

# Human Rights and Children

## *17<sup>th</sup> Informal ASEM Seminar on Human Rights*

### Background Paper

Bina D'Costa  
Ton Liefwaard



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 serve as the Main Rapporteurs for the 17<sup>th</sup> Informal ASEM Seminar on Human Rights: Human Rights and Children, Sofia, Bulgaria, 7-9 November 2017.

Co-authors (in alphabetical order): Prof. Dr Jaap E. DOEK, Former Chair United Nations Committee on the Rights of the Child (2001-2007); Ms. Amra LEE, UNHCR, Lebanon; Mr. Jeremy SHUSTERMAN, UNICEF Office of Research, Florence, Italy and Ms. Daniella ZLOTNIK, LL.M, Leiden Law School, Leiden University, The Netherlands.

---

**Prof. Ton LIEFAARD**  
**Professor of Children’s Rights/UNICEF Chair in Human Rights**

Prof. Dr. Ton Liefwaard is Professor of Children’s Rights and holds the UNICEF Chair in Children’s Rights at Leiden Law School, Leiden University, the Netherlands. He teaches children’s rights and child law from an international and comparative perspective and has published widely on the meaning of the UN Convention on the Rights of the Child and related international and regional instruments for the position of children. Prof. Liefwaard is the Programme Director of the Master of Laws Programme: Advanced Studies in International Children’s Rights at Leiden University and coordinates the Leiden Summer School on International Children’s Rights. He received the award for best lecturer of Leiden Law School in 2015. Prof. Ton Liefwaard is also a Deputy Justice at the Court of Appeal of the Hague, the Netherlands. He regularly works as a consultant for international organizations, including agencies of the United Nations, the Council of Europe and the European Union, on issues related to children’s rights, child friendly justice, child protection, juvenile justice, alternative care and violence against children.

**Dr. Bina D’COSTA**  
**Lead Research and Evaluation Specialist (Migration), UNICEF Office of Research**

Dr Bina D’Costa has joined the UNICEF Office of Research – Innocenti as the Lead Research and Evaluation Specialist (Migration) in 2016. Her research interests span migration, children and conflict, gender, human rights and justice. She has undertaken studies on refugees, stateless communities and IDPs, and has provided inputs and technical advice to Human Rights bodies, UN agencies and NGOs. Her publications include books- Children and Violence: The Politics of Conflict in South Asia (editor, Cambridge University Press, 2016); Children and Global Conflict (co-authored, Cambridge University Press, 2015); Nationbuilding, Gender and War Crimes in South Asia (Routledge, 2011, 2013); Marginalisation and Impunity: Violence against Women and Girls in the Chittagong Hill Tracts (CHTC and IWGIA, 2014, 2016); and Gender and the Global Politics of the Asia-Pacific (co-editor, Palgrave, 2010). Bina is currently finishing a book with John Braithwaite titled ‘Cascades of Violence in South Asia’ (forthcoming, ANU Press, 2018). Bina joins UNICEF from the Australian National University where she was an Associate Professor at the Department of International Relations, Coral Bell School of Asia-Pacific Affairs. Bina has held visiting fellowships at the Graduate Institute for International and Development Studies, Geneva (2012-14); the Refugee Studies Centre, Oxford University (2011-12) and the Global Justice Center, New York (2008).

*This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of the rapporteurs and can under no circumstances be regarded as reflecting the position of the European Union or as reflecting the views or opinions of the organisers and the host of the 17<sup>th</sup> Informal ASEM Seminar on Human Rights, namely the Asia-Europe Foundation, the Raoul Wallenberg Institute, the French Ministry of Europe and Foreign Affairs, the Philippine Department of Foreign Affairs and the Swiss Federal Department of Foreign Affairs.*

## Table of Contents

Chapter 1 - Introduction to Children's Rights	
1.1. Children's Rights at the International Level	4
1.2. Children's Rights at the Regional Level: Europe	17
1.3. Children's Rights at the Regional Level: Asia	22
Chapter 2 – Children's Rights: A Thematic focus	
2.1. Protection of Children in vulnerable situations	26
2.2. Participation and involvement of children in decision-making	43
2.3. International partnership & State provisions for the survival and development of children	52
Chapter 3 – Emerging Issues	
3.1. Children's rights and the digital environment	58
3.2. Children's rights and the SDGs	60
3.3. Role and involvement of non-state actors	60
Epilogue – Recommendations from the rapporteurs	65
Bibliography	67

## 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 (part 1.1) with an overview of children's rights at the international level, with specific focus on the UN Convention on the Rights of the Child (Hereinafter: 'CRC') and its optional protocols.<sup>1</sup> This part will include some remarks on the emergence of children's rights during the 20<sup>th</sup> century and will offer a brief account on the drafting of the CRC (including in relation to controversial issues), the main features of the CRC and its general principles, and finally on the role of the UN Committee on the Rights of the Child (Hereinafter: 'CRC Committee'). Attention will also be given to the stakeholders relevant to the implementation of the CRC and to the interaction of the CRC and the CRC Committee with other international organizations. The part will conclude with observations on the impact of the CRC at the regional and national level, focusing on the African and American context. The second part of the chapter (parts 1.2 and 1.3, respectively) will offer a closer look at the background and developments in the field 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; An Historical Perspective

World War I had a devastating impact on children. Millions of children had lost their parents and were on the streets or on the move without health care, education, protection or food. Civil society organizations or individuals were taking actions to address the needs these children. One lasting action was the establishment of the organization "Save the Children" by Eglantine Jebb in May 1919. To support this initiative, Jebb, together with others drafted a five point declaration. It was unanimously adopted by the General Assembly of the then existing League of Nations (49 member States) on 24 September 1924: **The Geneva Declaration on the Rights of the Child** (1924). It was the first milestone in the recognition of the rights of the child at the 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 very 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 the rights of the child at the international level was the unanimous adoption by the General Assembly of the UN on 20 November 1959 of the 1959 **Declaration of the Rights of the Child**. 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, the right to be protected against all forms of

---

<sup>1</sup> Part 1 is partly based on J.E. Doek, 'The Human Rights of Children: An Introduction', in U. Kilkelly & T. Liefwaard (eds.), 'International Children's Rights Law', Springer (forthcoming).

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 lack of systematic research little is known about the impact of this Declaration at the national level. However, children's rights 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 take full part 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, the right to travel and to live away from home (Holt 1975; Farson 1974). These proposals did not gain much support because they were simply too radical. However, they showed that children's rights became a matter of public debate and developments.

In any case, 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 as 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 to 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 summarize of the discussions, the proposed amendments and new draft articles which arose from the meetings of the Working Group taking place from 1979 and continuing well into 1989 (Detrick 1992). However, some general observations are necessary for an understanding of the drafting process:

- a. The drafting process was very slow at the beginning, with few articles adopted. The main reason was the political climate due to tensions in the East-West relationship, often resulting in purely political statements and negotiations by US and Soviet Union representatives. After 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 one 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 time in order for the CRC to be adopted in 1989, ten 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 two meetings of two weeks being held in 1988 (Cantwell 1992).
- b. The Working Group operated on the basis of consensus, meaning that all 53 representatives of Member States of the Working Group needed to agree on the proposed text.<sup>2</sup> Small working

---

<sup>2</sup> The members of the Working Group were representatives of states which 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, this person often with expertise in the field of children's rights. This resulted in what was described as a "family atmosphere" that made working together far easier (Cantwell 1992). An example of this atmosphere was the "pea-soup" meeting organized by Simone Ek (a representative of Save the Children) during the meetings of the Working Group, attended by representatives of States and NGO and a welcome opportunity to discuss informally the draft articles under consideration as I know from my own experience.

groups were often formed to produce a compromise text acceptable for 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 for most articles consensus was reached relatively easily, there were four 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 re-open 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 (Fox 1995; Sloth-Nielsen 1995; Alston 1990).
- 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 (Hereinafter: '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 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 para. 1 expresses this as follows: "States parties that recognize and/or permit the system of adoption shall ensure (...)" (Detrick 1992)<sup>3</sup>.
- d. **The protection of children in armed conflict:** at the time of the drafting, the existing international standard was: no recruitment of and no direct participation in hostilities by children below the age of 15 (art. 77 Protocol I and art. 4 Protocol II to the Geneva Conventions of 12 August 1949). Many 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 argued for a lower age limit which implied that there was consensus on the age of fifteen. The discussion was closed accordingly (Detrick 1992). Quite a number of delegations were (very) unhappy with this result and considered re-opening the debate and elevating it to the UN Commission on Human Rights or even the General Assembly. Delegations quickly realised that this could open the door for demands to reconsider other draft articles, jeopardizing 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 CRC on the Involvement of Children in Armed Conflict, raising the age for recruitment and direct participation in hostilities to 18.<sup>4</sup>

---

<sup>3</sup> Langlaude (2008) provides a critical analysis of the CRC Committee's monitoring of the implementation of article 14.

<sup>4</sup> CRC OP1, art 1-3.

### 1.1.3. The CRC

#### 1.1.3.1. Why 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 (Hereinafter: 'ICESCR').<sup>5</sup> These two covenants entered into force in 1976 and are the core international instruments on human rights and together with the Universal Declaration of Human Rights (Hereinafter: 'UDHR')<sup>6</sup> are often called the International Bill of Rights.<sup>7</sup> 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 recognized in this Covenant without distinction of any kind (art. 2, para. 1 ICCPR; see also art. 3 ICESCR). So why did we need a separate human rights treaty for children? Were the Covenants not adequately covering 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 an assessment of the shortcomings of the existing Covenants and/or presented a solid justification for the proposal. According to the records of its meetings the Open-Ended Working Group never raised or discussed the question why a separate children's right treaty was necessary with a small exception. Some government delegates questioned the need for reaffirming the fundamental right and freedoms in the CRC because they were already covered by the existing human rights treaties. They wanted to limit the convention to rights specific to children, although without identifying these rights.<sup>8</sup> 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 two Covenants was limited to care and protection.<sup>9</sup> 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 they contain. (e.g. the ICCPR provided "every citizen" the right to vote, art. 25). 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.<sup>10</sup>
- b. A separate treaty obliges to take children's rights more seriously,<sup>11</sup> inter alia by recognizing children's inherent dignity and worth. The comprehensive nature of the CRC does not only provide 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 in the family, in courts, in schools, in children's institutions and in their

---

<sup>5</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (Hereinafter: ICESCR)

<sup>6</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) (Hereinafter: 'UDHR')

<sup>7</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (Hereinafter: 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 adopted by the same resolution on the same date and entered into force on 3 January 1976 in accordance with article 27. The UDHR was adopted and proclaimed by the UN General Assembly resolution 217A (III) of 10 December 1948.

<sup>8</sup> Detrick (1992), p. 239 – 240 and 250 – 251 dealing with respectively the current article 14 and 13.

<sup>9</sup> See (ICCPR: art.10, para 2 (b) and 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)

<sup>10</sup> Cantwell (2011), p. 41 and 42.

<sup>11</sup> 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 serious. See inter alia Freeman (1997), Freeman (2007) and Freeman (2011)

communities and societies. In short, the CRC explicitly recognized 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 your identity (art. 8), the right to express your views (art. 12), the protection from narcotic and psychotropic substance (art. 33), the right to recovery and social re-integration (art. 39), the rights in the process of juvenile justice (art. 40). The CRC also allows to include important and child-centred improvements in various fields, e.g. in the area of health care; requiring measures to abolish harmful practices (art. 24) and in education; introducing the rule that discipline should be administered in a manner consistent with the child's human dignity.<sup>12</sup> Also, a well-known categorization of the provisions of the CRC is the distinction between the protection, provision and participation rights.<sup>13</sup>

Whatever the answers to the "Why" question may be, the reality is that 196 States 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.<sup>14</sup>

#### 1.1.3.2. Ratifications and reservations

After the UN General Assembly had unanimously adopted the CRC, it entered into force on 2 September 1990.<sup>15</sup> It is noteworthy that, despite criticism that the CRC was drafted with limited participation of developing countries,<sup>16</sup> which could have resulted in few ratifications by these countries; out of the first twenty only one was a developed country (Sweden).<sup>17</sup> By 5 September 1991, 33 African states had ratified the CRC, 16 countries in Asia, 27 in Latin America and 20 Western countries (Europe and other).<sup>18</sup> The ratification continued thereafter with unprecedented speed. Today, 196 countries have ratified the CRC, including two States with 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 the ratification or accession. The reservations must be compatible with the object and purpose of the CRC and can be withdrawn at any time (art. 51 CRC). Quite a number of States made reservations varying from 33 to 64 depending on whether statements or declarations, not presented as reservations, are due to their content considered as reservations. The CRC Committee has systematically recommended States Parties to withdraw their reservations with some success. A total of 6 states have withdrawn their rather general reservation (e.g., Pakistan's reservation: "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.<sup>19</sup>

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

#### 1.1.4.1. General

The CRC consists of three sections: Section I contains the substantive articles (arts. 1 – 41); Section II consists of provisions relating to reporting and monitoring of the implementation of the CRC by the CRC Committee (arts. 42 – 45); Section III concerns the ratification of the CRC, reservations, and amending the CRC. The substantive articles do not have a simple structure (e.g. one section with civil and political rights and another with economic, social and cultural rights). The order in which the

---

<sup>12</sup> Cantwell (1992), p. 28 and 29.

<sup>13</sup> See for critical comments on this distinction, also known as the three P's, Quennerstedt (2010).

<sup>14</sup> On the timing of the drafting process of the CRC, see Van Bueren (1998)

<sup>15</sup> The CRC entered into force was following its first ratification by 20 states (art. 49, para. 1 CRC)

<sup>16</sup> See for the full record of participation by States and others to the meetings of the Working Group Detrick (1992), p. 644 – 657)

<sup>17</sup> Price Cohen (1996), footnote 7.

<sup>18</sup> Doek (1992), p 633.

<sup>19</sup> Arts (2014), p. 275 and 276.

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 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; 8. Special protection measures (CRC Committee 1991, 1994; 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) indicates development. It includes three new clusters: one on violence against children and two on the follow-up to the optional protocols to the CRC (CRC Committee, 2015). These clusters are also used for structuring the country specific Concluding Observations issued after meeting with the state parties. It 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 four provisions of the CRC as General Principles: article 2 on non-discrimination; article 3, para. 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; Article 12 on the right to express views and have them taken into account (CRC Committee 2009b; Doek 2007). This decision of the CRC Committee was criticised for using the term "principles" because it undermines the concept of rights and misrepresents the State's legal obligation. Furthermore, it was initially unclear what the Committee meant by the qualification and why these four provisions were included as opposed to others, e.g. article 4 (Abramson 2008; Hanson & 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, in the examination of the implementation of the other articles a systematic assessment of the impact of the General Principles is lacking, although, the CRC Committee did pay attention to the General Principles rather systematically in its General Comments (Doek 2015). In order to provide guidance to the States Parties and others in the implementation of the CRC, the CRC Committee had issued General Comments on article 12 and on article 3, para 1 (CRC Committee 2009b, 2013a).

#### 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. It is important because it acknowledges that the child is not an isolated individual but part of a family and that State 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 of the child* (art. 18, para. 2 CRC). It underscores the key role that parents play in the realization of the rights of the child. This is confirmed in article 5 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 (Lansdown 2008), appropriate direction and guidance in the exercise by the child of the rights recognized in the CRC. Furthermore, parents have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. State Parties also have the obligation to assist parents in performing this responsibility and, when needed, provide material assistance, particularly with regard to nutrition, clothing and housing (art. 27 CRC; see also CRC Committee 2017). From these provisions, it is clear that there is a

kind of a triangle: the child, the parent(s) and the state, with an ongoing challenge to balance the interests of all three (Tobin 2005; Seymour 2005).

It goes without saying that the exercise of these rights and duties are subject to limitations. The exercise may not lead to physical or mental abuse of the child, other forms of maltreatment, neglect or exploitation (e.g. art 19. 32 – 36 CRC). If that is the case, the state should take appropriate action to protect the rights of the child (see e.g. art. 9 and 19 CRC).<sup>20</sup> However, it can be considered as a serious shortcoming of the CRC that it does not contain specific provisions to ensure that child protection proceedings are conducted in a manner which 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 to have an opportunity to participate and make their views known (art. 9, para 2 and art. 12, para 2).

In light of articles 18, 5 and 27 of the CRC, it is incomprehensible that the opponents of the ratification of the CRC by the US present the CRC as anti-parent and as a treaty that will undermine the role of parents in raising their children (Todres 2006; Guggenheim 2005; 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 (art. 5 CRC) 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 (art. 12 CRC). 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, the school, the provision of health care and in children's institutions. Adults have to give an answer to 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 up to the level that their views are 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. It may lead to very different decisions (e.g. in court proceedings or in health treatment). In that regard, following the views of the child may result in a decision contrary to the child's best interests. We may have to protect the child from an irrational decision that is one that harms 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 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 – 16 CRC. The right to express your views implies an active participation in the decision-making processes in all kinds of settings, including the family, in school, the provision of health care, in court, and in the community and/or society (CRC Committee 2009b; 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 of the recognition of the child as a rights holder and an agent of social change.<sup>21</sup>

#### 1.1.4.6. Cultural Sensitivity of the CRC

Finally, and related 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 1994). But culture can never be a justification for not implementing basic human rights of children (or

---

<sup>20</sup> See for the implementation of article CRC Committee (2011).

<sup>21</sup> For examples and more information on this topic, see e.g. Gal and Duramy (2015) and a special issue of *The International Journal of Children's Rights* (2007) (Vol. 15, No. 1) on Children as Social Actors.

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 marriages and female genital mutilation.

Nevertheless, the CRC provides room for interpretation and implementation with respect for cultural or other diversity. For instance, the term "appropriate", which is used 48 times, is a key provider of space for accommodating cultural and other diversities 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, which each State Party will find appropriate to ensure effective implementation of the CRC (CRC Committee 2003). In General Comment No. 11, the CRC Committee observed that States Parties are invited to come up with contextual interpretation and stipulates that the 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 2009a).

### **1.1.5. The Optional Protocols to the CRC**

The CRC is the only human rights treaty with three Optional Protocols. Two are of a substantive nature and one provides for the possibility to file complaints about violations of the rights of the child. The two substantive OP's 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 on the Involvement of Children in Armed Conflict (Hereinafter: 'OPAC') - raises the very low standard for the prohibition of 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). The OPAC entered into force on 12 February 2002, in accordance with article 10 and is currently ratified by 166 States. This Optional Protocol was the direct result of the Day of General Discussion organized in 1993 by the CRC Committee and the ensuing UN Study on children and armed conflict led by Graca Machel.<sup>22</sup> 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 of 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.<sup>23</sup>

The second optional protocol - the Optional Protocol on the sale of children, child prostitution and child pornography (Hereinafter: 'OPSC') - was to a large degree the result of the First World Congress on Commercial Sexual Exploitation of Children held in 1996 in Stockholm; the second was held in Yokohama 2001 and the third in Rio de Janeiro in 2008.<sup>24</sup> This OPSC entered into force on 18 January 2002, in accordance with article 14 and is currently ratified by 173 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)<sup>25</sup> and requires States Parties to criminalize various acts of sexual exploitation 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

---

<sup>22</sup> See UN General Assembly Resolution (A/RES/48/157) in 1993 requesting the Secretary General to conduct the Study and the Report presented in November 1996 UN Doc A/51/306 and the follow-up report (Machel 2001)

<sup>23</sup> 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 (CAAC) monitoring 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; see for more <http://www.un.org/children/conflict/english/securitycouncilwg.html>

<sup>24</sup> See for the Third Congress [http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_outcome_Document_Final.pdf)

<sup>25</sup> For emerging new terms and changing of existing terms in the field of sexual exploitation and sexual abuse of children in particular due to the rapid increase of the use of ICT, see Greijer and Doek (2016).

when involved as witnesses or otherwise in criminal law proceedings (art. 8).<sup>26</sup> One of the developments in the implementation of this OPSC is the emergence of new terms, such as transactional sex, sexting, grooming and sexual extortion of children, and changes in the use of the traditional terms like child prostitution and child pornography (Hessick 2016; Greijer S and Doek JE 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, plays an important role in the implementation of the OPSC.<sup>27</sup> NGOs play a very active role in the implementation of these Optional Protocols, for example the Coalition Stop Child Soldiers and others (OPAC), ECPAT and others (OPSC).

The third optional protocol – The Optional Protocol to the CRC on a Communications Procedure (Hereinafter: 'OPCP') - was adopted by the UN General Assembly in 2011 (UN General Assembly Resolution A/RES/66/138 of 19 December 2011), entered into force on 8 March 2014, in accordance with article 18, para. 1 and is currently ratified by 37 States. It 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 to be admissible.<sup>28</sup> The CRC Committee issued rules of procedure under the 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 (Šahović et al. 2012).

The CRC Committee has been established for the purpose of examining the progress made by States Parties in achieving the realization 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 specialized UN agencies such as UNICEF,<sup>29</sup> the OHCHR, the ILO and the WHO, and national and international NGOs, children and others to submit reports on the implementation of the CRC in various countries, usually called alternative or supplementary reports. These reports are important sources of information and the Committee invites NGOs, UN agencies and children who submitted reports to discuss them in so-called pre-sessional meetings, which take place about six months before the meeting with a delegation of the State Party concerned. This is a Q&A session behind closed doors. If children are present the CRC Committee has a separate meeting with them. But it should be noted that the participation of children in the monitoring process is limited and measures should be taken to improve it (Doek 2011). After this pre-sessional meeting the CRC Committee sends a list of issues to the State Party concerned containing a request for further information to which the State 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 State Party for a dialogue in a public meeting. After six 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 the State 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.

