child's access to these rights?
3. How can the involvement of children in the planning and development of public policies and services be encouraged?
4. Expression and participation can have cultural restrictions — especially for girls. How can the community be involved to improve child participation in social and political decision-making processes?
5. 2 previous Eurobarometer surveys (2008 and 2009) showed that 76% of children interviewed were not aware of having rights; and 79% did not know who to contact in case of need. What can be done to ensure that children receive information about their rights in an accessible way? What is the role of the school/education system in informing children of their rights? How can active citizenship among children be encouraged?
6. For children who may find themselves in a vulnerable position with the law (trafficking victims, undocumented migrants, children involved in forced criminality), how do we ensure that they are aware of their rights? Who should they approach?
7. What efforts are needed to assist children in understanding legal procedures and proceedings? Their rights and options? What provisions should be made for children with disabilities?
8. How can States and civil society improve access to justice for children? How to balance participation with child protection in justice processes
9. Successful implementation of the 2030 Agenda depends on governments being held to account for goals and targets, and people, including children, having an active role in accountability processes. How can children's participation in public processes of accountability be improved? How to monitor and evaluate the quality of participation?

IV. International partnership (Working Group 4)

1. What international and regional mechanisms exist to monitor and improve accountability for the implementation of the CRC by individual States? What role do regional organisations play in making Member States respect their international obligations? Are there guidelines formulated for the development of effective mechanisms for sharing good practices?
2. For regional strategies on implementing the CRC, what are the challenges of monitoring and evaluating regional strategies on child protection? Are there results of evaluations conducted on regional programmes and plans?
3. One of the SDG goals is to create partnerships for implementation. Given how children's rights are close inter-twinned with the SDGs, what are the examples of partnerships and initiatives (demonstrated good practice)? What would an Asia-Europe partnership on protecting children's rights look like?
4. What kinds of partnerships are required with the private sector for protecting children's rights (not only for child labour but also social and environment rights)? Can the private sector better support or champion vulnerable children or vulnerable groups, for example offering career guidance, work placements, internships or scholarships to children in alternative care/children from ethnic minorities, etc.?
5. What kind of support do medium and small-scale companies need to protect child rights?
6. International standards require that legal services and detention facilities be child-friendly. What monitoring and evaluation is done at the regional level for these standards?
7. Eradication of poverty, improvement of healthcare and access to social protection and services requires good data and monitoring. How can States and civil society harness the targets and indicators of the SDGs to monitor the progress made for child rights?
8. How can civil society, children and their representatives be supported to monitor and evaluate the implementation of the CRC? And to enhance their role at the international level?

Endnotes:

