



**Convention on the  
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COMMITTEE ON THE RIGHTS OF THE CHILD  
Forty-fourth session  
15 January-2 February 2007

**REPORT ON THE FORTY-FOURTH SESSION**

**(Geneva, 15 January-2 February 2007)**

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## **I. ORGANIZATIONAL AND OTHER MATTERS**

### **A. States parties to the Convention**

1. As at 2 February 2007, the closing date of the forty-fourth session of the Committee on the Rights of the Child, there were 193 States parties to the Convention on the Rights of the Child. The Convention was adopted by the General Assembly in its resolution 44/25 of 20 November 1989 and opened for signature and ratification or accession in New York on 26 January 1990. It entered into force on 2 September 1990, in accordance with the provisions of its article 49. An updated list of States that have signed, ratified or acceded to the Convention is available at [www.ohchr.org](http://www.ohchr.org) and <http://untreaty.un.org>.

2. As at the same date, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified or acceded to by 111 States parties and signed by 122 States. The Optional Protocol entered into force on 12 February 2002. Also as at the same date, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography had been ratified or acceded to by 117 States parties and signed by 117 States. It entered into force on 18 January 2002. The two Optional Protocols to the Convention were adopted by the General Assembly in its resolution 54/263 of 25 May 2000 and opened for signature and ratification or accession in New York on 5 June 2000. A list of States that have signed, ratified or acceded to the two Optional Protocols is available on [www.ohchr.org](http://www.ohchr.org) and <http://untreaty.un.org>.

### **B. Opening and duration of the session**

3. The Committee on the Rights of the Child held its forty-fourth session at the United Nations Office at Geneva from 15 January to 2 February 2007. The Committee held 29 meetings. An account of the Committee's deliberations at its forty-fourth session is contained in the relevant summary records (see CRC/C/SR.1200 to SR.1228).

### **C. Membership and attendance**

4. All the members of the Committee attended the forty-fourth session, except Mr. Parfitt and Ms. Anderson. A list of members, together with an indication of the duration of their terms of office, is provided in annex I to the present report.

5. The following United Nations bodies were represented at the session: Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Children's Fund (UNICEF), Office of the United Nations High Commissioner for Refugees (UNHCR).

6. The following specialized agencies were also represented at the session: International Labour Organization (ILO), World Health Organization (WHO).

7. Representatives of the following non-governmental organizations also attended the session:

*General consultative status*

International Confederation of Free Trade Unions, International Council of Women, International Movement ATD Fourth World, International Save the Children Alliance, Zonta International.

*Special consultative status*

Amnesty International, Arab Organization for Human Rights, Coalition against Trafficking in Women, Defence for Children International, International Commission of Jurists, International Confederation of Social Workers, International Federation of Women in Legal Careers, International Federation Terre des Hommes, International Service for Human Rights, World Federation of Methodist and Uniting Church Women, World Organization against Torture.

*Others*

NGO Group for the Convention on the Rights of the Child, Geneva Institute for Human Rights (GIHR), International Baby Food Action Network.

**D. Agenda**

8. At its 1200th meeting, on 15 January 2007, the Committee adopted the following agenda on the basis of the provisional agenda (CRC/C/44/1):

1. Adoption of the agenda.
2. Organizational matters.
3. Submission of reports by States parties.
4. Consideration of reports of States parties.
5. Cooperation with other United Nations bodies, specialized agencies and other competent bodies.
6. Methods of work of the Committee.
7. General comments.
8. Future meetings.
9. Other matters.

**E. Pre-sessional working group**

9. In accordance with a decision of the Committee at its first session, a pre-sessional working group met in Geneva from 2 to 6 October 2006. All the members except Ms. Al-Thani and Mr. Siddiqui participated in the Working Group. Representatives of OHCHR, ILO, UNICEF,

UNESCO, UNHCR and WHO also participated. A representative of the NGO Group for the Convention on the Rights of the Child, as well as representatives of various national and international non-governmental organizations, also attended.

10. The purpose of the pre-sessional working group is to facilitate the Committee's work under articles 44 and 45 of the Convention, article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement on children in armed conflicts, primarily by reviewing State party reports and identifying in advance the main questions that would need to be discussed with the representatives of the reporting States. It also provides an opportunity to consider questions relating to technical assistance and international cooperation.

11. Mr. Jakob Egbert Doek chaired the pre sessional working group, which held nine meetings, at which it examined lists of issues put before it by members of the Committee relating to the initial report of Malaysia; second periodic reports of four countries (Kenya, Maldives, Mali, Suriname) and two third periodic reports, those of Chile and Honduras, and the initial reports submitted to the Committee on both the Optional Protocol on the involvement of children in armed conflict and on the Optional Protocol on the sale of children, child prostitution and child pornography (Costa Rica and Kyrgyzstan). The lists of issues were transmitted to the Permanent Missions of the States concerned with a note requesting written answers to the issues raised in the list, if possible before 24 November 2006.

#### **F. Organization of work**

12. The Committee considered the organization of its work at its 1200th meeting, held on 15 January 2007. The Committee had before it the tentative programme of work for the forty-fourth session, prepared by the Secretary-General in consultation with the Chairperson of the Committee.

#### **G. Future regular meetings**

13. The Committee decided that its forty-fifth session would take place from 21 May to 8 June 2007 and that its pre-sessional working group for the forty-sixth session would meet from 11 to 15 June 2007.

## **II. REPORTS SUBMITTED BY STATES PARTIES**

### **Submission of reports**

14. The Committee had before it the note by the Secretary-General on States parties to the Convention and status of the submission of reports (CRC/C/44/2).

15. The Committee was informed that between its forty-third and forty-fourth sessions, the Secretary-General had received the second periodic report of Venezuela (Bolivarian Republic of) and the third periodic report of the Republic of Georgia.

16. The Committee was also informed that the following initial reports submitted under the Optional Protocol on the involvement of children in armed conflict had been received: Bulgaria, Chile, Croatia, Germany, Ireland, Kuwait and the Syrian Arab Republic.

17. It was also informed that the initial reports under the Optional Protocol on the sale of children, child prostitution and child pornography from Bulgaria, Chile and Kuwait have been received.

18. As at 15 January 2007, the Committee had received 191 initial reports, 104 second periodic reports and 21 third periodic reports. A total of 310 reports have been considered by the Committee. The Committee further received 23 initial reports under the Optional Protocol on the sale of children, child prostitution and child pornography and 33 under the Optional Protocol on the involvement of children in armed conflict. To date, the Committee considered 17 initial reports under the Optional Protocol on the involvement of children in armed conflict and 14 under the Optional Protocol on the sale of children, child prostitution and child pornography.

19. At its forty-fourth session, the Committee examined seven periodic reports submitted by seven States parties under article 44 of the Convention. It also considered two initial reports under each of the Optional Protocols to the Convention from two States parties.

20. The following reports, listed in the order in which they were received by the Secretary-General, were before the Committee at its forty-fourth session: Marshall Islands (CRC/C/93/Add.8); Suriname (CRC/C/SUR/2); Mali (CRC/C/MLI/2); Kenya (CRC/C/KEN/2); Chile (CRC/C/CHL/3); Costa Rica (CRC/C/OPAC/CRI/1 and CRC/C/OPSC/CRI/1); Honduras (CRC/C/HND/3); Kyrgyzstan (CRC/C/OPAC/KGZ/1 and CRC/C/OPSC/KGZ/1) and Malaysia (CRC/C/MYS/1).

21. In accordance with rule 68 of the provisional rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee at which their reports were examined. The report of the Marshall Islands was considered in the absence of a delegation.

22. The following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain concluding observations reflecting the main points of discussion and indicating, where necessary, issues that require specific follow-up. More detailed information is contained in the reports submitted by the States parties and in the summary records of the relevant meetings of the Committee.

### **III. CONSIDERATION OF REPORTS OF STATES PARTIES**

#### **Concluding observations: Costa Rica**

#### **(Optional Protocol to the Convention on the involvement of children in armed conflict, OPAC)**

23. The Committee considered the initial report of Costa Rica (CRC/C/OPAC/CRI/1) at its 1200th meeting (see CRC/C/SR.1200), held on 15 January 2007, and at its 1228th meeting, on 2 February 2007, adopted the following concluding observations.

## A. Introduction

24. The Committee welcomes the submission of the State party's initial report and the replies to the list of issues submitted in a timely fashion. The Committee also appreciates the constructive and informative dialogue with the State party's high-level delegation.

25. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's third periodic report on 3 June 2005, which are contained in CRC/C/15/Add.266.

## B. Positive aspects

26. The Committee welcomes the fact that:

(a) Since the armed forces were abolished in the 1949 Constitution, national law prohibits both voluntary and compulsory enlistment;

(b) Only persons over 18 may be recruited in police forces - which, in any case, are of a civilian nature.

27. The Committee also welcomes the ratification of the following by the State party:

(a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 9 April 2002;

(b) International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), on 10 September 2001;

(c) Rome Statute of the International Criminal Court, on 7 June 2001.

## C. Principal areas of concern and recommendations

### General measures of implementation

#### Legislation

28. The Committee welcomes the enactment of law 8272 of 2002, which introduced two new articles in the Criminal Law (378 and 379) to make war crimes and crimes against humanity criminal offences. The Committee also welcomes the fact that the amended article 7 of the Criminal Code, in conjunction with article 8, allows for conditional universal jurisdiction over crimes covered by human rights treaties to which Costa Rica is a party, including the Optional Protocol.

**29. In order to strengthen the national and international measures for the prevention of the recruitment of children for armed forces or armed groups and their use in hostilities, the Committee recommends that the State Party:**

**(a) Explicitly prohibit by law, in line with article 38 of the Convention, the recruitment of children under the age of 15 years into armed forces/groups and their direct participation in hostilities;**

**(b) Explicitly prohibit by law the violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities;**

**(c) Establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State Party;**

**(d) Stipulate explicitly that military personnel not undertake any act that violates the rights enshrined in the Optional Protocol regardless of any military order to that effect.**

#### **Prevention/culture of peace**

30. The Committee notes with appreciation the State party's efforts to promote - both nationally and internationally - a culture of peace, inter alia through primary and secondary education courses, the "Costa Rica Consensus" and the prohibition of "war toys". The Committee encourages the State party to continue and, where possible, strengthen these efforts with the involvement of NGOs and other parts of civil society.

#### **Dissemination and training**

31. The Committee notes the State party's view that "since it has no army and it is not involved in any internal armed conflicts, the dissemination of the Protocol and monitoring of its implementation are confined to certain professional circles". In the light of article 6, paragraph 2, of the Optional Protocol, the Committee recommends that the State party make the principles and provisions of the Protocol widely known and promoted by appropriate means, to adults and children alike. The Committee further recommends that the State party develop systematic awareness-raising education and training on the provisions of the Optional Protocol for all relevant professional groups, including those working with asylum-seeking, refugee and migrant children coming from countries affected by armed conflict, such as teachers, medical professionals, social workers, police officers, lawyers and judges.

#### **Measures adopted with regard to disarmament, demobilization, physical and psychological recovery and social reintegration**

##### **Assistance for physical and psychological recovery**

32. The Committee notes the State party's view that, due to the absence of conflicts and of armed forces, measures concerning the disarmament, demobilization or social reintegration of child soldiers are not relevant. However, the State party is a country of destination of asylum-seekers and migrants, including children - some of whom may come from countries affected by armed conflict - and the Committee regrets the lack of information about measures adopted with regard to their identification, physical and psychological recovery and social reintegration.



33. **The Committee recommends that the State party:**

(a) **Identify at the earliest possible stage refugee, asylum-seeking and migrant children entering Costa Rica who may have been recruited or used in hostilities contrary to the Protocol;**

(b) **Carefully assess the situation of these children and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with article 6 (3) of the Convention;**

(c) **Include in its next report information on measures adopted in this respect.**

#### **Follow-up and dissemination**

34. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to the members of the Cabinet, or a similar body, the Parliament (Asamblea Legislativa), the Defence Ministry and to provincial authorities, where applicable, for appropriate consideration and further action.**

35. **The Committee recommends that the initial report submitted by the State Party and concluding observations adopted by the Committee be made widely available to the public at large in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

#### **Next report**

36. **In accordance with article 8, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third and fourth periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 19 September 2007.**

#### **Concluding observations: Costa Rica**

##### **(Optional Protocol on the sale of children, child prostitution and child pornography, OPSC)**

37. **The Committee considered the initial report of Costa Rica (CRC/C/OPSC/CRI/1) at its 1201st meeting (see CRC/C/SR.1201), held on 15 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.**

##### **A. Introduction**

38. **The Committee welcomes the submission of the State party's initial report, as well as the replies to its list of issues submitted in a timely fashion. The Committee also appreciates the constructive and informative dialogue held with the State party's high-level delegation.**

39. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's third periodic report on 3 June 2005, which are contained in CRC/C/15/Add.266.

## **B. Positive aspects**

40. The Committee notes with appreciation the following:

(a) Establishment in 1999 within the Ministry of Public Security of a unit to combat the sexual exploitation of children and of a specialized unit within the Judicial Investigation Department;

(b) Establishment of the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES) as a special thematic commission of the National Council on Children and Adolescents; and the participation of non-governmental organizations (NGOs) in this Commission;

(c) Adoption in September 2006 of the "Programme for the Integral Care of children and adolescents at risk and in vulnerable situation", a project implemented by the National Child Welfare Agency (PANI) offices at local level.

41. The Committee also welcomes the ratification, in 2003, of the Convention against Transnational Organized Crime and its two supplementing Protocols: to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants.

## **C. Principal areas of concern, and recommendations**

### **1. General measures of implementation**

#### **Coordination and National Plan of action**

42. The Committee notes that CONACOES is the body responsible for the implementation of the Optional Protocol and the follow-up to the National Plan to combat the commercial sexual exploitation of children and adolescents. However, the Committee is concerned that the coordination and cooperation among the different institutions and bodies that compose CONACOES is insufficient and that there is lack of clarity with regard to the sphere of competence of these institutions and bodies. The Committee is further concerned that the lack of a specific public policy to eradicate the sale of children, child prostitution and child pornography may also contribute to the low level of cooperation and coordination among the different actors involved.

43. **The Committee recommends that the State party develop a specific and comprehensive policy aimed at eradicating the sale of children, child prostitution and child pornography, which, inter alia, would clearly define the mandate and competencies of the different institutions and bodies that compose CONACOES in order to improve their cooperation and the coordination of their activities.**

### **Dissemination and training**

44. The Committee notes with appreciation the activities on awareness-raising and training that targeted key actors in the fight against the commercial sexual exploitation of children. These activities were largely conducted in cooperation with and/or partnership with civil society organizations and international organizations, including United Nations agencies and programmes. Among the activities were large-scale campaigns to raise public awareness of the consequences of the commercial sexual exploitation of children and to publicize the relevant legislation. However, the Committee is concerned that, despite these efforts, there still appears to be broad tolerance of the offences covered by the Optional Protocol.

45. **The Committee recommends that the State party:**

**(a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups;**

**(b) Make the provisions of the Optional Protocol widely known, particularly to children and their families, through, for example, school curricula and long-term awareness-raising campaigns;**

**(c) Promote, in line with article 9, paragraph 2, of the Optional Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training, of the preventive measures and harmful effects of the offences referred to in the Protocol, including by encouraging the community and, in particular, children and child victims to participate in such information and education and training programmes;**

**(d) Continue to cooperate with civil society organizations and support them in their awareness-raising and training activities on issues related to the Protocol;**

**(e) Continue to seek the assistance of United Nations agencies and programmes, including the UNICEF and the International Labour Organization's International Programme on the Elimination of Child Labour (ILO/IPEC).**

### **Data collection**

46. The Committee regrets the scarcity of data disaggregated by age, sex and minority group, as well as of research on the prevalence of sale of children, trafficking, child prostitution, and child pornography.

47. **The Committee recommends that the State party ensure that data, disaggregated inter alia by age, sex and minority group, are systematically collected and analysed, as they provide an essential tool for measuring policy implementation. In particular, the Committee encourages the State party to strengthen research on the nature and extent of the commercial sexual exploitation of children, including prostitution and pornography, in order to identify the causes and the extent of the issue, and develop and implement effective policies to prevent and combat it.**

### **Budget allocations**

48. The Committee, while welcoming the information that the budget of PANI has been increased for the year 2007, is concerned at the lack of adequate resources for the implementation of the Optional Protocol. In this respect, the Committee notes the information that while the National Plan on the prevention of commercial sexual exploitation for the period 2004-2006 proposed by the Ministry of Education has been approved by the National Council on Children and Adolescents, budgetary funds have not yet been allocated for its implementation.

49. **The Committee recommends that the State party provide adequate resources, including budget allocations, for all the activities aimed at implementing the Optional Protocol, such as the National Plan on the prevention of commercial sexual exploitation. Particular attention should be paid, for example through earmarked budgetary funds, to prevention, timely investigation and effective prosecution of the crimes covered by the Optional Protocol and to ensuring adequate protection, care and social reintegration of child victims.**

#### **2. Prohibition of the sale of children, child pornography and child prostitution**

50. **The Committee welcomes the various legislative measures aimed at implementing article 3 of the Optional Protocol. However, it is concerned that possession of child pornography is not yet fully covered under the State party's criminal law, although a Bill to that effect (No. 14568) has been submitted to Congress.**

51. **The Committee recommends that the State Party:**

**(a) Take the necessary measures to ensure that possession of child pornography is fully covered under Costa Rican criminal law in accordance with article 3, paragraph 1 (c), of the Optional Protocol. This crime should include the possession of child pornography in a computer system or on a computer-data storage medium;**

**(b) Take the necessary steps to adequately define and criminalize trafficking in persons in the criminal legislation in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.**

#### **3. Penal/criminal procedure**

##### **Jurisdiction**

52. The Committee notes that in 2000 a Bill (No. 14204) was submitted to Parliament for the introduction of extraterritorial jurisdiction for sexual crimes against children that were committed outside the State party's territory. However, the Committee is concerned that this Bill has not yet been approved and that currently Costa Rica does not assume jurisdiction for prosecution of an offence covered by the Optional Protocol when it is committed abroad by a national of Costa Rica and the victim is not a national of Costa Rica.

53. **The Committee recommends that the State party, especially in the context of prosecution of crimes related to sex tourism, take the necessary legislative measures, e.g. by adopting Bill No. 14204, to ensure, inter alia, that Costa Rican courts, in accordance with article 4, paragraph 2 (a), of the Optional Protocol, assume jurisdiction in cases where a national of the State party commits abroad an offence covered under the Optional Protocol.**

#### **4. Protection of the rights of child victims**

54. The Committee welcomes the fact that one of the main areas of focus of the National Plan to combat the commercial sexual exploitation of children and adolescents is the provision of direct support for victims. It also welcomes that the Children and Adolescents Code provides for psychological assistance to child victims of any offence as well as for training to police officers on interviewing victims and special conditions for hearings in court. However, the Committee is concerned that a rights-based victim care system that takes account of sex and age is still lacking and that the area of protection and care of child victims suffers from a shortage of resources.

55. **The Committee recommends that the State party:**

**(a) Ensure that adequate services are available for child victims, including for their physical and psychological recovery and social reintegration, in accordance with article 9, paragraph 3, of the Optional Protocol, and, in this respect, assess the impact of the newly used method called the *Modelo Cíclico de Respuestas Articuladas*;**

**(b) Take measures to ensure appropriate training, particularly legal and psychological, for persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8, paragraph 4, of the Optional Protocol;**

**(c) Ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol;**

**(d) In the light of article 8, paragraph 1, of the Optional Protocol, continue to protect child victims and witnesses at all stages of the criminal justice process, taking also into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20).**

#### **Smuggling and trafficking in children for the purpose of sexual exploitation**

56. The Committee welcomes the measures taken to protect migrant children and children who are either smuggled into the country or trafficked for the purpose of sexual exploitation, including the creation of a special desk for them at the international airport at San José. The Committee also welcomes the establishment, in 2005, of a National Commission against the Smuggling of Migrants and Trafficking of Persons, of which PANI is a member. However, it expresses concern at the information that smuggling of migrants, including children, and trafficking in children for the purpose of sexual exploitation continue to be a serious problem in the country.

**57. The Committee, with reference to the situation of special vulnerability to the offences covered by the Optional Protocol of children victims of smuggling and trafficking, recommends that the State party:**

**(a) Increase its efforts to combat these criminal activities, including by adequately implementing the Programme of Action against Trafficking of Children for the purpose of Sexual Exploitation, a joint project between the Judiciary and the PANIAMOR Foundation;**

**(b) Provide the National Commission against the Smuggling of Migrants and Trafficking of Persons with adequate resources;**

**(c) Consider becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

## **5. Prevention of the sale of children, child prostitution and child pornography**

### **Sex tourism**

58. The Committee notes with appreciation that strict controls have been introduced in the tourist sector, and partnerships have been established with hotel owners, networks of taxi drivers and other stakeholders in order to prevent offences covered by the Protocol, especially child sex tourism. It also welcomes the adoption, in 2003, of a Code of Conduct for the Protection of Children and Adolescents from Commercial Sexual Exploitation in Tourism, an intersectoral project focused on responsible and sustainable tourism aimed at service providers, customers and entrepreneurs in the public and the private sectors. However, the Committee notes with concern that the practice of purchasing sexual services from children is still socially acceptable, especially among men, and that Costa Rica is increasingly becoming a popular destination for sex tourism.