---

<sup>26</sup> See about this protection also the (ECOSOC 2005), and for more information on the content of the OPSC see UNICEF (2009).

<sup>27</sup> For information about the work of the special rapporteur, see M'jid (2013).

<sup>28</sup> See about this Optional Protocol inter alia Lee (2010) and Smith (2013)

<sup>29</sup> Article 45 of the CRC is the only provision in a human treaty that explicitly mentions a specialized UN agency, in this case UNICEF.

The CRC Committee also examines the progress made by States Parties to the Optional Protocols (OPAC and OPSC) using the same method as with the monitoring of the CRC. The initial reports on the implementation of the Optional Protocols are subject to a separate examination and the next periodic reports are included in the State Party's report on the CRC (OPAC art. 8; OPSC art. 12). With a view to assist the States Parties to the CRC and to the Optional Protocols, the Committee has issued guidelines on how issues should be reported (not per article but per cluster) and on what is expected in terms of content.<sup>30</sup>

It is obvious that monitoring the implementation of the CRC in 196 countries and of the two Optional Protocols in 163 and 177 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 State Parties. In 2005, the CRC Committee decided to work with two 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 two chambers from time to time and currently one session per year is a two chamber session.<sup>31</sup> Most recently the CRC Committee has started implementing a Simplified Reporting Procedure (SRP). The core of this procedure is that the current three steps (Report, List of Issues, Responses) will be reduced to two. The CRC committee sends the State Party a List of Issues Prior to Reporting (LOIPR). The State Party prepares its report limited to addressing the List of Issues. That report becomes the document that is discussed in the public meeting with the state party. This SRP will be followed with state parties which agree with this procedure (UNGA 2012).

The CRC Committee is composed of 18 members elected by the States Parties. Every two years an election takes place for nine vacancies. Each State 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 recognized competence in the field covered by the CRC. Members serve for a period of four years and can be re-elected if re-nominated (art. 43, paras. 2 – 6 CRC). In their voting, State Parties should give consideration to equitable geographical distribution as well as to principal legal systems (art. 43, para. 2 CRC). The members are expected to attend the sessions of the CRC Committee in Geneva. There are three sessions per year each lasting for four weeks. The remuneration for this quite demanding work has been set by the UN General Assembly at 1 US\$ 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.<sup>32</sup> 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 para. 1 and article 15 on article 24, and 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, 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 CEDAW Committee in 2014 (CEDAW and CRC Committee 2014).<sup>33</sup> General Comments are non-binding documents but given the fact that they are issued by a body that is elected by States Parties, the

---

<sup>30</sup> See, for the CRC, CRC Committee (2015); for the OPSC, CRC Committee (2005); and for the OPAC, CRC Committee (2007).

<sup>31</sup> This two-chamber practice requires additional budget which must be approved by the UN General Assembly. This is not easy and requires extensive lobbying.

<sup>32</sup> The Committee issued its first general Comment in 2001 and has issued till now in total 21 General Comments, the most recent one in 2017 on children in street situations (UN Doc. CRC/C/GC/21)

<sup>33</sup> The CRC Committee is currently working on another joint General Comment on the rights of children in the context of migration with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

interpretations and recommendations should be taken into account when developing and implementing laws, policies and programmes.

The Committee also organizes 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 and 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 (art. 45 (c) CRC): firstly, 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); secondly, 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 (family, school institutions, workplace and community) which remain 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.<sup>34</sup> 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, the CRC Committee is since March 2014 charged with receiving and considering complaints from children on violations of their rights under the OPCP (see above). Although the number of cases has been limited so far it can be expected that this activity 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 in 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 (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 two 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 Organizations and other 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 via the regular meetings of the chairpersons of these bodies. These meetings are meant to exchange experiences in monitoring the human rights treaties and to discuss the possible improvements and harmonisation of their working methods. The CRC Committee has used this interaction to establish cooperation with other treaty bodies for the development and adoption of General Comments. So far resulting in a joint General Comment with the Committee on the Elimination of discrimination against women on harmful practices and the preparation of a General Comment with 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 specialized UN agencies such as the Office of the High Commissioner on Refugees (OHCR), e.g. in the development of General Comment No. 6 (2005) on Treatment of unaccompanied and separated children outside their country of origin, the World Health

---

<sup>34</sup> See for more information: <http://www.endcorporalpunishment.org>

Organisation (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 on Human Rights (OHCHR), e.g. in the development of General Comment No. 2 (2002) on The role of the independent national human rights institutions in the promotion and protection of the rights of the child. These agencies, including the ILO and UNESCO, submit when appropriate, country specific reports in the context of the monitoring activities of the Committee (see for the role of specialized UN agencies art.45 CRC). The key role of UNICEF is acknowledged by the fact that it is the only specialized UN agencies that is explicitly mentioned in art. 45 CRC. There is no other human rights provision in which a specialized UN agency is explicitly mentioned.

The CRC Committee has regular meetings with UNICEF representatives to discuss and improve where possible cooperation. UNICEF has a representative in Geneva who attends all sessions of the Committee. The role of UNICEF in the monitoring of the CRC is of extraordinary importance. First, all UNICEF country offices submit supplementary reports to the CRC Committee in the context of its monitoring work, the reports not only provide very valuable information on the implementation of the CRC in the country, identifying progress and shortcomings with recommendations to address them. Second, UNICEF country offices take the recommendations of the Committee made in the concluding Observations very serious. They undertake concrete follow-up to many recommendations inter alia by taking them into account when discussing with the government the next country programme. Using the recommendations of the Committee UNICEF country offices have significantly contributed to law reform and the development of programmes and policies for the realization of the rights of the child inter alia in the field of health care, education and protection.

The CRC Committee has no formal working relation with the Human Rights Council (HRC), but takes into account the annual resolution of the HRC on the rights of the child and the country specific outcome of the Universal Periodic Review (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 UNGA to make a presentation of the activities of the Committee in the past year.

The CRC Committee also interacts with other (non-state) stakeholders, such as NGO's, 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. In the drafting process of General Comment No. 16 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. Impact of the CRC at Regional and National Level**

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 were done on the issue, e.g. in 2007 a comparative study on Law reform and implementation of the CRC in 52 countries from the different region of the world. It concluded among others that nearly all countries made substantial changes in their legislation to better protect the rights of children.<sup>35</sup> A study of harmonising laws in 19 countries in Eastern and Southern Africa found that a complex patchwork of existing legislation poses a significant barrier for harmonisation of laws with the provisions of the CRC. But it also found that 13 countries had established children's courts to deal with children in conflict

---

<sup>35</sup> Law reform and the Implementation of the Convention on the Rights of the Child. Florence: UNICEF Innocenti Research Centre 2007.

with the penal law.<sup>36</sup> 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 Liefaard & Doek (eds), 2014; Liefaard & Sloth-Nielsen (eds), 2017).

An assessment of the impact of the CRC at the regional level is equally difficult. This part 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 a children's rights perspective Africa is a very special region. Not only because this continent is facing 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 with its own children's rights treaty: The African Charter on the Rights and Welfare of the Child (Hereinafter: 'ACRWC') which is the only comprehensive regional treaty on children's rights. It 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 those which are especially relevant 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 the 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 ACRWC prohibits all forms of recruitment or use of children (defined as persons below the age of 18 without the exception in art. 1 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); special protection of children of imprisoned mothers (art. 30). The implementation of the 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 ACRWC (Viljoen 2012; Sloth-Nielsen 2008). A good source of information on the implementation of the CRC and the ACRWC are the reports of the African Child Policy forum. They are the only systematic regional analytical assessment of the progress made and the remaining challenges with an interesting ranking of the all African countries.<sup>37</sup>

#### 1.1.8.2. The Americas

The American Convention on Human Rights 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 this Convention on Economic, Social and Cultural Rights (Protocol of San Salvador) contains a more elaborated article 16 and includes the right to free and compulsory education, at least in the elementary phase. But the Convention also established the Inter-American Commission and The Inter-American Court on Human Rights. These two 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 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 Court recognizes 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).

---

<sup>36</sup> In the Best Interest of the Child. Harmonising laws in Eastern and Southern Africa. Addis Ababa: the African Child Policy Forum and UNICEF regional Office 2007.

<sup>37</sup> The 2008 African Report (the first one) on How child-friendly are the African Governments?; the 2011 report on Budgeting for Children; the 2013 Report on Towards greater accountability to Africa's children; the 2016 Report on Child Rights Implementation in Africa: Beyond rhetoric, towards practical actions and results.

## 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 (hereinafter 'EU') and the Council of Europe (hereinafter '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. The 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 (hereinafter 'ENOC') as an example.

The issue of children's rights feature 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: the OPAC the OPSC, and the OPIC.<sup>38</sup> The fact that all EU and CoE are parties to the CRC 'gives the convention important standing at the European level'.<sup>39</sup> While neither the EU or the CoE are parties 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'.<sup>40</sup>

### 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*.<sup>41</sup> The communication called for the development of a comprehensive EU strategy to promote and safeguard the rights of children in EU's internal and external policies, and support Member States in this field. 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.<sup>42</sup> The strategy explicitly refers to the CRC and its optional protocols, and establishes children's rights as a priority for the EU.<sup>43</sup>

The EU continued with 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*<sup>44</sup> and in 2017 the revised EU Guidelines were adopted.<sup>45</sup> In 2008, the European Commission adopted another Communication; *A special place for children in EU external action*. The communication aims to promote and mainstream the right of

---

<sup>38</sup> See online [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).

See also <http://indicators.ohchr.org/>. For more information on the decisions made under the OPCR, see:

<http://juris.ohchr.org/en/search/results?Bodies=5&sortOrder=Date>

<sup>39</sup> FRA Handbook (2015), p. 26.

<sup>40</sup> See FRA Handbook (2015), p. 26-27

<sup>41</sup> COM(2006) 367 final.

<sup>42</sup> FRA Handbook (2015), p. 7-10

<sup>43</sup> FRA Handbook (2015), p. 2

<sup>44</sup> EU Guidelines for the Promotion and Protection of the Rights of Children (2017).

<sup>45</sup> EU Guidelines for the Promotion and Protection of the Rights of Children (2017).

children in EU's external policies, i.e. with non-EU member states.<sup>46</sup> In 2011, the European Commission adopted the *EU Agenda for the rights of the child*, which sets out priorities and actions for the development and implementation of children's rights law and policy in EU Member States, such as adopting relevant legislation, supporting training, etc.<sup>47</sup> The agenda also stated that the CRC should guide the EU in its policies and actions relating to children.<sup>48</sup> The *EU Action plan on human rights and democracy (2015-2019)* also contains several actions relating to children.<sup>49</sup>

Also noteworthy in that regard is that, in 2014, the European Parliament passed the *Resolution on the 25<sup>th</sup> anniversary of the UN Convention on the Rights of the Child*,<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

Relating to legislation, the entry into force of the Treaty of Lisbon<sup>53</sup> has made important institutional, procedural and constitutional changes in the EU, also enhancing its competence in relation to issues impacting children.<sup>54</sup> Whereas in the past children rights were only addressed in a 'piecemeal fashion', in recent years it is embedded in a structured and coordinated fashion in the EU legislation and policy making.<sup>55</sup> Following the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union (hereinafter 'The Charter') gained the 'same legal status as the EU treaties' and it obliges the EU and its Member States to safeguard the rights enshrined in the charter when implementing EU law.<sup>56</sup> 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., art 13; the right to education).<sup>57</sup> These provisions are inspired by the CRC and the ECHR.<sup>58</sup> Initially, the Charter was merely a declaration of fundamental rights and principles and did not have any binding force. As a consequence of the entry in to force of the Lisbon Treaty 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.<sup>59</sup> Still, the Charter is limited in its application, as it related 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

<sup>46</sup> FRA Handbook (2015), p. 22; COM(2008) 55 final, p. 1.

<sup>47</sup> COM(2011) 60 final; European Union Agency for Fundamental Rights, *op. cit.*; H. Stalford (2016), *op. cit.*

<sup>48</sup> COM(2011) 60 final, p. 3.

<sup>49</sup> *EU Action plan on human rights and democracy (2015-2019)*, adopted at the Foreign Affairs Council 20 July 2017.

<sup>50</sup> European Parliament resolution of 27 November 2014 on the 25 anniversary of the UN Convention on the Rights of the Child, 2014/2919(RSP). For more information, see also M. Tuite, 'Child Right Research for 2040: A European Commission Perspective', in T. Liefwaard & J. Sloth-Nielsen, eds., *The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead* (Leiden-Boston: Brill-Nijhoff Publishing, 2017) pp. 461-488.

<sup>51</sup> European Parliament resolution of 27 November 2014 on the 25 anniversary of the UN Convention on the Rights of the Child, 2014/2919(RSP). See also art 1 there.

<sup>52</sup> European Union Agency for Fundamental Rights, *op. cit.*, p. 22.

<sup>53</sup> European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01.

<sup>54</sup> For more information: see FRA Handbook (2015), p. 21

<sup>55</sup> See FRA Handbook (2015).

<sup>56</sup> FRA Handbook (2015), p. 20

<sup>57</sup> The provisions are inspired by the CRC

<sup>58</sup> H. Stalford, *Children and the European Union: Rights, Welfare and Accountability* (Oxford: Hart Publishing, 2012) p. 40.

<sup>59</sup> H. Stalford, 'Journeys to European Justice: (How) Can the EU Enable Children to Enforce their Rights?' in I. Iusmen & H. Stalford, eds., *The EU as a Children's Rights Actor. Law, Policy and Structural Dimensions* (Opladen-Berlin-Toronto: Barbara Budrich Publishers, 2016) p. 32; H. Stalford & M. Schuurman, 'Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda', 19 *International Journal of Children's Rights* (2011) 381-403, p. 397.

children who are suspects or accused persons in criminal proceedings; 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 which can impact children, such as asylum and migration.<sup>60</sup> In addition, the EU Fundamental Rights Agency (Hereinafter '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 published reports on immigration and detention of children, child-friendly justice, children deprived of parental care, and on European law relating to children.<sup>61</sup>

The Court of Justice of the European Union (hereinafter '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. In relation 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.<sup>62</sup> The CJEU has delivered most of its judgments concerning children's rights in the context of free movement and EU citizenship.<sup>63</sup> Regarding its interaction with the CRC, the CJEU has directly referred to the CRC (art 17) to determine the interpretation of EU law.<sup>64</sup> In addition, the CJEU has also referred to general children's rights principles in its decision (e.g., best interests of the child, right to be heard), specifically in relation to cross-border child abduction cases.<sup>65</sup> It should be noted that until recent years, the CJEU had only adjudicated a few children's rights cases, but the adoption of more explicit children's rights legislative measures 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.<sup>66</sup>

#### 1.2.2.2. The CoE

The CoE, established in 1949, is an international organization that aims to uphold human rights, democracy and rule of law in Europe.<sup>67</sup> It has 47 Member States in Europe (and outside), including all the Member States of the EU.

The primary instrument of the CoE is the European Convention on Human Rights (hereinafter '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, protocol 1 ECHR). The European Court of Human Rights (hereinafter 'ECtHR') enforces the ECHR, and is the competent body to interpret and apply the ECHR and its protocols.<sup>68</sup> 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.<sup>69</sup> While the ECtHR has been known to refer and incorporate the CRC in its case-law, it 'does not systematically attach decisive weight to it'.<sup>70</sup> There is also criticism that some of the ECHR provisions are regarded from a parental perspective (i.e., art 8),

---

<sup>60</sup> FRA Handbook (2015), p. 22

<sup>61</sup> See FRA Handbook (2015); FRA, 'Guardianship systems for children deprived of parental care in the European Union (2015)'; FRA, 'European Legal and Policy Framework on Immigration Detention of Children' (2017); FRA, 'Child-friendly Justice - Perspectives and Experiences of Children Involved in Judicial Proceedings as Victims, Witnesses or Parties in Nine EU Member States' (2017). For more on FRA and its work in relation to children, see also <http://fra.europa.eu/en/theme/rights-child>

<sup>62</sup> See FRA Handbook (2015), p. 28-29; TFEU article 267

<sup>63</sup> FRA Handbook (2015), p. 29

<sup>64</sup> CJEU, *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, February 14 2008 (ECLI:EU:C:2008:85).

<sup>65</sup> FRA Handbook (2015), p. 30

<sup>66</sup> FRA Handbook (2015), p. 29

<sup>67</sup> FRA Handbook (2015), p. 23

<sup>68</sup> Art 32, 34-35 ECHR; FRA Handbook (2015), p. 30

<sup>69</sup> See ECtHR, 'Children's Rights – Factsheet', February 2017. Available online at: [http://www.echr.coe.int/Documents/FS\\_Childrens\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Childrens_ENG.pdf)

<sup>70</sup> FRA Handbook (2015), p. 23, 30-31

and that the approach of the ECtHR can vary from that of the CRC and the CRC Committee in certain matters.<sup>71</sup>

The CoE's other main human rights treaty is the European Social Charter (hereinafter 'ESC'). The ESC entered into force in 1965, and was revised in 1996 (hereinafter '(R)ESC'). It provides protection of social rights at the European level, and includes provisions with particular importance for children. These include the right of children to 'special protection against the physical and moral hazards', particularly in the context of employment (art 7), right to appropriate social, legal and economic protection, including in the relation to care, 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 (hereinafter '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 two complementary mechanisms.<sup>72</sup> First, national reporting of the contracting states. The ESC has established a reporting system (part IV) which requires States to regularly submit a report on the implementation of the charter in law and practice. The report is then examined by the ECSR and it publishes its findings as 'conclusions'.<sup>73</sup> Second, 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 NGO's) to directly lodge a complaint before the ECSR.<sup>74</sup> The ECSR decisions are binding, and require the State, in case a violation was 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 concerned violation of children's rights on various issues, including economic exploitation of children, physical integrity of children, health rights of migrant children, access to education with children with disabilities, etc.<sup>75</sup>

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 regards the CRC and is particularly guided by art 4 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).<sup>76</sup> 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 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 (art 5-7). The Convention explicitly refers to the CRC, particularly article 34 of the CRC 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 program 'building a Europe for and with children' a plan of action for addressing children's rights issues. The program aims to support the implementation

---

<sup>71</sup> FRA Handbook (2015), p. 31

<sup>72</sup> FRA Handbook (2015), p. 23-24

<sup>73</sup> For more information see <http://www.coe.int/en/web/turin-european-social-charter/reporting-system>

<sup>74</sup> Additional protocol to the **European Social Charter Providing for a System of Collective Complaints, art 1; for more information on the procedure** <http://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>

<sup>75</sup> See FRA Handbook (2015), p. 31 for particular examples.

<sup>76</sup> The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (2007)

of international children's rights standards, in particular the CRC.<sup>77</sup> The program resulted in the drafting of two strategy papers; Strategy for the Rights of the Child (2012-2015), and the recent Strategy for the Rights of the Child (2016-2021). These have set the priorities for the CoE in the area of children's rights, identifying main challenges, and noting areas and actions to meet those challenges. The 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.<sup>78</sup> The strategy identified five 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.<sup>79</sup> In addition, the program 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 standards<sup>80</sup> and include, among others, the CoE Guidelines on Child-Friendly Justice,<sup>81</sup> the CoE Guidelines on child-friendly healthcare,<sup>82</sup> CoE Recommendation on Integrated National Strategies for the Protection of Children from Violence,<sup>83</sup> Recommendation on Participation of Children and Young People under the Age of 18,<sup>84</sup> 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 (Hereinafter 'CAHENF'). CAHENF operates under the supervision of the Committee of Ministers of the CoE and works to promote the mainstreaming of children's rights at the CoE level, and in Member States, provide expertise and advice on children's rights issues, and facilitates knowledge exchange in relevant fields.<sup>85</sup> The CoE also commissions various research studies relating to children in order to guide its actions and policies. For example, it recently commissioned two studies on the rights of children in biomedicine: 'The Rights of Children in Biomedicine: Challenges posed by Scientific Advances and Uncertainties' (2017),<sup>86</sup> and 'From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine' (2017).<sup>87</sup> Thus, Europe is a key player in relation to standard-setting on children's rights.<sup>88</sup>

### 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 of the prominent examples in that regard is the European Network of Children's Ombudspersons (ENOC). Established in 1997, ENOC is an association of independent children's rights institutions (ICRI), and includes national ombudspersons, commissioners for children or other relevant bodies.<sup>89</sup>

Today, ENOC includes 41 institutions (from 34 CoE Member States) and works to link between ICRI's in Europe, enable information sharing and the gathering of best practices, and the protection and promotion of children's rights and the CRC.<sup>90</sup> Among its activities, ENOC holds annual meetings (the most recent on 'equal opportunities in education') and conferences to provide professional training and address urgent matters in the European context.

---

<sup>77</sup> FRA Handbook (2015), p. 25

<sup>78</sup> CoE, Strategy for the Rights of the Child (2012-2015); CoE, Strategy for the Rights of the Child (2016-2021). See CoE, Strategy for the Rights of the Child (2016-2021), p. 4.