- 1 "UN Convention on the Rights of the Child," UNICEF, <https://www.unicef.org/crc/>
- 2 Convention on the Rights of the Child, Article 1, https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf
- 3 "Who We Are," UNICEF, http://www.unicef.org/about/who/index_faq.html
- 4 Universal Declaration of Human Rights, Article 25, <http://www.un.org/en/universal-declaration-human-rights/>. Specific provisions in other international and regional conventions that also refer to children include the UN International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights, African Charter on Human and People's Rights 1981 (Banjul Charter) and Protocol, American Convention on Human Rights (Pact of San Jose, Costa Rica), and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- 5 "Preamble," Declaration of the Rights of the Child (1959), The Circumcision Reference Library, <http://www.cirp.org/library/ethics/UN-declaration/>
- 6 Other human rights instruments or conventions that specifically cover child rights include the ILO Minimum Age Convention, ILO Convention on Worst Forms of Child Labour, African Charter on the Rights and Welfare of the Child, and the European Convention on the Exercise of Children Rights.
- 7 "ASEAN Community in Figures 2016," ASEAN, <http://asean.org/storage/2012/05/25Content-ACIF.pdf>
- 8 The first four articles in the Declaration read "(1) Promote regional cooperation for the survival, development, protection and participation of ASEAN children, as an integral part of ASEAN's efforts to improve the lives of peoples in the region; (2) Intensify ASEAN economic and social development cooperation so as to eradicate the scourges of poverty, hunger and homelessness, which have a far-reaching impact on children, in order to promote their welfare and well-being; (3) Protect, respect and recognize the rights of all children, including those of indigenous people, consistent with the customs and traditions of their respective communities; and (4) Recognize and encourage respect for children's rights through mutual sharing of information on the rights of the child by ASEAN members, taking into account the different religious, cultural and social values of different countries." Save the Children, *Child Rights Situation Analysis Within the ASEAN Region* (2016), 8, https://resourcecentre.savethechildren.net/sites/default/files/documents/crsa-asean_region_250416.pdf
- 9 2010 Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children, ASEAN, https://asean.org/?static_post=ha-noi-declaration-on-the-enhancement-of-welfare-and-development-of-asean-women-and-children
- 10 ASEAN Socio-Cultural Community Blueprint (2009–2015), ASEAN (2009), <https://asean.org/wp-content/uploads/archive/5187-19.pdf>
- 11 Ministerial Conferences on Children were held in 1986, 1992, 1996 and 2009. See details on SAARC website http://saarc-sec.org/areaofcooperation/detail.php?activity_id=8
- 12 A regional taskforce was established to monitor the implementation of the Convention.
- 13 South Asia Initiative for Ending Violence against Children (SAIEVAC), <http://www.saievac.org/about-saievac/mission-statement/>
- 14 Articles 3(3) and 3(5) of the Treaty of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>
- 15 Furthermore, the EU yearly adopts Guidelines for the promotion and protection of the rights of the child, which follow the ideas of the EU Action Plan on Human Rights and Democracy.
- 16 On 6 March 2017, the EU revised and updated its existing 2007 Guidelines for the Promotion and Protection of the Rights of the Child. European Council, "Leave No Child Behind: Council Adopts EU Guidelines for the Promotion and Protection of the Rights of the Child," 6 March 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/03/06/protection-rights-children/>
- 17 "An EU Agenda for the Rights of the Child," Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 15 February 2011, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0060&from=en>
- 18 European Council, "Rights of the Child," http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm
- 19 Other CoE legal frameworks that protect the rights of the child include the European Convention on the Adoption of Children (Revised), Convention on Contact Concerning Children, European Convention on the Exercise of Children's Rights.
- 20 Council of Europe, *Council of Europe Strategy for the Rights of the Child (2016–2021)*, 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8>
- 21 Ibid.
- 22 See relevant articles that fall under this category, https://www.unicef.org/crc/files/Survival_Development.pdf
- 23 See relevant articles that fall under this category, http://www.unicef.org/crc/files/Protection_list.pdf
- 24 See relevant articles that fall under this category: <http://www.unicef.org/crc/files/Participation.pdf>