**59. The Committee recommends that the State party continue to take measures to tackle the increasing problem of sex tourism involving children, including by strengthening awareness-raising campaigns containing specific messages on child rights and on the existing sanctions on child abusers. The State party should also take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the Protocol, in accordance with article 9, paragraph 5.**

### **Child pornography on the Internet and other evolving technologies**

60. The Committee welcomes the steps taken by the State party in the area of cybercrime, including the creation of a special investigation unit for cybercrime, the adoption of “regulations governing the control and regulation of premises providing public Internet services”, as well as the project “Internet security for children: safe surfing”, which was launched in 2003. However, the Committee is concerned at the growing availability of child pornography on the Internet and other evolving technologies and that a certain degree of impunity continues to exist for crimes covered by the Protocol committed through the Internet, e.g. child pornography.

61. **The Committee recommends that the State party continue to take measures to combat cybercrime and especially child pornography on the Internet, including by ensuring and monitoring the full implementation of the regulations governing the control and regulation of premises providing public Internet services. It also recommends that the State party adopt and implement specific legislation on the obligation of Internet providers to prevent (to the extent possible) the dissemination of and access to child pornography on the Internet.**

#### **Contributing factors to the sale of children, child prostitution and child pornography**

62. The Committee welcomes the National Development Plan 2002-2006 and the “New Life” Plan to overcome poverty, as these plans address one of the main causes of the sale of children, child prostitution and child pornography, and will thus contribute to their prevention and elimination.

63. **The Committee encourages the State party to continue to give support, including financially, to projects aiming at poverty reduction. It also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism, in accordance with article 10, paragraph 3, of the Optional Protocol.**

#### **Prevention of sale for the purpose of adoption**

64. The Committee is concerned that problems continue in the governance and implementation of child adoption, especially intercountry adoption, although a proposal aimed at addressing this problem is pending before the Parliament. In particular, the Committee is concerned to learn that the juridical regime applying to intercountry adoptions processed through PANI, where all international standards are applied, differs from that which applies to intercountry adoptions based on direct consent among the parties, which bypass the intermediation of PANI.

65. **The Committee recommends that the State party:**

**(a) Modify its legislation so as to ensure that all requests and procedures for adoption, whether national or intercountry, are assessed by PANI and respect applicable international standards;**

**(b) Adequately define and punish the sale of children for the purpose of adoption in conformity with article 3, paragraph 1 (a) (ii), of the Optional Protocol;**

**(c) Take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments;**

**(d) Collect information on and investigate the activities of the agencies and/or individuals acting as facilitators and mediators in the adoption procedures and punish those violating national and international legislation.**

## **6. International assistance and cooperation**

**66. The Committee encourages the State party to continue its active cooperation with United Nations agencies and programmes, including interregional programmes, and NGOs, in the development and implementation of measures aimed at adequate application of the Optional Protocol.**

### **Law enforcement**

**67. The Committee encourages the State party to continue its efforts to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.**

## **7. Follow-up and dissemination**

### **Follow-up**

**68. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to relevant ministries and Parliament (Asamblea Legislativa), and to provincial authorities, where applicable, for appropriate consideration and further action.**

### **Dissemination**

**69. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

## **8. Next report**

**70. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child due, in accordance with article 44 of the Convention, on 19 September 2007.**

## **Concluding observations: Kenya**

### **A. Introduction**

**71. The Committee considered the second periodic report of Kenya (CRC/C/KEN/2) at its 1202nd and 1203rd meetings (CRC/C/SR.1202 and 1203), held on 16 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.**



72. The Committee welcomes the submission of the second periodic report as well as the written replies to its list of issues (CRC/C/KEN/Q/2) and the frank and open dialogue with the high-level, cross-sectional delegation, which enabled the Committee to have a clear understanding of the situation of children in the State party.

**B. Follow-up measures undertaken and progress achieved by the State party**

73. The Committee notes with appreciation the enactment of legislation aimed at promoting and protecting the rights of the child, such as the following:

(a) Children's Act of 2001 (Cap 586, Laws of Kenya) and the creation of the National Council for Children's Services;

(b) Sexual Offences Act of 2006;

(c) Refugee Act of 2006.

74. The Committee also welcomes the ratification or accession to the following:

(a) African Charter on the Rights and Welfare of the Child, on 25 July 2000;

(b) International Convention on the Elimination of All Forms of Racial Discrimination, on 13 September 2001;

(c) ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 7 May 2001;

(d) Optional Protocol on the Involvement of Children in Armed Conflict, on 28 January 2002;

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 5 January 2005;

(f) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, on 4 February 2004;

(g) Rome Statute of the International Criminal Court, on 15 March 2005.

**C. Factors and difficulties impeding the implementation of the Convention**

75. The Committee acknowledges:

(a) The recurring droughts and floods that have affected vast parts of Kenya and the entire Horn of Africa;

(b) The extent of the HIV/AIDS epidemic prevailing in both urban and rural areas, which continues to hamper further progress in the effective implementation of the provisions of the Convention.

## **D. Principal subjects of concern, and recommendations**

### **1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

#### **Previous recommendations of the Committee**

76. The Committee notes with satisfaction that some concerns and recommendations (CRC/C/15/Add.160) made upon the consideration of the State party's initial report (CRC/C/3/Add.62) have been addressed through legislative measures and policies. However, recommendations regarding, inter alia, coordination, the various inconsistent, discriminatory and often exceedingly low legal minimum ages, corporal punishment, child labour and juvenile justice, have not been given sufficient follow-up. The Committee notes that those concerns and recommendations are reiterated in the present document.

**77. The Committee urges the State party, taking into account general comment No. 5 (CRC/GC/2003/5) on the general measures of implementation for the Convention on the Rights of the Child, to make every effort to address the recommendations contained in its concluding observations on the initial report that have not yet been implemented, and to address the list of concerns contained in the present concluding observations on the second periodic report.**

#### **Legislation**

78. The Committee welcomes the enactment of a Children's Act in 2001 (Cap 586 Laws of Kenya) and notes the various legislative measures undertaken by the State party as listed in the second period report (CRC/C/KEN/2); however, it is concerned that national legislation needs further harmonization and strengthening.

**79. The Committee urges the State party to continue the harmonization of national legislation, inter alia by completing the legislative review regarding orphans and vulnerable children, and work towards the adoption and implementation, without further delay, of the various proposed laws and policies that benefit and protect children, and engage all efforts and resources necessary for the effective implementation of the Children's Act, as a matter of priority. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, taking fully into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex, of 22 July 2005).**

#### **Coordination and national plan of action**

80. While noting with appreciation the different measures and programmes to coordinate children matters, including the creation of the National Council for Children's Services (NCCS) with a five-year strategic work plan and the establishment of advisory councils at the local level,

the Committee is concerned that the adoption of a national plan of action remains pending and that additional resources are required to ensure effective coordination and implementation at the local level.

**81. The Committee recommends that the State party adopt a national plan of action which covers all the rights in the Convention and takes into account the outcome document of the General Assembly Special Session on Children, “A world fit for children”, adopted in May 2002 (resolution S-27/2, annex), and continue and strengthen its efforts to establish mechanisms for coordination at the local level throughout the country and assign adequate resources to support effective inter-institutional coordination at both national and local levels.**

### **Independent monitoring**

82. The Committee welcomes the establishment in 2003 of the Kenya National Commission on Human Rights (KNCHR); however, it is concerned that the State party does not provide it with sufficient human and financial resources. The Committee notes, however, that KNCHR does not place specific emphasis on the rights and needs of children in discharging its mandate.

**83. The Committee recommends that the State party ensure that adequate human and financial resources are allocated to the Kenya National Commission on Human Rights to enable it to discharge all of its mandated activities in line with the Principles Relating to the Status of National Institutions (the “Paris Principles”). The Committee also recommends that the State party take the necessary measures, in accordance with the Committee’s general comment No. 2 (CRC/GC/2002/2) on the role of independent human rights institutions in the protection and promotion of the rights of the child, to ensure that KNCHR pays special attention to the concerns of children, e.g. by establishing a children’s rights unit in order to be easily accessible for children and to facilitate dealing with complaints by or on behalf of children in a child-sensitive manner by well-trained staff, and when cases have been referred to authorities ensure that they are followed up on by KNCHR.**

### **Allocation of resources**

84. The Committee welcomes the general increase in the budgetary allocation to social services such as health and culture, but is concerned that it is not possible to identify the funds spent on children or have a clear understanding of this proportion of the budget. Furthermore, the Committee regrets the regional disparities and the lack of prioritization of children’s economic, social and cultural rights, especially for marginalized children, and the lack of budget allocations with a view to alleviating disparities.

**85. The Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention, by increasing and prioritizing budgetary allocations to ensure at all levels the implementation of the rights of the child and that in the budget allocation particular attention is paid to the protection of the rights of children belonging to vulnerable or disadvantaged groups, including children with disabilities; children infected with HIV and/or affected by HIV/AIDS; orphans; children living in**

**poverty and children in remote or marginalized areas. The Committee urges prioritization of children's economic, social and cultural rights, especially for marginalized children, and adequate budget allocations with a view of alleviating disparities. The Committee encourages the State party to start budget tracking from a child-rights' perspective with a view to monitoring budget allocations for children and seek technical assistance for this purpose from, inter alia, the United Nations Children's Fund (UNICEF). Furthermore, the Committee encourages the State party to negotiate debt relief in favour of resources for child protection.**

#### **Data collection**

86. While taking note of the efforts made to provide disaggregated data in the State party's reply to the list of issues (CRC/C/KEN/Q/2/Add.1) in improving the data-collection system and the development of a national database on children in need of special protection, the Committee remains concerned at the lack of a centralized data-collection system and a disaggregated representation of specific categories of children.

**87. The Committee recommends that the State party strengthen its system of collecting data as a basis for assessing progress achieved in the realization of children's rights and to help design policies to implement the Convention, specifically with regard to the allocation of financial and human resources made in respect of children.**

#### **Cooperation with civil society**

88. The Committee notes with appreciation the efforts made by the State party to ensure and enhance cooperation between State institutions and civil-society organizations in the implementation of projects related to children's rights. Nevertheless, the Committee notes that there is a need to further improve and formalize this cooperation in order to enhance sustainability and continuity.

**89. The Committee encourages the State party to continue and to strengthen its cooperation with NGOs and other sectors of civil society working for and with children throughout all stages of implementation of the Convention.**

#### **Dissemination and training**

90. The Committee notes with appreciation the efforts made by the State party, including the translation of the Convention into Kiswahili and other indigenous languages as well as programmes aimed at promoting children's rights. However, the Committee concurs with the State party's conclusion that additional progress needs to be made with regard to raising awareness of the principles and provisions of the Convention, particularly in rural and marginalized communities.

**91. The Committee recommends that the State party:**

**(a) Strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children in the various minority communities of Kenya;**

**(b) Develop and disseminate child-friendly versions of key documents, plans and policies that affect children;**

**(c) Provide and reinforce adequate and systematic training for all professional groups working for and with children, in particular law-enforcement officials; teachers, including teachers in rural and remote areas; health-service personnel; social workers; and personnel in childcare institutions.**

## **2. Definition of the child (art. 1 of the Convention)**

92. The Committee notes with concern that there are various minimum ages for marriage under different laws and that they are not the same for boys and girls and welcomes the information that this concern will be addressed in a review of the Children's Act.

**93. The Committee recommends that the State party expedite the review of the Children's Act, inter alia with a view to establishing a minimum age for marriage that is the same for both boys and girls and is set at the intended age of 18.**

## **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **Non-discrimination**

94. While welcoming the information that the State party has reviewed certain discriminatory legislation to ensure that children's rights are not breached, the Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly with regard to the girl child, children of certain minorities such as pastoralists and hunter gatherers, children with disabilities, refugee children and the children of asylum-seekers. The Committee also expresses concern at the de facto discrimination faced by children born out of wedlock, children infected with HIV and/or affected by HIV/AIDS, orphans, street children and children born of Kenyan mothers and non-Kenyan fathers.

**95. The Committee urges the State party to:**

**(a) Continue revising all its legislation in order to bring it into full compliance with article 2 of the Convention, and to ensure full implementation of all legal provisions;**

**(b) Combat discrimination by ensuring equal access to education, health-care facilities and poverty-alleviation programmes and pay special attention in this regard to the rights of girls;**

**(c) Carry out comprehensive public-education campaigns to prevent and combat all forms of discrimination;**

**(d) Include specific information in the State party's next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action**

**adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account the Committee's general comment No. 1 (CRC/GC/2001/1) on the aims of education.**

### **Best interests of the child**

96. The Committee welcomes the principle of the best interests of the child being reflected in the Children's Act. However, the use of this principle depends on the understanding and sensitivity of officials and others who make decisions concerning children and the Committee is concerned that the best interest of the child is not systematically taken into account, among other things owing to the lack of adequate training.

**97. The Committee recommends that the State party ensure that the principle of the best interests of the child is systematically taken into account in all programmes, policies and decisions that concern children, and especially aiming at addressing vulnerable and disadvantaged children, inter alia by sensitizing and training all involved officials and other professionals.**

### **Respect for the views of the child**

98. The Committee appreciates the State party's efforts to promote and respect children's right to freely express their views and the process of drafting National Guidelines for Child Participation aimed at facilitating participation of children at all levels. However, it is concerned that the prevailing sociocultural and traditional attitudes and practices are serious obstacles to guaranteeing this right and the full consideration of children's views in administrative and judicial decision-making processes at local or national levels.

**99. The Committee recommends that the State party:**

**(a) Promote, facilitate and implement, within the family, schools, the community, in institutions as well as in judicial and administrative procedures, the principle of respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention, while taking into account the recommendations adopted by the Committee after the day of general discussion on the right of the child to be heard, in 2006;**

**(b) Make efforts to widely disseminate the National Guidelines on Child Participation and develop strategies to reach the most marginalized groups of children and involve them in public debates, particularly at local level.**

## **4. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)**

### **Birth registration**

100. The Committee welcomes the enshrinement in the Children's Act of every child's right to a name and nationality and the measures taken to ensure registration. It remains, however, deeply concerned at the high percentage of children not registered at birth, especially in rural areas, and

the restrictive measures around birth registration, the discrimination with regard to the registration of children born out of wedlock and of non-Kenyan fathers, as well as the lack of mechanisms and infrastructure to facilitate birth registrations.

**101. The Committee recommends that, in the light of article 7 of the Convention, the State party implement an efficient birth-registration system that fully covers its territory and all the children in Kenya, including through:**

- (a) Ensuring free-of-charge birth registration at all stages of the registration process;**
- (b) Taking appropriate measures to register those who have not been registered at birth;**
- (c) Introducing mobile birth-registration units in order to reach the remote areas;**
- (d) Reviewing existing discriminatory legislation on birth registration, including legislation that prohibits the registration of children born to foreign fathers;**
- (e) Formalizing links between various service-delivery structures and promoting awareness and appreciation of the importance of birth registration through mass campaigns that provide information on the procedure of birth registration, including the rights and entitlements derived from the registration, through, inter alia, television, radio and printed materials.**

#### **Torture or other cruel, inhuman or degrading treatment or punishment**

102. The Committee notes that, despite a clear prohibition in the legislation, reports of torture, cruel, inhuman and degrading treatment indicate that it still occurs. The Committee is concerned at the excessive use of force and shooting at children in Kisumu in October 2005 and is further concerned at reports indicating that rapes of girls by law-enforcement agents have not been investigated. The Committee also regrets the lack of comprehensive measures to address the causes and effects of torture, cruel, inhuman and degrading treatment.

**103. The Committee urges the State party to:**

- (a) Review its legislation and ensure its effective implementation in order to provide children with better protection against torture and ill-treatment;**
- (b) Investigate and prosecute all cases of torture and ill-treatment of children, ensuring that the abused child is not victimized in legal proceedings and that the child's privacy is protected;**
- (c) Ensure that child victims are provided with appropriate services for care, recovery and reintegration, including psychosocial support for those affected by torture and other cruel, inhuman and degrading experiences, and provide them with adequate legal assistance in this regard;**

**(d) Continue its efforts to train professionals working with and for children, including teachers, law-enforcement officials, social workers, judges, magistrates and health personnel in the identification, reporting and management of cases of ill-treatment.**

### **Corporal punishment**

104. The Committee welcomes the legislative prohibition of corporal punishment in schools and institutions under the Children's Act of 2001 but continues to be concerned at corporal punishment in the home, in the penal system, in alternative-care settings, as well as in employment settings. The Committee is also concerned at the continued use of corporal punishment in practice by certain schools and the lack of measures to enforce the prohibition of this practice.

**105. The Committee urges the State party, taking into account general comment No. 8 (CRC/C/GC/8) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, to do the following:**

**(a) Introduce legislation explicitly prohibiting corporal punishment in the home and in all public and private alternative care and employment settings;**

**(b) Conduct public education and awareness raising campaigns on children's rights to protection from all forms of violence and promotion of alternative, participatory, non-violent forms of discipline;**

**(c) Improve the effectiveness of the monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions.**

### **5. Family environment and alternative care**

**(arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

### **Family support**

106. The Committee welcomes the initiatives taken to focus on the family as part of social policy, in particular programmes in family counselling and parental education. The Committee, however, notes with concern:

(a) The constraints existing with regard to limited availability and accessibility of services, the high levels of poverty, and all of this compounded by the effects of the HIV/AIDS pandemic and negative social trends and attitudes;

(b) The reservation made by the Government of Kenya to paragraph 2 of article 10 of the International Covenant on Economic, Social and Cultural Rights, as it limits the family support available to women in employment before and after childbirth;

(c) Inadequate maternity legislation, which fails to comply with the recommended 14 weeks of maternity paid in accordance with the ILO Maternal Protection Convention No. 183 (2000).



107. **The Committee recommends that the State party:**

**(a) Provide further support to families in the form of family counselling, parenting education, social workers at the local level and financial allowances as well as conduct public awareness campaigns in this regard;**

**(b) Strengthen the support available to women before and after childbirth by taking appropriate measures including the removal of the reservation to paragraph 2 of article 10 of the International Covenant on Economic, Social and Cultural Rights, of 1966;**

**(c) Review maternity legislation in order to support women working in the formal and informal sector by providing the recommended 14 weeks of paid maternity leave in accordance with the ILO Maternal Protection Convention No. 183 (2000).**

#### **Alternative care**

108. The Committee welcomes the creation of the National Council for Children's Services (NCCS) and the 2005-2009 Strategic Plan and Area Advisory Councils (AAC). It also welcomes the efforts of the State party to regulate and register all charitable institutions for the care of children, including reviewing the registration every three years, and to improve the support for foster care. The Committee, however, remains concerned that these measures are inadequate to meet the varied needs of orphaned and other vulnerable children in Kenya.

109. **With regard to the alternative care for orphans and other vulnerable children, the Committee recommends that the State party:**

**(a) Continue and strengthen its efforts to fully implement the National Guidelines for the care and protection of orphans and vulnerable children;**

**(b) Continue and strengthen the measures for support of foster care through, inter alia, its cash-transfer programme, in order to achieve as soon as possible the intended expansion of this programme to cover 300,000 orphans and vulnerable children;**

**(c) Take the necessary measures to prevent and combat exploitation of children in foster care and ensure protection of property of orphans and their inheritance rights, provide communities with civic education in this regard and strengthen the capacity of chiefs and local leaders to deal with these matters;**

**(d) Continue and complete the registration, including regular reviews and inspections, of all available institutions for alternative care;**

**(e) Develop effective measures to improve alternative care, including through the allocation of adequate financial and human resources;**

**(f) Provide additional training, including in children rights, for social and welfare workers, ensure the periodic review of placements in institutions in accordance with article 25 and establish an independent complaints mechanism for children in alternative-care institutions.**

## **Adoption**

110. The Committee welcomes the intended accession to the 1993 Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption, the enactment of the Children (Adoption) Regulations in 2005 and the setting up of a National Adoption Committee, which have strengthened the procedures and structures for conducting adoption. The Committee is concerned by reports indicating that irregular intercountry adoptions and possible trafficking of children for that purpose still exist.

111. **The Committee urges the State party to:**

**(a) Ensure the compliance of the legislation regarding adoption with article 21 of the Convention;**

**(b) Establish a comprehensive national policy and guidelines governing adoption in order to ensure that domestic and intercountry adoption are performed in full compliance with the best interests of the child and the appropriate legal guarantees in accordance with the Convention;**

**(c) Strengthen its monitoring of intercountry adoptions, in particular by ratifying and implementing the 1993 Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption;**

**(d) Seek technical assistance from the Hague Conference on Private International Law for the above-mentioned purpose.**

## **Abuse and neglect, ill-treatment, violence**

112. The Committee welcomes the awareness-raising campaigns conducted to counteract violence and abuse of children. It is, however, concerned that prevention measures and appropriate mechanisms for responding to abuse remain inadequate. It regrets the lack of updated statistics on victims of reported cases of violence, especially sexual and intra-family, the limited number of investigations and sanctions in relation to such cases and the lack of available physical and psychological recovery and social reintegration measures.

113. **The Committee recommends that the State party:**

**(a) Strengthen its existing measures to prevent child abuse and neglect;**

**(b) Strengthen capacity, inter alia by systematic training of the children's officers, volunteer children's officers and other law-enforcement agencies such as the police within the Provincial Administration to investigate, review and respond to child-rights complaints;**

**(c) Provide support for the operation of a 24-hour three-digit toll-free nationwide telephone helpline for children, resourced with well-trained professionals and volunteers;**

**(d) Stimulate the creation of networks and partnerships, with the involvement of local advisory councils, aimed at eliminating violence against children;**

(e) Consider establishing a centralized system of gathering data, documenting, coordinating, investigating, responding to and following up on cases of child abuse in its various forms.