Strategy 2016-2021, p. 4

<sup>79</sup> See CoE, Strategy for the Rights of the Child (2016-2021), p. 4, 10

<sup>80</sup> FRA Handbook (2015), p. 25

<sup>81</sup> CoE, 'Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice and explanatory memorandum', 17 November 2010.

<sup>82</sup> CoE, 'Council of Europe Guidelines on Child-Friendly Health Care', 21 September 2011.

<sup>83</sup> CoE, 'Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence', CM/Rec(2009) 10.

<sup>84</sup> CoE, 'Council of Europe Recommendation on Participation of Children and Young People under the Age of 18', CM/Rec(2012) 2.

<sup>85</sup> For more information on CAHENF, see also <https://www.coe.int/en/web/children/cahenf>

<sup>86</sup> K. Zillén et al., 'The Rights of Children in Biomedicine: Challenges posed by Scientific Advances and Uncertainties' (2017). Available online: <https://rm.coe.int/16806d8e2f>

<sup>87</sup> T. Liefwaard et al., 'From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine' (2017). Available online: <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>

<sup>88</sup> FRA Handbook (2015), p. 26

<sup>89</sup> See ENOC website, 'What is ENOC', available online at [http://enoc.eu/?page\\_id=8](http://enoc.eu/?page_id=8)

<sup>90</sup> See ENOC website, 'Annual Meetings', available online [http://enoc.eu/?page\\_id=402](http://enoc.eu/?page_id=402)

### 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, 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 and within its region

The CRC has been ratified by all countries in Asia,<sup>91</sup> and a vast majority of Asian countries have also ratified its optional protocols, particularly the OPAC<sup>92</sup> and the OPSC<sup>93</sup> (only a few Asian countries have ratified to OPCP).<sup>94</sup> 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, and contrary to the European context, Asia does not yet have a common political or legal regional body or court, though such processes are under consideration.<sup>95</sup>

One of the most prominent regional body in Asia is the Association of Southeast Asian Nations ('ASEAN'); a regional intergovernmental organization, comprising of ten Southeast Asian countries, that promotes political and economic cooperation, regional peace and stability and facilitates mutual assistance on various issues.<sup>96</sup> While ASEAN was not initially designed as a human rights body, in recent years the issue of children's rights has been prominent in its agenda, and binding and non-binding legal instruments were 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.

ASEAN was established in 1967, and is tasked to promote cooperation in economic, social, cultural, technical, educational and other issues in the region, as well as enhance peace and stability.<sup>97</sup> In recent decades, the human rights discourse has become more prominent. In 1993, the ASEAN ministerial meeting adopted a communique holding that ASEAN should "coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights".<sup>98</sup> In 2008, the ASEAN Charter was published, which officially recognized the promotion and protection of human rights and fundamental freedoms as a purpose, and required to establish a human rights body.<sup>99</sup> This led to the establishment of the ASEAN intergovernmental commission on human rights (Hereinafter: 'AICHR') in 2009, and the ASEAN commission on the promotion and protection of the rights of women and children (Hereinafter: 'ACWC') in 2010.

---

<sup>91</sup> <http://indicators.ohchr.org/>

<sup>92</sup> <http://indicators.ohchr.org/>

<sup>93</sup> <http://indicators.ohchr.org/> Only Mongolia and Thailand ratified the OP3: <http://indicators.ohchr.org/>

<sup>94</sup> On the ratification by Asian states, see online <http://indicators.ohchr.org/> and

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).

<sup>95</sup> See for example: ASEAN joint communique of the twenty sixth ASEAN ministerial meeting, July 23-24, 1993, par 16. Available online at [http://asean.org/?static\\_post=joint-communique-of-the-twenty-sixth-asean-ministerial-meeting-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 V. Muntarbhorn, 'Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter?', *Transnational Law & Contemporary Problems*, Vol. 8:407, p. 417.

<sup>96</sup> ASEAN Website, 'ASEAN Overview', available online at <http://asean.org/asean/about-asean/overview/>

<sup>97</sup> See The ASEAN Declaration (Bangkok Declaration), 8 August 1967.

<sup>98</sup> ASEAN Joint Communique of the Twenty Sixth ASEAN Ministerial Meeting, 23-24 July, 1993, par 17. Available online at [http://asean.org/?static\\_post=joint-communique-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993](http://asean.org/?static_post=joint-communique-of-the-twenty-sixth-asean-ministerial-meeting-singapore-23-24-july-1993)

<sup>99</sup> Art 1(7), 14 of the *Charter of the Association of Southeast Asian Nations (ASEAN)*, 20 November 2007. Also available at <http://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>

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 trafficking in persons and especially children.<sup>100</sup> The plan notes that trafficking is not adequately addressed in ASEAN member states, that further legislation are required<sup>101</sup> and that despite regional differences, all ASEAN Member States share a common interests and commitment to battle trafficking.<sup>102</sup> The plan notes challenges, and presents different actions plans to address them 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.<sup>103</sup>

At the domestic level, the AICHR and the ACWC also conduct training workshop for professionals to promote the rights of children and address regional challenges. Noteworthy is the recent jointly organized workshop on the CRC. The workshop, first of its kind, brought together the AICHR and ACWC representatives, representatives from ASEAN Member States, as well as civil society organizations working on the implementation of the CRC in the national context, and on reporting to the CRC Committee as part of its periodic reporting processes.<sup>104</sup>

ASEAN has also developed several legal instruments relevant for children. Most notably is the ASEAN Convention against Trafficking in Persons Particularly Women and Children (Hereinafter: 'ACTIP').<sup>105</sup> It 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), to establish policies and programmes to prevent and combat trafficking, as well as protect victims, especially women and children (art. 11, 14-15), and to enable and promote cross-border and regional cooperation in relation to trafficking in persons (e.g., art. 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).<sup>106</sup>

In addition, ASEAN has also established several relevant declarations dealing with the rights and interests of children in the ASEAN region. These are not legally binding instruments and they do not establish a body to interpret or monitor the application of the declarations. Yet, it can be argued that the instruments reflect the influence of the CRC and the political commitment of ASEAN to issues relating to children, and that they provide guidance for Member States. This part will briefly present some of the most relevant declaration:

- a. The ASEAN Human Rights Declaration,<sup>107</sup> adopted in 2012, details the Member States commitment to human rights. Art. 4 of the declaration concerns, among others, the position of children and states that the rights of children are "inalienable, integral and indivisible part of human rights and

---

<sup>100</sup> ASEAN, Plan of Action against Trafficking in Persons, Especially Women and Children, p.1. Available online at <http://www.asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>

<sup>101</sup> ASEAN, Plan of Action against Trafficking in Persons, Especially Women and Children, p.2. Available online at <http://www.asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>

<sup>102</sup> ASEAN, Plan of Action against Trafficking in Persons, Especially Women and Children, p.3. Available online at <http://www.asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>

<sup>103</sup> ASEAN, Plan of Action against Trafficking in Persons, Especially Women and Children, p. 4-12. Available online at <http://www.asean.org/wp-content/uploads/2015/12/APA-FINAL.pdf>

<sup>104</sup> AICHR Website, 'Press Release: AICHR-ACWC Training Workshop on the UN Convention on the Rights of the Child, 13-14 July 2017', published on 14 July 2017. Available online at <http://aichr.org/press-release/press-release-aichr-acwc-training-workshop-on-the-un-convention-on-the-rights-of-the-child-13-14-july-2017-singapore/>

<sup>105</sup> ASEAN Convention against Trafficking in Persons Particularly Women and Children (2015).

<sup>106</sup> K. Estorninos, 'A Legal Analysis of Selected ASEAN Declarations and Conventions from a Child Rights Perspective', Master Thesis submitted for Master of Laws: Advanced Studies in International Children's Rights Program, Leiden University, supervised by J. Doek (2017). p 19. Available online at <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jr-estorninos-thesis-2017.pdf>

<sup>107</sup> ASEAN, Human Rights Declaration, 18 November 2012.

fundamental freedoms".<sup>108</sup> The declaration further prohibits to subject 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 enact legislation, establish policies and strengthen a multi-disciplinary and child sensitive approach to eliminate violence against children.<sup>109</sup> The declaration specifically acknowledges the commitment of ASEAN Member States to the CRC<sup>110</sup> 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.<sup>111</sup> Thus, the 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.<sup>112</sup>
- 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.<sup>113</sup> 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, and monitoring and evaluation processes.<sup>114</sup> The declaration acknowledges the CRC and aims to strengthen the ability of ASEAN Member States to fulfil their commitments under the Convention.<sup>115</sup> It also addresses specific child-related issues, such as child mortality, health, protection of children, housing, adequate living environment, education, protection from violence, etc.<sup>116</sup>
- 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'.<sup>117</sup> The declaration is guided by the CRC and recognises and encourages respect for children's rights.<sup>118</sup> In particular, the declaration notes different issues impacting children in the region, such as poverty, hunger and homelessness,<sup>119</sup> protection from violence,<sup>120</sup> family support and alternative care,<sup>121</sup> health care<sup>122</sup>, education,<sup>123</sup> and child participation.<sup>124</sup>

---

<sup>108</sup> Art 4 of the ASEAN, Human Rights Declaration.

<sup>109</sup> Art 1-3 The Declaration on the elimination of violence against women and the elimination of violence against children

<sup>110</sup> P. 1 preamble declaration The Declaration on the elimination of violence against women and the elimination of violence against children

<sup>111</sup> Art 4 The Declaration on the elimination of violence against women and the elimination of violence against children

<sup>112</sup> K. Estorninos, 'A Legal Analysis of Selected ASEAN Declarations and Conventions from a Child Rights Perspective', Master Thesis submitted for Master of Laws: Advanced Studies in International Children's Rights Program, Leiden University, supervised by J. Doek (2017), p. 25. Available online at

<https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jr-estorninos-thesis-2017.pdf>

<sup>113</sup> PREAMBLE The Ha Noi declaration on the enhancement of welfare and development of ASEAN women and children

<sup>114</sup> Art 4 The Ha Noi declaration on the enhancement of welfare and development of ASEAN women and children

<sup>115</sup> PREAMBLE The Ha Noi declaration on the enhancement of welfare and development of ASEAN women and children; Art 3 The Ha Noi declaration on the enhancement of welfare and development of ASEAN women and children

<sup>116</sup> Art 7-9, The Ha Noi declaration on the enhancement of welfare and development of ASEAN women and children

<sup>117</sup> Art 1 Declaration on the Commitment for children in ASEAN

<sup>118</sup> Preamble and art 4 Declaration on the Commitment for children in ASEAN

<sup>119</sup> Art 2. Declaration on the Commitment for children in ASEAN

<sup>120</sup> Art 15 Declaration on the Commitment for children in ASEAN

<sup>121</sup> Art 9, 10 Declaration on the Commitment for children in ASEAN

<sup>122</sup> Art 14, 13 Declaration on the Commitment for children in ASEAN

<sup>123</sup> Art 11, 12 Declaration on the Commitment for children in ASEAN

<sup>124</sup> Art 6 Declaration on the Commitment for children in ASEAN

### 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, 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 group concerning alleged violations of children's rights in the region.

Yet it can be argued that a closer look at the developments and increased cooperation at the regional level signal the emergence of a human (and children's) rights system. In recent years there is increased regional cooperation in matters relating to economy and security in Asia, and the UN Office of the High Commissioner for Human Rights (OHCHR) also established and promoted regional and sub-regional cooperation, human rights mechanisms and regional offices.<sup>125</sup> Scholars have also noted a change in the political will of Asian countries, also evident in the establishment of ASEAN.<sup>126</sup> In particular, the ASEAN human rights declaration that can be viewed as an initial step to establish a formal (sub) regional human rights system.<sup>127</sup>

In addition, there is a growing variety of activities and initiatives for human rights in the regional and sub-regional level in Asia.<sup>128</sup> A noteworthy example in that regard is the Asia Pacific Forum of Independent National Human Rights Institutions (hereinafter: 'NHRI'). The forum is independent, working in several partner states across Asia and the Middle East. Their activities are directed towards supporting members by providing training programs, capacity building, and other activities. The forum works with a range of partners (e.g., CSOs, governmental, and international organizations) also on issues relating to the rights of children and the implementation of the CRC.<sup>129</sup>

That being said, while there are signs for progress and cooperation at the regional level, also in relation to the protection of children, there is currently no formal regional human rights system in Asia.<sup>130</sup> This limits the ability to monitor and evaluate the implementation of the CRC in practice, or to address urging issues impacting children at the regional level.

---

<sup>125</sup> <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/AsiaRegionIndex.aspx>; Tae-Ung Bai. P. 3

<sup>126</sup> Tae-Ung Bai. P. 3; <https://www.cambridge.org/core/books/emerging-regional-human-rights-systems-in-asia/emerging-regional-human-rights-systems-in-asia/F845C6B8DF61A882EC17F8BA4872D5A4>

<sup>127</sup> See K. Estorninos, 'A Legal Analysis of Selected ASEAN Declarations and Conventions from a Child Rights Perspective', Master Thesis submitted for Master of Laws: Advanced Studies in International Children's Rights Program, Leiden University, supervised by J. Doek (2017).

<sup>128</sup> Tae-Ung Bai. P. 5

<sup>129</sup> <http://www.asiapacificforum.net/human-rights/children/>

<sup>130</sup> See also Muntarhorn, Asia, Human Rights and the New Millennium: Time for a Regional Human Rights Charter? 417

## Chapter 2: Children's Rights – A Thematic Focus

This second chapter aims to shine a light on key thematic issues affecting children's rights with particular relevance to the Asia and Europe region. Three key themes – with corresponding sub-themes – will be explored in the below. Part 2.1 will then explore the critical issue of children in vulnerable situations and their rights, reviewing the challenges faced by children in armed conflict, juvenile justice, trafficking, children on the move including unaccompanied minors and separated children, and children at the intersection of different determinants of vulnerability (looking at gender, indigenous and minority children, children with disabilities, and children in contact with the law). Part 2.2 turns to 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 concludes on international partnerships that may help further advance children's rights, returning to some of the issues and challenges raised in the previous sections – for example on protection of displaced, refugee and stateless children, mechanisms for international cooperation on missing children and separated children, as well as on monitoring mechanisms against the Convention on the Rights of the Child (hereinafter: 'CRC').

### **2.1. Protection of children in vulnerable situations**

#### **2.1.1. Emergence of an agenda: a (brief) historical perspective**

While child survival and development for long enjoyed widespread support from the angle of charitable action,<sup>131</sup> some years before the adoption of the CRC, advocates for children noted a glaring gap and the premises of a child rights agenda grew around children made vulnerable because of a range of 'especially difficult circumstances'.<sup>132</sup> 'Reducing mortality among infants and young children' was indeed recognized to be a 'hollow and insufficient victory' if those children had no opportunity to grow and develop specifically because of the circumstances they were born or lived in.<sup>133</sup> As this agenda began to emerge in the 1980s, the 'especially difficult circumstances' concerning 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'.<sup>134</sup> While the language may have changed, one recognizes from then many of the challenges children still face today. Children remain exposed to violence, exploitation and abuse, in the home, at school and in their communities. But 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'.<sup>135</sup> While the rest of this section surveys those different themes, this over-arching principle needs always 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 the Asia and Europe regions risks facing children cross socio-cultural-economic divides and require robust child protection system level prevention and response measures. There is for

---

<sup>131</sup> One of the very first modern-day NGOs was Eglantyne Jebb's 'Save the Children Fund', see Barnett, M. (2011). *Empire of humanity, a history of humanitarianism*. Ithaca, London: Cornell University Press.

<sup>132</sup> UNICEF Executive Board (1984), "Annual Report of the 1984 session" (E/1989/19 – E/ICEF/1984/12) New York: UNICEF. para 135

<sup>133</sup> UNICEF Executive Board (1986), "Policy Review on Children in Especially Difficult Circumstances" (E/ICEF/1986/L.6) New York: UNICEF.

<sup>134</sup> Ibid Supra, p4.

<sup>135</sup> For more on a shift from issue-based to a systems approach see: UNICEF. (2008). *UNICEF Child Protection Strategy*. (E/ICEF/2008/5/Rev.1). New York: UNICEF; Save the Children. (2010). Building rights-based national child protection systems: a concept paper to support Save the Children's work.

example a strong correlation between child poverty and abuse, neglect and exploitation.<sup>136</sup> Children with disabilities and indigenous children suffer higher rates of poverty than non-disabled and non-indigenous; and are more vulnerable to marginalisation and exclusion.<sup>137</sup> Humanitarian crises, fragile contexts,<sup>138</sup> 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 nexus 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, who further increase their exposure to sexual and physical exploitation. In other cases, migration producing and hosting states can drive vulnerability through failing to implement the necessary protection and assistance measures contained in their international and domestic commitments. Such inter-connections exacerbate further protection risks, such as arbitrary detention, trafficking, worst forms of child labour including children in street situations and children associated with armed forces and armed groups (CAAFAG). There are additional gendered risks exacerbated by socio-cultural norms, including child marriage, female genital mutilation, and discrimination targeted against non-conforming sexual orientation and/or gender identity (SOGI)/LGBTI adolescents.<sup>139</sup> Current examples of the above nexus can be seen through the migration paths of Syrian, Iraqi, Pakistani and Afghan and other child refugees and migrants<sup>140</sup> 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 related 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 is long recognized for dramatically increasing children's vulnerability to human rights and humanitarian law violations,<sup>141</sup> 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.<sup>142</sup> In the Asia region, the situation in Afghanistan is of particular concern, with 3,512 child casualties verified by

---

<sup>136</sup> The *Special Representative of the Secretary-General on Violence Against Children* has noted that "Social exclusion and extreme poverty offer fertile ground for violence against children and enhance the risk of abuse and exploitation". Pais, Marta Santos (2011), *Children in Extreme Poverty and victims of violence are at a double disadvantage*, [http://srsq.violenceagainstchildren.org/story/2011-02-09\\_103](http://srsq.violenceagainstchildren.org/story/2011-02-09_103).

<sup>137</sup> UNICEF (2013), *Children and Young People with Disabilities Fact Sheet May 2013*, [https://www.unicef.org/disabilities/files/Factsheet\\_A5\\_Web\\_NEW.pdf](https://www.unicef.org/disabilities/files/Factsheet_A5_Web_NEW.pdf); and UN (2010), *Indigenous peoples make up one-third of the world's poorest and suffer alarming conditions in all countries*, <http://www.un.org/esa/socdev/unpfiu/documents/SOWIP/press%20package/sowip-press-package-en.pdf>

<sup>138</sup> Fragility can be a much-debated concept but is generally understood here as relating to a combination of multiple vulnerabilities in one context (which maybe across a whole country or in pockets of that country), exhibiting dimensions such as weak economic foundations, significant environmental issues and degradation, unaccountable, weak and poor governance structures (with implications for the proper delivery of social services) and poor security / high levels of political and social violence with fragmented or in-existent social cohesion (see OECD States of Fragility, 2016)

<sup>139</sup> LGBTI youth and lesbian, bisexual and transgender women are at particular risk of physical, psychological and sexual violence in family and community settings. LGBTI persons often face violence and discrimination when seeking refuge from persecution and in humanitarian emergencies. They may also face abuse in medical settings, including unethical and harmful so-called "therapies" to change sexual orientation, forced or coercive sterilization, forced genital and anal examinations, and unnecessary surgery and treatment on intersex children without their consent.

[http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929\\_LGBTI](http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929_LGBTI)

<sup>140</sup> For 2016 statistics: [https://www.unicef.org/eca/Factsheet\\_refugee\\_migrant.pdf](https://www.unicef.org/eca/Factsheet_refugee_migrant.pdf)

<sup>141</sup> Machel, G. (1996). *Impact of Armed Conflict on Children - Report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157. (A/51/306)*. New York: United Nations; Machel, G. (2001). *The impact of war on children*. London: Hurst & Company.

<sup>142</sup> United Nations Secretary-General (2017), "Children and Armed Conflict, Report of the Secretary-General", A/72/361-S/2017/821. New York: United Nations.

the United Nations in 2016, the highest number recorded to date.<sup>143</sup> Recruitment into armed forces and groups is a particularly egregious violation with multiple implications rippling through a child's life. Beyond the, one dimension revolves around children associated with armed forces and groups (CAAFAG) who may have been forced by their commanders 'into perpetrating atrocities, such as killing, torturing and looting – sometimes against their own families and communities'.<sup>144</sup> 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 counter-terrorism legislation and notably when children are associated with non-state actors<sup>145</sup> The same applies to child witnesses who are asked to testify, with gaps in systems to protect child witnesses 'both inside and outside the courtroom'.<sup>146</sup> The impact of armed conflict in triggering displacement also increases push and pull factors for harmful coping mechanisms including early marriage<sup>147</sup> 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.<sup>148</sup> Children are at heightened risk of violence, exploitation and abuse while on the move, particularly those that are unaccompanied and/or separated in transit. While children represent less than a third of the overall global population, they constitute over half of refugees under UNHCR's mandate.<sup>149</sup> Migrant children face rights deprivations 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.<sup>150</sup> Both refugee and migrant children are exposed to grave human rights violations throughout the stages of their migration paths including exposure to trafficking and other forms of exploitation,<sup>151</sup> arbitrary detention, death, 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 wellbeing and development. The reach of laws is often poor due to a lack of awareness, lack of respect and lack of

---

<sup>143</sup> Ibid supra, p2.