- 25 “Guiding Principles,” Convention on the Rights of the Child, https://www.unicef.org/crc/files/Guiding_Principles.pdf. See also Council of Europe-European Youth Centre Budapest, “What are Children’s Rights?” http://www.eycb.coe.int/comasito/chapter_1/2_wha.html
- 26 Antonio Franco Garcia, “7 Facts About Child Poverty You Should Know,” blog, UNICEF, <https://blogs.unicef.org/blog/7-facts-about-child-poverty-you-should-know/>
- 27 The Special Representative of the Secretary-General on Violence Against Children has noted: “Social exclusion and extreme poverty offer fertile ground for violence against children and enhance the risk of abuse and exploitation”. Marta Santos Pais, “Children in Extreme Poverty and Victims of Violence are at a Double Disadvantage,” 9 February 2011.
For further reading, see *Measuring Child Poverty: New League Tables of Child Poverty in the World’s Rich Countries* (Florence: UNICEF Innocenti Research Centre, 2012), https://www.unicef-irc.org/publications/pdf/rc10_eng.pdf; Paul Bywaters et al., *The Relationship Between Poverty, Child Abuse and Neglect: An Evidence Review*, Joseph Rowntree Foundation, 2016, <https://www.jrf.org.uk/report/relationship-between-poverty-child-abuse-and-neglect-evidence-review>; and *Child Abuse: What Role Does Poverty Play?* (Auckland: Child Poverty Action Group, 2013), <http://www.cpag.org.nz/assets/Publications/130610%20CPAG%20Child%20Abuse%20Report%201%20June%202013.pdf>
- 28 *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children* (New York: UNICEF, 2014), https://data.unicef.org/wp-content/uploads/2015/12/VR-full-report_Final-LR-3_2_15_189.pdf
- 29 The definition also drew from the definition used by WHO in the *World Report on Violence and Health* (2002): “... the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity.” United Nations, “Report of the Independent Expert for the United Nations Study on Violence Against Children,” General Assembly, A/61/299, 29 August 2006.
- 30 United Nations, “Resolution adopted by the General Assembly on 18 December 2007,” General Assembly A/RES/62/141, 22 February 2008.
- 31 Nearly half of all deaths in children under five can be attributed to under-nutrition. UNICEF, WHO, World Bank Group, “Joint Child Malnutrition Estimates,” 2016, <http://data.unicef.org/wp-content/uploads/2016/09/UNICEF-Joint-Malnutrition-brochure.pdf>
- 32 The UN estimates that illnesses due to contaminated water are one of the major causes of absenteeism in schools, responsible for the loss of over 443 million school days each year. UN News, “UN expert welcomes declaration that clean water and sanitation is a human right,” 2010, <http://www.un.org/apps/news/story.asp?NewsID=35487#.W17SH1N97IU>
- 33 UNICEF, “Children and Young People with Disabilities Fact Sheet,” May 2013, https://www.unicef.org/disabilities/files/Factsheet_A5__Web_NEW.pdf; and United Nations, “Indigenous Peoples Make up One-Third of the World’s Poorest and Suffer Alarming Conditions in all Countries,” 2010, <http://www.un.org/esa/socdev/unpfi/documents/SOWIP/press%20package/sowip-press-package-en.pdf>
- 34 The UN CRC also provides children with the right to health and health services, including access to clean water, sanitation and food (Article 24); they also have the right to a basic standard of living (Article 27).
- 35 UNICEF, “Education: Equitable Access,” 2016, https://www.unicef.org/education/bege_61657.html
- 36 Ibid.
- 37 UNHCR, “Education,” 2015, <http://www.unhcr.org/education.html>
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ANNEX 3: BIBLIOGRAPHY

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ANNEX 4: ABOUT THE CO-ORGANISERS



The **Asia-Europe Foundation (ASEF)** promotes understanding, strengthens relationships and facilitates cooperation among the people, institutions and organisations of Asia and Europe. ASEF enhances dialogue, enables exchanges and encourages collaboration across thematic areas of culture, education, governance, economy, sustainable development, public health and media.

ASEF is an intergovernmental not-for-profit organisation located in Singapore. Founded in 1997, it is the only institution of the Asia-Europe Meeting (ASEM).

ASEF runs more than 25 projects a year, consisting of around 100 activities, mainly conferences, seminars, workshops, lectures, publications and online platforms, together with about 150 partner organisations. Each year over 3,000 Asians and Europeans participate in ASEF's activities, and much wider audiences are reached through its various events, networks and web-portsals.

For more information, please visit www.ASEF.org



The **Raoul Wallenberg Institute** of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising in Lund two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

For more information, please visit www.rwi.lu.se

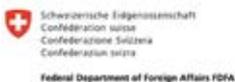


The **Ministry for Europe and Foreign Affairs** of France, as a founding member of ASEM, is pleased to have supported the ASEM human rights dialogue since its inception in 1997. For more information, please visit www.diplomatie.gouv.fr/en/



The **Department of Foreign Affairs of the Philippines** is the prime agency of the Philippine government responsible for the pursuit of the State's foreign policy. It is also responsible for the coordination and execution of the foreign policies of the country and the conduct of its foreign relations.