114. With reference to the United Nations Secretary-General's Study on violence against children, the Committee recommends that the State party:

(a) Take all necessary measures for the implementation of the overarching and setting specific recommendations contained in the report of the independent expert for the United Nations Study on violence against children (A/61/299) while taking into account the outcome and recommendations of the Regional Consultations for Eastern and Southern Africa (South Africa, 18-20 July 2005);

(b) Use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;

(c) Seek technical assistance for the above-mentioned purposes from UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO).

#### **6. Basic health and welfare**

(arts. 6; 18, para. 3; 23; 24; 26 and 27, paras. 1-3, of the Convention)

##### **Children with disabilities**

115. While welcoming the establishment of the National Council for Persons with Disabilities, the Committee remains concerned at the limited capacities for early detection and treatment of children with disabilities, the lack of governmental institutions and infrastructure to provide for the needs of disabled children, the inaccessibility of buildings and transportation for children with disabilities, and the absence of an inclusive policy for them.

116. The Committee recommends that the State party take fully into account the Committee's general comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), and more specifically:

(a) Further encourage the inclusion of children with disabilities into the regular educational system and their inclusion into society;

(b) Pay more attention to special training for teachers and making the physical environment, including schools, sports and leisure facilities and all other public areas, accessible for children with disabilities;

(c) Improve and strengthen early detection and treatment services through the health and education sector;

**(d) Initiate programmes for public education on children with disabilities. The programmes should aim at addressing the stigmatization of and discrimination against children with special needs. Similarly, initiate community-based programmes to support families and parents with children with special needs;**

**(e) Increase the financial allocation given to children with disabilities in schools. The allocation of resources should take into consideration the specific needs of each child;**

**(f) Ensure the effective implementation of the Persons with Disabilities Act of 2003 so as to enable the National Council for Persons with Disabilities to carry out the necessary programmes.**

### **Health and health services**

117. The Committee notes the efforts of the State party at policy and practical levels to give effect to the right to health and health services, including the National Infant Feeding Policy and the distribution of impregnated nets for the prevention of malaria. However, it remains deeply concerned at the state of health of children in Kenya, in particular the following:

(a) Disparity in distribution and allocation of health care and services between rural and urban areas;

(b) High infant and under-five mortality rates and the inadequacies of the existing measures and their inaccessibility for children living in poverty;

(c) Lack of access to sanitation and clean, sufficient, reliable and affordable drinking water, as well as the threat posed by malaria to the right to health and survival of children;

(d) High percentage of children under age 5 who are chronically malnourished, underweight or stunted, as well as the limited enjoyment of the right to health by children, particularly with regard to access to generic medicine.

118. **The Committee recommends that the State party:**

**(a) Allocate more financial and human resources to health services, in particular with a view to rationalizing their distribution to ensure availability in all parts of the country;**

**(b) Undertake all necessary measures to reduce infant and under-five mortality rates and take into account general comment No. 7 on implementing child rights in early childhood (CRC/C/GC/7/Rev.1, para. 27), including by improving prenatal care and preventing malaria and communicable diseases;**

**(c) Establish more child health clinics in order to reduce distances for mothers and pregnant mothers;**

**(d) Improve access to safe drinking water and sanitation facilities and ensure sustainability, availability, sufficiency and affordability to all, particularly children;**

**(e) Develop appropriate national strategies to address the critical nutritional needs of children, particularly among the most vulnerable groups, through a holistic and intersectoral approach;**

**(f) Ensure that regional and other free-trade agreements do not have a negative impact on the enjoyment of the right to health by children, in particular with regard to access to generic medicine;**

**(g) Step up anti-corruption measures relating to the management of funds for the health sector.**

### **Adolescent health**

119. The Committee, while acknowledging that some measures have been taken to address mental and other health problems of adolescents, is concerned at the high rates of teenage pregnancies, the criminalization of the termination of pregnancies in cases of rape and incest, the lack of adequate and accessible sex education and reproductive health services and the difficulties pregnant girls face in order to continue their education. These factors all contribute to the elevated incidence of maternal mortality among adolescent girls. The Committee is further concerned over drug usage, the rate of adolescent suicides and lacking mental-health services.

120. **The Committee recommends that the State party:**

**(a) Undertake a comprehensive study to assess the nature and the extent of adolescent health problems and, with the full participation of adolescents, use this as a basis for formulating adolescent-health policies and programmes in the school curriculum, with a particular focus on the prevention of teenage pregnancies, unsafe abortions and sexually transmitted diseases, including HIV/AIDS, taking into account the Committee's general comment No. 4 (CRC/GC/2003/4) on adolescent health and development;**

**(b) Strengthen developmental and mental-health counselling services, as well as reproductive counselling, and make them known and accessible to adolescents;**

**(c) Continue to provide support to pregnant teenagers and ensure the continuation of their education.**

### **HIV/AIDS**

121. The Committee welcomes Kenya's National Strategic Plan on HIV/AIDS (2005-2010), as well as the guidelines on infant and young-child feeding in the context of HIV/AIDS. It notes as positive that infection rates have declined in recent years; however, it is concerned at the particularly high infection rates among adolescent girls and children under age 5. The Committee is further concerned at the extremely high number of HIV/AIDS orphans and child-headed households. The Committee regrets that government funding for antiretroviral medication appears to be insufficient. It also regrets that insufficient resources are allocated to prevention through sex education among adolescents.

**122. The Committee recommends that the State party, taking into account the Committee's general comment No. 3 on HIV/AIDS and the rights of children (CRC/GC/2003/3) and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37):**

**(a) Strengthen its efforts in combating the spread and effects of HIV/AIDS, in particular by effectively implementing the National Strategic Plan, policies and guidelines on HIV/AIDS, infant and child feeding and the programme for preventing mother-to-child transmission of HIV/AIDS;**

**(b) Provide all pregnant women with adequate health and social services free of charge, and by ensuring the provision of antiretroviral drugs and formula-feeding for infants;**

**(c) Systematically include comprehensive information about HIV/AIDS and sex education to youth, including confidential counselling and testing and the promotion of contraceptive use, and provide training to health workers, teachers and education personnel on teaching about HIV/AIDS and sex education;**

**(d) Integrate respect for the rights of the child into, and involve children in, the development and implementation of its HIV/AIDS policies and strategies;**

**(e) Expand assistance to orphaned children and made vulnerable by HIV/AIDS;**

**(f) Ensure that public-awareness campaigns seek to prevent discrimination against children infected with and affected by HIV/AIDS.**

#### **Harmful traditional practices**

123. The Committee acknowledges the endeavours made by local administrative officers in collaboration with civil society to protect the girl child from forced and early marriages and/or female genital mutilation, particularly the prohibition of female genital mutilation (FGM) under the Children's Act of 2001 and the implementation of the Alternative Rite of Passage Initiative with the goal of eliminating female genital mutilation. However, the Committee reiterates its concern that female genital mutilation is still widely practiced, especially among certain indigenous and minority groups.

**124. The Committee recommends that the State party:**

**(a) Strengthen its measures regarding female genital mutilation and early marriages and ensure that the prohibition is strictly enforced;**

**(b) Conduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls;**

**(c) Introduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes, and engage the extended family and the traditional and religious leaders in these actions.**

### **Standard of living**

125. The Committee remains deeply concerned at the widespread poverty and the increasingly high number of children who do not enjoy the right to an adequate standard of living, including access to food, clean drinking water, adequate housing and latrines. The Committee is particularly concerned at the situation of children belonging to disadvantaged families, rural communities, orphans, children infected with HIV and/or affected by HIV/AIDS, and street children. The Committee regrets that the Poverty Reduction Strategy does not address children, specifically children in need of protection and working children.

126. **The Committee:**

**(a) Reiterates its recommendation (CRC/C/15/Add.160, para. 5) urging the State party, in accordance with article 27 of the Convention, to reinforce its efforts to provide support and material assistance to marginalized and disadvantaged families and to guarantee the right of children to an adequate standard of living;**

**(b) Urges the State party to pay particular attention to the rights and needs of children in the implementation of the Poverty Eradication Plan, the Poverty Reduction Strategy, the Constituency Development Fund (CDF) under the CDF Act of 2003, the Local Authorities Transfer Fund (LATF), the Local Authority Service Delivery Action Plan (LASDAP) and all other programmes intended to improve the standard of living in the country, including coordinated efforts with civil society and local communities;**

**(c) Recommends that the State party, taking into account general comment No. 7 on implementing child rights in early childhood (CRC/C/GC/7/Rev.1, para. 26), urgently develop a comprehensive social protection framework, giving the highest priority to the most vulnerable children, particularly children belonging to disadvantaged families, rural communities, orphans, children infected with HIV and/or affected by HIV/AIDS, and street children.**

### **7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

#### **Education, including vocational training and guidance**

127. The Committee notes with appreciation the introduction of a policy of free primary education in 2003, which despite prevailing high rates of children unable to access education, has resulted in a significant increase of school enrolment. The Committee is concerned at the low enrolment in early-childhood care and education institutions and the disparities in the access to quality education, which particularly disadvantages girls and pastoralist and hunter-gatherer children. The Committee also notes that the rapid increase in school enrolment significantly challenges sufficient allocation of financial resources, commonly resulting in a poor physical school environment lacking adequate infrastructure, trained teachers, and appropriate water and sanitation facilities. The Committee regrets that enrolment in secondary schools is not free, and because of this may impede higher attendance. It is also concerned about the low level of vocational training available to qualify adolescents for non-academic occupations.

128. **The Committee further recommends that the State party, taking into account its general comment No. 1 (CRC/GC/2001/1) on the aims of education:**

- (a) Ensure that all children complete eight years of compulsory free primary education;**
- (b) Undertake measures to provide secondary education free of cost;**
- (c) Increase public expenditure in education, in particular in pre-primary, primary and secondary education;**
- (d) Increase enrolment in primary and secondary education, reducing socio-economic, gender, ethnic and regional disparities in the access and full enjoyment of the right to education;**
- (e) Undertake additional efforts to ensure access to informal education to vulnerable groups, in particular pastoralist and hunter-gatherer children, as well as street children, orphans, children with disabilities, child domestic workers, children living in conflict risk areas and refugee camps by, for example, introducing mobile schools, evening classes and eliminating indirect costs of school education;**
- (f) Strengthen vocational trainings, including for children who have left school before completion;**
- (g) Provide detailed information on the implementation of the Early Childhood Education Policy in its next periodic report.**

#### **8. Special protection measures**

**(arts. 22, 30, 38, 39, 40, 37(b)-(d) and 32-36 of the Convention)**

#### **Refugee children**

129. The Committee notes with appreciation the State party's long-standing, generous approach to receiving refugees from neighbouring countries and the information provided by the delegation that a Refugee Act was adopted in December 2006. However, the Committee is concerned at the following:

- (a) Lack of disaggregated information on refugee, displaced and asylum-seeking children in the State party report;**
- (b) Gaps in implementation and the negative consequences of the long-term refugee encampment policy which results in children having only limited access to education and health services and restrictions on freedoms of movement, expression and association;**
- (c) Reports of police brutality and harassment of refugee children.**



130. **The Committee recommends that the State party:**

**(a) Take all necessary measures to guarantee the full implementation of the Refugee Act of 2006, in line with international human rights and refugee law, while taking into account the Committee's general comment No. 6 (CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin;**

**(b) Collect comprehensive and disaggregated information on refugee and asylum-seeking children;**

**(c) Provide adequate resources to the Refugee Department to enable it to gradually assume a greater role in the protection and assistance of refugees, including children refugees, in coordination with the Children's Department;**

**(d) Take all necessary measures to prevent and investigate reports of police brutality to ensure that refugee children are well protected and that perpetrators are brought to justice;**

**(e) Revise the policy on long-term encampment of refugees and provide new regulations to allow greater opportunities for refugees to reside outside designated areas, particularly to pursue medical treatment and education, to engage in self-employment, to reunite with other family members and secure adequate physical and legal protection;**

**(f) Continue pursuing international cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR).**

#### **Economic exploitation**

131. The Committee notes with concern the absence of domestic regulations or policies concerning child labour, and the high number of children engaged in economic activities compounded by high poverty levels and the effects of HIV/AIDS. The Committee further notes reports of consistent and serious problems regarding the economic exploitation of children and of the number involved in work that is hazardous and negatively impacts on their right to health, education and development.

132. **The Committee urges the State party to:**

**(a) Develop and enact legislation, as well as policies, to protect children from the worst forms of child labour, including measures to address the root causes of this problem;**

**(b) Strengthen the capacity of the institutions responsible for the control and protection of child labour;**

**(c) Seek the support and technical assistance of the International Labour Organization (ILO), UNICEF and national and international non-governmental organizations (NGOs), in order to develop a comprehensive programme to prevent and combat child labour, in full compliance with ILO Convention No. 182 (1999) concerning**

**the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment, which the State party has ratified.**

**Street children**

133. The Committee expresses deep concern at the following:

(a) The large number of street children, the denial of their right to education and health care, and their vulnerability to various forms of violence, including sexual abuse and exploitation and arrests that are arbitrary and abusive;

(b) The lack of a systematic and comprehensive strategy to protect and to address the situation of these children;

(c) The negative views and attitudes of society towards street children.

134. **The Committee recommends that the State party:**

**(a) Identify and address the root causes of children living in the streets;**

**(b) Develop a comprehensive strategy to address the large number of street children, with the aims of reducing and preventing this situation;**

**(c) Ensure that street children are provided with adequate nutrition and shelter, as well as health care, educational opportunities, protection and recourse to the justice system, in order to support their full development;**

**(d) Raise awareness of the issue of street children in order to reduce stigma and negative public attitudes, particularly among law-enforcement officers;**

**(e) Ensure that street children are provided with recovery and reintegration services, including psychosocial assistance for physical, sexual and substance abuse, and where possible and when in the best interests of the child, services for reconciliation with a view to reintegrating them into their families.**

**Sexual exploitation and trafficking**

135. The Committee, while recognizing certain efforts to take preventive action, expresses concern over the rising number of children internally trafficked and engaged in prostitution as part of sex tourism, particularly in the coastal regions of Kenya. In this regard it is a matter of concern that a minimum age for sexual consent for boys is not clearly established. The Committee is concerned that preventive measures, including those to address child pornography, remain insufficient. The Committee also regrets that the counter-trafficking bill has yet to be enacted and that despite the legislative provision in the Children's Act for the protection of children against sale, trafficking and abduction, effective protection remains weak and rarely results in investigations and sanctions.

136. **The Committee recommends that the State party:**

**(a) Strengthen its legislative measures and develop an effective and comprehensive policy that addresses the sexual exploitation of children, including the factors that place children at risk of such exploitation, and that addresses areas where such exploitation has been identified as most prevalent;**

**(b) Prevent the criminalization of child victims of sexual exploitation;**

**(c) Implement appropriate policies and programmes for the prevention, recovery and reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congress against Commercial Sexual Exploitation of Children;**

**(d) Ratify the Optional Protocol on the sale of children, child prostitution and child pornography;**

**(e) Provide the Committee with further information on efforts to address child pornography;**

**(f) Enact the “counter-trafficking in persons” bill, taking into account international legal obligations;**

**(g) Dedicate further resources to prevention and awareness-raising, paying particular attention to the tourism sector;**

**(h) Train law-enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a child-sensitive manner that respects the privacy of the victim;**

**(i) Ensure enforcement of the law to avoid impunity;**

**(j) Seek further technical assistance from among others, UNICEF and ILO-IPEC (International Programme for the Elimination of Child Labour).**

#### **Administration of juvenile justice**

137. The Committee welcomes the piloting of a diversion programme for children in conflict with the law and the construction of facilities to house children in conflict with the law, as well as plans to make child-friendly transportation available to child offenders. While recognizing the efforts made, the Committee reiterates its previous concern that the minimum age of criminal responsibility, still set at 8 years of age, is too low. The Committee is further concerned that in certain instances children are treated as adults and that only limited progress has been achieved in establishing a functioning juvenile justice system outside the capital. The Committee is particularly concerned over information that, although the death penalty is outlawed for children, according to some reports children are still being sentenced to death. The Committee regrets the

lack of data on the number of children in conflict with the law. The Committee is concerned that children in need of care are kept in the same institutions as children in conflict with the law and that detention facilities are overcrowded. The Committee also regrets that free legal aid for children is not systematized and that assistance for child victims is inadequate. Finally, the Committee is concerned that street children are detained on the basis on their social condition.

**138. The Committee recommends that the State party bring the system of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”); the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty; (the “Havana Rules”), and the Guidelines for Action on Children in the Criminal Justice System (the “Vienna Guidelines”); and the recommendations of the Committee’s general comment No. 10 (CRC/C/GC/10) on children’s rights in juvenile justice. In this regard, the Committee recommends that the State party:**

- (a) Raise the age of criminal responsibility at least to the age of 12 years, and consider increasing it;**
- (b) Ensure that all minors, including those who have committed serious offences, are treated under the rules of juvenile justice and not in adult criminal courts;**
- (c) Establish children’s courts in different places throughout the country, drawing on the experience in Nairobi;**
- (d) Guarantee that no children are sentenced to the death penalty;**
- (e) Collect data on the number of children in conflict with the law and ensure that this information is taken into account in policy design and reform;**
- (f) Take all necessary measures to ensure that persons under the age of 18 are only deprived of liberty as a last resort and that, if detained, children remain separated from adults;**
- (g) Ensure that children in need of care are separated from children in conflict with the law;**
- (h) Implement alternative measures to deprivation of liberty, such as diversion, probation, counselling and community services;**
- (i) Ensure that persons under 18 years of age in conflict with the law have access to free legal aid as well as to independent and effective complaints mechanisms;**
- (j) Make sure that street children are not systematically treated as children in conflict with the law;**

**(k) Ensure that both sentenced and released persons under the age of 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development;**

**(l) Continue to seek technical assistance and cooperation from, inter alia, the United Nations Inter-Agency Panel on Juvenile Justice which is composed of representatives of OHCHR, the United Nations Office on Drugs and Crime (UNODC), UNICEF and NGOs.**

#### **Minority and indigenous children**

139. The Committee acknowledges the efforts deployed by the Government to provide special treatment to children belonging to indigenous peoples, including pastoralist and hunter-gatherer communities, as well as to other minority groups. The Committee notes with concern the elevated poverty rates among these groups and the limited access of their children to basic health, sanitation and education. Despite the Government's effort to ensure free universal primary education, enrolment and literacy rates among children from minority and indigenous peoples' communities continuously fare below the national average, especially in the case of girls. The Committee notes that, in addition to cultural practices such as early marriages and child labour, the major reasons for their low enrolment rates are poverty and the lack of education adapted to the lifestyle of these communities. The Committee also notes the low quality of and lack of access to schools in remote pastoralist areas. Finally, it is very concerned at the widespread continuation of harmful traditional practices and their impact on girls, despite the formal outlawing of some of these practices such as female genital mutilation.

**140. In the light of the recommendations adopted during its day of general discussion on the rights of indigenous children (CRC/C/133, para. 624), the Committee recommends that the State Party:**

**(a) Constitutionally recognize the rights of indigenous pastoralist and hunter-gatherer and other marginalized communities to their lands and resources, to effective political participation and to cultural identity, and enact specific legislation accordingly;**

**(b) Consider ratifying the ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries;**

**(c) Put into place affirmative-action measures and the corresponding resources to ensure free universal primary education and basic health care for children belonging to indigenous peoples and minority communities. These measures should include further efforts to establish clinics and mobile schools, and conduct birth-registration campaigns, as well as specific incentives and training for health workers and teachers. Such measures should be developed in consultation with and with the participation of the communities concerned;**

**(d) Implement culturally appropriate measures to eliminate harmful traditional practices and provide material and psychological support to children who are victims of these practices;**

(e) Pay particular attention to the recommendations presented by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, based on his mission to Kenya in December 2006 (A/HRC/4/32/Add.3).

#### **9. Optional Protocols to the Convention on the Rights of the Child**

141. The Committee welcomes the statement of the State party delegation of the intention to ratify within 12 months the Optional Protocol on the sale of children, child prostitution and child pornography and urges the State party to submit the initial report to the Optional Protocol on the involvement of children in armed conflict.

#### **10. Follow-up and dissemination**

##### **Follow-up**

142. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting the recommendations to the members of the Cabinet, the Parliament, and to district and local administrators, when applicable, for appropriate consideration and further action.

##### **Dissemination**

143. The Committee further recommends that the second periodic report and written replies submitted by the State party, and related recommendations (concluding observations) it adopted, be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil-society organizations, youth groups, professional groups, and children, in order to generate debate on and awareness of the Convention, its implementation and monitoring.

#### **11. Next report**

144. The Committee invites the State party to submit a consolidated third, fourth and fifth report by 1 September 2012, the due date for submission of the fifth periodic report. This is an exceptional measure owing to the large number of reports received by the Committee every year. This report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

145. The Committee also invites the State party to submit a core document in accordance with the requirements of the common core document in the “Harmonized guidelines on reporting”, approved at the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

#### **Concluding observations: Mali**

146. The Committee considered the second periodic report of Mali (CRC/C/MLI/2) at its 1206th and 1207th meetings (see CRC/C/SR.1206 and 1207), held on 18 January 2007, and at its 1228th meeting, held on 2 February, it adopted the following concluding observations.