<sup>144</sup> OSRSG-CAAC (2011), "Children and Justice During and in the Aftermath of Armed Conflict", Working Paper 3, September 2011, New York: OSRSG-CAAC, p10.

<sup>145</sup> Ibid supra.

<sup>146</sup> Ibid supra, p16

<sup>147</sup> Mazuaran, Dyan, Carlson, Kristopher, *The girl child and armed conflict: recognizing and addressing grave violations of human rights*, United Nations Division for the Advancement of Women in collaboration with UNICEF, Expert Group meeting on Elimination of all forms of discrimination and violence against the girl child, Florence, Italy, 25-28 September 2006. EGM/DVGC/2006/Ep.12.

<sup>148</sup> UNICEF. (2016). Uprooted: the growing crisis for refugee and migrant children. New York: UNICEF.

<sup>149</sup> UNICEF. (2016). Uprooted: the growing crisis for refugee and migrant children. New York: UNICEF.

<sup>150</sup> Voluntary repatriation, resettlement or local integration: <http://www.unhcr.org/50a4c17f9.pdf> Noting unaccompanied and separated children will have additional considerations, including family reunification where determined appropriate by a 'best interests determination' (BID).

<sup>151</sup> UNICEF, IOM (2017), *Harrowing Journeys, children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation*, New York, Geneva: UNICEF, IOM.

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 state parties.<sup>152</sup>

States must ensure humane and appropriate legislative, administrative, social and educational measures to protect children seeking sanctuary. We need to recognize 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 state parties.<sup>153</sup>

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 wellbeing of children.

#### **Case Example: Greece... and far beyond.**

Of the estimated 1.2 million asylum seekers passing through Greece from a range of conflict and fragile contexts, 480,000 were children, and of the 62,375 remaining in Greece, 21,300 are children, while an estimated 2,300 are unaccompanied, noting numbers likely higher as older children tend to present as adults or accompanied.<sup>154</sup> A common bottleneck experienced by authorities in Greece, international actors and partner countries in the EU, was the serious underestimation of the time needed for family reunification, and the 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, it should not detract from spill-over effects in neighbouring countries– for example in Serbia, Croatia, the former Yugoslav Republic of Macedonia, Bulgaria and elsewhere on alternate routes between Asia, the Middle East and Europe – including in Italy, which has seen arrivals not only from countries in Africa, but also increasing numbers of people (including children) arriving from Asian countries (e.g. Bangladesh, Afghanistan, Pakistan).<sup>155</sup> Beyond those countries, a sharp focus needs to be maintained on the migration routes, protracted displacement and phenomena of forced returns, for examples between Pakistan and Afghanistan,<sup>156</sup> with increased cases of returns, onward migration from Afghanistan, or the recent surge in arrivals of Rohingya refugees in Bangladesh, and the continuing practice of returns and refoulement of such refugees across the regions (from Thailand, Malaysia, Indonesia, India, and beyond). It is also important to note attempts to forcibly stop population movements inadvertently drove smuggling and trafficking networks in Greece.<sup>157</sup>

#### 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

<sup>152</sup> Bina D'Costa, UNICEF Research Watch Interview, September 2016

<sup>153</sup> *ibid*

<sup>154</sup> Digidiki, V., & Bhabha, J. (2017). *Emergency within an Emergency: The Growing Epidemic of Sexual Exploitation and Abuse of Migrant Children in Greece*. Harvard: FXB Centre for Health and Human Rights, Harvard University. P.6 and 11.

<sup>155</sup> Ministero del Lavoro et delle Politiche Sociali, Report Mensile Minori Stranieri Non Accompagnati in Italia – reports issued in 2017 available here: <http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Pagine/Dati-minori-stranieri-non-accompagnati.aspx>

<sup>156</sup> With documented impacts on children, see Human Rights Watch (2017), "Pakistan Coercion, UN Complicity: the mass forced return of Afghan refugees", Washington: HRW. p18.

<sup>157</sup> Interview data, child protection specialist working in EU.

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.<sup>158</sup>

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, and crimes against humanity.<sup>159</sup>

A child is born stateless somewhere in the world every ten minutes.<sup>160</sup> UNHCR estimates there are at least 10 million people without a nationality and warns that the problem is growing.<sup>161</sup> Statelessness

#### Rohingya Children

There are eight 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, June 2, 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 August 25, 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 percent of the new arrivals are children and 30 percent are children under five years old. Seven percent are infants less one year old. Three percent of the newly arrived refugees are pregnant, and seven percent 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 one in five refugee households are headed by women, and five percent 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 August 25 are women of reproductive age and 24,000 are either pregnant or breastfeeding. About 60 percent 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 one in every three 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, The Daily Star, 2017*  
<http://www.thedailystar.net/star-weekend/the-shadow-violence/no-place-hide-1475062>

<sup>158</sup> Bina D'Costa, Asia's Child Migrants, UNICEF Innocenti Report.

<sup>159</sup> Ibid

<sup>160</sup> UNHCR (2015), "I am Here, I Belong: The urgent need to end childhood statelessness", Geneva: UNHCR.

<sup>161</sup> UNHCR (2015), "I am Here, I Belong: The urgent need to end childhood statelessness", Geneva: UNHCR.

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.<sup>162</sup> 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'.<sup>163</sup>

#### 2.1.2.5. Child trafficking and the Worst Forms of Child Labour (WFCL)

Armed conflict, situations of fragility and the subsequent breakdown in the protective environment and the rule of law facilitates transnational crime including the trafficking of children. Further, significant risks of trafficking arise during displacement and subsequent onward movement for 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.<sup>164</sup> Meanwhile, some 152 million children worldwide are believed to be engaged in child labour, with nearly half engaged in its worst forms.<sup>165</sup> Reliable data however is difficult to come by given the nature of the work children are engaged in (e.g. slavery and situation 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 those vulnerable, disrupt and prosecute criminal and other exploitative networks and provide appropriate responses to child survivors that are too often lacking.

#### 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 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'.<sup>166</sup> A number of situations testify to such patterns, such as the abnormally high detention rate of indigenous children in Australia,<sup>167</sup> persecution and reproduction of stateless status for Rohingya people and children in Myanmar and neighbouring countries,<sup>168</sup> or persistent intersectional discrimination with

---

<sup>162</sup> UNHCR (2014), "A Special Report - Ending Statelessness within 10 years", Geneva: UNHCR; UNHCR (2014), "Background Note on Gender Equality, Nationality Laws and Statelessness", Geneva: UNHCR. In the ASEM region, there are three States where nationality laws do not give mothers the ability to confer nationality to their children on an equal basis as their fathers, these include: Brunei Darussalam, Nepal and Malaysia.

<sup>163</sup> European Network on Statelessness : <http://www.statelessness.eu/blog/addressing-statelessness-amongst-women-and-children-asia-and-pacific> (Accessed 11 October 2017)

<sup>164</sup> United Nations Secretary-General (2016), *Report of the Secretary-General on the implementation of measures to counter trafficking in persons*, S/2016/949. 10 November 2016.

<sup>165</sup> ILO (2017), *Global Estimates of Child Labour*, Geneva: ILO. See full definition in below section on legal frameworks and ILO convention 182 Article 3.

<sup>166</sup> Paras 35 and 36 of Convention on the Rights of the Child General Comment 20 (2016) on the implementation of the rights of the child during adolescence. See also General Comment 11 (2009) on indigenous children and their rights under the Convention.

<sup>167</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory (2017), *Interim Report*, Commonwealth of Australia, Sydney.

<sup>168</sup> Crews Slezak, Amanda, Roussos Singer, Thalia & Ramadurai, Rupa, *Stateless and Fleeing Persecution: The Situation of the Rohingya in Thailand*, 35 *Children's Legal Rights Journal* 44 (2015). Available at: <http://lawcommons.luc.edu/clrj/vol35/iss1/5>; and Abdelkader, Engy (2014). *Myanmar's Democracy Struggle: The Impact Of Communal Violence Upon Rohingya Women And Youth*. *Pacific Rim Law & Policy Journal*, 23(3), 511-542.

stateless Roma populations across Europe and Eastern Europe.<sup>169</sup> Meanwhile, of the estimated 500-650 million persons with disabilities globally, 150 million are children and over 80 per cent live in developing countries with limited to no access to services.<sup>170</sup> Children with disabilities face unacceptable levels of social exclusion, discrimination in access to essential services including education and health, as well adolescents facing disproportionate vulnerability to physical and sexual violence and child marriage.<sup>171</sup> Their access to services is even further restricted in conflict contexts and while on the move, as witnessed in the Europe and Asia region with the lack of accessible services across the response to refugee arrivals.<sup>172</sup>

#### 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.<sup>173</sup> Too often children come into contact with the law that shouldn't due to accompanying a parent to detention, seeking asylum or being removed from an abusive environment.<sup>174</sup> 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.<sup>175</sup> This applies to all children, including migrant, refugee and asylum-seeking children, children trafficked into forced criminality, and children associated with armed forces and groups (CAAFAG).<sup>176</sup> Wherever appropriate, States should provide alternatives to judicial proceedings and detention including diversion procedures, community-based alternatives and restorative justice.<sup>177</sup> CRC General Comment 10 (2007) 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 regular review of decision-makers application of such provisions to prevent discrimination in practice.<sup>178</sup>

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.<sup>179</sup>

---

<sup>169</sup> Ravnbøl, Camilla Ida (2009), „Intersectional Discrimination against Children: Discrimination against Romani children and anti-discrimination measures to address child trafficking“, Innocenti Working Paper No. IDP 2009-11 UNICEF Innocenti Research Centre, Florence.

<sup>170</sup> Child Rights International Network (CRIN), see <https://www.crin.org/en/library/publications/general-comment-no-9-rights-children-disabilities> (Accessed 11 October 2017)

<sup>171</sup> Para 31 CRC General Comment 9 (2006) on the rights of children with disabilities.

<sup>172</sup> Human Rights Watch (2017), Greece: refugees with disabilities overlooked, underserved. HRW.

<sup>173</sup> [https://www.unicef.org/protection/57929\\_57999.html](https://www.unicef.org/protection/57929_57999.html) Accessed: 16 October 2017

<sup>174</sup> [https://www.unicef.org/protection/57929\\_57999.html](https://www.unicef.org/protection/57929_57999.html) Accessed: 16 October 2017

<sup>175</sup> Articles 37 and 40 of the CRC.

<sup>176</sup> ASEM, 17<sup>th</sup> Informal ASEM Seminar Concept Paper, 2017, p5.

<sup>177</sup> Noting challenges in implementation but as a 2015 study on juvenile justice in ASEAN found even when the legal framework in place, diversion is not always used; decision-makers lack adequate knowledge and resources to implement the programmes.

<sup>178</sup> UN CRC GC 10 (2007) Child Rights in Juvenile Justice, p10.

<sup>179</sup> UNICEF. (2016). Uprooted: the growing crisis for refugee and migrant children. New York: UNICEF.

### **A 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 two serious causes for concern.<sup>180</sup> Refugee and asylum-seeking children are being held in offshore processing centres, most notably Nauru.<sup>181</sup> Some are with families, some unaccompanied, some were born on Nauru and are in effect stateless.<sup>182</sup> There have been widespread reports of sexual assault and alleged sexual harassment against children,<sup>183</sup> and alarms raised on 'post-traumatic stress disorder and depression' reaching epidemic proportions, including among children.<sup>184</sup> Despite attempts to refute legal responsibility, the involvement of Australian authorities in the apprehension, detention and transfer of refugee, in refugee status determination procedures and in financing those centres meets the standard of 'effective control' under international law, assigning Australia international responsibility for refugee and asylum seekers, including children, held in these centres.<sup>185</sup> A further challenge in Australia involves how indigenous children are overrepresented in the juvenile justice system,<sup>186</sup> face substantially lower levels of access to health, education, survival and well-being, justice, while also being confronted with endemic discrimination.<sup>187</sup> In some Australian states indigenous children are 52 times more likely to spend time in detention than non-indigenous, and are also less likely to receive bail or benefit from diversion programmes.<sup>188</sup>

Article 40(3) of the CRC requires member states to have a minimum age of criminal responsibility (MACR). CRC General Comment (10) 2007 considers the MACR for children below the age of 12 years to be unacceptable internationally and encourages states to increase to 14 to 16 years. Several member states in Europe and Asia currently have legislation, exemptions and/or practices inconsistent with this norm.<sup>189</sup>

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

Sexual and Gender-Based Violence (SGBV) 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

<sup>180</sup> Australian Human Rights Commission: Information about children in immigration detention (last updated 6 January 2016) <https://www.humanrights.gov.au/information-about-children-immigration-detention> (Accessed 11 October 2017)

<sup>181</sup> Including those with families as well as unaccompanied.

<sup>182</sup> Human Rights Watch (2017) Submission by Human Rights Watch on the Situation in Australia to the Committee on Economic, Social and Cultural Rights, 61<sup>st</sup> Plenary Session, May 2017 p. 6. [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/AUS/INT\\_CESCR\\_CSS\\_AUS\\_27315\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/AUS/INT_CESCR_CSS_AUS_27315_E.pdf) (Accessed 11 October 2017)

<sup>183</sup> Ibid Supra.

<sup>184</sup> Doherty, Ben, 'Offshore detention whistle-blower loses job after condemning "atrocities" of camps', The Guardian, 21 June 2016; <https://www.theguardian.com/australia-news/2016/jun/21/offshore-detention-whistleblower-loses-job-after-condemning-atrocities-of-camps> (Accessed 11 October 2017)

<sup>185</sup> Human Rights Watch (2017) Submission by Human Rights Watch on the Situation in Australia to the Committee on Economic, Social and Cultural Rights, 61<sup>st</sup> Plenary Session, May 2017.

<sup>186</sup> Royal Commission into the Protection and Detention of Children in the Northern Territory (2017), Interim Report, Commonwealth of Australia, Sydney; and Titterton, A. (2017). Indigenous Access To Family Law In Australia And Caring For Indigenous Children. *University Of New South Wales Law Journal*, 40(1), 146-185.

<sup>187</sup> Ibid supra.

<sup>188</sup> Amnesty International, (2015) *A brighter tomorrow, keeping indigenous kids in the community and out of detention in Australia*, National Overview, Amnesty International Australia, Broadway NSW. Using data from the Juvenile Justice Minimum Data Set from the Australian Institute of Health and Welfare (AIHW).

<sup>189</sup> Switzerland, Ireland, UK and Wales, Scotland, Bangladesh, Bhutan, Brunei, Hong Kong, Indonesia, Iran (for girls), Myanmar, Nepal, Pakistan, Singapore, Sri Lanka – have lower than 12 years or exemptions to their set MACR <https://www.crin.org/en/home/ages/asia> <https://www.crin.org/en/home/ages/europe>; see furthermore D. Cipriani, 'Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective', Farnham; Ashgate) (2009).

the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys.<sup>190</sup> For children, unfortunately all too common SGBV risk exposure includes child marriage, sexual exploitation and abuse, trafficking including for worsts forms of child labour, female-genital mutilation, infanticide and prenatal sex selection. Children are exposed to various forms and risks of sexual and gender based violence (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.<sup>191</sup>

One particularly acute issue in the Asia and Europe region is child marriage. A human and child rights violation, child marriage violates the four core CRC principles of discrimination, best interests, survival and development and participation, through 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, increased risk of contracting HIV/AIDs, increased risk of domestic violence, impeded access to education and fundamentally unequal power dynamics due to the often significant age gap between the parties.<sup>192</sup> Child marriage is a phenomenon of particular criticality in South Asia, which is home to 42 per cent of all child brides globally.<sup>193</sup> Bangladesh has the highest rate of child marriage in the region (52%), followed by India (47%), Nepal (37%) and Afghanistan (33%).<sup>194</sup>

A further dimension not to be overlooked revolves around discriminations faced by people including adolescents with non-conforming sexual orientation and gender identity (SOGI)/ and lesbian, gay, bisexual, transgender, intersex (LGBTI), who face high levels of discrimination, social exclusion and violence.<sup>195</sup> 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 work being carried out. Girls are for example far more likely to be involved in domestic work.<sup>196</sup> 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 exploitation<sup>197</sup> and are at higher risk of hazardous work from 5-11 years (58%) while boys are at higher risk from 15-17 years (81%).<sup>198</sup>

### 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 Machel<sup>199</sup> on the impact of conflict on children. Seized of the issue, the Security Council began considering children and armed conflict as a recurring

<sup>190</sup> Definition by the Office of the United Nations High Commissioner for Refugees (UNHCR) available here: <http://www.unhcr.org/sexual-and-gender-based-violence.html> (Accessed 11 October 2017).

<sup>191</sup> Kapur, Amrita, Mudell, Kelli, *When no one calls it rape: addressing sexual violence against men and boys in transitional contexts*, International Centre for Transitional Justice, New York, December 2016; and Dolan, C. (2014). Letting go of the gender binary: Charting new pathways for humanitarian interventions on gender-based violence. *International Review of the Red Cross*, 96(894), 485-501.

<sup>192</sup> Girls Not Brides Global Partnership, <http://www.girlsnotbrides.org/themes/health/> (Accessed 11 October 2017)

<sup>193</sup> UNICEF (2014), *Ending Child Marriage: Progress and prospects*, UNICEF, New York.

<sup>194</sup> UNICEF (2016), *State of the World's Children, A Fair Chance for Every Child*, UNICEF, New York. Table 9 – Child Protection.

<sup>195</sup> Turk, V. (2013). Ensuring protection to LGBTI persons of concern. *International Journal of Refugee Law* 25 (1), 120-129.

<sup>196</sup> USAID (2012), *Ending child marriage and meeting the needs of married children: the USAID vision for action*, USAID, Washington.. p 3, 17

<sup>197</sup> Avis, William R.(2017), Data on the prevalence of the worst forms of child labour, Knowledge Evidence and Learning for Development Helpdesk Report, GSDRC K4D. See <http://www.gsdrc.org/wp-content/uploads/2017/04/101-Worst-forms-of-child-labour.pdf> (Accessed 11 October 2017)

<sup>198</sup> ILO 2015 data in Ibid Supra.

<sup>199</sup> Machel, G. (1996). *Impact of Armed Conflict on Children - Report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157.* (A/51/306). New York: United Nations.

thematic item, and the unanimous adoption in 2005 of UN Security Council Resolution 1612 ushered in a new era<sup>200</sup> with the establishment of a Monitoring and Reporting Mechanism (MRM) on children and armed conflict (CAAC). The MRM focuses on six grave child rights violations in conflict: recruitment and use of children, attacks on schools and health care 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 onto 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 fourteen situations/countries currently before the UN Security Council the situation of one ASEM member is under consideration (Myanmar), while in the Asia region Afghanistan is also under considerations.<sup>201</sup> A number of other ASEM member countries where the MRM is monitoring the impact of conflict on children (without the situation being on the Council's agenda) include 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.<sup>202</sup> The sum of these monitoring efforts is captured on a yearly basis by the Secretary-General of the United Nations, 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 the Asia region, parties to conflicts in Afghanistan, the Philippines and Myanmar have been listed as committing one or more of the six grave violations. These are almost exclusively non-state parties, with the exception of the Tatmadaw Army (including border guard forces) in Myanmar and the Afghan National and Local Polices in Afghanistan.<sup>203</sup>

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 167 State parties to the Protocol<sup>204</sup> - the only countries in the Asia and Europe region not full parties being Myanmar (signatory only), the Democratic People's Republic of Korea and Papua New Guinea (non-signatories). The optional protocol establishes eighteen as the minimum age for compulsory recruitment and participation in hostilities.<sup>205</sup> More recent initiatives including the Countering Violent Extremism (CVE)/ Preventing Violent Extremism (PVE) agenda 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).<sup>206</sup>

### 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'.<sup>207</sup> There is long-established recognition of the challenges related to unaccompanied and separated refugees children, particularly the search for 'an appropriate durable solution [... in which] regard should be given to the principles of family unity and the best interests of the child'.<sup>208</sup> Meanwhile the framework for migrant children is

<sup>200</sup> Knudsen, A., & Godwin, M. (2016). Pinning Down a Paper Tiger: Some Practice Observations on the Monitoring and Reporting Mechanism in Nepal and Asian Contexts. In B. D'Costa (Ed.), *Children and Violence: Politics of Conflict in South Asia* (pp. 243-274). Cambridge: Cambridge University Press.

<sup>201</sup> For further information see: <https://childrenandarmedconflict.un.org/countries-caac/> (Accessed 11 October 2017)

<sup>202</sup> For further information see: <https://childrenandarmedconflict.un.org/countries-caac/> (Accessed 11 October 2017)

<sup>203</sup> United Nations Secretary-General (2017), Children and Armed Conflict, Report of the Secretary-General, New York: United Nations. A/72/361-S/2017/821. Of note, while the Tatmadaw and the Afghan Police are both listed, the Afghan National and Local Police forces are listed in a sub-section for parties that have put in place measures to improve the protection of children, while the Tatmadaw is listed as not having put in place measures during the reporting period for the latest Secretary-General report, which encompasses the period January-December 2016.

<sup>204</sup> See: <http://indicators.ohchr.org/> (Accessed 11 October 2017)

<sup>205</sup> Coomaraswamy, R. (2010). The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – Towards Universal Ratification. *The International Journal of Children's Rights*, 18(4), 535-549.

<sup>206</sup> It could be however argued that this agenda is rarely discussed within the rights framework and enables rights violation.