For more information, please visit www.dfa.gov.ph



The **Federal Department of Foreign Affairs of Switzerland (FDFA)** forms and coordinates Swiss foreign policy on behalf of the Federal Council, pursues foreign policy objectives, safeguards the interests of Switzerland and promotes Swiss values.

For more information, please visit www.eda.admin.ch

ANNEX 5: ABOUT THE HOST



The **Ministry of Foreign Affairs of the Republic of Bulgaria** was the host of the ASEMHR17.

For more information, please visit <https://www.mfa.bg/en>

ANNEX 6: ABOUT THE ASIA-EUROPE MEETING (ASEM)



The **Asia-Europe Meeting (ASEM)** is an intergovernmental process established in 1996 to foster dialogue and cooperation between Asia and Europe.

The 53 ASEM Partners are Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Cambodia, China, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Korea, The Lao PDR, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, the Netherlands, New Zealand, Norway, Pakistan, the Philippines, Poland, Portugal, Romania, the Russian Federation, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, the United Kingdom, Viet Nam, the European Union and the ASEAN Secretariat.

For more information, please visit www.ASEMinfoboard.org

ANNEX 7: BACKGROUND ON THE INFORMAL ASEM SEMINAR ON HUMAN RIGHTS SERIES

The aim of the Informal ASEM Seminar on Human Rights is to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

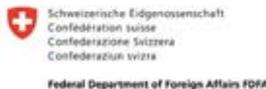
Previous seminar topics include:

- *Access to Justice; Regional & National Particularities in the Administration of Justice; Monitoring the Administration of Justice* (1997, Lund, Sweden)
- *Differences in Asian & European Values; Rights to Education; Rights of Minorities* (1999, Beijing, China)
- *Freedom of Expression & Right to Information; Humanitarian Intervention & the Sovereignty of States; Is there a Right to a Healthy Environment?* (2000, Paris, France)
- *Freedom of Conscience & Religion; Democratisation, Conflict Resolution & Human Rights; Rights & Obligations in the Promotion of Social Welfare* (2001, Bali, Indonesia)
- *Economic Relations; Rights of Multinational Companies & Foreign Direct Investments* (2003, Lund, Sweden)
- *International Migrations; Protection of Migrants, Migration Control & Management* (2004, Suzhou, China)
- *Human Rights & Ethnic, Linguistic & Religious Minorities* (2006, Budapest, Hungary)
- *Human Rights & Freedom of Expression* (2007, Siem Reap, Cambodia)
- *Human Rights in Criminal Justice Systems* (2009, Strasbourg, France)
- *Human Rights & Gender Equality* (2010, Manila, Philippines)
- *National & Regional Human Rights Mechanisms* (2011, Prague, Czech Republic)
- *Human Rights and Information and Communication Technologies* (2012, Seoul, Korea)
- *Human Rights & the Environment* (2013, Copenhagen, Denmark)
- *Human Rights & Businesses* (2014, Hanoi, Viet Nam)
- *Human Rights & Trafficking in Persons* (2015, Montreux, Switzerland)
- *Persons & Disabilities and Human Rights* (2016, Beijing, China)
- *Human Rights & Children* (2017, Sofia, Bulgaria)

The Seminar series is co-organised by the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute (nominated by the Swedish Ministry of Foreign Affairs), the French Ministry for Europe & Foreign Affairs, the Philippine Department of Foreign Affairs and the Federal Department of Foreign Affairs of Switzerland. ASEF has acted as the Secretariat of the Seminar since 2000.

Supervision of the seminar is entrusted to a Steering Committee, composed of the Seminar's 5 co-organisers as well as representatives of the Ministries of Foreign Affairs of China and Indonesia & the European Union.

The 17th Informal ASEM Seminar on Human Rights (ASEMHRS17) is co-organised by:



ASEMHRS17 was hosted by the Ministry of Foreign Affairs of the Republic of Bulgaria



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