## A. Introduction

147. The Committee welcomes the State party's second periodic report, prepared in accordance with the Committee's guidelines, which gave a clear understanding of the situation of children in the State party, and the detailed written replies to its list of issues (CRC/C/MLI/Q/2). It further notes with appreciation the open, frank and constructive dialogue with the high-level delegation.

## B. Follow-up measures undertaken and progress achieved by the State party

148. The Committee notes with appreciation the enactment of the following legislation:

- (a) Law No. 06-024, of 2006, making birth registration cost-free;
- (b) Decree No. 06-117/P-RM, creating the "Commission nationale des droits de l'homme" in 2006;
- (c) Decree No. 05-147/P-RM, of 2005, providing free antiretroviral therapy;
- (d) Act No. 04-004, creating the National Centre for Documentation and Information on Women and the Child in 2004;
- (e) Order No. 02-062/P-RM, of 2002, establishing the Child Protection Code;
- (f) Decrees Nos. 99-450, of 1999, and 02-067, of 2002, laying down the conditions for the establishment and operation of private reception, listening, counselling and accommodation centres for children;
- (g) Act No. 01-081, of 2001, on the criminal responsibility of minors and the establishment of juvenile courts;
- (h) Agreements with a number of countries, including Côte d'Ivoire (2000), Burkina Faso (2004) and Senegal (2004), on cooperation in combating cross-border trafficking of children.

149. The Committee also welcomes the ratification or accession to the following international human rights instruments:

- (a) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, in 2002;
- (b) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2005;
- (c) Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, in 2006;
- (d) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2003;

(e) International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), in 2000;

(f) International Labour Organization Convention concerning Minimum Age for Admission to Employment (No. 138), in 2002;

(g) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000, in 2002;

(h) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, in 2000;

(i) Rome Statute of the International Criminal Court, in 2000.

### **C. Factors and difficulties impeding the implementation of the Convention**

150. The Committee acknowledges challenges faced by the State party: namely the high rate of poverty; serious problems of accessibility, in particular, for people living in the large and desert areas of the country; and the prevalence of traditions and customs that may hamper progress towards the full realization of all human rights and fundamental freedoms of children.

### **D. Principal areas of concern and recommendations**

#### **1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

#### **Previous recommendations of the Committee**

151. While the Committee notes that some of its previous recommendations (CRC/C/15/Add.113) have been implemented, it regrets that many have not been sufficiently addressed, including those recommendations regarding birth registration, corporal punishment and ill-treatment, neglect and abuse of children, female genital mutilation and early and forced marriages, economic exploitation, discrimination against certain vulnerable groups of children and the reform of the juvenile justice system. These concerns and recommendations are reiterated in the present document.

152. The Committee urges the State party to make every effort to implement the recommendations from the concluding observations of the initial report that have not yet been sufficiently addressed and to provide adequate follow-up information to the recommendations contained in the present concluding observations.

#### **Reservations**

153. The Committee welcomes the information that the ratification of relevant international agreements and the enactment of the Child Protection Code have rendered the reservation to article 16 invalid and that it will be withdrawn.



154. **The Committee, while referring to its previous recommendations, recommends that the State party take all necessary measures for a speedy withdrawal of the said reservation.**

### **Legislation**

155. The Committee notes that the Convention takes precedence over national legislation and that certain legislative and regulatory steps have been taken to give effect to the Convention, such as the Child Protection Code and the draft Individuals and Family Code. However, the Committee remains concerned that a number of measures that would facilitate the full implementation of the Convention have not been undertaken.

156. **The Committee recommends that the State party strengthen its efforts to implement the Convention and work with the different regions and *cercles* in order to ensure that laws and regulations are in full conformity with the Convention. The Committee also recommends that the State party adopt and fully implement the Child Protection Code, including by putting in place the child protection officers (“*Délégués à la protection de l’enfance*”) and the probation officers (“*Délégués à la liberté surveillée*”). Furthermore, the Committee recommends that the State party expedite as much as possible the adoption of the draft Individuals and Family Code and provide adequate resources for its full implementation.**

157. **The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes e.g. abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking are provided with the protection required by the Convention, and in doing so the State party take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).**

### **National Plan of Action**

158. The Committee notes the National Strategic Plan 2002-2006 of the Ministry of the Promotion of Women, the Child and the Family with a sub-plan for the promotion of the child and the family. However, the Committee regrets that the National Plan of Action for the Survival, Development and Protection of Children (1992-2000) has not been renewed; in that regard, the Committee regrets the absence of a comprehensive national plan of action for children, covering all areas of the Convention.

159. **The Committee recommends that the State party develop a comprehensive, rights based national plan of action that covers all areas of the Convention and takes into account the objectives and goals of the outcome document entitled “A world fit for children”, adopted by the General Assembly at its special session on children in 2002, as well as the Millennium Development Goals. In this exercise, the Committee urges the State party to allocate sufficient human and financial resources for implementing such a plan.**

### **Coordination**

160. The Committee notes the establishment of an inter-ministerial Committee, which seems to be the successor to the former national assessment and monitoring Committee. However, it is unclear whether this new body has a coordinating mandate.

**161. The Committee recommends that the State party further enhance the capacity of the inter-ministerial Committee, which should include coordination, by defining its exact mandate, role and membership and provide it with adequate human and financial resources for performing its mandate. In this regard, the Committee refers the State party to its general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child (CRC/GC/2003/5).**

### **Independent monitoring**

162. The Committee notes with appreciation the establishment in 2006 of a national human rights institution, Commission nationale des droits de l'homme, and the various sectoral follow-up mechanisms. However, it regrets that this institution has not yet been provided with sufficient human and financial resources, and notes the lack of information on the extent to which the institution can and will deal with complaints submitted by or on behalf of children.

**163. The Committee recommends that the State party provide the necessary human and financial resources to the recently established national human rights institution for it to carry out efficiently the activities under its mandate. It also recommends that the State party ensure that this institution is accessible to children, by establishing a separate unit, and that it has the capacity, including well-trained staff, to investigate complaints by or on behalf of children, in a child-sensitive manner and in full accordance with the Convention. In all these actions, the State party should fully take into account the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child. The Committee also recommends that the State party seek assistance from, among others, the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Children's Fund (UNICEF).**

### **Resources for children**

164. The Committee is concerned that the budgets allocated for children present a very low percentage of the gross domestic product (GDP) and that it is unclear whether and to what extent budget allocations are provided for children belonging to vulnerable groups and/or living in rural and remote areas. The Committee is also concerned at the limited budget allocated to the Ministry for the Advancement of Women, the Child and the Family and to the social sector.

**165. The Committee recommends that the State party urgently strengthen its efforts to increase budgets for the implementation of the Convention, in particular for the economic, social and cultural rights of children (e.g. education and health) to the maximum extent of available resources, while paying special attention to ensuring adequate budget allocations for the protection of the rights of children belonging to vulnerable or disadvantaged groups, including children infected with HIV and/or affected by HIV/AIDS, orphans,**

**children living in poverty and those living in rural and remote areas. Furthermore, the Committee recommends that the State party increase the budget allocation to the Ministry for the Advancement of Women, the Child and the Family in order to enable it to fully carry out the activities under its mandate and particularly with respect to the sector related to children.**

#### **Data collection**

166. The Committee notes the progress made by the State party in the data-collection system. However, it is concerned that the current data-collection mechanism is insufficient to ensure the systematic and comprehensive collection of disaggregated quantitative and qualitative data for all areas covered by the Convention in relation to all groups of children, in order to monitor and evaluate progress and assess the impact of policies adopted with respect to children.

**167. The Committee recommends that the State party take measures to improve the system of collecting statistical and other data in all areas covered by the Convention and on the basis of appropriate indicators at the national, regional and local levels by allocating appropriate financial and human resources. Such a system should include all groups of children, while paying particular attention to those belonging to the most vulnerable groups, including children living in poverty, children with disabilities, street children and *garibou*.**

#### **Dissemination of the Convention**

168. The Committee commends the State party's efforts to promote awareness of the rights of the child and to disseminate the Convention through, for example, training programmes, translations of the text into different national languages, and distribution of brochures. However, the Committee remains concerned that a large part of the population and professionals working with and for children are not yet aware of the Convention and the principles enshrined therein.

**169. The Committee recommends that the State party continue and reinforce the awareness-raising campaigns to improve the understanding of the provisions and principles of the Convention, particularly in close cooperation with community and religious leaders. It also recommends that the State party disseminate the Convention to children, their parents and other caregivers, professionals working with and for children, including in the judiciary and the legal profession, and to the general public, paying particular attention to people living in rural and remote areas. Furthermore, the Committee encourages the State party to promote the incorporation of education on the Convention in the curricula of professionals working with and for children.**

#### **Cooperation with civil society**

170. The Committee notes the efforts undertaken by the State party to cooperate with civil society in the promotion of children's rights particularly in the preparation of the State party report and in the dissemination of the Convention.

**171. The Committee recommends that the State party further strengthen and institutionalize collaboration with civil society, including non-governmental organizations (NGOs) and traditional and religious leaders in the promotion of children's rights, in the follow-up to the concluding observations of the Committee both through awareness-raising and through making information available. In this regard, the Committee recommends that the State party take measures to strengthen the organizational capacity and the mobilization of civil society.**

### **International cooperation**

172. The Committee notes that the State party is one of the Heavily Indebted Poor Countries most affected by poverty and welcomes the information that it receives various forms of support through international cooperation. However, it is concerned at the lack of information on the coordination and management of the disbursement of foreign aid, at the extent to which children benefit from the aid, and at the fact that the State party has not yet achieved the goal of the 20/20 initiative.

**173. The Committee recommends that the State party ensure that the disbursement of foreign aid takes place in an effective, transparent and coordinated manner and that children benefit from it significantly. The Committee also recommends that the State party take the necessary measures to meet the goal of the 20/20 initiative.**

### **2. Definition of the child (art. 1 of the Convention)**

174. The Committee notes with appreciation that the draft Individuals and Family Code sets the marriage age at 18 for boys and girls.

**175. The Committee urges the State party to take every feasible measure to speed up the process of legislative reform in order to ensure equality between the age of marriage for girls and boys.**

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

176. While noting that the Constitution and the Child Protection Code prohibit discrimination on the grounds of social origin, colour, language, race, sex, religion or political opinion, the Committee is concerned that discrimination against girls and certain groups of children still exists in practice, particularly against children with disabilities, children born out of wedlock, children of disadvantaged families and street children, including *garibou*.

**177. The Committee urges the State party to adopt appropriate measures, including legislative measures, as well as a comprehensive strategy to combat discrimination on any grounds and against all vulnerable groups of children including through public educational campaigns aiming at changing negative social attitudes in this regard.**

### **Respect for the views of the child**

178. While noting with appreciation the efforts made by the State party to implement the principle of respect for the views of the child through awareness-raising campaigns and the establishment of the Children's Parliament, the Committee remains concerned that traditional societal attitudes limit the ability of children to freely express their views within the family, schools, communities, courts and other institutional settings.

**179. The Committee recommends that the State party strengthen its efforts to ensure that children's views are given due consideration in the family, schools, communities, courts and relevant administrative proceedings and in society in general. With regard to the implementation of article 12, the Committee recommends that the State party continue with its awareness-raising campaigns among the public at large and urges the State party to include traditional communities in these campaigns and involve religious leaders. The Committee further recommends that the State party take into account the recommendations adopted in September 2006 on the Committee's day of general discussion on the right of the child to be heard.**

### **4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a) of the Convention)**

#### **Nationality**

180. The Committee is concerned that current provisions prevent children from deriving nationality from their mothers.

**181. As a matter of non-discrimination and in the best interests of the child, the Committee recommends that the State party undertake the necessary legislative measures to ensure that the child can derive nationality not only from the father but also from the mother.**

#### **Birth registration**

182. The Committee welcomes the State party's initiatives to promote birth registration, such as the campaigns undertaken on the Day of the African Child in 2003; the 2004-2008 action plan to improve registration of civil status ("Plan de la Mission d'appui à la consolidation de l'état civil") and in 2006 the adoption of Law No. 06-024, which governs civil status and ensures free birth registration. However, the Committee is concerned that birth registration is a complicated process, that a large number of children are neither registered at birth nor at a later stage, and that major disparities exist between the birth registration of children in urban and rural and remote areas.

**183. The Committee recommends that the State party continue its efforts of systematic birth registration for all children born within the national territory, inter alia by ensuring a simplified and cost-free birth registration process, and by increasing the coverage of the mobile units, especially in rural and remote areas, in order to reach the most**

**disadvantaged populations. The Committee also urges the State party to proceed with the registration of those children who have not yet been registered and to enable them to access, in particular, education and health care.**

### **Corporal punishment**

184. The Committee appreciates the efforts undertaken by the State party to combat corporal punishment by implementing legislative, administrative, social and educational measures. However, it remains concerned that corporal punishment is lawful in the home and that it is used within families, Koranic schools and alternative-care settings, and not explicitly prohibited in penal institutions.

**185. The Committee urges the State party, while taking into account general comment No. 1 on the aims of education (CRC/GC/2001/1) and general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/GC/2006/8), to:**

**(a) Explicitly prohibit corporal punishment within the home, in all alternative-care settings and in penal institutions;**

**(b) Continue to sensitize and educate parents, guardians and professionals working with and for children by carrying out public educational campaigns on the harmful effects of corporal punishment;**

**(c) Continue to promote positive, non-violent forms of discipline as an alternative to corporal punishment;**

**(d) Seek assistance from, among others, UNICEF and WHO.**

### **5. Family environment and alternative care (arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

#### **Alternative care**

186. The Committee notes that there are many orphans and other vulnerable children in the State party who are in need of care and protection. The Committee, while noting the efforts to develop standards for institutional care, is concerned at the lack of a comprehensive policy for providing alternative care to children. Furthermore, the Committee notes that boys in need of alternative care and boys in conflict with the law are placed together in some centres, such as in Bollé.

**187. The Committee recommends that the State party, while taking into account the recommendations formulated following the day of general discussion on children without parental care in September 2005 (see CRC/C/135), develop and implement a comprehensive national policy for the care and protection of orphans and other vulnerable children, which should include measures to:**

**(a) Provide adequate assistance to families so that children do not have to be placed in alternative care;**

**(b) Provide adequate financial and other support for extended and foster families who take care of children;**

**(c) Ensure that institutional care is an option of last resort and that the quality of care in institutions is in full accordance with the principles and provisions of the Convention; and in this regard, complete the standard-setting efforts and ensure, including through effective inspections, that these standards are fully implemented;**

**(d) Take all necessary measures to prevent boys in need of alternative care from being placed in the same institution as boys in conflict with the law;**

**(e) Ensure that adequate human and financial resources be allocated for the proper functioning and monitoring of these centres.**

### **Adoption**

188. The Committee welcomes the State party's accession in 2006 to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, the reforms undertaken in the field of adoption, the establishment of a central body dealing with adoption, as well as the collaboration with the neighbouring countries on the subject. However, the Committee remains concerned that intercountry adoption has not yet been sufficiently regulated or addressed through legislative measures and policies. The Committee is further concerned that the reforms are not widely known and that children still leave the country without the approval of the adoption authorities.

**189. The Committee reiterates its previous concluding observation and recommends that the State party:**

**(a) Introduce proper monitoring procedures with respect to both domestic and intercountry adoptions;**

**(b) Provide training to magistrates;**

**(c) Take all necessary measures, including legal and administrative ones, to regulate intercountry adoption;**

**(d) Strengthen the central authority and make its functioning well known to the public at large;**

**(e) Take all necessary measures to ensure that the best interests of the child are paramount at all stages of adoption proceedings;**

**(f) Continue and strengthen the information campaigns and support measures to achieve full compliance with the new regulations of the adoption reform.**

### **Child abuse and neglect**

190. While the Committee notes the efforts undertaken by the State party to put in place laws and regulations to combat child abuse and neglect, the Committee is concerned that Malian law fails to prevent and penalize child abuse and neglect. Furthermore, the Committee is concerned at the lack of psychological and social support, the absence of legal and material assistance for victims and the lack of statistical data on child abuse and neglect.

191. **The Committee recommends that the State party:**

**(a) Adopt an inclusive and rights-based legal framework that addresses child abuse and neglect;**

**(b) Develop awareness-raising campaigns, with the involvement of children, to prevent and combat child abuse and neglect;**

**(c) Provide a 3-digit, toll-free, 24-hour national helpline for children;**

**(d) Ensure the psychological and legal support for children who are victims of abuse or neglect;**

**(e) Ensure that there is an effective system for receiving, monitoring and investigating reports on sexual abuse and ill-treatment in a manner which is child sensitive, that the privacy of victims is well protected and that perpetrators are brought to justice;**

**(f) Undertake studies on child abuse and neglect, including sexual abuse, to assess the extent, scope and nature of these practices.**

192. **With reference to the United Nations study on violence against children, the Committee recommends that the State party:**

**(a) Take all necessary measures for the implementation of the overarching and setting-specific recommendations contained in the report of the independent expert for the United Nations study on violence against children (A/61/299), while taking into account the outcome and recommendations of the Regional Consultation for West and Central Africa, which was hosted by the State party in Bamako from 23 to 25 May 2005;**

**(b) Use these recommendations as a tool for action in partnership with civil society and, in particular, with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) Seek technical assistance from UNICEF, OHCHR and WHO for the above mentioned purposes.**



**6. Basic health and welfare**  
**(arts. 6; 18, para. 3; 23; 24; 26; 27, paras. 1-3 of the Convention)**

**Children with disabilities**

193. While noting the development and increase in programmes and training courses related to children with disabilities as well as their inclusion into the regular educational system, the Committee is concerned at the lack of information and statistical data on the status of children with disabilities. The Committee is further concerned at reports that services for children with disabilities may be insufficient and are being reduced, that public areas are not all accessible for children with disabilities and that the legal framework to address the specific needs of children with disabilities is lacking.

194. **The Committee recommends that the State party, while taking into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's general comment No. 9 on the rights of children with disabilities, take all necessary measures to:**

**(a) Continue to encourage the inclusion of children with disabilities into the regular educational system and into society, inter alia by giving more attention to special training for teachers and making the physical environment - including schools, sports and leisure facilities and all other public areas - accessible for children with disabilities;**

**(b) Adopt an inclusive and rights-based legal framework that addresses the specific needs of children with disabilities;**

**(c) Implement all relevant provisions of existing legislation related to children with disabilities;**

**(d) Undertake awareness-raising campaigns with the involvement of children, with a focus on children with disabilities;**

**(e) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification.**

**Health and health services**

195. While acknowledging the efforts undertaken by the State party to improve health services, particularly in the area of immunization, combating malaria and promoting breastfeeding, the Committee remains concerned at the low level of GDP allocated to health, the limited number of doctors and of health centres, especially in rural and remote areas, the high maternal and child mortality rates, the high rate of child malnutrition, the still low breastfeeding rates and the prevalence of malaria.

196. **The Committee recommends that the State party:**

**(a) Strengthen its efforts to ensure universal access to maternal and child health care services and facilities, in particular, in rural and remote areas, including by allocating increased financial and human resources;**

**(b) Strengthen its efforts to ensure that all children have access to basic health care, in urban as well as in rural and remote areas;**

**(c) Reinforce measures to prevent malnutrition and malaria and increase immunization coverage for as many children and mothers as possible;**

**(d) Reinforce measures to promote and encourage exclusive breastfeeding for an infant's first six months and adopt the International Code of Marketing of Breast-milk Substitutes.**

### **Harmful traditional practices**

197. The Committee welcomes the establishment of the national programme that the State party implemented in cooperation with NGOs to combat female genital mutilation and the efforts undertaken to sensitize the population to the danger of other harmful practices. However, the Committee is deeply concerned at the lack of a specific legal prohibition to the practice of female genital mutilation. It is also particularly concerned at the persistence of early and forced marriages and other harmful traditional practices listed in the State party report.

198. **The Committee urges the State party to:**

**(a) Implement legislative measures on the prohibition of female genital mutilation and the prohibition of traditional marriage practices, including early and forced marriages, which are harmful to children, and ensure that perpetrators are brought to justice;**

**(b) Continue and strengthen awareness-raising campaigns to combat female genital mutilation and reinforce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes, by engaging with the extended family as well as with traditional and religious leaders;**

**(c) Take adequate measures to provide practitioners of female genital mutilation with the adequate training necessary to find alternative sources of income;**

**(d) Take appropriate measures to eradicate female genital mutilation and other traditional practices harmful to the health, survival and development of children, especially girls.**

### **Adolescent health**

199. The Committee is concerned that insufficient attention has been given to adolescent health issues, including developmental, mental and reproductive health issues, as well as drug, alcohol and tobacco abuse. It is also concerned at the high rate of teenage pregnancies and the lack of adequate and accessible sexual and reproductive health services.

200. **The Committee recommends that the State party:**

**(a) Strengthen adolescent-sensitive mental health counselling services and make them known and accessible to adolescents;**

**(b) Take measures to prevent and reduce alcohol and drug abuse among adolescents and to support recovery and social reintegration programmes for child victims of drug and alcohol abuse including by seeking technical cooperation from, for example, WHO and UNICEF;**

**(c) Strengthen sex and reproductive health education for adolescents, especially in schools, with a view to reducing the incidence of teenage pregnancies and provide adolescents with the necessary assistance and access to health care and education;**

**(d) Take into account the general comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child (CRC/GC/2003/4) of 2003.**

### **HIV/AIDS**

201. The Committee welcomes the efforts undertaken by the State party to combat HIV/AIDS, such as the establishment of the High National Council for Combating HIV/AIDS and the decision to provide free antiretroviral therapy. However, the Committee remains concerned at the high number of children infected with HIV and/or affected by HIV/AIDS, the lack of preventive measures taken and the inadequate assistance given to AIDS orphans, and the lack of data.