<sup>207</sup> UNHCR Executive Committee (1987), "Note on Refugee Children", EC/SCP/46.

<sup>208</sup> Ibid supra.

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'<sup>209</sup> – with children falling through that crack in international legal and rights frameworks.

An attempt at fixing a number of these gaps was initiated in September 2016 when the UN General Assembly adopted the New York Declaration for Refugees and Migrants.<sup>210</sup> The declaration provides the basis for the negotiation and adoption of two 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 six 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.<sup>211</sup> Meanwhile, older CRC General Comments (GC) such as GC 6 in 2006 on Treatment of Unaccompanied and Separated Children outside their country of origin remain critically relevant for UASC children on the move. The more recent CRC GC 21 on Children in Street Situations provides important guidance for ASEM members on a rights-based response for a complex caseload which often involves refugee and migrant children. In addition, the forthcoming Joint General Comment (JGC) on the CRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) aims to address the present '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.<sup>212</sup> The latter despite all member states obligations to protect all children within their territories and jurisdiction, regardless of the child's nationality or immigration status.<sup>213</sup> Further the Sustainable Development Goals (SDG's) 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.<sup>214</sup>

*Trafficked children:* Complementing the United Nations 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 span prostitution and other forms of sexual exploitation, forced

---

<sup>209</sup> Kysel, Ian M. (2016), "Promoting the Recognition and Protection of the Rights of All Migrants Using a Soft-Law International Migrants Bill of Rights", *Journal on Migration and Human Security*, Volume 4 Number 2 (2016): 29-44

<sup>210</sup> United Nations General Assembly, Resolution adopted by the General Assembly on 19 September 2016, A/RES/71/1.

<sup>211</sup> Initiative for Child Rights in the Global Compacts, 2016. See <http://www.childrenonthemove.org> (Accessed 11 October 2017)

<sup>212</sup> McDonald, Marie (2017), « Report of the Regional Conference on Children on the Move in Southeast Asia – May 24-25, 2017, Bangkok, Thailand », Asia-Pacific Refugee Rights Network, International Detention Coalition, Terre des Hommes, Save the Children. See [http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/1\\_Global/INT\\_CMW\\_INF\\_8260\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/1_Global/INT_CMW_INF_8260_E.pdf) (Accessed 11 October 2017).

<sup>213</sup> Paragraph 12, Committee of the Rights of the Child, General Comment No 6 (2005), Treatment of Unaccompanied and Separated Children Outside their Country of Origin.

<sup>214</sup> D'Costa, Bina (2016), "Children and Migration: Rights, Advocacy, Resilience", UNICEF Innocenti Brief.

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 (Article 3 (a);(b);(c)).

*Stateless children:* In 1948 the Universal Declaration of Human Rights (UDHR) stipulated in its 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'<sup>215</sup> articles 1-4 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 1-4, though some may choose different methods and legal routes available to prevent statelessness. Meanwhile, the protection against statelessness is reinforced with the importance of children's right to a nationality as reflected in Article 7 of the CRC.<sup>216</sup>

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

*Gender and Child Marriage:* Article 16 of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) prohibits child marriage and the Committee on the Rights of the Child (CRC) has set the minimum age for marriage at 18 years.<sup>217</sup> The 2016 UN Sustainable Development Goals further requires all countries to end child marriage by 2030. Regarding gender identity and sexual orientation, a key framework comes from the CRC's General Comment 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).<sup>218</sup>

*Children with disabilities:* CRC General Comment 9 (2006) outlines the rights of children with disabilities and provides guidance for states to achieve their realization, 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 categorization of persons with disabilities' and reaffirming 'that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms', including children (Article 7 CRPD). The CRPD has been adopted and ratified by all ASEM Member States.

---

<sup>215</sup> UNHCR (2012), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, <http://www.refworld.org/docid/50d460c72.html>

<sup>216</sup> In addition to Article 15 of the UDHR, with similar protections provided under ICCPR and Convention on the Reduction of Statelessness.

<sup>217</sup> de Silva-deAlwis, Rangita (2008), "Child Marriage and the Law", Working Paper, Legislative Reform Initiative Paper Series, Division of Policy and Planning, UNICEF, New York.

<sup>218</sup> General Comment 20 of the Convention on the Rights of the Child (2016) on the implementation of the rights of the child during adolescence

*Indigenous and minority children.* General Comment 11 of the CRC (2009) 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' (GC 11 CRC Article 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 Declaration on the Rights of Indigenous People, 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), as well as for indigenous children with disabilities. Of note however a number of countries in the Asia and Europe region either voted against the Declaration's adoption in 2007 (Australia, New Zealand) or abstained (Azerbaijan, Bangladesh, Georgia, Russian Federation, Samoa and Ukraine).<sup>219</sup>

*Worst forms of child labour.* The 'worst forms of child labour' (WFCL) are defined according to Article 3 of ILO Convention No. 182 of 1999 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 per cent of the world's children aged 5 to 17 years are now covered by it'.<sup>220</sup> It is almost universally in force in the ASEM region.<sup>221</sup>

*Children in contact with the law and deprived of liberty.* The Convention on the Rights of the Child enjoins State parties to use deprivation of children's liberty only as a measure of last resort, and only for the shortest appropriate period of time (Article 37(b)). Children also have a fair trial (art. 40 CRC). The position of children in conflict with the law is regulated by the CRC as well as by a number of UN resolutions. Art. 40 CRC is the core provision addressing juvenile justice. It recognizes the right of every child alleged as, accused of, or recognized 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 in society (art. 40(1)). The provision further recognizes 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 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 (40(3), and the CRC Committee has underscored States' obligations to establish a specialized juvenile justice system.<sup>222</sup> Such a system builds on the determination of a minimum age of criminal responsibility (MACR) and the development of diversion and alternative dispositions for children (art. 40(3); 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.

<sup>219</sup> See <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx> (Accessed 11 October 2017)

<sup>220</sup> ILO (2017), Global Estimates of Child Labour, Geneva: ILO. p48.

<sup>221</sup> India ratified as of 13 June 2017, but will enter into force on 13 June 2018. See: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300_INSTRUMENT_ID:312327) (Accessed 11 October 2017)

<sup>222</sup> UN Committee on the Rights of the Child (2007), 'General Comment No. 10: Children's Rights in Juvenile Justice', CRC/C/GC/10

In addition to the CRC, the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules')<sup>223</sup> addresses the establishment of a specialized justice system for children. In 1990 the UN General Assembly adopted the UN Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines'),<sup>224</sup> presenting a child-centred approach to the prevention of delinquency, and the UN Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules')<sup>225</sup>, which set standards for the protection of children deprived of liberty. These three 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, treatment of children and in 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 stigmatized 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.<sup>226</sup>

For children who are in detention, there are international legal safeguards protecting them from violence, abuse and exploitation and safeguarding their human rights.<sup>227</sup> 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 Committee on the Rights of the Child 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'.<sup>228</sup> 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).<sup>229</sup> In the Europe region 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'.<sup>230</sup> Globally, child rights advocates have argued for administration detention never to happen, particular on the basis of a child's immigration status.<sup>231</sup> The United Nations Secretary-General has meanwhile commissioned, with the support of a resolution of the General Assembly, a global study on children deprived of

---

<sup>223</sup> UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 29 November 1985, A/RES/40/33.

<sup>224</sup> UN General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 14 December 1990, A/RES/45/112.

<sup>225</sup> UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), 2 April 1991, A/RES/45/113.

<sup>226</sup> T. Liefwaard, 'Juvenile Justice from an International Children's Rights Perspective', in W. Vandenhoe et al. (eds), 'Routledge International Handbook of Children's Rights', Routledge Publishing (2015).

<sup>227</sup> T. Liefwaard, 'Deprivation of Liberty of Children in Light of International Human Rights Law and Standards', Intersentia (2008). See also B. Goldson & U. Kilkelly, 'International Human Rights Standards and Child Imprisonment: Potentialities and Limitations', *International Journal of Children's Rights* 21, 345-371 (2013).

<sup>228</sup> Sandberg, Kirsten (2014) *Letter to the Secretary-General from the Chairperson of the Committee on the Rights of the Child*, 19 May 2014.

<sup>229</sup> Hamilton, Carolyn, et al (2011). *Administrative Detention of Children, A Global Report*, UNICEF, New York and Children's Legal Centre, University of Essex.

<sup>230</sup> Ibid supra, p3.

<sup>231</sup> UNICEF. (2016). *Uprooted: the growing crisis for refugee and migrant children*. New York: UNICEF.

liberty<sup>232</sup> 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.<sup>233</sup>

#### 2.1.4. What solutions: emerging good practices, gaps and priorities

Recognizing the holistic and inter-related nature of children's rights, solutions and examples of good practice from the Asia and Europe region are outlined below, not theme-by-theme, but rather around key priority area 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 this applies through the lens of gender, disability, minority and indigenous rights – concrete steps that can be taken in the Asia and Europe region include delivering on the commitments made in the New York Declaration of 2016 and subscribing to the core principle that a 'Child is a Child' and that the CRC applies to all children, no matter their migration status, the way they migrated, or lack of nationality. Moreover, efforts to protect children uprooted need to be integrated into existing domestic child protection legal frameworks and systems, and including providing for the specific needs of unaccompanied and separated children. Parallel protection systems for refugee children (including refugee UASC and child trafficking victims), for example, *are* not recommended<sup>234</sup> – a principle recognized as an emerging good practice for example through the 'Ten principles on Integrated Child Protection Systems' in the European Union area.<sup>235</sup> In practice, this entails a 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 (ICRC, UNHCR). Child protection systems, and international agencies supporting them, need to be able to speak to one another 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; or the strengthening of cooperation on family tracing to inform 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 (from ministries mandated for social welfare, justice, education and interior/home affairs). Coordination finally needs to be strengthened in conducting timely best interest determinations, family reunifications, and in triggering timely interim care and access to services.

*Child Trafficking.* Specifically with regards to issues of child trafficking, Asia and Europe member states should consider measures such as operational domestic legislation and convictions to deter criminal networks,<sup>236</sup> enhanced regional and international cooperation, holistic support packages to survivors, ensuring deployment and sufficient numbers of capacitated officials and proactive measures from the state to protect at high risk children including unaccompanied refugee and migrant children, while

---

<sup>232</sup> Independent legal expert Manfred Nowak was appointed in 2016 to lead the study.

<sup>233</sup> Sandberg, Kirsten, Op. Cit.

<sup>234</sup> 10<sup>th</sup> Forum on the Rights of the Child, 29-30 November, The Protection of children in migration, General Background Paper, version revised 29 March 2017

<sup>235</sup> 9<sup>th</sup> European Forum on the rights of the child, Coordination and cooperation in integrated child protection systems, Reflection paper, 30 April 2015.

<sup>236</sup> According to the 2016 *Global Report on Trafficking in Persons*, 87 per cent of reporting countries criminalized all aspects of trafficking in persons explicitly listed in the Protocol, 9 per cent had partial legislation and 4 per cent did not have any offence in their legislation which specifically criminalized trafficking in persons. The report also shows that the level of criminal convictions for trafficking in persons globally has remained low. Also see: United Nations Secretary-General (2016), *Report of the Secretary-General on the implementation of measures to counter trafficking in persons*, S/2016/949. 10 November 2016.

again and always ensuring compliance with the best interests of the child.<sup>237</sup> It is important for member states to expand on progress made in anti-money-laundering and counter-terrorist financing tools, as well as sanctions regimes, to disrupt human trafficking connected to conflict.<sup>238</sup> 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 the Association of Southeast Asian Nations (ASEAN) is the signature of the ASEAN Convention against Trafficking in Persons, Especially Women and Children. A regional and legally binding agreement, signed at the end of 2015, it 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 meaningful implementation of diversion programmes<sup>239</sup> to curb deprivation of children's liberty – which applies whatever 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 ASEAN<sup>240</sup> 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 the CRC's General Comment 10 on Children's rights in juvenile justice (2007) 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, while adequate diversion programmes are also key for children associated with armed forces and groups (CAAFAG), with the need to explore diversion options at all possible stages of the judicial process, including if a trial has already started.<sup>241</sup> Additional specific training and protocols are needed for state actors interacting with children caught up in C/PVE measures, ensuring practical diversion measures and that children's treatment is in line with international and national obligations. It is important in this regard to recognize that the C/PVE agenda has the potential to inadvertently yet significantly undermine over 20 years<sup>242</sup> 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.<sup>243</sup> 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.<sup>244</sup> 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 C/PVE measures to comply with state obligations under international human rights, refugee and

---

<sup>237</sup> Asia-Europe Meeting (2015), "Human Rights and Trafficking in Persons", 15<sup>th</sup> Informal ASEM Seminar on Human Rights, 24-26 November 2015, Montreux, Switzerland. p 36

<sup>238</sup> United Nations Secretary-General (2016), *Report of the Secretary-General on the implementation of measures to counter trafficking in persons*, S/2016/949. 10 November 2016.

<sup>239</sup> As defined by UNICEF, 'diversion means the conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record' See: [https://www.unicef.org/tdad/index\\_56037.html](https://www.unicef.org/tdad/index_56037.html) (Accessed 11 October 2017)

<sup>240</sup> Raoul Wallenberg Institute (2015), *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States*, RWI, Sweden.

<sup>241</sup> OSRSG-CAAC (2011), "Children and Justice During and in the Aftermath of Armed Conflict", Working Paper 3, September 2011, New York: OSRSG-CAAC, p39.

<sup>242</sup> OSRSG-CAAC. (2017). 20 Years to Better Protect Children Affected by Conflict. New York: Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

<sup>243</sup> UN-Women (2015) "Preventing Conflict, Transforming Justice, Securing the Peace: a Global Study on the Implementation of Security Council Resolution 1325", New York: UN-Women.

<sup>244</sup> This had already been noted to a large extent in the 10-year review of the Graca Machel study. See UNICEF, OSRSG-CAAC (2009), "Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World", New York: UNICEF-OSRSG-CAAC, p13.

humanitarian law, including human rights education and training capacity building for state and local entities involved in implementing such measures.<sup>245</sup>

*Child Marriage:* Regarding child marriage, some countries such as Afghanistan (see case example) have made significant legal and policy progress on paper. However child marriage remains entrenched in practice due to socio-cultural norms both in Afghanistan and across many Asia region countries. In some countries protections against child marriage have or are being eroded, with concerning legal developments for example in Bangladesh, where recent legislative changes permits girls under 18 years to marry in 'special circumstances' involving approval of the parents and a court.<sup>246</sup> 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 concerning trend.<sup>247</sup> Further challenges lie in lower ages for girls than boys, as well as differences based on religious affiliation such as in the Philippines.<sup>248</sup> Operationalising commitments to ending child marriage through in-country task forces with dedicated resources and concrete actions 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 15-16 years, well below the international standard of 18 years.<sup>249</sup> In practice the average age is likely much lower, though difficult to verify due to very low birth registration and associated civil documentation. Internally displaced<sup>250</sup> and returnee girl children are at high risk of child marriage to 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.<sup>251</sup> However there is concern that, similar to other plans and legislation aimed to end child marriage, this too will have a negligible impact for 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 GC 19 on public budgeting for realising child rights (2016)/ Article 4 CRC. Child marriage is also a socio-cultural 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.<sup>252</sup> These measures and their results should be documented to inform other countries in the Asia region tackling high rates of child marriage including Bangladesh, India and Pakistan and Nepal.

*Specific gender dimensions:* With regards 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 in school, in the family, community and broader society.<sup>253</sup>

<sup>245</sup> United Nations Office of the High Commissioner on Human Rights, "Human Rights and Preventing and countering violent extremism" See <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/PCVE.aspx> (Accessed 11 October 2017)

<sup>246</sup> Human Rights Watch (2017) "Bangladesh, Legalizing Child Marriage Threatens Girls' Safety", News Article, March 2 2017: <https://www.hrw.org/news/2017/03/02/bangladesh-legalizing-child-marriage-threatens-girls-safety> (Accessed 11 October 2017)

<sup>247</sup> Alex Gray, World Economic Forum, These are the countries where child marriage is legal, 26 September 2016.

<sup>248</sup> Alex Gray, World Economic Forum, These are the countries where child marriage is legal, 26 September 2016.

<sup>249</sup> Source: UNFPA – see <http://afghanistan.unfpa.org/node/15233> (Accessed 11 October 2017)

<sup>250</sup> Source: Internal Displacement Monitoring Centre (IDMC) – see <http://www.internal-displacement.org/countries/afghanistan> (Accessed 11 October 2017)

<sup>251</sup> <https://www.hrw.org/news/2017/04/20/will-afghanistan-follow-through-promise-end-child-marriage>

<sup>252</sup> Source: UNFPA – see <http://afghanistan.unfpa.org/node/15233> (Accessed 11 October 2017)

<sup>253</sup> Further outlined in paras 33 and 34 of General Comment 20 (2016); See also Joint United Nations Statement on "Ending Violence And Discrimination Against Lesbian, Gay, Bisexual, Transgender And Intersex People", September 2015. Available here via OHCHR: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx> (Accessed 11 October 2017)

Finally, whatever the gap in frameworks for realising child rights, even if international, regional and national legal and policy framework 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. Participation and involvement of children in decision-making**

### **2.2.1. 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 2.3.2 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. The part will provide a legal analysis of article 12 CRC, as well as explore the meaning of scope of 'participation'. Part 2.3.3 will centre on the child's freedom of expression and the right to access information, 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 are the obligations of states in that regard.

The following parts will then offer a specific look on different arenas for child participation, their scope and challenges: child participation in health care (part 2.3.4), child participation in education (part 2.3.5), child participation in the family (part 2.3.6) and participation in criminal proceedings (part 2.3.7). Finally, the chapter will conclude with a focus discussion on the CRC OPCP (part 2.3.8) 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 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.<sup>254</sup> 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.<sup>255</sup> 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.<sup>256</sup> 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 art. 9, 21, 37, 40). This reflects

<sup>254</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12, PAR 2. (Hereinafter: CRC GC 12 (2009)).

<sup>255</sup> Art 12(1) CRC.

<sup>256</sup> Art 12(2) CRC

that the right to be heard is an underlying principle of the CRC.<sup>257</sup> As previously discussed in chapter 1, the right to be heard has also been recognized as a general principle of the CRC,<sup>258</sup> 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 comment.<sup>259</sup>

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 of 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 parental authority, educator's authority, and challenging the political, social, religious and other norms.<sup>260</sup> Yet, the CRC presented a new image of the child, as a subject of rights, with his or her own voice and views, and 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'.<sup>261</sup>

The legal analysis of article 12 CRC reflects a clear and broad legal obligation.<sup>262</sup> 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.<sup>263</sup> Article 12 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 CRC imposes a legal obligation on the *state* to ensure the right to be heard for children, without threat of violence or ill-treatment, and 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.<sup>264</sup>

The implementation of article 12 of the CRC has been broadly conceptualized as 'participation'.<sup>265</sup> According to the Council of Europe Recommendation on the Participation of Children<sup>266</sup>, participation is defined as the right, means, space and opportunity to express views freely, be heard, and 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 conceptualize the different elements of article 12.<sup>267</sup> 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

---

<sup>257</sup> L. Krappmann, *The Weight of the Child's View (Article 12 of the Convention on the Rights of the Child)*, International Journal of Children's Rights (2010) 23, 501-513, p. 505

<sup>258</sup> UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General Measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, par 12.

<sup>259</sup> Krappmann (2010), p. 511.; see also CRC GC 12 (2009); UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20 (Hereinafter: 'CRC GC 20 (2016)').

<sup>260</sup> Krappmann (2010), p. 510

<sup>261</sup> CRC GC 12 (2009), par 12

<sup>262</sup> CRC GC 12 (2009), par 12, 15: this is a duty on the state to enable child participation and cannot be viewed as an obligation of the child himself or herself to participate; see also L. Lundy, *'Voice' is not enough: conceptualizing Article 12 of the United Nations Convention on the Rights of the Child*, British Educational Research Journal (2007) 33 (6), 927-942, p. 941. (Hereinafter: 'Lundy (2007)').