202. **The Committee recommends that the State party, while taking into account the Committee's general comment No. 3 (2003) on HIV/AIDS and the rights of the child and the international Guidelines on HIV/AIDS and Human Rights:**

**(a) Ensure universal and cost-free access to antiretroviral therapy;**

**(b) Involve children in the programme of the fight against HIV/AIDS, in particular by ensuring that more attention is given to the issue of children and HIV/AIDS;**

**(c) Continue and strengthen its efforts to prevent mother-to-child transmission of HIV;**

**(d) Strengthen its efforts to combat HIV/AIDS, including through ensuring availability of contraceptives throughout the country and through awareness-raising campaigns;**

**(e) Improve the protective and preventive support for AIDS orphans;**

**(f) Continue to prevent discrimination against children infected with HIV and/or affected by HIV/AIDS;**

**(g) Take steps to collect disaggregated data on the prevalence of HIV/AIDS in the State party, including among children, which can be used for the development, implementation and monitoring of policies and programmes for children living with HIV/AIDS.**

### **Standard of living**

203. While noting the adoption of the Strategic Framework for Combating Poverty in 2002, which takes into account the protection of the child, the Committee remains concerned at the high numbers of children and their families living below the poverty line and the high and increasing number of children living and/or working on the streets.

**204. The Committee recommends that the State party further strengthen its Strategic Framework for Combating Poverty by providing adequate financial and human resources for it and by paying particular attention to the needs of the most vulnerable groups of children.**

### **7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

205. The Committee acknowledges the efforts of the State party towards improving access to education, including for children with disabilities and nomadic children, increasing attendance rates and combating gender disparities by achieving education for all by 2015. However, it remains deeply concerned at the persistence of low rates of school enrolment and especially at the gender and geographical disparities with regard to access to education. The Committee is also concerned at the high illiteracy rates among children, the low qualifications and low numbers of teachers, the very limited pupil/teacher ratio, the insufficiency of adequate facilities, the high dropout and repetition rates, particularly of girls, the indirect school costs constituting barriers to education, the lack of information on vocational training and the type of education given in Koranic schools. Furthermore, the Committee notes with concern that the budget allocation for education has been reduced.

**206. The Committee recommends that the State party:**

**(a) Continue with its programme to achieve education for all by 2015 by paying particular attention to increasing enrolment and enrolment parity between girls and boys and between urban, rural and remote areas;**

**(b) Take all appropriate measures to allocate increased and adequate financial resources to improve the situation of education, paying particular attention to ensuring a sufficient number of school facilities;**

**(c) Improve teacher training and recruit more teachers, as planned, in order to improve the quality of education and in this regard improve, as necessary, the quality of the school curricula;**

**(d) Implement measures to reduce dropout and repetition rates;**

**(e) Eliminate indirect school costs;**

**(f) Promote the establishment of vocational training and provide detailed information on this in its third periodic report;**

**(g) Take appropriate measures to ensure that Koranic schools respect national school curricula and aims of education in conformity with article 29 of the Convention and are placed under the authority of the Ministry for Education;**

**(h) Seek technical assistance from UNICEF and UNESCO in this regard.**

#### **8. Special protection measures**

**(arts. 22, 38, 39, 40, 37 (b)-(d), 30 and 32-36 of the Convention)**

##### **Street children/child beggars**

207. While noting the efforts undertaken by the State party to reduce child begging by, inter alia, providing vocational training programmes for begging children the Committee remains deeply concerned at the high and increasing number of street and begging children in the State party. The Committee notes that these child beggars, referred to as *garibous*, are pupils under the guardianship of Koranic education teachers called *marabouts*. The Committee is concerned at their vulnerability to, inter alia, all forms of violence, sexual abuse and exploitation, as well as economic exploitation.

208. **The Committee recommends that the State party further address the problem of street and begging children and facilitate their reintegration into society by:**

**(a) Undertaking, as stated to the Committee during the dialogue, a study and assessment of the situation of these children in order to get an accurate picture of its causes and magnitude by involving *marabouts* in the programmes;**

**(b) Developing and implementing, with the active involvement of the children concerned and NGOs, a comprehensive policy that should address the root causes, in order to discourage, prevent and reduce child begging, and which should provide street children with necessary protection, adequate health-care services, education and other social reintegration services;**

**(c) Setting up family support programmes, including awareness-raising campaigns with a view to the reinsertion of street and begging children in the family unit if it is in their best interests;**

**(d) Seeking technical assistance from UNICEF.**

##### **Economic exploitation, including child labour**

209. The Committee is concerned at the high number of working children in the State party including working in agricultural fields, as domestic servants who may be subjected to violence including sexual abuse.

210. **The Committee recommends that the State party:**

**(a) Strengthen its efforts to combat child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education;**

**(b) Take measures to ensure effective implementation of the ILO Conventions No. 138 and 182, which the State party has ratified;**

**(c) Develop complaint and protection mechanisms, also by raising the number of inspectors and adopt legal measures to punish those responsible;**

**(d) Seek technical cooperation from ILO and UNICEF.**

### **Sexual exploitation and prostitution**

211. The Committee is concerned at the lack of information provided regarding sexual exploitation and prostitution of children in the State party, and in particular, expresses concern at the lack of the following:

**(a) Comprehensive legislation to prevent sexual exploitation of children;**

**(b) Protection and/or recovery assistance and social reintegration for children who are victims of sexual exploitation;**

**(c) Available data on the extent and patterns of sexual exploitation and prostitution.**

212. **The Committee recommends that the State party:**

**(a) Take all necessary measures to prevent sexual exploitation and prostitution of children;**

**(b) Take appropriate legal measures to protect children who are victims of sexual exploitation, including trafficking and prostitution, and bring perpetrators of sexual abuse and exploitation to justice;**

**(c) Train law-enforcement officials, particularly the “brigade des mœurs” and the police, social workers, journalists and prosecutors on how to receive, monitor and investigate complaints, and in a child-sensitive manner that respects confidentiality;**

**(d) Implement appropriate policies and programmes for the prevention, recovery and social reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the first and second World Congress against Commercial Sexual Exploitation of Children in 1996 and 2001;**

**(e) Prioritize recovery assistance and ensure that education and training, as well as psychological assistance and counselling, are provided to victims.**

### **Trafficking of children**

213. The Committee welcomes the various efforts taken by the State party to combat the trafficking of children, including by signing cooperative agreements with its neighbouring countries. However, the Committee remains concerned at the cross-border trafficking of children to other countries in the region and especially to Côte d'Ivoire, the lack of investigations opened and the lack of data on the number of children trafficked.

214. **The Committee recommends that the State party:**

**(a) Take measures, including legislation, to prevent and protect children from being trafficked;**

**(b) Effectively implement a policy against trafficking, including by allocating appropriate financial and human resources and by introducing awareness-raising campaigns;**

**(c) Ensure that all cases of trafficking are investigated and that perpetrators are charged, convicted and punished in accordance with due process of law;**

**(d) Ensure the application of the cooperative agreements to control cross-border trafficking;**

**(e) Reinforce the community surveillance units in the frontier zones of Sikasso, Ségou, Mopti and Koulikoro;**

**(f) Ensure the return of the child to its country and its family, if this is in the best interests of the child;**

**(g) Provide adequate programmes of assistance, recovery and reintegration for trafficked children, who should be treated as victims and neither criminalized nor penalized;**

**(h) Seek cooperation with, among others, UNICEF and the International Organization for Migration.**

#### **Juvenile justice**

215. The Committee welcomes the fact that legal reforms are under way and that the ones carried out in the justice sector have integrated the provisions of the “Riyadh Guidelines” and the “Beijing Rules”. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at the lack of systematic use of alternative measures (e.g. diversion and restorative justice), the detention of juveniles within the same facilities as adults, the absence of juvenile courts in most of the regions, the limited number of specialized and trained juvenile judges and the insufficiency of facilities and programmes for the physical and psychological recovery and social reintegration of children.

**216. The Committee recommends that the State party bring the system of juvenile justice fully into line with the Convention, in particular articles 37 (b), 40 and 39, as well as into line with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the “Havana Rules”), the Guidelines for Action on Children**

**in the Criminal Justice System (the “Vienna Guidelines”) and the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party:**

- (a) Speed-up the process of legal reforms;**
- (b) Develop and implement alternative measures such as diversion and restorative justice in order to strengthen the possibilities of dealing with children in conflict with the law without resorting to judicial proceedings;**
- (c) Ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time;**
- (d) In cases where deprivation of liberty is unavoidable and used as a last resort, improve conditions of detention and ensure that children in detention are placed in separate facilities from adults, paying special attention in this regard to girls;**
- (e) Ensure that persons under 18 have access to appropriate legal aid and defence and an independent, child-sensitive and effective complaint mechanism;**
- (f) Provide training on relevant international standards to those responsible for administration of the juvenile justice system, including judges, magistrates and law -enforcement officials;**
- (g) Ensure that both sentenced and released persons under 18 are provided with educational opportunities, including vocational and life-skills training, recovery and social reintegration services;**
- (h) Establish specialized juvenile courts in various regions of the country and appoint further specialized juvenile judges;**
- (i) Accelerate the appointment of the probation officers (*délégués à la liberté surveillée*) and provide them with adequate resources to carry out their mandate;**
- (j) Seek technical assistance from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime (UNODC), UNICEF, OHCHR and NGOs.**

## **9. Optional Protocols to the Convention on the Rights of the Child**

217. The Committee welcomes the ratification by the State party of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict.

218. **The Committee encourages the State party to submit its initial reports under the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, which were due in June 2004.**



## **10. Follow-up and dissemination**

### **Follow-up**

219. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, including by transmitting them to the members of the Council of Ministers, the Parliament, and to the governors of the regions, to the *cercles* and communes for appropriate consideration and further action.**

### **Dissemination**

220. **The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) that it adopted be made widely available in the languages of the country, to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

## **11. Next report**

221. The Committee invites the State party to submit a consolidated third, fourth and fifth report by 19 October 2012, due date of the fifth periodic report. This is an exceptional measure due to the large number of reports received by the Committee every year. This report should not exceed 120 pages (CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

222. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, approved by the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).

### **Concluding observations: Honduras**

223. The Committee considered the third periodic report of Honduras (CRC/C/HND/3) at its 1208th and 1209th meetings (see CRC/C/SR.1208 and 1209), held on 19 January 2007, and adopted at the 1228th meeting, held on 2 February, the following concluding observations.

#### **A. Introduction**

224. The Committee welcomes the submission of the State party's third periodic report, as well as the replies to the list of issues, which provide further information on the situation of children in Honduras (CRC/C/HND/Q/3/Add.1). It further notes with appreciation the dialogue with the high-level and intersectoral delegation of the State party.

#### **B. Follow-up measures undertaken and progress achieved by the State party**

225. The Committee welcomes the adoption in 2005 of the National Plan of Opportunities for Children and Adolescents.

226. The Committee notes with appreciation the State party's agreement concluded with UNICEF for the period from 2002 to 2006 to support the implementation of the Convention.

227. The Committee also welcomes the establishment in 2002 of an inter-institutional Commission against the Commercial Sexual Exploitation of Children and Adolescents.

228. The Committee also welcomes the State party's having adhered to the following international instruments:

(a) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (14 August and 8 May 2002, respectively);

(b) International Convention on the Elimination of All Forms of Racial Discrimination (10 October 2002);

(c) International Convention on the Protection on All Migrant Workers and Members of Their Families (9 August 2005);

(d) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (25 October 2001);

(e) Rome Statute of the International Criminal Court (1 July 2002);

(f) Inter-American Convention on the Forced Disappearances of Persons (28 April 2005).

### **C. Factors and difficulties affecting the implementation of the Convention**

229. The Committee recognizes that despite almost nine years having passed, the State party is still recovering from the effects of the devastating hurricane Mitch in 1998, which caused thousands of deaths, destroyed most of the infrastructure and left over 20 per cent of the population homeless.

### **D. Main subjects of concern, and recommendations**

#### **1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

#### **Previous recommendations of the Committee**

230. The Committee notes that some of its concerns and recommendations (CRC/C/15/Add.105, June 1999) made upon the consideration of the State party's second periodic report (CRC/C/65/Add.2) have been addressed. However, it regrets that other concerns and recommendations have been insufficiently or only partly addressed, including those related to the following:

- The need to establish adequate coordination

- The insufficient financial and human resources of the Honduras Institute of Children and the Family (IHNFA)
- Non-discrimination
- Birth registration, abuse and ill-treatment of children
- Limited access to health services
- Adolescent health
- Economic and sexual exploitation
- Children working and living in the streets
- Juvenile justice

**231. The Committee urges the State party to take all the necessary measures to address those recommendations from the concluding observations of the second periodic report that have not yet been implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the third periodic report.**

#### **Legislation and implementation**

232. The Committee is concerned that, as indicated in the State party's report, despite the adoption of the Code on Children and Adolescents and of various relevant pieces of legislation, there is still insufficient harmonization of the national legislation with the provisions of the Convention.

**233. The Committee recommends that the State party increase its efforts to guarantee the full harmonization of its domestic law, including the Family Code and the Code on Children and Adolescents, with the Convention on the Rights of the Child and other applicable international standards.**

**234. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes, e.g. abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking, are provided with the protection required by the Convention, and that in doing so the State party take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20 of 22 July 2005, annex).**

#### **National Plan of Action**

235. The Committee notes with appreciation the adoption in 2005 of the National Opportunities Plan for Children and Adolescents, which was drawn up taking into account the document "A world fit for children", adopted by the General Assembly at its special session in 2002, but

regrets the lack of information about the resources allocated for its implementation. The Committee also notes that several other specific plans of actions and programmes (see e.g. paras. 72, 74 and 78 of the present report) have been adopted in the last few years, but is concerned that they may not be adequately coordinated with the National Opportunities Plan for Children and Adolescents.

**236. The Committee recommends that the State party implement effectively the National Opportunities Plan for Children and Adolescents, with the aim of giving effect to the principles and provisions of the Convention, and for this purpose allocate adequate resources both at national and local level. The Committee further recommends that all other specific programmes and plans that may have an impact on children take this National Plan into account and be properly coordinated with it.**

### **Coordination**

237. The Committee notes the State party's efforts towards institutional reform of IHNFA aimed at reinforcing it. However, it is concerned that IHNFA still lacks adequate institutional structure to efficiently perform its coordination mandate throughout the country. It notes that its previous concerns over the lack of adequate human and financial resources of the Institute, expressed upon consideration of the State party's second periodic report, still remain valid. It is further concerned that most of the budget allocated to the Institute is spent on recurrent expenses and that a large number of its staff have not yet been adequately trained.

**238. The Committee recommends that the State party:**

**(a) Complete the institutional reform aimed at strengthening IHNFA;**

**(b) Provide IHNFA with adequate human and financial resources, including the necessary continuity of an adequately trained staff, to be able to properly carry out its mandate, i.e. to develop and coordinate the State policy on children and all the activities aimed at the implementation of the Convention.**

### **Independent monitoring**

239. The Committee welcomes the work of the National Commissioner for Human Rights (CONADEH). This Commissioner has the mandate, inter alia, to receive and consider complaints about violations of children's rights. The Committee also welcomes the activities of the municipal human rights commissioners, which should incorporate the functions of *defensores de la niñez*. However, it is concerned that an independent human rights institution focused on children is still lacking and that the municipal commissioners only exist in a limited number of municipalities.

**240. The Committee recommends that the State party take the necessary measures to expand the presence of the municipal commissioners to all municipalities. It further recommends that, taking into account the Committee's general comment No. 2 on national human rights institutions (2002) and the Paris Principles (General Assembly resolution 48/134, annex), the State party establish a national Ombudsman for Children,**

**and provide that person with adequate human and financial resources. The Ombudsman should coordinate his/her activities with those of the municipal commissioners and be explicitly mandated to deal with complaints from children in a child-sensitive and expeditious manner.**

#### **Resources for children**

241. The Committee is concerned that the increase in the funds available through, for instance, poverty reduction strategies, debt reduction programmes and international cooperation did not result in a proportionate strengthening of the mechanisms for the integral care and protection of children either at the national or local level. Furthermore, the Committee is concerned that among the main causes of poverty in Honduras are the unequal distribution of income and the misuse of resources, which severely affect children's enjoyment of their rights.

**242. The Committee recommends that the State party, in accordance with article 4 of the Convention:**

**(a) Increase budget allocations for the implementation of the rights recognized in the Convention both at the central and at the local level;**

**(b) Ensure a more balanced distribution of income throughout the country and prioritize budgetary allocations to ensure implementation of the economic, social and cultural rights of all children, including those belonging to disadvantaged groups, such as indigenous children, children with disabilities and children living in remote areas;**

**(c) Use the Poverty Reduction Strategy as a major opportunity to increase social expenditure for children in the context of their human rights, with a view to strengthening the system of integral care for children;**

**(d) Establish an effective mechanism for tracking and monitoring the allocation of resources from the national budget and international sources from a children's rights perspective.**

#### **Data collection**

243. The Committee welcomes the measures taken by IHNFA to improve the system of data collection, including the joint project between the Institute and non-governmental organizations (NGOs) to set up a database to study the extent of commercial sexual exploitation of children. However, it is concerned that information on children remains insufficient, especially regarding vulnerable groups such as street children, children with disabilities, and indigenous children, and that there is no centralized data management system to monitor progress in the implementation of the Convention.

**244. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system of data collection on the implementation of the Convention, covering all persons under the age of 18 and disaggregated by those groups of children who are in need of special protection. In this respect, the Committee also encourages the State party to continue its cooperation with UNICEF.**

### **Training on and dissemination of the Convention**

245. The Committee notes that, despite the chronic lack of resources, training courses have been held for professional groups and activities organized, especially with UNICEF and civil society support, on dissemination of the Convention. However, the Committee is concerned that the level of awareness of the Convention is low, in particular among indigenous groups and in rural areas.

**246. The Committee recommends that the State party strengthen its efforts to provide adequate and systematic training and/or sensitization on children's rights for professionals working with and for children, in particular law-enforcement officials, as well as for parliamentarians, judges, lawyers, health personnel, teachers, school administrators, social workers and others as required. The Committee further recommends that the State party include human rights in general, and the rights of the child in particular, in the curricula at all levels of education, including at universities, where appropriate.**

**247. The Committee recommends that the State party strengthen its efforts to disseminate the Convention throughout the country and to raise public awareness about its principles and provisions, in particular among children themselves, parents, teachers and local authorities, as well as among indigenous groups and in rural areas. The State party is encouraged to continue cooperating with UNICEF in this respect.**

### **Cooperation with NGOs**

248. The Committee notes with appreciation the involvement of NGOs in several relevant activities for the implementation of the Convention.

**249. The Committee encourages the State party to continue, and where possible strengthen, the collaboration with NGOs, including children's organizations, in the development and implementation of programmes and activities aimed at improving children's rights.**

### **International cooperation**

**250. The Committee notes that various programmes and projects have been and are being implemented in the framework of international cooperation, including the technical assistance and cooperation of United Nations agencies and programmes. The Committee thus recommends that the State party continue to undertake measures within the framework of international cooperation, while at the same time seeking to strengthen, through it, its institutional structure for the implementation of the Convention.**

## **2. Definition of the child (art. 1 of the Convention)**

251. The Committee reiterates its concern expressed in its previous concluding observations about the use of the biological criterion of puberty to set different ages of maturity between boys and girls; namely, that childhood ends at the age of 12 for males and 14 for females, while adolescence starts at these ages and ends at 18.

252. **The Committee, reiterating its previous recommendation made upon consideration of the State party's second periodic report, recommends that the State party abolish in all domains the biological criterion of puberty, which sets different legal age-limits for boys and girls.**

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

253. The Committee, while noting the State party's efforts aimed at combating all forms of discrimination, including the adoption in 2000 of the Equal Opportunities for Women Act and the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination in 2002, is nevertheless concerned that discrimination and stigmatization continue to exist towards certain vulnerable groups, such as indigenous children, street children, children living in rural and remote areas and towards certain children because of their appearance (e.g. way of dressing, tattoos, symbols). The Committee is also concerned at the persistence of traditional patriarchal cultural attitudes that discriminate against girls, thus making them more vulnerable to human rights violations.

254. **The Committee urges the State party to:**

**(a) Continue revising its legislation in order to bring it into full compliance with article 2 of the Convention, and to ensure full implementation in practice of all legal provisions prohibiting discrimination;**

**(b) Combat discrimination by ensuring equal access to education, health-care facilities and poverty alleviation programmes and pay special attention to the situation of girls;**

**(c) Carry out comprehensive public education campaigns to prevent and combat all forms of discrimination;**

**(d) Include in its next periodic report specific information on the measures and programmes it has undertaken that are relevant to the Convention on the Rights of the Child to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account the Committee's general comment No. 1 (CRC/GC/2001/1) on the aims of education.**

#### **Best interests of the child**

255. While the Committee welcomes the principle of the best interests of the child being enshrined in the State party's legislation, it is nevertheless concerned that this principle is neither recognized nor applied in practice; for instance in the allocation of resources, in the area of child protection and in the administration of justice.

**256. The Committee recommends that the State party strengthen its efforts to ensure that the general principle of the best interests of the child is understood and appropriately integrated in all legal provisions as well as in judicial and administrative decisions and in projects, programmes and services that have an impact on children.**

#### **Right to life, survival and development**

257. The Committee is extremely concerned at the very high number of disappearances and extrajudicial killings of children, including at hands of members of the police force and at the fact that these killings are not responded to with strong condemnation and adequate action by the authorities and the public at large. While noting the establishment of a special intersectoral commission of investigation in 2001, as well as of a special unit within the Criminal Bureau of Investigation specifically mandated to investigate these crimes, the Committee is concerned that many of them have so far remained unpunished. The Committee therefore welcomes the information that the President of the State party has written a letter in which he guarantees support for the special unit of investigation.

**258. The Committee recommends that the State party guarantee children throughout the country the right to life, continue to carry out a thorough investigation of the allegations of disappearances and extrajudicial killings of children, and prosecute and adequately punish those responsible of these heinous acts. Furthermore, the State party should:**

- (a) Systematically collect data and information on all violence and abuse against children and notably extrajudicial killings;**
- (b) Ensure that - as promised by the President - the necessary earmarked budgets are provided to the special unit created to investigate these crimes not only to deal with the current cases but also with all the cases waiting for investigation;**
- (c) Provide the family of the victims with adequate support and compensation;**
- (d) Reduce the availability of arms and ensure that their sale occurs only under strict governmental control;**
- (e) Address the root causes of these violent acts, including poverty and marginalization, since most of these acts are said to occur in the poorest metropolitan areas of Tegucigalpa and San Pedro Sula;**
- (f) Take measures, in cooperation with the media, to sensitize the public against the use of violent and other illegal measures in the strategy to address the problem of *maras*;**
- (g) Ensure that mechanisms to control and monitor independently the activities of the police forces are created and/or reinforced, if they exist.**

#### **Respect for the views of the child**

259. The Committee welcomes some positive initiatives in the area of child participation, such as the National Children's Congress and the Student Legislative Congress, but is concerned that



the right of the child to express his/her views is rarely implemented in practice, partly due to the fact that children are not recognized yet as right-holders. Furthermore, the Committee regrets the paucity of information on the participation of children in the justice system.

**260. The Committee recommends that the State party continue to promote, facilitate and implement in practice, within the family, schools, community, other institutions as well as in judicial and administrative procedures, the principle of respect for the views of children in all matters affecting them, in accordance with article 12 of the Convention. Furthermore, the Committee recommends that the State party take fully into account the recommendations adopted in September 2006 on the Committee's day of general discussion on the right of the child to be heard.**

#### **4. Civil rights and freedoms (arts. 7, 8, 113-17 and 37 (a) of the Convention)**

##### **Birth registration**

261. The Committee appreciates the considerable efforts of the State party to establish a birth registration system that covers all children throughout the country effectively, including awareness-raising campaigns, the adoption of Decree No. 62 of 2004 establishing the national registry system and the setting up of mobile registries in rural or remote areas. However, it is concerned at the significant discrepancies in birth registration rates between urban and rural areas, which are partly due to the low level of awareness thereof and lack of adequate resources and qualified staff in the registration system.

**262. The Committee reiterates its previous recommendation urging that the State party make a priority of the immediate registration of the births of all children, and promote and facilitate the registration of those children who were not registered at birth, in the light of article 7 of the Convention. The State party should also continue to carry out awareness campaigns, such as "All Honduran children have a right to a name and a nationality", targeted to the rural and most remote areas and intensify its efforts to provide adequate human and financial resources to improve the effective functioning of the national registration system, with special attention to civil registries located in rural and indigenous areas. Measures should be also taken to ensure that the data provided to the offices of the civil registry are accurate.**

##### **Freedom of association**

263. The Committee notes the information that, due to a repressive policy in combating *maras*, the crime of "illicit association" (art. 332 of the Penal Code) has been interpreted too broadly, which in some instances may amount to a violation of article 15 of the Convention, which recognizes the right of the child to freedom of association.

**264. The Committee recommends that the State party ensure that no restrictions are placed on the right of the child to freedom of association other than those imposed in conformity with article 15 of the Convention.**

### **Prohibition of torture and other cruel, inhuman or degrading treatment**

265. The Committee is deeply concerned at the information that beatings during and after apprehension of persons below 18 are common. The Committee is further concerned at the information that some of the child victims of extrajudicial killings appear to have been tortured before being killed.

**266. The Committee urges the State party to take all necessary measures to prevent children from being subjected to torture or any other cruel, inhuman or degrading treatment or punishment in all circumstances, and in particular during or after their apprehension by law-enforcement officials. The Committee further recommends that all allegations of ill-treatment and abuse committed at the hands of law-enforcement officials be investigated and those responsible prosecuted and punished.**

### **5. Family environment and alternative care (arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

#### **Family care and parental responsibilities**

267. While the Committee notes the creation of the Community Child Care Homes in 1998, of 42 comprehensive care centres for children aged under 5, as well as the enactment of the Equal Opportunities Law in 2000 - which obliges companies with more than 30 employees to create day-care centres for children under the age of 7 - it is concerned that integral care services for children while their parents are working are still insufficient. The Committee is also concerned that very few programmes provide specific support for single-mother families, which reportedly constitute around 50 per cent of Honduran families.

**268. The Committee recommends that the State party:**

**(a) Give appropriate assistance to parents in the performance of their child-rearing responsibilities, including appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible;**

**(b) Develop and implement policies and programmes to provide for the needs of children in single-parent families;**

**(c) Take all appropriate measures to expedite the adoption of two Bills aimed at facilitating the determination of paternity and at providing for the responsibility of fathers for the care and upbringing of their children.**

#### **Alternative care**

269. The Committee welcomes the programme supporting foster families and the “families in solidarity” programme, although the latter covers a limited number of children and seems to lack adequate regulations. The Committee is nonetheless concerned at the high number of children in need of alternative care (about 5,000 every year) and at the outdated guidelines for foster care and institutional care, which need to be reviewed.

270. **The Committee recommends that the State party, taking into account the recommendations formulated following its Day of General Discussion on children without parental care in September 2005 (see CRC/C/153), develop and implement a comprehensive policy for children in need of alternative care, which should include measures to:**

**(a) Provide families of children in need of care and protection with the necessary support and counselling in order to prevent child-parent separation, unless this separation is necessary in the best interests of the child;**

**(b) Promote alternative care in foster families, including kinship care and provide these families with adequate financial and other support, including training;**

**(c) Ensure that institutional care is an option of last resort and that the conditions in institutions, including provisions of health care and education, are in full conformity with the Convention;**

**(d) Ensure that children placed in institutions have access to adequate complaint and consultation mechanisms;**

**(e) Ensure the periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement;**

**(f) Review existing guidelines for alternative care (foster and institutional care) and bring them into full conformity with the Convention.**

### **Adoption**

271. The Committee notes that a draft Special Law on Adoption is under consideration in the Congress since 2000 and that the State party has started the process towards ratification of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

**272. The Committee, reiterating its previous recommendations, urges the State party to speed up the adoption of the draft Special Law on Adoption and finalize the process of ratification of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.**

### **Violence, abuse, neglect and maltreatment**

273. The Committee notes that legislation to prevent violence is abundant, including specific provisions in the Code on Children and Adolescents, the Law against Domestic Violence and in the Penal Code against violence within the family. However, the Committee is concerned that:

**(a) Domestic violence and abuse of children, including sexual abuse, constitute a serious problem and are on the rise, with more than 4,000 cases of child abuse and maltreatment reported every year;**

(b) Services for the physical and psychological support of victims of violence are insufficient.

**274. The Committee urges the State party to strengthen its efforts to prevent and combat ill-treatment of children within and outside the family and reinforce the mechanisms monitoring the extent of all forms of violence, injury or abuse, neglect, maltreatment or exploitation covered by article 19, including within the family, schools, in institutional or other care. The State party should also ensure that all children victims of violence have access to counselling and access to appropriate recovery and reintegration services.**

**275. With reference to the United Nations study on violence against children, the Committee recommends that the State party:**

**(a) Take all necessary measures for the implementation of the overarching recommendations contained in the report of the independent expert for the United Nations study on violence against children (A/61/299), while taking into account the outcome and recommendations of the Latin American Regional Consultation on Violence against Children, held in Buenos Aires from 30 May to 1 June 2005;**

**(b) Use these recommendations as a tool for action, in partnership with civil society and, in particular, with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) Seek technical cooperation in this respect from, inter alia, the Office of the High Commissioner for Human Rights, UNICEF and the World Health Organization.**

### **Corporal punishment**

276. The Committee is concerned that article 191 of the Family Code seems to authorize corporal punishment in the home and that there is no explicit prohibition of corporal punishment in alternative care settings.

**277. The Committee recommends that the State party, taking into account the Committee's general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006), introduce - and enforce where applicable - legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. The State party should also conduct awareness-raising and public-education campaigns against corporal punishment and promote non-violent, participatory methods of child-rearing and education.**

## **6. Basic health and welfare**

**(arts. 6; 18, para. 3; 23; 24; 26; 27, paras. 1-3, of the Convention)**

### **Children with disabilities**

278. The Committee notes the enactment in October 2005 of the Law for Integral and Equal Development for the Disabled, and welcomes the work of CONAMED (National Council for the

Care of Disabled Children). But it expresses concern that this body enjoys limited support. The Committee is also concerned at the general situation of children with disabilities, and especially concerned that very limited infrastructure exists for their care, and that a very high percentage of children with disabilities do not attend primary school and do not complete any level of education.

**279. The Committee recommends that the State party, taking into account the Committee's general comment No. 9 on the Rights of Children with Disabilities and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96):**

**(a) Pursue efforts to ensure that children with disabilities may exercise their right to education to the maximum extent possible, and facilitate their inclusion in the mainstream education system;**

**(b) Undertake greater efforts to make available the necessary professional (i.e. disability specialists) and financial resources, especially at the local level, and promote and expand community-based rehabilitation and social reintegration programmes, including parent support groups;**

**(c) Provide CONAMED with adequate human and financial support necessary to perform its important functions adequately;**

**(d) Adequately disseminate and implement the Law for Integral and Equal Development for the Disabled;**

**(e) Provide appropriate infrastructure for the care of children with disabilities;**

**(f) Strengthen public-awareness campaigns to change negative public attitudes;**

**(g) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification.**

## **Health**

280. The Committee welcomes the health-reform project aimed at improving access to health services for disadvantaged groups, as well as other important progress in this area. However, it is concerned that:

(a) Access to health services is inadequate especially in rural and remote areas of the country;

(b) A high percentage of maternal mortality occurs in rural areas due to lack of services and skilled health workers;

(c) Despite considerable improvement in the last few years, infant and child mortality remains high, especially in rural areas;

- (d) Malnutrition - despite some slight progress having been made - remains one of the main causes of child mortality; and it is very high, especially in rural areas;
- (e) Homes, especially in rural areas, lack clean drinking water;
- (f) Breastfeeding to the age of six months has significantly decreased since 2001.

**281. The Committee recommends that the State party:**

- (a) Ensure basic health care and services to all children throughout the country, including by finalizing the reform of the health sector so as to improve the quality and accessibility of services;**
- (b) Continue to address the problem of malnutrition and expand the supply of clean drinking water in homes, with special emphasis on rural and remote areas;**
- (c) Strengthen its efforts to urgently tackle infant, child and maternal mortality throughout the country;**
- (d) Develop and approve a special law for the protection and promotion of breastfeeding.**

**Adolescent health**

282. The Committee welcomes the 2002 National Programme for the Integral Care of Adolescents. However, it is concerned at the following:

- (a) High rate of teenage pregnancies and the still insufficient reproductive health services;
- (b) Much higher risk of maternal mortality to which pregnant girls are exposed, inter alia since girls often recur to clandestine forms of abortion;
- (c) High consumption of alcohol and tobacco among adolescents;
- (d) High rate of substance abuse, and increase in the suicide rate.

**283. The Committee recommends that the State party, taking into account the Committee's general comment No. 4 on adolescent health and development in the context of the Convention (CRC/GC/2003/4):**

- (a) Ensure access to reproductive health services to all adolescents and carefully address the issues of teenage pregnancy, clandestine abortions and substance abuse;**
- (b) Provide adequate access to mental-health services for all children and take all necessary measures to fight drug, alcohol and tobacco addictions, including by providing specific rehabilitation services;**

**(c) Continue prioritizing the issue of adolescent health on the political agenda of the Government and grant more resources to public institutions for quality care of this age group.**

#### **HIV/AIDS**

284. The Committee welcomes the adoption in 1999 of Decree No. 147/99 on HIV/AIDS which, inter alia, establishes a multisectoral national Commission (CONASIDA) mandated to promote inter-institutional coordination on all issues related to HIV/AIDS, as well as the HIV/AIDS Strategic National Plan 2003-2007 (PENSIDA II). However, the Committee is concerned that, despite the 2003 National Plan for prevention of mother-to-child transmission, the incidence of HIV/AIDS in Honduras is worryingly increasing and substantially higher than the average in the region. The Committee is also concerned at the information that CONASIDA lacks the necessary support to carry out its functions properly and that coordination is lacking among all institutional actors dealing with this issue.

**285. The Committee recommends that the State party, taking into account the Committee's general comment No. 3 on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37):**

**(a) Increase its efforts to prevent HIV/AIDS transmission among children, including by developing a clear and coherent national normative framework;**

**(b) Strengthen its measures to prevent mother-to-child transmission, for example through coordination with the activities aimed at reducing maternal mortality;**

**(c) Pay particular attention to children infected and affected by HIV/AIDS or who have become orphans as a result of the death of HIV/AIDS-infected parents, through providing adequate medical, psychological and material support and by involving the community;**

**(d) Provide adequate human and financial resources to both CONASIDA and PENSIDA II;**

**(e) Strengthen its efforts by conducting campaigns and programmes to raise awareness about HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups as well as the population at large, so as to reduce discrimination against children infected and affected by HIV/AIDS;**

**(f) Seek further technical assistance from, for example, the United Nations Joint Programme on HIV/AIDS and UNICEF.**

#### **Standard of living**

286. The Committee, while welcoming the adoption of a Poverty Reduction Strategy in 2001 and of the Law on the Fund for Poverty Reduction (Decree No. 70-2002), is concerned that the degree of poverty in the country remains high, especially in the rural areas and that the poor socio-economic situation of the country has a devastating impact on the standard of living of children, particularly the lack of access to basic goods, health services and education.

**287. The Committee recommends that the State party take all possible action, including providing additional and better managed resources, to reduce poverty and ensure that the entire country has access to basic goods, education, health and other services, including clean drinking water, especially the remote and rural areas. The Committee also recommends that in poverty-reduction strategies special attention be paid to children's rights.**

**7. Education, leisure and cultural activities  
(arts. 28, 29 and 31 of the Convention)**

288. The Committee notes that Honduras has proclaimed 2007 a "Year of Education" and welcomes the adoption of a Basic National Curriculum, as well as other educational programmes and plans. However, it is still concerned about the following:

- (a) Low quality of education in the country;
- (b) Considerable difference between urban areas and rural and remote areas with respect to quality and accessibility of education, number of inscriptions, level of infrastructure and dropout rates;
- (c) Low number of annual days of school and effective school hours in comparison with international standards;
- (d) Low number of teachers and their lack of training;
- (e) Lack of preschool education, especially in rural areas;
- (f) High rate of illiteracy in the country.

**289. The Committee recommends that the State party, taking into account the Committee's general comment No. 1 on the aims of education (2001):**

- (a) Increase its efforts to improve school conditions in remote and rural areas and eliminate discrepancies in access to education between urban and rural areas;**
- (b) Emphasize the quality of education, including vocational education and training, and in the national budget devote more and better-targeted resources to education;**
- (c) Strengthen measures aimed at increasing enrolment and completion rates, as well as reducing dropout rates;**
- (d) Increase educational opportunities for indigenous children, inter alia by continuing to provide bilingual education, where necessary;**
- (e) Increase the number of days of school and effective school hours for all children;**



**(f) Increase the number of teachers and improve the quality of teaching, including by investing in their training;**

**(g) Provide opportunities for children outside schools so that they can get as much education as possible through specific programmes tailored to their life conditions;**

**(h) Seek technical assistance from the United Nations Educational, Social and Cultural Organization (UNESCO) and UNICEF.**

290. The Committee is concerned that - for various reasons, including the lack of spaces for recreational activities for children - children's right to rest and leisure and to engage in play and recreational activities appropriate to their age is not being fully respected.

**291. The Committee recommends that the State party increase its efforts to promote and protect the right to rest, leisure and play of children in conformity with article 31 of the Convention, for example by establishing safer and accessible recreational areas for children.**

### **8. Special protection measures**

**(arts. 22; 30; 38; 39; 40; 37 (b)-(d); 32-36 of the Convention)**

#### **Migrant children and children of migrants**

292. While noting the existence of bilateral agreements relating to migration entered into by the State party, the Committee is concerned at the high number of migrant children who - especially those unaccompanied and in an irregular or undocumented situation - are particularly vulnerable to becoming victims of exploitation and abuse, including sexual exploitation, and have difficulties when forcibly returned home.

**293. The Committee recommends that the State party, taking into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin:**

**(a) Pay special attention to the situation of migrant children, particularly those unaccompanied and in irregular and/or undocumented situation;**

**(b) Take the necessary measures to intensify its efforts to prevent irregular migration, including by raising awareness about the risks involved in it, and promoting adequate conditions for the resettlement and reintegration of these children and their families upon their return;**

**(c) Effectively monitor the implementation of bilateral and regional agreements to protect the rights of migrant children;**

**(d) Ratify the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.**

### **Economic exploitation, including child labour**

294. The Committee notes the setting up of the National Commission for the Eradication of Child Labour, as well as the formulation and adoption of the National Plan of Action for the Gradual and Progressive Eradication of Child Labour. However, the Committee is concerned at the following:

- (a) No specific funds have been allocated for implementing the National Plan;
- (b) A large number of children - especially in rural areas and among the indigenous people - are still working in high-risk and exploitative conditions. Of particular concern to the Committee is the situation of children exploited for deep-sea fishing, especially in Puerto Lempira, with grave consequences for their health;
- (c) Child domestic workers often face difficult working conditions, such as long distances from home, low wages and long working hours, and are particularly vulnerable to ill-treatment and abuse, including sexual abuse, at the hands of their employers;
- (d) A high number of children between 14 and 17 are working in mines;
- (e) A high percentage of working children do not attend school.

295. **The Committee recommends that the State party:**

- (a) Undertake a survey of the number of children working, including as domestic workers and in the agricultural sector, in order to design and implement comprehensive strategies and policies to prevent and combat their economic exploitation;**
- (b) Improve the labour inspection system in order to ensure that the work performed by children is light work and not exploitative and/or hazardous;**
- (c) Ensure the implementation of legislation fully covering article 32 of the Convention, and ILO Conventions No. 138 and No. 182, including, in particular, identification of hazardous forms of work at the national level;**
- (d) Ensure adequate budget allocation for the implementation of the National Plan of Action for the Gradual and Progressive Eradication of Child Labour;**
- (e) Undertake awareness-raising campaigns to prevent and combat the economic exploitation of children;**
- (f) Seek technical assistance from the International Labour Organization's International Programme on the Elimination of Child Labour (IPEC/ILO), and UNICEF, among others.**

### **Street children**

296. While welcoming the National Plan of Action for the Social Integration of Children and Women Dependent on the Street, the Committee remains concerned at the high number of street children in the State party and at the lack of coordinated activities in this area. The Committee is further concerned at the information that a high percentage of street children are regularly exploited through prostitution, and that these children lack the most basic human rights, including an adequate standard of health, food, housing and education.

297. **The Committee recommends that the State party:**

- (a) Carry out a comprehensive study to assess the scope, nature and causes of the presence of street children in the country in order to develop a comprehensive policy, including at local level, for their prevention and reduction;**
- (b) Provide street children with recovery and social reintegration services as well as with adequate nutrition, housing, necessary healthcare and educational opportunities;**
- (c) Facilitate reunification of street children with their families, when in the best interests of the child;**
- (d) Continue to seek assistance from, inter alia, UNICEF.**

### ***Maras/pandillas***

298. The Committee is concerned that, according to the information received, the number of *maras/pandillas* has increased in the country. It also notes that most of the children belonging to these groups do not attend school and do not have any employment. Furthermore, the Committee - while noting the adoption of Decree No. 141 of 2001 on the prevention, rehabilitation and reintegration of members of *maras* - regrets that lack of adequate resources, including financial allocations, has hampered its effective implementation.