<sup>263</sup> See CRC GC 12 (2009), par 20-21

<sup>264</sup> CRC GC 12 (2009), par 23-25, 15-16

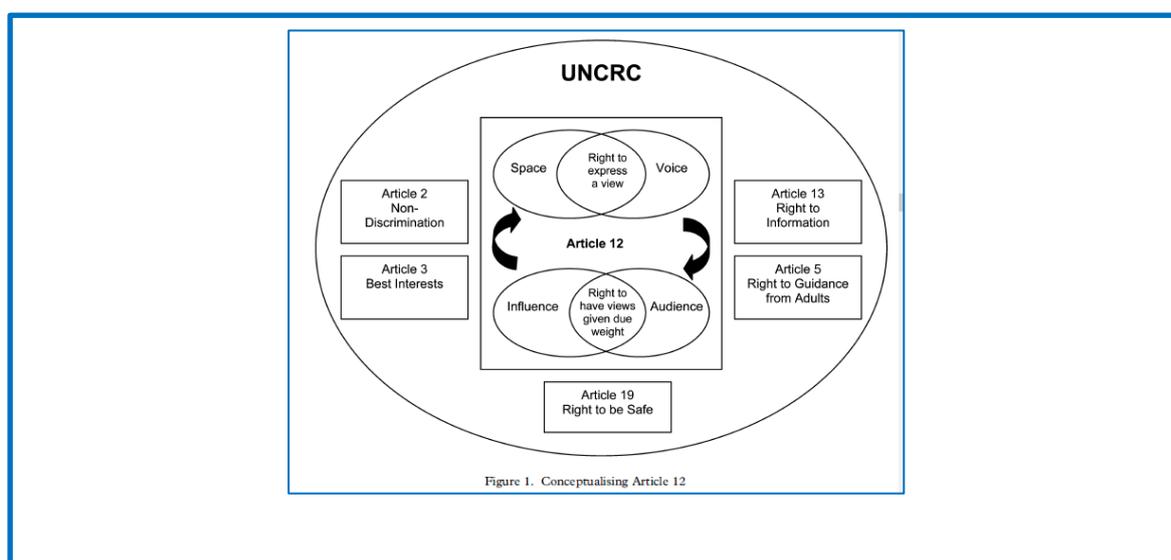
<sup>265</sup> CRC GC 12, par 3; 13

<sup>266</sup> CoE, 'Council of Europe Recommendation on Participation of Children and Young People under the Age of 18', CM/Rec(2012)

<sup>267</sup> (Lundy (2007)), p. 982

must be a safe space,<sup>268</sup> 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.<sup>269</sup>

- **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 of 'age and maturity' refers to the weight the child's views should receive and in any case should not be regarded as a limitation on children's right to express their views freely.<sup>270</sup> Lundy recognizes that children may require assistance to be heard, such as child-friendly information, guidance, sufficient time, etc.<sup>271</sup>
- **Audience:** this element refers to the persons and/or decision-makers that are hearing children. Lundy holds that in order to effectively and fully implement article 12 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').<sup>272</sup> 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.<sup>273</sup>
- **Influence:** this element refers to the weight children's views are given in decision-making. The requirement of article 12 CRC extend 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 as 'tokenistic' or 'decorative'. This requires states to establish procedural safeguards to ensure that decisions will reflect and regard the opinion of the child, and is not considered 'tokenistic' or 'decorative'.<sup>274</sup>



The CRC Committee held that participation should be ensured in various settings, in either local, national and international levels.<sup>275</sup> Yet, there remain significant challenges in the implementing children's participation in practice. These can stem from either systemic issues, relating to long-

<sup>268</sup> Lundy (2007), p. 934

<sup>269</sup> Lundy (2007), p. 934-935. See also art 2 CRC.

<sup>270</sup> Lundy (2007), p. 935

<sup>271</sup> Lundy (2007), p. 935-936

<sup>272</sup> Lundy (2007), p. 937.

<sup>273</sup> Lundy (2007), p. 937.

<sup>274</sup> Lundy (2007), p. 938

<sup>275</sup> CRC GC 12 (2009), par 87; Also, CRC GC 20 (2016), par 24.

standing practices, and political social and cultural attitudes towards children and their capacity; or from practical problems, such as institutional and resource related barriers.<sup>276</sup> Due to the scope of this paper, the following parts (1.3, 1.4., 1.5) 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 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 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,<sup>277</sup> article 14 CRC which anchors the child's freedom of thought and conscience,<sup>278</sup> article 15 CRC which anchors the child's freedom of association and peaceful assembly,<sup>279</sup> and article 17 CRC, which anchors the child's right to access information and materials from a diversity of national and international sources.<sup>280</sup>

Articles 13 and 17 CRC, in particular, have been recognized by the CRC Committee as essential elements for exercising child participation.<sup>281</sup> While article 12 CRC provides children with a right to express views on matters affecting *their lives*, freedoms of expression under the CRC is broader, covering all fields and issues, and serves as a ground for article 12 CRC. The ability to form views requires first 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.<sup>282</sup>

Access to information covers all forms of media, including the online world, in which children (and particularly adolescent) use to interact, learn and participate. Yet, access to information should be made available in formats appropriate for children's age and capacities. This requires States, as well as other relevant stakeholders (i.e., health-care institutions, schools, media, NGO's, 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 which is gender and culture sensitive, and should be provided to children directly.

#### **Example: Child Friendly Version of the CRC**

Article 42 CRC requires States Parties to make the CRC widely known 'to adults and children alike', and the CRC Committee has required States Parties to also ensure relevant information for children (such as national strategies on children, or reporting under the CRC) be translated to child friendly versions (CRC GC 5, par 33, 66-67, 71)

States parties, as well as NGO's, have drafted child friendly versions of the CRC in multiple languages, and for various age groups. For more information and examples, see: [https://www.unicef.org/rightsite/484\\_540.htm](https://www.unicef.org/rightsite/484_540.htm)

<sup>276</sup> CRC GC 12 (2009), par 4

<sup>277</sup> Art 13 CRC

<sup>278</sup> 14(1) CRC

<sup>279</sup> Art 15(1) CRC

<sup>280</sup> Art 17 CRC

<sup>281</sup> CRC GC 12 (2009), par 80-81

<sup>282</sup> CRC GC 12 (2009), par 82-83

## 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 two 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 health care policies and services at the national and local levels.<sup>283</sup>

### Child Participation in Health and Treatment Related Decision Making

Children have the right to be informed, consulted and heard, to 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 recognizes children as 'active stakeholders' in this issue.<sup>284</sup>

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 depending on the type of the 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 in a particular state for certain medical treatment and procedures may also be different. Some countries have a fixed age of consent for children below the age of eighteen, and this has been 'welcomed' by the CRC Committee that strongly recommends states to allow children, with the capacity to express views on treatment, to give them due weight.<sup>285</sup> However, it should be noted that European standards, notably in the context of biomedicine, provide additional protection and safeguards for those unable to consent, and not necessarily children.<sup>286</sup> 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.<sup>287</sup> This requires more guidance and comparative legal research at an international and regional level. Even if children are legally able to consent, this also requires medical professionals to provide clear and accessible information for children on their rights concerning participation in research and care.<sup>288</sup> 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.<sup>289</sup> 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 in need of reproductive health education or services. A right to counselling and advice is distinct from medical consent, should not be limited by age.<sup>290</sup>

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

---

<sup>283</sup> CRC GC 12 (2009), par 98

<sup>284</sup> CoE, 'Council of Europe Guidelines on Child-Friendly Health Care', 21 September 2011, p. 9

<sup>285</sup> CRC GC 12 (2009), par 102

<sup>286</sup> T. Liefwaard et al., 'From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine' (2017). Available online: <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>, p. 27, 31

<sup>287</sup> T. Liefwaard et al., 'From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine' (2017). Available online: <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>, p. 27, 31

<sup>288</sup> CRC GC 12 (2009), par 103

<sup>289</sup> CRC GC 12 (2009), par 100

<sup>290</sup> CRC GC 12 (2009), par 101

and maturity.<sup>291</sup> 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 an understandable language. In order to encourage children to effectively participate in health-care, professionals need to be trained on communication 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 over-emphasize the child's right to protection and do not sufficiently recognize the principle of evolving capacities and the child's right to be heard and participate in decision making.<sup>292</sup>

#### **Example: Child Friendly Health Care Survey (2011)**

The CoE guidelines on child friendly health care provide a framework to ensure health care systems operate in line with international children's rights. As part of the guidelines, a survey was conducted with thousands of children and young people across Europe on health care and their experiences. On health care visits, shows what features in health care systems are important for children. Shows the importance of child friendly health care setting, and how it's important for children. U. Kilkelly, 'Child Friendly Health Care: The Views and Experiences of Children and Young People in Council of Europe Member States, MSN (2011)'. PART OF THE CHILD-FRIENDLY HEALTH CARE PROGRAMMEME.

#### Child Participation in Health Care Policies and Programs

Health care 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 health care related plans, policies, administration and legislation and be able to contribute from their own experiences as patients and/or family members of patients.<sup>293</sup>

This requires government bodies to develop adapted procedures and mechanisms to hear children, from diverse background, ages and health conditions, and ensure their views are given due weight and consideration in policy design. In addition, states should require relevant stakeholders, such as health care providers, to also 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.<sup>294</sup> 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.<sup>295</sup> In particular, the CRC Committee considered participation to be 'fundamental to the realization of the right to education',<sup>296</sup> and held that States are required to build opportunities for children to express

<sup>291</sup> See for example Article 14 para. 1(iv) Protocol concerning Biomedical Research"; CRC GC 12 (2009), par 30.

<sup>292</sup> T. Liefwaard et al., 'From Law to Practice: Towards a Roadmap to Strengthen Children's Rights in the Era of Biomedicine' (2017). Available online: <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>, p. 4-5.

<sup>293</sup> CRC GC 12 (2009), par 104; see also CoE, 'Council of Europe Guidelines on Child-Friendly Health Care', 21 September 2011, p. 7.

<sup>294</sup> See UNICEF, 'Manual: Child Friendly Schools', p. 10 (2009).

<sup>295</sup> CRC GC 20 (2016) par 72; CRC GC 1

<sup>296</sup> CRC GC 12 (2009), par 105

views and have them given due weight, in all education environment, and promote a participatory learning environment for all children.<sup>297</sup>

In that regard, Goal 4 of the SDG's calls upon states to ensure 'inclusive and equitable quality education..',<sup>298</sup> and it has been recognized that quality education is closely tied to student participation in academic and non-academic activities.<sup>299</sup> 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'.<sup>300</sup>

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 children's views weight can assist in elimination of discrimination, prevention of bullying and violence, and reducing the use and need for disciplinary measures.<sup>301</sup> Participation in education can take various forms, and implemented in 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 programs, decisions on next level schools, school disciplinary procedures, etc.),<sup>302</sup> children as a group should also be consulted on a school, local and national level on all aspects of education policies and substance.

Student participation can be achieved by student councils, or other forms of student representation in 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 organizations, should be supported by the state and the school administration, in order to allow children to have a participatory role in the education system.<sup>303</sup> This requires, among others, to ensure that such bodies are inclusive for all student, reflect the student population without discrimination, enjoy certain decision making powers, and are able to freely speak out and express views on school policies and codes, without threat of ill-treatment or punishment.<sup>304</sup>

There exist many studies on student councils as an institution, and to what extent they allow for effective and genuine student participation.<sup>305</sup>

## 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 issues on maintenance, custody and access. Many jurisdiction 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.<sup>306</sup> The CRC Committee also refers to participation and finds a legal obligation in relation to separation from parents and alternative care systems: on decisions on removing a child from his or her family, the view must be taken into account in order to determine the

---

<sup>297</sup> CRC GC 12 (2009), par 106-107

<sup>298</sup> Goal 4 of the UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1

<sup>299</sup> See UNICEF, 'Manual: Child Friendly Schools', p. 1-4 (2009); see also OECD, 'Student Engagement at School: A Sense of Belonging and Participation – Results from PISA 2000', (2003)

<sup>300</sup> UNICEF, 'Manual: Child Friendly Schools', p. 3-4 (2009).

<sup>301</sup> CRC GC 12 (2009), par 109; The CRC Committee particularly welcomes peer-education and peer-counselling

<sup>302</sup> CRC GC 12 (2009), par 113

<sup>303</sup> CRC GC 12 (2009), par 112

<sup>304</sup> See also CRC GC 12 (2009), par 110

<sup>305</sup> See for example: A. M. Cannon, 'Students' Experiences with a State Student Advisory Council: Implications for Student Voice and Participatory Democracy', Dissertation submitted to the Graduate Faculty of the University of West Georgia (2017)

<sup>306</sup> CRC GC 12, par 51-52

best interests (see also art. 9 (2) CRC).<sup>307</sup> As well as in adoption of Kafalah schemes.<sup>308</sup> 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 how to involve children in decision making in a non-conflict situation, for example. The CRC Committee holds that a family where 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.<sup>309</sup> The CRC recognizes 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.<sup>310</sup> States should encourage through legislation and policy and education programs that parents listen to children and give due weight to their views.<sup>311</sup>

### 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.<sup>312</sup> 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 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.<sup>313</sup> 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 adaption of procedures for children, establishment of specialized units and information to the child on the charges in an understandable and age-appropriate language. In addition, judicial procedures should be accessible, child-appropriate and -friendly. Law enforcement, prosecution and judicial officials should also undergo specialized training on child development; and on how to communicate with children and to 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 policed interrogations, when children are particularly vulnerable. Among others, a child's right to legal representation before and during police interrogations (explicitly recognized 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.

---

<sup>307</sup> CRC GC 12, par 53

<sup>308</sup> CRC GC 12, par 55

<sup>309</sup> CRC GC 12, par 90

<sup>310</sup> CRC GC 12, par 91

<sup>311</sup> CRC GC 12, par 92-96

<sup>312</sup> See elaborated S. Rap, 'A Children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court', *The International Journal of Children's Rights*, vol. 24. Issue 1 (2016); see also T. Liefwaard, 'Child-Friendly Justice: Protection and Participation of Children in the Justice System', *Temple Law Review*, vol. 88, no. 4 (2016).

<sup>313</sup> See Liefwaard, *Ibid.*

## 2.2.8. Special Focus: the OPCP and Child Participation

As previously discussed in part 1, the CRC has three optional protocols. The third optional protocol, the 'OPCP' was adopted by the UN General Assembly in 2011, and entered into force in 2014.<sup>314</sup> 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.<sup>315</sup> The adoption of the Protocol has been welcomed as an important milestone in recognizing children's rights, particularly the child's right to participate and access justice at the international level.<sup>316</sup>

### 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 2000's, and was led by NGO's working in the field of children's rights.<sup>317</sup> In 2009, an open-ended working group was established in order to explore the possibility of drafting an optional protocol,<sup>318</sup> and the final text of the protocol was adopted in 2011.<sup>319</sup>

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.<sup>320</sup> 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.<sup>321</sup>

### 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'.<sup>322</sup> The rules of procedures also set particular safeguards for child applicants, including adapted and child-sensitive procedures, requirement to publish decisions in

---

<sup>314</sup> To date, it has been ratified by 34 states and the CRC Committee has published four decisions (three on inadmissibility; one that was discontinued); See [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11-d&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-d&chapter=4&clang=en) (last visited 27 April 2017). For case list see <http://juris.ohchr.org/en/search/results?Bodies=5&sortOrder=Date>

<sup>315</sup> OPCP; Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 72; In addition, the CRC Committee is competent to receive inter-state communications; Art. 12 (1) OPIC.

<sup>316</sup> Preamble of the Third Optional Protocol. ; See Spronk-Van der Meer, 'The Right to Health of the Child: An Analytical Exploration of the International Normative Framework', (Diss. Leiden), Antwerp: Intersentia Publishing 2014, p. 268-269; Lee, 'Address: Creating New Futures of All Children: the promise of international human rights law, 20 Australian International Law Journal 2013, p. 14. See also Clark 2015 (S. Clark, child rights and the movement from status to agency', 84 Nordic Journal of International Law, 2015, p. 217 who observes that with the adoption of the Third Optional Protocol 'any remaining objections to the legal capacities of children at the international level have since been eviscerated'.

<sup>317</sup> Spronk-Van der Meer 2014, p. 270; See also NGO Joint Statement 2008 (HRC, Joint written statement by international save the children alliance et al.), p. 2. Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 71

<sup>318</sup> See Human Rights Council, Resolution 11/1 (Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to provide a Communication Procedure), 17 June 2009, A/HRC/RES/11/1, para. 1; Human Rights Council, Resolution 13/3 (Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to provide a Communication Procedure), 14 April 2010, A/HRC/RES/13/3; for more on the drafting history see also Lee 2013, p. 14-15, Spronk-Van der Meer 2014, p. 270-271.

<sup>319</sup> More on the background and scope, see Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 71-73

<sup>320</sup> Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p.71-73

<sup>321</sup> Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 72-73; See Smith 2013, p. 307-308; Spronk-Van der Meer 2014, p. 271; Preamble of the OPIC; UN General Assembly, Report of the Open-ended Working Group on an Optional Protocol of the Convention on the Rights of the Child to provide a Communication Procedure, par 29, 25 May 2011, A/HRC/17/36 (hereinafter 'Report, A/HRC/17/36').

<sup>322</sup> Art. 2 OPIC; see also Rule 19(1) of the OPIC Rules of Procedures; Spronk-Van der Meer 2014, p. 277. ; Liefwaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 75-76

an accessible manner and in a child-friendly language, safeguards to ensure children's protection and privacy, etc.<sup>323</sup>

However, there remain challenges for the effective participation of children under the OPCP.<sup>324</sup> For example, the OPCP establishes that non-written communications are inadmissible<sup>325</sup> and this can have implications for (young) children may be better able to express themselves through other means (i.e., drawings, film, etc.). In addition, filing communication requires legal assistance for child applicants. For this reason, it is unclear to what extent will 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.<sup>326</sup> 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'.<sup>327</sup> 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 & 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, Optional Protocol's and other human rights instruments. Most importantly this national level system needs to deliver protection and services for children at the community level, as well as meaningfully engaging community level stakeholders and individuals, including enhancing 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.<sup>328</sup> The limits of national level policy efforts alone to shift deeply entrenched social practices however is well established, for example in Afghanistan<sup>329</sup> and throughout numerous ASEM Member countries. 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 layers.

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

The SDG goals are grounded in the Universal Declaration of Human Rights (UDHR) and international human rights treaties including the CRC. This is demonstrated through all seventeen SDG goals having

---

<sup>323</sup> Rules 3, 19, 27(1) and 39 of the OPIC Rules of Procedures; see also Preamble of the OPIC.; Art. 4 (1) OPIC; Rules 29 and 33 of the OPIC Rules of Procedures; Liefaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 75-76

<sup>324</sup> For more see Liefaard, Access to Justice for Children, *Preadvies KNVIR 2017*

<sup>325</sup> See Art. 7 OPIC.

<sup>326</sup> Spronk-Van der Meer 2014, pp. 274-275 and 278-279; see also Grover 2015, pp. 188-187 and 109-110. ; preadvies, p. 76

<sup>327</sup> Art. 5 (2) OPIC. Liefaard, Access to Justice for Children, *Preadvies KNVIR 2017*, p. 75-76

<sup>328</sup> For further resources on partnering with religious communities please see:

[https://www.unicef.org/about/partnerships/index\\_60543.html](https://www.unicef.org/about/partnerships/index_60543.html)

<sup>329</sup> Barr, Heather, (2017), "Will Afghanistan Follow Through on Promise to End Child Marriage?", Human Rights Watch, Dispatches. Available here <https://www.hrw.org/news/2017/04/20/will-afghanistan-follow-through-promise-end-child-marriage> (Accessed 11 October 2017)

a direct link to one or more CRC provisions.<sup>330</sup> SDG goal number 17 is meanwhile specifically dedicated to strengthening means of implementation and revitalizing global partnerships – focused on creating local, regional and inter-regional partnerships for implementation of the SDG framework and Agenda 2030. At the inter-regional level, there is significant potential to strengthen technical assistance exchanges as well as cooperation, and proactive protection measures, particularly for victims of transnational crime, and for children on the move. An Asia-Europe partnership could select core thematic concerns of common interest to enhance protection for children, while also exploring more opportunities for learning from different country perspectives and experiences, under the overall banner of SG 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 responding to new questions raised around children’s life and experience in the digital world.

### 2.3.1.2 Leveraging regional organization for partnerships on child rights

At the regional level ASEAN, the South Asian Association for Regional Cooperation (SAARC), the Council of Europe (CoE) and the European Union (EU) play key roles in facilitating implementation of the CRC, as well as 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.<sup>331</sup> Further opportunities for facilitation from a protection 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 GC and SDGs,<sup>332</sup> these can provide helpful baseline and can help set targets that regional groupings can agree and pursue collectively. The creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the ASEAN Intergovernmental Commission on the Promotion and Protection of the Rights of Women and Children (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 trans-national, have a responsibility to ensure children are not exploited through the conduct of their operations.<sup>333</sup> Practically this involves having a publically available zero-tolerance policy on exploitative activities involving children, including those classified as the worst forms of child labour.<sup>334</sup> 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 on the proactive role of business actors in positively contributing to children’s

<sup>330</sup> UNICEF (2015), Mapping the Global Goals for Sustainable Development and the Convention on the Rights of the Child, New York: UNICEF. Available at [https://www.unicef.org/agenda2030/files/SDG-CRC\\_mapping\\_FINAL.pdf](https://www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf) (Accessed 11 October 2017)

<sup>331</sup> Human Rights Council (2014), “Workshop on regional arrangements for the promotion and protection of human rights: Report of the United Nations High Commissioner for Human Rights”, Geneva: OHCHR.

<sup>332</sup> UNICEF (2015), Mapping the Global Goals for Sustainable Development and the Convention on the Rights of the Child, New York: UNICEF. Available at [https://www.unicef.org/agenda2030/files/SDG-CRC\\_mapping\\_FINAL.pdf](https://www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf) (Accessed 11 October 2017)

<sup>333</sup> Noting ASEM member states have a responsibility for effective monitoring and regulation of businesses operating on their territory.

<sup>334</sup>

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.

Reinforce community and government efforts to protect and fulfil children’s rights. Further tools can be found here: [https://www.unicef.org/corporate\\_partners/index\\_25078.html](https://www.unicef.org/corporate_partners/index_25078.html) Accessed: 10 September 2017

rights through corporate social responsibility initiatives.<sup>335</sup> 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.<sup>336</sup> 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 teashops.<sup>337</sup> The project received corporate sponsorship from Telenor, Ooredoo, Baydin and Samsung and brought the classroom to vulnerable children's workplaces and homes.<sup>338</sup>

### 2.3.2 Areas for international partnerships: good practices, priorities and gaps

#### 2.3.2.1 Better protecting refugee, migrant children and trafficked children

Given the clear inter-relationship between refugee, migrant and stateless children and heightened vulnerability to smuggling, trafficking, as well as sexual and labour exploitation, enhancing regional and international partnerships and technical cooperation is essential for timely solutions including family reunification and supporting ASEM states to scale up integrated child protection response services. Documented lessons learned from the recent Europe experience from both Save the Children and UNHCR-UNICEF-IRC provide informed guidance for ongoing and future influxes of unaccompanied children and other children on the move.<sup>339</sup> Learning across country experiences and sharing of 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.<sup>340</sup> 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 with obligations, with officials turning a willing blind eye and/or encouraging unaccompanied minors to move on to avoid registering them.<sup>341</sup> This is despite the Dublin regulation which requires that when a child is first registered in an EU state authority identify whether they have family in another EU state, and if so the child is sent to that state for asylum claim processing.<sup>342</sup> A further gap and worrying trend is the multiplication of 'migration sensitive' aid agreements between countries and regional organizations (for example between the European Union and Afghanistan under the 'Joint Way Forward') which hints at aid being conditional on countries accepting more and more (potentially forced) returns, with limited protections or safeguards against the returns of unaccompanied and separated children.<sup>343</sup>

---

<sup>335</sup> See: ASEM Concept Note

<sup>336</sup> See: ASEM Concept Note

<sup>337</sup> [https://business-humanrights.org/sites/default/files/documents/MCRB\\_Childrens-Rights-and-Business-in-Myanmar\\_downloaded%20on%20May%2015%202017.pdf](https://business-humanrights.org/sites/default/files/documents/MCRB_Childrens-Rights-and-Business-in-Myanmar_downloaded%20on%20May%2015%202017.pdf)

<sup>338</sup> [https://business-humanrights.org/sites/default/files/documents/MCRB\\_Childrens-Rights-and-Business-in-Myanmar\\_downloaded%20on%20May%2015%202017.pdf](https://business-humanrights.org/sites/default/files/documents/MCRB_Childrens-Rights-and-Business-in-Myanmar_downloaded%20on%20May%2015%202017.pdf)

<sup>339</sup> UNHCR, UNICEF, International Rescue Committee (2016), *Discussion Paper on a Possible Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children*, New York/Geneva: UNHCR, UNICEF, IRC.

<sup>340</sup> One further example of regional cooperation was the conference organized by the Republic of Croatia and UNICEF entitled 'On the move and alone: how to respond effectively to the needs of unaccompanied and separated children in Southeast Europe' in October 2016. See <https://eeas.europa.eu/headquarters/headquarters-homepage/11429/move-and-alone-how-respond-effectively-needs-unaccompanied-and-separated-children-southeast-fr> (accessed 11 October 2017)

<sup>341</sup> House of Lords (2016), Inquiry on Unaccompanied Minors in the EU, Unrevised transcript of evidence taken before the EU Sub-Committee on Home Affairs, Evidence Session 2, Questions 18-46. Witnesses: Dr. Ciara Smyth, Professor Ravi KS Kohli and Professor Heaven Crawley. Chairman: Baroness Prashar. Transcript available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairs-subcommittee/unaccompanied-minors-in-the-eu/oral/31318.html> (Accessed 11 October 2017).

<sup>342</sup> European Commission – Migration and Home Affairs (undated), "Country Responsible for asylum application (Dublin)", See: [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en) (Accessed 11 October 2017)

<sup>343</sup> Amnesty International (2017), "Forced Back to Danger: Asylum Seekers Returned from Europe to Afghanistan", London: Amnesty International. p10. Available at : <https://www.amnesty.org/en/documents/asa11/6866/2017/en/> (Accessed 11 October 2017)

**Case Example – 2012 Study on Unaccompanied and Separated Children in Malaysia, Indonesia and Thailand:**<sup>344</sup>

In Malaysia, Indonesia and Thailand the concept of UASC and the understanding of their specific needs versus broader refugee, migrant, stateless and trafficked children caseloads remains poorly understood, preventing appropriate identification and response measures.<sup>345</sup> Among the challenges faced by UASC were lack of documentation and 'illegal' status, marginalisation in detention and refugee camps, restricted freedom of movement<sup>346</sup> which all individually prevent UASC from accessing the necessary protection and assistance they need and are guaranteed under the CRC. Moreover, the study found a gap between rhetoric and reality in 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, a number of officials were found to be complicit in exploitation, while 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 multi-disciplinary teams to determine child victims of trafficking in Thailand and similar taskforces set up in Indonesia and Malaysia, together with family tracing programs initiated by government agencies with support of UN agencies and national civil society, as well as interim care solutions and some legal representation and assistance being provided.<sup>347</sup> What still remains to be improved is full ratification of all instruments that afford protection to UASC, coordination and cooperation between the various actors dealing with UASC, including clarifying their roles and responsibilities; as well as better cross-border coordination for protection for UASC. This needs to be prioritized in the political agenda of countries in the region and 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 specialized training for social workers, police, immigration officers, judges and other frontline actors who come into contact with UASC.

Meanwhile, specifically with regards to child trafficking, a number of existing regional partnership initiatives need to be better leveraged, expanded or revitalized. The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is one such platform – co-chaired by Indonesia and Australia, it 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 the Europe region meanwhile have included closer work between INTERPOL and regional networks such as EUROPOL, EUROJUST, Frontex and the Police Cooperation Convention for Southeast Europe on child trafficking, as well as the establishment of some specialized networks, such as the Nordic Network against Child Trafficking.<sup>348</sup> These practices can be distilled to assist Asia member states.

<sup>344</sup> From neighbouring and conflict-affected countries: Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Afghanistan, Sri Lanka and Somalia.

<sup>345</sup> Mahidol University, ECPAT International, Universitas Gadjas Mada, University of Sains (2013), "Mapping and analyzing the protection situation of unaccompanied and separated children (UASC) in Indonesia, Malaysia and Thailand", UNHCR. Available at: <http://www.refworld.org/pdfid/538840d14.pdf> (Accessed 11 October 2017)

<sup>346</sup> Ibid supra.

<sup>347</sup> Ibid supra, p14.

<sup>348</sup> United Nations Secretary-General (2016), *Report of the Secretary-General on the implementation of measures to counter trafficking in persons*, S/2016/949. 10 November 2016. p8.

### 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, worst forms of child labour, physical and sexual assault, and death.<sup>349</sup> 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.<sup>350</sup> 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 responses in Europe where there are high caseloads of unaccompanied children on the move), with recommendations for national legislation to adopt a clear definition of a missing child, establish a reporting mechanism, ensure capacity for immediate investigation of missing children cases, 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), and ability to trigger responses and investigative procedures underwritten by formal agreements between agencies involved in missing children, community engagement programs, rapid emergency child alert system and a prevention framework.<sup>351</sup> 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,<sup>352</sup> as well as linking with existing regional initiatives that may have cross-over 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. Two areas where this particularly applies and that present opportunities for closer collaboration between States in the Asia and Europe region include efforts for the prevention of child sex tourism, and preventing child exploitation in 'faux orphanages'. With respect to child sex tourism, ECPAT<sup>353</sup> played a key role in escalating the issue of child sex tourism to global attention, while a number of states enacted reforms to their Criminal Code applying extra-territorial legislation to protect children overseas from child-sex tourists. Such legal reforms including extra-territorial legislation and related measures have now been enacted in over 40 countries<sup>354</sup> including Australia, Cambodia, France, Italy, Netherlands, New Zealand, Ukraine, the United Kingdom and the United States.<sup>355</sup> In June 2017 Australia has taken further steps to in passing legislation to prevent registered sex offenders with reporting obligations from travelling abroad.<sup>356</sup> Further progress is also being made through current advocacy to end the unintentional yet significant harm caused by well-intended foreign tourists involved in facilitating orphanage tourism abroad. Orphanage tourism,

<sup>349</sup> Dedel, Kelly (2006) *Juvenile Runaways*, Problem-Oriented Guides for Police, Problem Specific Guide Series No. 37, United States Department of Justice – Office of Community Oriented Policing services. Washington. Available at <https://cops.usdoj.gov/pdf/pop/e12051223.pdf> (Accessed 11 October 2017).

<sup>350</sup> International Centre for Missing and Exploited Children (2016), "Missing Children in Southeast Asia: Model Framework and Regional Review", ICMEC. Available at <http://www.icmec.org/wp-content/uploads/2016/07/SEAsiaMCRP.pdf>

<sup>351</sup> Ibid Supra.

<sup>352</sup> Ibid Supra p18

<sup>353</sup> Now working as a network across 88 countries, see: <http://www.ecpat.org/>

<sup>354</sup> Cohen, Emily (2012), "Child Sex Tourism: an Australian issue across borders", Spotlight Story, Border Crossing Observatory, November 2012. Available at <http://artsonline.monash.edu.au/thebordercrossingobservatory/files/2013/02/Spotlight-Story-November-2012-Child-Sex-Tourism-Emily-Cohen.pdf> (Accessed 11 October 2017)

<sup>355</sup> Noten, Theo (2013), "Combating the sexual exploitation of children in travel and tourism – Achievements and challenges", The Code and ECPAT, Geneva 6 March 2013. Available at [http://www.ohchr.org/Documents/Issues/Children/Childrenexploitation/TheoNOTENECPAT\\_presentation.pdf](http://www.ohchr.org/Documents/Issues/Children/Childrenexploitation/TheoNOTENECPAT_presentation.pdf) (Accessed 11 October 2017)

<sup>356</sup> <https://www.legislation.gov.au/Details/C2017B00119> Accessed: 16 October 2017.

including voluntourism, exploits the good intentions of foreign tourists, using poor children as a commodity and deceiving these children's parents with false promises of a better life and access to education. The overwhelming majority of children in the so-called orphanages have at least one living parent,<sup>357</sup> in addition to extended family networks. Children placed in orphanages are at higher risk of trafficking, child labour, physical and sexual abuse and poverty.<sup>358</sup> Legislative and other measures – including closer partnership and coordination between countries of origin and countries where 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 rights and treaty monitoring bodies play an instrumental role in this effort. ASEM members in this regard can consider more close cooperation in jointly monitoring general comments issued by the Committee on the Rights of the Child and should scale up work with key partners, including civil society, to ensure full compliance with treaty obligations. The Universal Periodic Review (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 in contributing to UPR consultations through submitting reports and recommendations to OHCHR and advocating and lobbying member states in the lead up to as well as in accepting UPR recommendations.<sup>359</sup> Regional organizations, including the EU, COE, ASEAN and SAARC can play an instrumental role in strengthening CRC implementation and monitoring through aligning their child rights strategies and targets with the CRC, GC's standards and SDGs targets, and facilitating good practice sharing and technical co-operation 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. Recent CRC GC's 20 on Adolescence (2016) and 21 on Children in Street Situations (2017) provide good practice<sup>360</sup> examples on consultation with children and civil society that should be systematized for all future GC's, and expanded to country level reporting on the CRC. These consultations should be age, gender, diversity and geographically representative and conducted by suitably qualified child protection specialists. Further the Optional Protocol (on a Communications Procedure) to the Convention on the Rights of the Child provides ASEM member states, and their respective regional organisations, the opportunity to strengthen their accountability to children and 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.

---

<sup>357</sup> 75% of children in Cambodian orphanages have at least one living parent: <https://www.unicef.org.au/blog/news-and-insights/august-2016/travel-tips-avoid-orphanage-tourism>

<sup>358</sup> UNICEF Australia (2016), "4 travel tips to help you avoid orphanage tourism", News and Insights. See: <https://www.unicef.org.au/blog/news-and-insights/august-2016/travel-tips-avoid-orphanage-tourism> (Accessed 11 October 2017)

<sup>359</sup> <http://www.childrightsconnect.org/connect-with-the-un-2/universal-periodic-review/> Accessed on: 16 October 2017.

<sup>360</sup> 327 children and young people from 32 countries were consulted in seven regional consultations. Committee on the Rights of the Child GC 21, paragraph 3.

## Chapter 3 – Emerging Issues

The third chapter explores some new and emerging trends such as child rights in a digital environment, including both the opportunities and grave risks new technology and tools present to the advancement of child rights. This includes ongoing challenges related to privacy, freedom of speech and radicalisation. 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 Child rights in a digital environment

Rapid advancements in information, communication and technology (ICT) has radically altered the way children interact with each other, and access and share information. With these changes has come 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 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 education 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.”<sup>361</sup>, there is increased pressure to facilitate equitable access, to these resources both within and across countries. In 2015 the International Telecommunication Union (ITU) estimated an additional 2 billion people from developing countries would have access to internet by 2015.<sup>362</sup>

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, participation, creativity, and expression of identity’.<sup>363</sup> ICT can further advance education, learning and inclusion outcomes for children with special needs<sup>364</sup>, children with language needs as well as gifted and talented students<sup>365</sup>. 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 cyber-bullying, 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. For the latter, studies are showing children’s exposure to online pornography has changed norms related to first sexual experiences and respectful relationships in alarming ways.<sup>366</sup>

---

<sup>361</sup> Council of Europe Strategy for the Rights of the Child (2016-2021), p 9. Accessed: <https://rm.coe.int/168066cff8> Accessed on: 3 September 2017.

<sup>362</sup> <https://www.unicef-irc.org/article/1194> Accessed: 23 October 2017.

<sup>363</sup> <https://www.unicef-irc.org/article/1194> Accessed: 23 October 2017.

<sup>364</sup> [https://www.european-agency.org/sites/default/files/information-and-communication-technology-ict-in-special-needs-education-sne\\_ict\\_sne\\_en.pdf](https://www.european-agency.org/sites/default/files/information-and-communication-technology-ict-in-special-needs-education-sne_ict_sne_en.pdf) Accessed: 23 October 2017.

<sup>365</sup> [http://homepages.shu.ac.uk/~edsjlc/ict/becta/information\\_sheets/gifted.pdf](http://homepages.shu.ac.uk/~edsjlc/ict/becta/information_sheets/gifted.pdf) Accessed: 23 October 2017.

<sup>366</sup> Multiple studies have documented concerning patterns and behaviours prompting several countries to commission their own reviews. The UK Council for Child Internet Safety a consortium of 200 organisations from government, industry, academia, law and civil society commissioned a literature review of children’s online activities, risks and safety to inform evidence based responses:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/650933/Literature\\_Review\\_Final\\_October\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650933/Literature_Review_Final_October_2017.pdf) In Australia these concerns culminated in an Australian Senate Inquiry into the harm being done to children through access to pornography on the Internet including trends in children’s consumption of pornography, the impact of this on the development of health and respectful relationships, harm minimisation methods used in other jurisdictions and possible measures to be implemented in Australia. Further details:

Some of above concerns are a new platform for pre-existing risks such on bullying and radicalisation, though the ready accessibility and lack of regulation of the internet, has significantly escalated the risk. Examples include the phenomena of ISIS brides lured online and the role of female British online radicalisers/propagandists.<sup>367</sup> 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.<sup>368</sup> 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<sup>369</sup>, 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 Council of Europe (CoE) Strategy for the Rights of the Child for 2016-21 includes child rights in a digital environment as one of its five strategic priorities. The strategy calls for investing in education and intercultural dialogue to prevent radicalisation of children as well as the need to respond to the reintegration needs of radicalised minors.<sup>370</sup> The CoE commitment to produce guidance for and support for member states on ensuring children's participation, protection and provision of rights approach to child rights in the digital environment will be helpful for the broader ASEM membership.<sup>371</sup>

Further guidance and tools are needed to better mitigate, prevent and respond to the wider range of challenges presented online. A 2016 Australian Senate Enquiry 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.<sup>372</sup> 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. On the latter the WA Commissioner for Children and Young People noted the primary harm minimisation tool is education on healthy and respectful relationships. In terms of protecting children online the EU Kids Online Initiative research and findings<sup>373</sup> 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<sup>374</sup>. 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."<sup>375</sup> This reinforces the importance of investing in peer to peer networks, parents and teachers in prevention activities.<sup>376</sup>

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."<sup>377</sup> Further recognizing the uneven rate at which access has been realized

---

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Online\\_access\\_to\\_porn/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions)

<sup>367</sup> <http://www.independent.co.uk/news/world/europe/isis-jihadi-brides-islamic-state-women-girls-europe-british-radicalisation-recruitment-report-a7878681.html> Accessed 7 September 2017. Research referred to notes importance of not seeing these girls as passive agents.

<sup>368</sup> <https://www.rand.org/randeurope/research/projects/internet-and-radicalisation.html> Accessed: 10 September 2017.

<sup>369</sup> <http://www.newstatesman.com/science-tech/internet/2017/08/we-need-talk-about-online-radicalisation-young-white-women>

<sup>370</sup> Declaration of the Committee of Ministers of the Council of Europe: "United around our principles against violent extremism and radicalisation leading to terrorism", Brussels, 19 May 2015 in <https://rm.coe.int/168066cff8> p9

<sup>371</sup> <https://rm.coe.int/168066cff8> p9

<sup>372</sup> Full scope: the harm being done to Australian children through access to pornography on the Internet including trends in children's consumption of pornography, the impact of this on the development of health and respectful relationships, harm minimisation methods used in other jurisdictions and possible measures to be implemented in Australia. [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Online\\_access\\_to\\_porn/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions)

<sup>373</sup> <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20Online%20reports.aspx> Accessed: 1 September 2017.

<sup>374</sup> More info on Asia: [https://www.unicef.org/eapro/Child\\_Protection\\_in\\_the\\_Digital\\_Age.pdf](https://www.unicef.org/eapro/Child_Protection_in_the_Digital_Age.pdf)

<sup>375</sup> [https://www.unicef-irc.org/publications/pdf/IRR\\_2016\\_01.pdf](https://www.unicef-irc.org/publications/pdf/IRR_2016_01.pdf) p68. Accessed: 20 August 2017.

<sup>376</sup> See table p 69 UNICEF Child rights in digital age <https://www.unicef-irc.org/research/270/> Accessed: 2 September 2017.

<sup>377</sup> See pp 83-4 UNICEF Child rights in digital age <https://www.unicef-irc.org/research/270/> Accessed: 2 September 2017.

compared with the North, global South actors can benefit from lessons learned and research initiatives such as the Global Kids Online international research partnership.<sup>378</sup>

### 3.2 Children's rights and the SDGs

The SDG goals are grounded in the Universal Declaration of Human Rights (UDHR) and international human rights treaties including the CRC. This is demonstrated through all seventeen SDG goals having a direct link to one or more CRC provisions.<sup>379</sup> 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 that demonstrate good practice? What would an Asia-Europe partnership on protecting children's rights look like? At the inter-regional level, there is significant potential to strengthen technical assistance exchanges as well as 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 protection for 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 significant challenges ahead for reaching the gender equality related SDGs.<sup>380</sup> With a girl dying every five minutes as a result of violence, one in four girls married as a child, 71% of known trafficking victims are female, 63 million girls having undergone female genital mutilation, 130 million girls are out of school and girls are twice as likely to be infected with HIV.<sup>381</sup>

### 3.3 Role and involvement of non-state actors

While the state has primary responsibility for implementation of the rights enshrined in the CRC, there are in practice a multitude of actors that significantly influence the protective environment for children and realisation of their rights. This includes children themselves, individual citizens, families, community and religious leaders, teachers and health care 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 need for more strategic and meaningful engagement to advance child rights in practice.

#### 3.3.1 Business actors

Business actors, both national and trans-national, have a dual responsibility, the first to ensure children are not exploited through the conduct of their operations. Practically this involves having a publically available zero-tolerance policy on exploitative activities involving children, including those classified as the worst forms of child labour.<sup>382</sup> 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) designed to guide both responsibilities.<sup>383</sup>

<sup>378</sup> <https://www.unicef-irc.org/article/1194> Accessed: 23 October 2017.

<sup>379</sup> For further details and specifics: [https://www.unicef.org/agenda2030/files/SDG-CRC\\_mapping\\_FINAL.pdf](https://www.unicef.org/agenda2030/files/SDG-CRC_mapping_FINAL.pdf)

<sup>380</sup> End all forms of violence against girls, put all girls in school, end the aids epidemic and end child marriage.

<sup>381</sup> <http://www.globalgoals.org/dayofthegirl>

<sup>382</sup> Noting ASEM member states have a responsibility for effective monitoring and regulation of businesses operating on their territory.

<sup>383</sup>

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.

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, this could entail offering work placements, training, scholarships and other capacity building support to vulnerable caseloads including children in alternative care and ethnic minorities.<sup>384</sup>

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; 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 needs to be distilled from the wide range of initiatives documented, including the innovative private sector initiative Myanmar Mobile Education Project (MyMe) that brought mobile flexible education and assistance to over 1200 children working across 53 teashops.<sup>385</sup> The project received corporate sponsorship from Telenor, Ooredoo, Baydin and Samsung and pragmatically brought the classroom to working children's workplaces and homes.<sup>386</sup>

### 3.3.2 Non-state armed actors

The changing nature and patterns of contemporary armed violence has resulted in a significant shift from conflict between states to within states, as well as substantial increase in the number of non-state armed actors. Strategic engagement with **non-state actors** in armed conflict and other situations of violence<sup>387</sup> is essential to safeguarding child rights outlined in the CRC and the Optional Protocol on Children in Armed Conflict. UNICEF among other humanitarian mandated actors have used such strategic engagement to secure humanitarian access to vulnerable children in need of protection and assistance, as well as secure the release of children associated with armed forces and armed groups (CAAFAG). A recent example includes UNICEF's indirect engagement with the Taliban for humanitarian access enabling a successful immunisation campaign.<sup>388</sup> 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 realisation of child rights on 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 Protection of Civilian reports 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-states actors are well-represented in successive Annexes' to the Report on Special Representative to the Secretary-General for Children and Armed Conflict, which mandates listing parties to conflict that recruit and misuse children in conflict as well as those not having measures to protect children from death or injury, sexual violence, abduction and attacks on schools and hospitals as provided under UNSCR's adopted 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.