299. **The Committee recommends that the State party:**

- (a) Pay more attention to the social factors and causes at the root of the problem of *maras/pandillas*;**
- (b) Focus on preventive measures while refraining from treating this issue exclusively in a punitive and repressive way;**
- (c) Invest in financial and human resources for activities of prevention, rehabilitation and reintegration for members of *maras/pandillas*.**

### **Sexual exploitation and trafficking**

300. The Committee notes the measures taken by the State party to combat sexual exploitation and trafficking of children, including the reform of the Penal Code in 2006, the establishment of an inter-institutional Commission against the Commercial Sexual Exploitation of Children and

Adolescents in 2002, the drawing up of a Plan of Action to combat commercial sexual exploitation of children and adolescents 2005-2010 and the establishment of a special unit within the police to investigate cases of sexual exploitation and abuse of children in 2004. However, the Committee is concerned that commercial sexual exploitation of children in all its manifestations is common in Honduras, due not only to poverty and the socio-economic situation prevailing in the country but also to other significant factors such as violence and criminality. The Committee is concerned in particular that:

- (a) Sexual exploitation of children, especially girls, and trafficking for its purpose are a serious problem in Honduras;
- (b) Child prostitution and child sex tourism are common and increasing;
- (c) Despite the ratification of the Optional Protocol on the sale of children, child prostitution and child pornography, no governmental body is in charge of policies implementing it and little has been done to raise awareness of this problem.

301. **The Committee recommends that the State party:**

- (a) Undertake a study on the sexual exploitation of children in order to assess its scope and causes, enable effective monitoring of the problem and develop measures and programmes to prevent, combat and eliminate it;**
- (b) Increase its efforts to combat crimes related to child prostitution and sex tourism; for instance, by developing a specific strategy targeting the tourist industry, including clear and specific messages on child rights and on the existing sanctions against child abusers;**
- (c) Provide adequate programmes of assistance and reintegration for sexually exploited or trafficked children, who should be treated as victims and not criminalized;**
- (d) Implement effectively the National Plan of Action against commercial sexual exploitation of children and adolescents;**
- (e) Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints, in a child-sensitive manner that respects the privacy of the victim;**
- (f) Strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving trafficking and sale of children, child prostitution, child pornography and child sex tourism;**
- (g) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the 2000 Convention on Transnational Organized Crime, and define trafficking in the criminal legislation according to the definition contained therein;**
- (h) Seek technical assistance from among others, UNICEF.**

### Administration of juvenile justice

302. The Committee notes some progress in the implementation of the juvenile justice system, including the establishment of juvenile courts in eight departments. The Committee is concerned at the systematic use of pretrial detention and the steep increase of persons below 18 deprived of their liberty since the adoption of the new anti-*maras* measures, such as article 332 of the Penal Code, which contemplates the offence of “illicit association”. The Committee is particularly concerned that many children are arrested and detained on the mere allegation that they may belong to a *mara* because of their appearance, e.g. due to the way of dressing or to the presence of a tattoo or a symbol. The Committee is further concerned about the following:

(a) Deprivation of liberty is regularly used due to the lack of an effective system of alternative measures;

(b) Bad conditions of detention, despite recent progress, in the centres for children; including overcrowding, lack of medical and psychological services, and lack of sanitation;

(c) Reports of consistent violation of the right to privacy of children deprived of their liberty;

(d) Decisions depriving children of liberty are neither periodically nor consistently reviewed;

(e) According to information received, accused children awaiting trial are not always separated from persons already convicted;

(f) The majority of children do not have access to reintegration programmes during or after the period of deprivation of liberty.

**303. The Committee recommends that the State party ensure that persons below 18 are not deprived of their liberty unlawfully or arbitrarily, in particular as a consequence of the application of anti-*maras* measures. It further recommends that the State party take all necessary legislative and other measures, including the abolition of article 332 of the Criminal Code, to prevent criminalization and/or deprivation of liberty of children merely based on their appearance. Pre-trial detention should be limited only to certain conditions clearly established by the law, in particular to assure the child’s appearance at the court proceedings and if the child is in immediate danger to self or others. The duration of pre-trial detention should be limited by law and be subject to regular review, e.g. every month. The Committee further recommends that the State party:**

**(a) Develop and implement a wide variety of extensive measures alternative to the deprivation of liberty;**

**(b) Ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time;**

(c) **Improve the conditions of detention of children when detention is used as a last resort, notably by complying with the international standards as to surface area, ventilation, fresh air, natural and artificial light, proper food, drinking water and hygienic conditions;**

(d) **Establish an independent child-sensitive and accessible system for the reception and processing of complaints by children and investigate, prosecute and punish any case of mistreatment or abuse committed;**

(e) **Ensure that children deprived of their liberty remain in regular contact with their families while in the juvenile justice system, notably by informing parents when the child is detained;**

(f) **Provide training for penitentiary staff on children's rights and special needs;**

(g) **Request technical assistance in the area of juvenile justice and police training from, inter alia, the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime, UNICEF, OHCHR and NGOs.**

304. **The Committee reiterates its previous recommendation that the State party bring the system of juvenile justice fully in line with the Convention, in particular with articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, such as: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"); and the Committee's general comment No. 10 on Children's Rights in Juvenile Justice (CRC/C/GC/10).**

#### **Children belonging to indigenous groups**

305. The Committee notes with concern that indigenous communities continue to face serious difficulties in the enjoyment of the rights enshrined in article 30. In particular, the Committee is concerned that the enjoyment of the rights by children belonging to indigenous groups is negatively affected by the following:

(a) **High level of poverty, inadequate access to basic services, health and education and high rates of illiteracy;**

(b) **Systematic threats and abuses against indigenous communities and impunity of the perpetrators;**

(c) **Land usurpation from municipal corporations and destruction of natural resources.**

306. **The Committee recommends that the State party pursue measures to address effectively the gap in life opportunities of indigenous children, and take adequate measures in order to provide protection for the rights of indigenous children taking into due account the recommendations adopted by the Committee on its Day of General Discussion on the rights of indigenous children in September 2003.**

### **E. Optional Protocols to the Convention on the Rights of the Child**

307. **The Committee reminds the State party that its initial reports under both the Optional Protocols to the Convention have been due since 2004 and encourages their speedy submission, simultaneously if possible, to facilitate the review process.**

### **F. Follow-up and dissemination**

#### **Follow-up**

308. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the National Congress, and to provincial or State Governments and Parliament, when applicable, for appropriate consideration and further action.**

#### **Dissemination**

309. **The Committee further recommends that the third periodic report and written replies submitted by the State party and related recommendations (concluding observations) that it adopted be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

### **G. Next report**

310. **The Committee invites the State party to submit its fourth and fifth periodic reports in one consolidated report by 3 October 2012. This is an exceptional measure due to the large number of reports received by the Committee every year. This consolidated report should not exceed 120 pages (see CRC/C/148). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.**

311. **The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents”, approved at the Fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).**

### **Concluding observations: Marshall Islands**

312. **The Committee considered the second periodic report of the Marshall Islands (CRC/C/93/Add.8) in the absence of a delegation from the State party, at its 1210th meeting held on 22 January 2007, and adopted at the 1228th meeting, held on 2 February 2007, the following concluding observations.**

### **A. Introduction**

313. The Committee welcomes the submission of the second periodic report of the Marshall Islands. However, the Committee regrets that the State party did not provide replies to the list of issues (CRC/C/MHL/Q/2). The Committee also deeply regrets the absence of a delegation from the State party for the second time. Consequently, the Committee could not benefit from the opportunity of having a constructive dialogue with representatives of the State party. The Committee had to base its recommendations on information provided in the State party's report, and on other reliable information made available to it.

### **B. Follow-up measures and progress achieved**

314. The Committee notes with appreciation the enactment of the following legislation:

- (a) Adoption Act, in 2002, which ensures the protection of children through legal safeguards and the creation of a supervisory agency;
- (b) Sale of Tobacco to Minors Act, in 2003 (Public Law 2003-101), which prohibits the sale, distribution and use of tobacco products to persons below the age of 18;
- (c) Amended Birth Registration and Marriage Registration Act, which raises the legal age of marriage for girls from 16 to 18 years, bridging the disparity between the minimum legal age for the marriage of boys and that of girls, as recommended by the Committee in its previous concluding observations (CRC/C/15/Add.139, para. 24);
- (d) Amended Criminal Code, which prohibits the use of corporal punishment against children as a disciplinary measure in penal institutions.

315. The Committee also welcomes the ratifications of the following international human rights instruments:

- (a) Rome Statute of the International Criminal Court, in 2003;
- (b) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in 2004;
- (c) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, in 2004;
- (d) Convention on the Elimination of All Forms of Discrimination against Women, in 2006.

### **C. Factors and difficulties impeding the implementation of the Convention**

316. The Committee acknowledges the challenges faced by the State party in implementing adequate programmes and services for children in its dispersed island communities. Some of these islands are isolated, very difficult to reach and have few inhabitants.



## D. Principal areas of concern, and recommendations

### 1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

#### Previous recommendations of the Committee

317. The Committee notes with satisfaction that certain concerns and recommendations (CRC/C/15/Add.139 of 16 October 2000) made upon the consideration of the State party's initial report have been addressed through legislative measures and policies. However, some recommendations have not been given sufficient follow-up, including, for example, those on coordination, independent monitoring, data collection, parental responsibilities, child abuse and neglect, health and health services, adolescent health, education and the administration of juvenile justice. The Committee notes that those concerns and recommendations are reiterated in the present document.

**318. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report that have not yet been implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations in the next periodic report.**

#### Legislation

319. The Committee notes the measures undertaken by the State party to review its legislation with a view to ensuring its conformity with the Convention. However, it is concerned that not all principles and provisions of the Convention are covered by the State party's legislation.

**320. The Committee recommends that the State party take effective measures to harmonize its domestic legislation, which includes customary law, with the provisions and principles of the Convention.**

**321. It also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention, taking fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20). The State party may also wish to seek the assistance of UNICEF.**

322. The Committee notes that the Marshall Islands is party to two of the nine core international human rights treaties. Although Parliament seems to have approved the ratification of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is concerned at the information that the instruments of ratification for these four treaties have not been submitted to the Secretary-General of the United Nations.

**323. The Committee recommends that the State party promptly submit to the Secretary-General of the United Nations the instruments of ratification for the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

**324. The Committee highly recommends that the State party consider ratifying other core international human rights treaties, as recommended in the Pacific Plan for Strengthening Regional Cooperation and Integration, endorsed in October 2005 by the 16 leaders of the Pacific Islands Forum.**

#### **National plan of action**

325. The Committee is concerned at the absence of a national plan of action covering all areas of the Convention. The Committee is also concerned at the absence of a holistic policy framework governing all aspects of children's well-being, as well as at the limited financial and human resource capacity of the National Nutrition and Children's Council (NNCC).

**326. The Committee recommends that the State party develop a comprehensive, rights-based national plan of action, covering all areas of the Convention on the Rights of the Child and taking into account the objectives and goals of the outcome document of the 2002 United Nations General Assembly Special Session for Children, "A world fit for children", as well as the Millennium Development Goals. In this exercise, the Committee urges the State party to allocate sufficient human and economic resources for implementation of the national plan and to use a participatory approach, involving children and non-governmental organizations.**

#### **Coordination**

327. While taking note of the establishment of a Child Rights Office within the Ministry of Internal Affairs to serve as the focal point for issues relating to children, as well as of the coordinating role of NNCC, the Committee is concerned that the Child Rights Office has not yet been officially endorsed by the Cabinet and does not have an independent budget. The Committee notes with concern that the multisectoral coordination of implementation at all levels remains inadequate.

**328. The Committee recommends that the State party:**

**(a) Strengthen the coordination mechanisms between the various ministries, with a view to ensuring effective coordination and monitoring of children's policies and programmes, including by defining clearly the role and mandate of the Child Rights Office and its relationship to NNCC. In this regard, the Committee recommends that the State party take into account general comment No. 5 on general measures of implementation for the Convention on the Rights of the Child (CRC/GC/2003/5);**

**(b) Provide NNCC and the Child Rights Office with adequate human and financial resources to execute their mandate.**

### **Independent monitoring**

329. The Committee remains concerned that no independent body exists to monitor the implementation of the Convention and receive individual complaints in cases of violations of the rights of the child.

**330. The Committee reiterates its recommendation that the State party establish a national human rights institution, including the nomination of an ombudsperson for children, provided with adequate human and financial resources to promote and strengthen accessibility for children and to enable the latter to submit complaints. While taking into account general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the State party is encouraged to seek technical assistance from, among others, UNICEF and the Regional Office of the Office of the High Commissioner for Human Rights (OHCHR). The Committee also encourages the State party to involve NGOs in its ongoing efforts to monitor the implementation of the Convention.**

### **Resources for children**

331. The Committee notes that the State party assigns significant resources to the health and education sectors. The Committee is, however, concerned at the negative impact that the lack of an effective system of accountability may have on the allocation of resources to effectively improve the promotion and protection of children's rights.

**332. The Committee recommends that the State Party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular of children belonging to economically disadvantaged groups “to the maximum extent of available resources and, where needed, within the framework of international cooperation”. While acknowledging the efforts made in this regard, the Committee further recommends that the State party strengthen its actions to implement the recommendations of the Task Force on Accountability.**

### **Data collection**

333. While noting that the State party has received support for data collection through a bilateral assistance project financed by the United States Department of Health and Human Services, the Committee is concerned at the lack of an adequate mechanism for the systematic collection of comprehensive disaggregated data for all areas covered by the Convention and in relation to all groups of children.

**334. The Committee recommends that the State party develop a system for the comprehensive collection of data on all areas of the Convention in a way that allows for disaggregation and analysis. Particular emphasis should be placed on those groups who are in need of special protection, including street children, children in alternative care, children “informally” adopted, children with disabilities and children who head families. Such data would be used for the purpose of monitoring and evaluating progress achieved and assessing the impact of policies adopted with respect to children.**

**335. The Committee further encourages the State party to use these data for the formulation of policies and programmes with a view to the effective implementation of the Convention, to continue its cooperation with UNICEF in this respect and to consider the publication of an annual statistical report on the implementation of the Convention.**

#### **Cooperation with civil society**

336. While appreciating the fact that the number of NGOs is increasing in the Marshall Islands, and taking note of the recently established Marshall Islands Council of Non-Governmental Organizations, the Committee is of the opinion that civil society and in particular the role of NGOs should be further strengthened in the promotion and implementation of the Convention. It is also concerned at the lack of awareness on rights-based approaches to development among many civil society actors.

**337. The Committee recommends that the State party encourage the active and systematic involvement of civil society and NGOs in the promotion of children's rights; including, for example, their participation in the follow-up to the concluding observations of the Committee. The Committee also recommends that the State party encourage service-based NGOs, as well as those working in the area of development, to adopt a rights-based approach to their work.**

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

338. While noting that the Constitution of the Marshall Islands prohibits discrimination on the basis of sex, race, colour, language, religion, political or other opinion, national or social origin, place of birth, family status or descent, the Committee remains concerned that the principle of non-discrimination is not fully implemented for children living in the outer islands and in disadvantaged urban communities, especially with regard to their access to adequate health and educational facilities.

**339. The Committee urges the State party to take adequate measures to ensure the practical application of the constitutional and legal provisions guaranteeing the principle of non-discrimination in full compliance with article 2 of the Convention. The Committee further recommends that the State party collect disaggregated data to enable effective monitoring of potential discrimination, in particular against girls, children living in disadvantaged urban communities and in the outer islands, and children with disabilities.**

**340. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education)**

### **Respect for the views of the child**

341. While noting with appreciation the efforts made by the State party to implement the principle of respect for the views of the child, in particular through the development of a five-year Strategic Plan following the second Marshall Islands Youth Congress, the Committee remains concerned that traditional attitudes still prevailing in the country may not be conducive to the full participation of children in family, community, school and social life.

**342. The Committee recommends that further efforts be made to ensure the implementation of the principle of respect for the views of the child. Particular emphasis should be placed on the right of every child to express his/her views freely in the family, at school, within other institutions and bodies, and in the community and society at large, with special attention paid to vulnerable groups. The rights enshrined in article 12 of the Convention must also be reflected in all laws, judicial and administrative decisions. In particular, the Committee recommends that the State party:**

**(a) Develop community-based training programmes for parents, teachers, judges and other professionals working with and for children with a view to promoting children's participation in all relevant settings;**

**(b) Systematically ensure the active participation of children and children associations and bodies in the development of national, regional and local policies or programmes affecting them, in particular in the framework of the five-year Strategic Plan;**

**(c) Seek the technical assistance of UNICEF.**

343. Furthermore, the Committee recommends that the State party take fully into consideration the recommendations adopted on 15 September 2006 on the Committee's day of general discussion on the right of the child to be heard.

### **4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37(a) of the Convention)**

#### **Birth registration**

344. While taking note with appreciation of the efforts undertaken by the State party to improve the registration system, the Committee shares the State party's concern that children are still being discharged from hospitals or health centres without a proper name and may remain without a formal name for several months.

**345. In the light of article 7 of the Convention, the Committee recommends that the State party establish an efficient and accessible birth registration system, which covers its entire territory, and, inter alia:**

**(a) Promote awareness and appreciation of the importance of birth registration through mass campaigns by providing information on the procedure of birth registration, including the rights and entitlements derived from the registration, through television, radio and printed materials or other means;**

**(b) Introduce measures such as the mandatory registration of newly born children in hospitals; facilitate the registration process and ensure that birth registration is free of charge;**

**(c) Introduce mobile birth registration units in order to reach remote areas, especially in the outer islands;**

**(d) Take appropriate measures to register those who have not been registered at birth;**

**(e) Enhance cooperation with relevant United Nations programmes, funds and specialized agencies such as UNICEF and the United Nations Population Fund (UNFPA).**

#### **5. Family environment and alternative care**

**(arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

##### **Family environment**

346. The Committee is concerned at the limited human and financial resources available at the community level to provide assistance to families, as well as at the breakdown of family structures.

**347. The Committee recommends that the State party strengthen the services of the Ministry of Social Welfare at the local level, by increasing the number of trained professionals working with families in order to assist them in addressing and preventing difficulties that they may encounter, and by ensuring that sufficient financial resources are allocated to these services. It also recommends that the State party provide support to families to prevent the breakdown of family structures.**

##### **Parental responsibilities**

348. The Committee remains concerned at the many children in urban areas who are left unattended at home and notes that, owing to recent and rapid urbanization, assistance from extended family support networks is not always available. It also remains concerned that single parenthood and teenage pregnancy are still common in the State party.

**349. The Committee reiterates its recommendation that the State party continue and strengthen its measures and programmes to educate and provide counselling on parental responsibilities to the general public. In the light of articles 18 and 21 of the Convention, it also urges the State party to consider developing comprehensive measures to encourage responsible parenthood and to assist needy families with their child-rearing responsibilities, for instance by offering social assistance to families or by securing childcare services and facilities for working parents. Furthermore, the Committee recommends that the State party take fully into consideration the recommendations adopted on the Committee's day of general discussion on children without parental care, on 16 September 2005.**

## **Adoption**

350. While noting with satisfaction the enactment of the Adoption Act 2002, which regulates intercountry adoptions, and the establishment of the Central Adoption Authority (CAA), the Committee remains concerned at the continued practice of “customary adoptions” by family members, as well as at the lack of accompanying measures to prevent illegal intercountry adoptions.

**351. The Committee reiterates its recommendation encouraging the State party to undertake a study, including data disaggregated by sex, age and rural/urban area, to analyse the phenomenon of “customary adoptions” by family members with a view to understanding the scope and nature of this practice and adopting adequate policies and measures. The Committee further recommends that the State party disseminate information on the Adoption Act 2002; take measures to criminalize illegal adoption and implement the provisions of the Act. It also encourages the State party to ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).**

## **Corporal punishment**

352. While noting that corporal punishment is prohibited in schools by the Rules and Regulations of the Ministry of Education (1992) and that it is unlawful as a disciplinary measure under the revised Penal Code, the Committee is concerned that it remains lawful in the family and that it is not formally prohibited in alternative care settings.

**353. The Committee urges the State party to:**

**(a) Explicitly prohibit all forms of corporal punishment in the family and in institutional settings and alternative care systems as a matter of priority;**

**(b) Sensitize and educate parents, guardians and professionals working with and for children by carrying out public educational campaigns about the harmful impact of corporal punishment, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;**

**(c) Provide children with child-sensitive mechanisms to lodge complaints in case they are victims of violence, including corporal punishment.**

**354. In this respect, the Committee recommends that the State party take into account general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.**

## **Child abuse and neglect**

355. The Committee is concerned at the reduction and subsequent termination of social work services, as well as at the lack of funding under the Compact Agreement available for child-abuse prevention. The Committee is further concerned at the absence of a legal system adapted to the needs of young victims of abuse and neglect.

356. Furthermore, the Committee is concerned at the increase in incidents of child abuse and neglect, especially in urban areas. It also remains concerned at the lack of data, appropriate measures, mechanisms and resources for the prevention of and fight against domestic violence, including child sexual abuse, and the absence of public debate and awareness-raising on this issue.