---

9. Help protect children affected by emergencies.

10. Reinforce community and government efforts to protect and fulfil children's rights. Further tools can be found here: [https://www.unicef.org/corporate\\_partners/index\\_25078.html](https://www.unicef.org/corporate_partners/index_25078.html) Accessed: 10 September 2017.

<sup>384</sup> ASEM Concept Note

<sup>385</sup> [https://business-humanrights.org/sites/default/files/documents/MCRB\\_Childrens-Rights-and-Business-in-Myanmar\\_downloaded%20on%20May%2015%202017.pdf](https://business-humanrights.org/sites/default/files/documents/MCRB_Childrens-Rights-and-Business-in-Myanmar_downloaded%20on%20May%2015%202017.pdf) Accessed: 16 October 2017.

<sup>386</sup> [https://business-humanrights.org/sites/default/files/documents/MCRB\\_Childrens-Rights-and-Business-in-Myanmar\\_downloaded%20on%20May%2015%202017.pdf](https://business-humanrights.org/sites/default/files/documents/MCRB_Childrens-Rights-and-Business-in-Myanmar_downloaded%20on%20May%2015%202017.pdf) Accessed: 16 October 2017.

<sup>387</sup> At present there is no definition of other situations of violence under international law, however this term is commonly used by ICRC and other humanitarian actors to refer to situations of violence falling short of the threshold of armed conflict. Examples includes urban violence, electoral-related violence and civil unrest such as the Arab uprisings.

<sup>388</sup> <http://www.unicefinemergencies.com/downloads/eresource/Engaging%20with%20Non-State%20Entities.html> Accessed: 16 October 2017.

Member state counter-terrorism measures and security-related Preventing Violent Extremism (PVE)/Countering Violent Extremism (CVE)<sup>389</sup> 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 counter-terrorism 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 recognize that the C/PVE agenda and associated measures used by member-states in situations of conflict, as well as peace, has the potential to inadvertently yet significantly undermine over 20 years<sup>390</sup> 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.<sup>391</sup> 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.<sup>392</sup> 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 C/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.<sup>393</sup> Further work is needed to re-orient the PVE/CVE agenda to addressing 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

Humanitarian and development child rights actors' strategies, advocacy and programming 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 significantly influence children's right to life, development and survival, as well as the prevalence of harmful socio-cultural 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<sup>394</sup>. Further religious leaders have a strategic advantage "with moral standing and broad platforms" to reach a wide and diverse members of society with messages on children's rights to protected from violence, exploitation and abuse.<sup>395</sup> In conflict and other situations of violence, religious leaders can play an even more critical role in access to affected populations, including children, and supporting their rights to life, survival and development.

---

<sup>389</sup> Referring to the UN SG and key member states lobbying resulting in the Plan of Action to Prevent Violent Extremism presented to General Assembly on 15 January 2016. This was followed by UNGA Resolution A/RES/70/291 on 1 July 2016 that recommended member states consider implementation of relevant recommendations contained in the Secretary-General's Plan of Action to Prevent Violent Extremism.

<sup>390</sup> OSRSG-CAAC. (2017). 20 Years to Better Protect Children Affected by Conflict. New York: Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

<sup>391</sup> UN-Women (2015) "Preventing Conflict, Transforming Justice, Securing the Peace: a Global Study on the Implementation of Security Council Resolution 1325", New York: UN-Women.

<sup>392</sup> This had already been noted to a large extent in the 10-year review of the Graça Machel study. See UNICEF, OSRSG-CAAC (2009), "Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World", New York: UNICEF-OSRSG-CAAC, p13.

<sup>393</sup> United Nations Office of the High Commissioner on Human Rights, "Human Rights and Preventing and countering violent extremism" See <http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/PCVE.aspx> (Accessed 11 October 2017)

<sup>394</sup> <http://bettercarenetwork.org/library/the-continuum-of-care/community-based-care-mechanisms/the-positive-role-of-religion-and-religious-communities-in-child-protection> Accessed: 18 October 2017.

<sup>395</sup> [https://www.unicef.org/protection/What Religious Communities can do to Eliminate Violence against Children \(UNICEF Religions for Peace Guide\).pdf](https://www.unicef.org/protection/What%20Religious%20Communities%20can%20do%20to%20Eliminate%20Violence%20against%20Children%20(UNICEF%20Religions%20for%20Peace%20Guide).pdf) p25. Accessed on: 22 October 2017.

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 countries four 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."<sup>396</sup> While a positive step in 2015, recent events highlight the need for continuous robust inter-faith 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 inter-faith 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 facilitating reconciliation processes necessary for peace. Finally, inter-faith dialogue initiatives need to ensure meaningfully engagement of children and youth, in addition to their care-givers and other key stakeholders, such as through youth interfaith leadership and networks.<sup>397</sup>

### 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 four 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.<sup>398</sup> At the international level, NGOs have become significant actors and norm-shapers. The experience of NGOs – especially child rights organisations at local levels – became crucial to 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 (CAAC) has focused on four specific elements defining the specificities and the scope of application of its campaign.<sup>399</sup> These are systematic monitoring and reporting of grave violations against children as a basis for action to end the impunity of those committing abuses; mainstreaming of CAAC concerns into the policies, priorities, and programs of the entities and institutional processes of the UN and beyond; strategic advocacy, awareness raising, and dissemination of CAAC norms and standards; recognition, support, and enhancement of local civil society actors, organisations, and networks who represent the front line protection and rehabilitation of CAAC.<sup>400</sup> 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 programs, and from early 2000 in encouraging children's peace movements.<sup>401</sup>

<sup>396</sup> [https://www.unicef.org/media/media\\_85898.html](https://www.unicef.org/media/media_85898.html) Accessed: 23 October 2017.

<sup>397</sup> For example <https://rfp.org/connect/global-interfaith-youth-network/> Accessed: 23 October 2017.

<sup>398</sup> Bina D'Costa, 'Who Speaks for Children? Advocacy, Activism and Resistance' in *Children and Global Conflict*, Cambridge University Press, 2015.

<sup>399</sup> Bina D'Costa, 'The Rights of the Child: Political History, practices and protection', in *Children and Global Conflict*, CUP, p 89-122.

<sup>400</sup> *ibid*

<sup>401</sup> *ibid*

While images of children have historically been used to frame advocacy measures, children's direct participation until comparatively recently has been almost non-existent in advocacy and activism. The rationale was that while it was critical to advocate for children's agency and empowerment, ultimately it was adults who framed policies. Such an advocacy approach was universal in global governance, including in transnational movements, anti-trafficking networks, and in state governance mechanisms. Children as participants in political movements – both peace and protest movements have different kind of roles in activism and advocacy. Children's representations in global and local advocacy strategies – their participation and the political framing of their identities – illustrates 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.<sup>402</sup>

---

<sup>402</sup> *ibid*

## Epilogue: Recommendations from the Rapporteurs – A Four Pillar Approach

One way to subject the reinvigorated children’s rights analytical framework to critical scrutiny is to ask how the rights framework can do a better job in articulating the concerns of children. In this context, we propose that the deliberations focus on a *Four Pillar Approach* of 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 Convention of the Rights of the Child (CRC), 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 wellbeing in the future, and their fundamental right to participate and be well now, today, as children – children themselves can and must help define what that successful balance looks like. Now is the moment for us to meaningfully recognize the importance of involving them in defining indicators and the vision that will hold the community to account to achieving the SDGs.

The CRC explicitly recognizes children as bearers of human rights and fundamental freedoms and particularly underscores that children have the right to protection against non-discrimination (art. 2 CRC), the right to have his or her best interests taken into account as a primary consideration (art. 3 (1) CRC), the right to life, survival and development (art. 6 CRC) and the right to be heard (art. 12 CRC). 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 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 has been identified as one of the four 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, justice proceedings and medical decision-making, with children’s views to be taken into consideration in accordance with their age and maturity.<sup>403</sup>

Children’s right to **protection**, and its many inter-related 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).[1] Article 4 of the CRC provides for the protection of children’s rights, and member states responsibility 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 where member states available resources are constrained. Children’s right to protection from all forms of violence and member states consequent responsibilities are outlined under Article 19 of the CRC. This also relates the child’s relationship with his parents and family and it deserves to be mentioned that the CRC protects the child-parent relationship and their right to family life (art. 9 CRC), which builds on the recognition of the position of parents and the extended family in the CRC (art. 18 and 5 CRC). 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 CRC, which considers the CRC in relation to both international and national legal frameworks

---

<sup>403</sup> For details see, EU additional measures re participation: [http://ec.europa.eu/justice/fundamental-rights/rights-child/child-participation/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/child-participation/index_en.htm)

and provides that the CRC does not affect provisions that are more conducive to the realization of the rights of the child.<sup>404</sup>

The transformative potential of the straightforward language of **empowerment** should not be underestimated. Children are rights bearers and they must be seen as human beings in the here and now. 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 Four Pillar Approach, it is important to consider these, in order to better understand and implement children's rights across the globe. The four 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 their rights violations meaningfully, where this four-pillar approach is interconnected and perceived as a single goal.

---

<sup>404</sup> [https://www.unicef.org/crc/files/Protection\\_list.pdf](https://www.unicef.org/crc/files/Protection_list.pdf) Accessed: 26 October 2017

## Bibliography

Abramson B (2008) Article 2 The Right to Non-Discrimination in: Alen A et al. (eds) A Commentary on the United Nations Convention on the Rights of the Child. Martinus Nijhoff, Leiden

Alston P (1990) The Unborn Child and Abortion under the Draft Convention on the Rights of the Child. *H Rts Q* 12(1):156–178

Arts K (2014) Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges. *Netherlands Int L Rev* 61(3):267–303

Cantwell N (1992) The Origins, Development and Significance of the United Nations Convention on the Rights of the Child. In Detrick S, *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* Martinus Nijhoff, Dordrecht/Boston/London, p. 19–30

Cantwell N (2011) Are Children's Rights still Human?. In Invernizzi A, Williams J (eds) *The Human Rights of Children: From Visions to Implementation*: Ashgate Publishing, Farnham/Burlington, p. 37-60

CEDAW and CRC Committee 2014. Committee on the Elimination of Discrimination against Women (CEDAW) and Committee on the Rights of the Child (CRC Committee) (2014) Joint General Recommendation/General Comment, General Recommendation No. 31/General Comment No. 18 (2014) on Harmful Practices. UN Doc CEDAW/C/GC/31-CRC/C/GC/18

CRC Committee (1991) Guidelines for Initial Reports. UN Doc CRC/C/5

CRC Committee (1994) Guidelines for Periodic Reports. UN Doc. CRC/C/58

CRC Committee (2003) General Comment No. 5, General Measures of Implementation of the Convention on the Rights of the Child. UN Doc CRC/GC/2003/5

CRC Committee (2005) 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 UN Doc CRC/C/OPSC/Rev.1

CRC Committee (2007) Guidelines Regarding Initial Reports to be Submitted by States parties under article 8, paragraph 1, UN Doc CRC/C/OPAC/2

CRC Committee (2009a) General Comment No. 11, Indigenous children and their rights under the Convention, para. 26. UN Doc. CRC/C/GC/11

CRC Committee (2009b) General Comment No. 12, The Right of the Child to be Heard. UN Doc CRC/C/GC/12

CRC Committee (2011) General Comment No. 13, The Right of the Child to Freedom from All Forms of Violence. UN Doc CRC/GC/13

CRC Committee (2013a) General Comment No. 14, The Right of the Child to Have his or her Best Interests Taken as a Primary Consideration. UN Doc CRC/C/GC/14,

CRC Committee (2015) Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States parties under article 44, paragraph i (b) of the Convention on the Rights of the Child. UN Doc CRC/C/58/Rev.3

D'Costa, Bina, ed., (2016), *Children and Violence: Politics of Conflict in South Asia*, Cambridge University Press. New Delhi: India.

Huynh, Kim, D'Costa, Bina & Lee-Koo, Katrina (2015), *Children and Global Conflict*, Cambridge University Press, Cambridge, United Kingdom.

D'Costa, Bina (2014), *Marginalisation and Impunity: Violence Against Women and Girls in the Chittagong Hill Tracts*. IWGIA and CHT Commission.

Detrick S (1992) *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* Martinus Nijhoff, Dordrecht/Boston/London

Detrick S (1999) *A Commentary on the United Nations Convention on the Rights of the Child*. Martinus Nijhoff, The Hague

Doek JE (1992) *The Current Status of the United Nations Convention on the Rights of the Child*. In Detrick S, *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"* Martinus Nijhoff, Dordrecht/Boston/London, p. 632–640

Doek JE (2007) *The CRC General Principles*. In Connors J, Zermatten J, Panayotidis A, *18 Candles: The Convention on the Rights of the Child Reaches Majority*, Institut international des droits de l'enfant, Sion, p. 31–42

Doek JE (2011) *The CRC: Dynamics and Directions of Monitoring its Implementation*, In Invernizzi A, Williams J (eds) *The Human Rights of Children: From Visions to Implementation*: Ashgate Publishing, Farnham/Burlington, p. 99–116

Doek JE (2015) *Article 6 CRC and the views of the CRC Committee*, Stellenbosch LRev 26(2):254–271

Economic and Social Council (ECOSOC) (2005) *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*. ECOSOC Resolution 2001/20, 22 Jul 2005

Farson R (1974) *Richard Farson, Birthrights*. Macmillan, New York

Feria-Tinta M (2015) *The CRC as a Litigation Tool Before the Inter-American System of Protection of Human Rights*. In Liefwaard T, Doek JE (eds) *Litigating the Rights of the Child*. Springer, Dordrecht/Heidelberg/New York/London, p. 231–248

Fox S J (1995) *The United Nations Convention on the Rights of the Child and the United States Abortion Law*, *Annual Survey of Int & Comp L* 2(1):15–40

Freeman M (1997) *Taking Children's Rights More Seriously*. In Freeman M, *The moral status of children: Essays on the Rights of the Child*. Martinus Nijhoff, The Hague, p. 19-46

Freeman M (2007) *Why It Remains Important to Take Children's Rights Seriously*. *Int J Children's Rts* 15(1):5-23

Freeman M (2011) *The Value and Values of Children's Rights*. In Invernizzi A, Williams J (eds) *The Human Rights of Children: From Visions to Implementation*: Ashgate Publishing, Farnham/Burlington, p. 21-36.

Gal T, Duhamy BF (eds) (2015) *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child Inclusive Policies*. Oxford University Press, Oxford

Greijer S and Doek JE (2016): *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. Adopted by the Inter-Agency Working Group in Luxembourg, 28 Jan 2016 (The Luxembourg Guidelines). ECPAT International, Bangkok

Gross B, Gross R (eds) (1977) *The Children's Rights Movement: Overcoming the Oppression of Young People*. Anchor Books, New York

Guggenheim M (2005) *What's Wrong with Children's Rights?* Harvard University Press, Cambridge/Massachusetts/London

Holt J (1975) *Escape From Childhood*. Penguin, Harmondsworth

Lansdown G (2005) *The Evolving Capacities of the Child*. UNICEF Innocenti Research Centre, Florence

Langlaude S (2008) Children and Religion under Article 14 UNCRC: A Critical Analysis. *Int J Children's Rts* 16(4):475–504

Lee Y (2010) Communications Procedure Under the Convention on the Rights of the Child: 3rd Optional Protocol. *Int J Children's Rts* 18(4):567–583

M'jid NM (2013) Report of the Special Rapporteur on the sale of children, child prostitution and child pornography. UN Doc A/HRC/25/48, 23 Dec 2013.

Pinheiro (2006), Paulo Pinheiro, *World Report on Violence Against Children*. United Nations Publishing Services, Geneva.

Price Cohen (1990), Cohen CP, Kosloske SM, Hart SN (1996) Monitoring the United Nations Convention on the Rights of the Child: The Challenge of Information Management. *H Rts Q*, 18(2):439–471

Quennerstedt A (2010) Children, But Not Really Humans? Critical Reflections on the Hampering Effect of the "3 p's". *Int J Children's Rts* 18 (2010), p. 619–635.

Šahović NV, Doek JE, Zermatten J (2012) *The Right of the Child in International Law. Rights of the Child in a Nutshell and in Context: All About Children's Rights*. Stämpfli, Bern

Seymour J (2005) Parental Rights and the Protection of Children: A Presumption against State Intervention? *Australian J Prof & Applied Ethics* 7(2) :16-30

Sloth-Nielsen (1995), Julia Sloth-Nielsen, Ratification of the UN Convention on the Rights of the Child (1989): Some implications for South Africa. *South African Journal on Human Rights* 11 (1995) 401.

Sloth-Nielsen J (ed) (2008) *Children's rights in Africa: A Legal Perspective*. Ashgate, Dartmouth

Smith R (2013) The Third Optional Protocol to the UN Convention on the Rights of the Child? – Challenges Arising Transforming the Rethoric into Reality, *Int J Children's Rts* 21(2):305–322.

Todres J (2006) Analyzing the Opposition to US Ratification of the UN Convention on the Rights of the Child. In Todres J, Wojick ME, Revaz C (eds) *The UN Convention on the Rights of the Child: An Analysis of Treaty Provisions and Implications of U.S. Ratification*, Transnational, Ardsley p. 19–32

United Nations General Assembly (UNGA) (2012) United Nations Reform: Measures and Proposals. UNGA Resolution A.66/860, 26 Jun 2012

Viljoen F (2012) *International Human Rights Law in Africa* (2nd ed). Oxford University Press, Oxford

UNICEF (2009): *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*. Florence: UNICEF Innocenti Research Centre, Florence



7-9 November 2017  
Sofia, Bulgaria  
[www.ASEMinfboard.org](http://www.ASEMinfboard.org)

## Asia-Europe Meeting

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 and National Particularities in the Administration of Justice; Monitoring the Administration of Justice* (December 1997, Lund, Sweden)
- *Differences in Asian & European Values; Rights to Education; Rights of Minorities* (June 1999, Beijing, China)
- *Freedom of Expression & Right to Information; Humanitarian Intervention & the Sovereignty of States; Is there a Right to a Healthy Environment?* (June 2000, Paris, France)
- *Freedom of Conscience & Religion; Democratisation, Conflict Resolution & Human Rights; Rights & Obligations in the Promotion of Social Welfare* (July 2001, Bali, Indonesia)
- *Economic Relations; Rights of Multinational Companies & Foreign Direct Investments* (May 2003, Lund, Sweden)
- *International Migrations; Protection of Migrants, Migration Control & Management* (September 2004, Suzhou, China)
- *Human Rights & Ethnic, Linguistic & Religious Minorities* (February 2006, Budapest, Hungary)
- *Human Rights & Freedom of Expression* (September 2007, Siem Reap, Cambodia)
- *Human Rights in Criminal Justice Systems* (February 2009, Strasbourg, France)
- *Human Rights & Gender Equality* (July 2010, Manila, Philippines)
- *National & Regional Human Rights Mechanisms* (November 2011, Prague, Czech Republic)
- *Human Rights & Information and Communication Technologies* (June 2012, Seoul, Republic of Korea)
- *Human Rights & the Environment* (October 2013, Copenhagen, Denmark)
- *Human Rights & Businesses* (November 2014, Hanoi, Viet Nam)
- *Human Rights & Trafficking in Persons* (November 2015, Montreux, Switzerland)
- *People with Disabilities & Human Rights* (November 2016, Beijing, China)
- *Human Rights & Children* (November 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 of Europe and Foreign Affairs, the Philippine Department of Foreign Affairs and the Federal Department of Foreign Affairs of Switzerland (FDFA). ASEF has acted as the Secretariat of the Seminar since 2000 ([www.asef.org](http://www.asef.org)).

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

**The Informal ASEM Seminar on Human Rights series is a partnership between:**



**RAOUL  
WALLENBERG  
INSTITUTE**  
OF HUMAN RIGHTS AND HUMANITARIAN LAW



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Foreign Affairs FDFA

**The 17<sup>th</sup> Informal ASEM Seminar on Human Rights is hosted by the Ministry of Foreign Affairs and the Ministry for Labour and Social Policy of the Republic of Bulgaria, and the State Agency for Child Protection, Bulgaria.**



REPUBLIC OF BULGARIA  
MINISTRY OF FOREIGN AFFAIRS



РЕПУБЛИКА БЪЛГАРИЯ  
МИНИСТЕРСТВО НА ТРУДА И СОЦИАЛНАТА ПОЛИТИКА



АГЕНЦИЯ ЗА ЗАЩИТА НА ДЕТЕТО - АЗД

**ASEF's contribution is with the financial support of the European Union**



**With the support of the Section for Development Cooperation at the Embassy of Sweden, Bangkok, Thailand**



SWEDEN