**357. The Committee recommends that the State party take the necessary measures to prevent child abuse and neglect, including by:**

- (a) Establishing effective mechanisms to receive, monitor and investigate complaints regarding cases of child abuse, and ensure that perpetrators are brought to justice;**
- (b) Ensuring that complaints are collected in a manner that is child-sensitive and respectful of the privacy of the victims;**
- (c) Developing and implementing a comprehensive policy, in coordination with NGOs, for the prevention of child abuse and recovery of child victims;**
- (d) Clarifying ministerial responsibilities with regard to child abuse/neglect investigative and follow-up functions, reviewing inter-agency protocols and strengthening inter-ministerial collaboration;**
- (e) Allocating adequate resources to the prevention of child abuse and neglect at the national and local level, including in the outer islands;**
- (f) Carrying out preventive public education campaigns at national and local level, including in the outer islands, on the criminal character and detrimental consequences of abuse and ill-treatment of children; in particular rape;**
- (g) Adopting a plan of action to combat any form of violence against children;**
- (h) Taking measures to bring perpetrators to justice; ensuring that confidentiality and privacy of victims are fully respected in those legal proceedings, and that interviews are conducted in a manner that is child sensitive;**
- (i) Providing support for the operation of a 24-hour three-digit toll-free helpline for children;**
- (j) Seeking the technical assistance of UNICEF.**

**358. With reference to the United Nations Study on violence against children, the Committee recommends that the State party:**

- (a) Take all necessary measures for the implementation of the overarching and setting-specific recommendations contained in the report of the independent expert of the United Nations Study on violence against children (A/61/299) while taking into account the outcome and recommendations of the Subregional Consultations for the Pacific, held in Fiji from 26 to 28 September 2005;**



**(b) Use these recommendations as a tool for action in partnership with civil society and, in particular, with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence, and to gain support for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) Seek technical assistance from UNICEF, OHCHR, and the World Health Organization (WHO) for the above-mentioned purposes.**

## **6. Basic health and welfare**

**(arts. 6; 18, para. 3; 23; 24; 26; 27, paras. 1-3, of the Convention)**

### **Children with disabilities**

359. The Committee is concerned that since the relocation of Majuro hospital, there is no physical therapy programme for children with disabilities or follow-up care available after constructive surgery, in particular in the outer islands. The Committee is further concerned at the lack of early detection and preventive measures, as well as at the considerable under-reporting of disability cases. The Committee is also concerned at the limited access of children with disabilities to specialized educational programmes, in particular in the outer islands, as well as at the absence of specialized programmes outside the school environment.

**360. The Committee recommends that the State party, in accordance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and general comment No. 9 on the rights of children with disabilities:**

**(a) Further encourage the inclusion of children with disabilities into the regular educational system and into society;**

**(b) Facilitate access of children with disabilities to specialized educational programmes when required, in particular in the outer islands, including programmes outside the school environment;**

**(c) Pay more attention to special training for teachers and make the physical environment, including schools, sports and leisure facilities and all other public areas, accessible for children with disabilities;**

**(d) Create partnerships between home, school and the community to address the long-term needs of children with disabilities;**

**(e) Improve and strengthen prevention and early detection, as well as treatment services, through the health and education sectors;**

**(f) Seek technical assistance from UNICEF;**

**(g) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification.**

**Health and health services**

361. While taking note of the Strategic Development Plan Framework (2003-2018), Vision 2018, and welcoming the reduction in child mortality, the Committee is concerned at the fact that infant and child mortality remain high owing to weak service delivery and poor nutritional habits, and that immunization levels have declined for all vaccines except the birth dose of hepatitis B. The Committee is concerned at the lack of basic health services, as well as at the insufficient resources allocated to health, in particular in the outer islands. The Committee remains concerned at the lack of trained local health workers owing to the tendency for these workers to emigrate. It also remains concerned at the fact that illnesses resulting from inadequate sanitation, hygiene and diet continue to threaten the development of children and that vitamin A and D and iodine deficiencies are still widespread. Furthermore, the Committee is concerned at the fact that accessibility and quality of outer island services is constrained by a lack of qualified professional staff, poor infrastructure, inadequate supplies, as well as transportation and communication problems.

362. Furthermore, the Committee is concerned to learn that children are still being born today with diseases resulting from nuclear tests that were carried out in the 1960s and the 1970s.

**363. The Committee recommends that the State party strengthen its efforts towards improving the health situation of children, including through:**

- (a) Reviewing existing policies and practices, and ensuring that health care is provided free of charge and without discrimination to all children of families unable to afford the payment fees;**
- (b) Allocating adequate financial and human resources to health services;**
- (c) Urgently addressing the issue of infant and child mortality, especially by focusing on preventive measures and treatment, including vaccination uptakes, improved nutrition and the prevention of communicable diseases;**
- (d) Providing adequate training to health professionals;**
- (e) Adopting and implementing a national law on marketing of breast-milk substitutes and promoting exclusive breastfeeding for at least six months;**
- (f) Ensuring that all segments of the society are informed, have access to health education and are supported in the use of basic knowledge of child health and nutrition, including the advantages of breastfeeding;**
- (g) Providing hospitals with sufficient obstetric supplies and emergency medicines;**
- (h) Providing adequate water sanitation and access to clean drinking water throughout the country.**

364. Furthermore, the Committee recommends that the State party submit information in its next periodic report on the situation of children born with diseases as a consequence of nuclear testing and on the measures taken to address this issue.

## **Adolescent health**

365. The Committee is concerned at reports of an increasing number of children, especially young boys, who use drugs and consume alcohol and tobacco. The Committee is also concerned at the increasing rates of attempted suicides among young people, sexually transmitted infections (STIs), teenage pregnancies and the absence of programmes related to mental health and to sexual and reproductive health.

**366. The Committee recommends that the State party pay close attention to adolescent health, taking into account the Committee's general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child. In particular, the Committee recommends that the State party:**

**(a) Formulate a rights-based plan of action for the protection of all children and particularly adolescents from the dangers of drugs and harmful substances, and involve children in its formulation and implementation;**

**(b) Provide children with accurate and objective information about the harmful consequences of substance abuse;**

**(c) Ensure that children using drugs and harmful substances are treated as victims and not as criminals and develop recovery and social reintegration services for child victims of substance abuse;**

**(d) Ensure access to mental health services for vulnerable children;**

**(e) Strengthen sexual and reproductive health education for adolescents, especially in schools, with a view to reducing STIs and the incidence of teenage pregnancies, and to provide teenage pregnant girls with the necessary assistance and access to health care and education;**

**(f) Strengthen technical cooperation from WHO and UNICEF.**

## **HIV/AIDS**

367. The Committee is concerned at the absence of quality information as well as access to contraceptives and the limited testing for sexually transmitted diseases (STDs), in particular in the outer islands, in order to prevent the spread of STDs and HIV/AIDS. The Committee is also concerned at the inadequate HIV/AIDS policy in place, as well as at the lack of funds allocated to the prevention of STDs.

**368. The Committee recommends that the State party, taking into account the Committee's general comment No. 3 (2003) on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights:**

**(a) Strengthen its efforts to combat the spread of HIV/AIDS, including through awareness-raising campaigns targeting vulnerable groups in particular, and increase the availability of confidential, voluntary testing;**

**(b) Allocate adequate financial and human resources to the prevention of HIV/AIDS and of other STDs;**

**(c) Prevent discrimination against children infected with and affected by HIV/AIDS;**

**(d) Ensure access to child-sensitive and confidential counselling, without the need for parental consent, when such counselling is required by a child;**

**(e) Adopt measures to prevent mother-to-child transmission of HIV and other STDs;**

**(f) Seek international assistance from, among others, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA), UNICEF and WHO.**

### **Standard of living**

369. While noting the considerable level of foreign aid available in the State party, the Committee is concerned at the low standard of living of children and adolescents, in particular in the outer islands. The Committee is concerned at the poor basic service provision, especially safe drinking water and electricity, as well as at overcrowding and low-quality housing, particularly in Majuro and Ebeye. In addition, the Committee is concerned at the absence of policies and programmes to address the increasing level of poverty in the State party and its impact on children and adolescents. The Committee also takes account of the numbers of job-seeking adolescents and is concerned at the difficulties of the transition from school to the labour market, which are experienced in particular by children who dropped out before graduation.

370. **The Committee recommends that the State party ensure that:**

**(a) A financial support system is provided to families living under restricted economic conditions and includes the provision of school lunches and educational allowances;**

**(b) Families, particularly disadvantaged families, receive adequate assistance with regard to child care and education;**

**(c) Families are provided with adequate and affordable housing, and have access to drinking water and sanitation;**

**(d) Youth unemployment is prevented by assisting adolescents who seek an occupation that is in compliance with the rights enshrined in the Convention.**

### **Lack of qualified human resources**

371. The Committee is concerned at the lack of quality of services provided to children owing to the tendency of qualified health and social workers, both trained abroad and inside the State party, to emigrate to other countries and not return to the Marshall Islands.

**372. The Committee recommends that the State party take appropriate measures to encourage sufficient qualified human resources for the provision of services to children. This may include encouraging qualified health and social workers trained abroad to return after their training and to practise in the Marshall Islands, in particular in the outer islands, and encouraging those trained in the State party to remain in the country.**

**7. Education, leisure and cultural activities  
(arts. 28, 29 and 31 of the Convention)**

**Education, including vocational training and guidance**

373. While acknowledging the efforts undertaken by the State party in the field of education, in particular the development of an Education Strategy Development Plan with UNESCO since 2000, the Committee is concerned at the lack of resources allocated to education at the national and local levels, in particular in the outer islands. The Committee is also concerned at the decline in female enrolment both at the elementary and secondary levels, as well as at the increase in the dropout rate of students in high schools; the lack of hygiene; the lack of access to drinking water and sanitation in schools; the lack of transportation to and from school, particularly in the outer islands; the insufficient numbers and low standard of trained/qualified teachers and schools available, in particular in the outer islands; and the poor quality of education and the lack of vocational training in schools. The Committee is also concerned that leisure and cultural activities are severely lacking both in Majuro and Ebeye.

374. While noting that the Head Start Programme was intended to cater for children between three and six, the Committee is concerned that high demand has restricted enrolment to five-year-olds. The Committee is also concerned that the Ministry of Education has difficulties in maintaining contact with rural schools to monitor and evaluate teacher progress towards achievement of national education benchmarks.

**375. The Committee recommends that the State party, while taking into account general comment No. 1 on the aims of education, undertake measures to adopt the deficiencies in the area of education, inter alia by:**

**(a) Increasing budgetary allocation to ensure access to free primary and quality education in all regions and to improve the physical infrastructure of educational facilities;**

**(b) Strengthening efforts to bridge the gaps in the provision of education throughout the country, including the availability of school materials, drinking water, sanitation and transportation;**

**(c) Promoting female enrolment and ensuring the reduction of the dropout rate for both male and female students;**

**(d) Providing assistance to children from disadvantaged families;**

**(e) Strengthening vocational programmes for children, including those who do not attend regular school;**

- (f) Facilitating access to early childhood education by promoting Head Start Programmes throughout the country;**
- (g) Ensuring access for children to leisure and cultural activities;**
- (h) Improving the training and recruitment of teachers, as well as the monitoring and evaluation of their progress towards achievement of national education benchmarks;**
- (i) Implementing new technology, including e-learning;**
- (j) Introducing human rights education in the school curricula.**

**8. Special protection measures  
(arts. 22, 38, 39, 40, 37 (b-d) and 32-36 of the Convention)**

**Economic exploitation**

376. While acknowledging the efforts made by the State party to combat economic exploitation of children, the Committee is concerned that the Minimum Conditions Inquiry Act (Child Labour Law), which has been amended, prohibits employment of a person below the age of 18. This creates difficulties for children who have completed their compulsory education but drop out of secondary school, as they are not allowed to enter into employment contracts. It may also lead these children to engage in illegal activities, particularly in the light of the increasing level of poverty and unemployment in the country.

**377. The Committee recommends that the State party take necessary measures to regulate the work of children who have completed compulsory education and have not reached the age of 18. The State party should develop appropriate regulation of the working hours, the nature of the work and the working conditions of these children in the light of relevant inter national norms and standards, in particular International Labour Organization (ILO) Convention No. 138 (1973) concerning Minimum Age for Admission to Employment and ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.**

**378. The Committee further encourages the State party to ratify these two conventions and in this regard to seek technical cooperation from ILO for the development of the policy and legislation.**

**Sexual exploitation**

379. The Committee regrets the absence of information in the State party's report on measures taken to prevent sexual exploitation of children, in the light of the low standard of living and the high rate of tourism in the country which could be conducive to its occurrence.

**380. The Committee recommends that in its next periodic report the State party provide information on the sexual exploitation of children in the country and measures taken to prevent its occurrence.**

## **Administration of juvenile justice**

381. The Committee regrets that the State party did not implement its previous recommendations on the administration of juvenile justice and remains concerned that the treatment of children in conflict with the law is not in compliance with the Convention on the Rights of the Child, including with respect to the extremely harsh conditions of detention in the main prison in Majuro, in particular the failure to separate persons under 18 from adult prisoners. The Committee is also concerned at the absence of a minimum age of criminal responsibility.

**382. The Committee urges the State party to ensure the full implementation of juvenile justice standards, in particular articles 37 (b), 40 and 39 of the Convention as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), and take fully into account general comment No. 10. In this regard, the Committee recommends that the State party, in particular:**

**(a) Adopt legislation setting a minimum age for criminal responsibility, at least at the age of 12 years, and consider increasing it in conformity with the principles enshrined in the Convention;**

**(b) Ensure that persons under 18 who are detained as a measure of last resort, are placed in a setting in which the conditions of deprivation of liberty are in full compliance with international standards;**

**(c) Take measures to establish a juvenile court and ensure that judges and other professionals working with children in conflict with the law are adequately trained;**

**(d) Seek technical assistance and other cooperation, inter alia from the Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime (UNODC), OHCHR, UNICEF and NGOs;**

**(e) In addition, the Committee wishes to obtain information on the manner in which the State party through its judicial system addresses the emergence of youth gangs.**

## **9. Optional Protocols to the Convention on the Rights of the Child**

**383. The Committee recommends that the State party ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.**

## **10. Follow-up and dissemination**

### **Follow-up**

**384. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia by transmitting them to the members of the Cabinet, the Parliament (“Iroij” and “Nitijela”) and the local governments of the atolls and islands for appropriate consideration and further action.**

## **Dissemination**

385. **The Committee further recommends that the second periodic report and the related recommendations (concluding observations) adopted by the Committee be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

### **11. Next report**

386. **The Committee invites the State party to submit a consolidated third and fourth periodic report by 2 November 2010, the date of submission of the fourth periodic report. This is an exceptional measure due to the large number of reports received by the Committee every year. The report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.**

387. **The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the “Harmonized guidelines on reporting”, approved during the Fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).**

### **Concluding observations: Suriname**

388. The Committee considered the second periodic report of Suriname (CRC/C/SUR/2) at its 1214th and 1215th meetings (see CRC/C/SR.1214 and 1215), held on 24 January 2007, and adopted, at the 1228th meeting, held on 2 February 2007, the following concluding observations.

#### **A. Introduction**

389. The Committee welcomes the submission of the second periodic report, as well as the written replies to its list of issues (CRC/C/SUR/Q/2/Add.1), and commends the frank and self-critical nature of both the report and the replies to the list of issues, which gave a better understanding of the situation of children in the State party. The Committee further notes with appreciation the constructive efforts made by the inter-ministerial delegation to provide additional information in the course of the dialogue.

#### **B. Follow-up measures and progress achieved by the State party**

390. The Committee welcomes the ratification by the State party of:

(a) ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in April 2006;

(b) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, in May 2002;

(c) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará”, in February 2002.



391. The Committee welcomes the finalization of the comprehensive Sector Wide Approach Plans (SWAPS) for the education, health, housing and agriculture sectors.

### **C. Principal areas of concern, and recommendations**

#### **1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

##### **Previous recommendations of the Committee**

392. The Committee notes with appreciation that the State party provided a systematic overview of the follow-up actions to the previous concluding observations in its report and updated this in the written replies to the List of Issues. The overview shows that various follow-up measures have been taken but that a number of them, particularly in the area of legislation, remain outstanding. These include the discrimination of children belonging to vulnerable groups, the need for disaggregated data on children, the lack of budgetary resources dedicated to children, and the mandatory reporting obligations of abuse of children.

393. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report that have not yet been implemented or sufficiently implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the second periodic report.

##### **Legislation**

394. The Committee, while noting the various legislative efforts regarding children's rights, is deeply concerned at the very slow process of enacting and implementing legislative changes. There are many draft laws or amendments to laws that have not been submitted to Parliament. The Committee furthermore notes that the bill on hearing minors during court proceedings, as well as two bills on offences against public decency, were already referred to in the State party's initial report in 2000 as "ready for submission to the National Assembly" but have not yet been adopted.

**395. The Committee recommends that the State party consolidate its efforts to bring domestic laws into full compliance with the Convention. It urges the State party to take, as a matter of priority, all appropriate measures to expedite the adoption of bills pending with Parliament and to submit as soon as possible the draft laws or amendments to Parliament for a speedy discussion and adoption of these legislative proposals. The Committee also recommends that the State party ensure adequate human and financial resources for the full implementation of laws when approved.**

**396. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by**

**the Convention, taking fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex, of 22 July 2005).**

### **Coordination**

397. The Committee welcomes the establishment in 2001 of the National Child Rights Bureau with the mandate, inter alia, to coordinate the implementation of the Convention. The Committee also welcomes the decision of the State party to reactivate the National Commission on the Rights of the Child, which will take up a coordination, advocacy and monitoring role. The Committee notes with concern, however, that the National Child Rights Bureau does not currently have sufficient human or financial resources and that also the National Commission for the Rights of the Child may not have adequate financial and human resources. The Committee is also concerned that it is not clear how these two coordinating bodies are going to cooperate.

**398. The Committee recommends that the State party implement its decision to reactivate the National Commission on the Rights of the Child as soon as possible and that it ensure by all means possible that both the National Commission on the Rights of the Child and the Child Rights Bureau have adequate financial and human resources to efficiently carry out their work. The Committee further recommends that the State party ensure that these two agencies cooperate with each other in order to establish the most effective coordination of the implementation of the Convention.**

### **National Plan of Action**

399. The Committee welcomes the finalization of the National Youth Policy Framework in 2000, the completion of the National Policy Plan for Children in 2001, and the development of the National Policy Plan for Children 2002-2006. The Committee also notes with appreciation the State party's intention to initiate a National Policy Plan for 2007-2011, which will take into account the best interests of the child.

**400. The Committee recommends that the State party ensure that the National Policy Plan for Children 2007-2011 is adopted as a matter of priority and that it addresses fully all of the rights of the child enshrined in the Convention, and takes into account the outcome document "A world fit for children" adopted by the United Nations General Assembly at its special session on children, held in May 2002. The Committee also recommends that the State party provide a specific budget allocation and adequate follow-up mechanisms for its full implementation. The Committee further recommends that the State party ensure that the plan of action is equipped with an evaluation and monitoring mechanism to regularly assess progress achieved and identify possible deficiencies.**

### **Independent monitoring**

401. The Committee welcomes the information that the State party will consider the establishment of an ombudsperson that will be an independent monitoring mechanism for the implementation of the rights of children and will have the mandate to receive and address complaints of violations of children's rights.

402. **The Committee recommends that the State party establish as soon as possible an ombudsperson, or other independent body, for monitoring the implementation of the Convention on the Rights of the Child, in accordance with the Paris Principles (General Assembly resolution 48/134) and the Committee's general comment No. 2 on national human rights institutions. Such a body should be able to receive and investigate complaints from, or on behalf of, children on violations of their rights and should be provided with the necessary human and financial resources. In this regard, the Committee recommends that the State party seek technical assistance from, inter alia, UNICEF and OHCHR.**

#### **Allocation of resources**

403. The Committee notes that the Government allocates funds from its budget to implement policies for children. It regrets, however, the unavailability of data on the allocation of budgetary resources to children, including those with disabilities, and expresses concern that there is no adequate budget tracking system in place for monitoring allocations for children. The Committee also shares the State party's view that budgetary allocations for social services are still inadequate, particularly because of the high percentage allocated for recurrent expenses.

404. **With reference to its previous recommendations (CRC/C/15/Add.130, paras. 15-16), and in the light of article 4 of the Convention, the Committee urges the State party to prioritize and increase budgetary allocations for children at both national and local levels, to ensure at all levels the implementation of the rights of the child, and in particular to pay attention to the protection of the rights of children belonging to vulnerable groups, including children with disabilities, children infected with HIV and/or affected by HIV/AIDS, children living in poverty and those in remote areas. The Committee further recommends that the State party implement intended increases in budget allocations for non-recurrent expenses (programmes and services) and that it start budget tracking from a child right's perspective with a view to monitoring budget allocations for children, seeking technical assistance for this purpose from, inter alia, UNICEF.**

#### **Data collection**

405. The Committee welcomes the establishment of the Child Indiciary Monitoring System (CIMS) and the yearly publication of its data. The Committee also notes with appreciation the development of the Children in Need of Special Protection (CNSP) monitoring system, which is a sub-system of CIMS, as well as other data- or information-collection systems. Nevertheless, the Committee notes that the data collected by the CIMS and the CNSP systems are not sufficiently disaggregated, particularly in terms of providing information on a wide range of vulnerable groups.

406. **The Committee encourages the State party to continue to strengthen its data collection system as a basis for assessing progress achieved in the realization of child rights and to help design policies to implement the Convention. The State party should ensure that information collected, particularly through the CNSP system, contains data on a wide range of vulnerable groups including children belonging to minority or indigenous groups, children living in poverty and street children. The Committee also recommends that the State party seek technical assistance from, inter alia, UNICEF.**

**Dissemination, training and awareness-raising**

407. The Committee notes with appreciation the efforts made by the State party in disseminating the Convention through, for example, awareness-raising activities, the development and distribution of materials related to the Convention on the Rights of the Child and the development of training programmes on the Convention. It welcomes, in particular the “Children as Promoters of Child Rights” project, also known as the Peer Education Project. The Committee is of the opinion, however, that training programmes have been targeted towards only a limited scope of professional groups working with children. The Committee also notes that there has been no incorporation of human rights and child rights into the school curricula.

**408. The Committee recommends that the State party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law-enforcement officials, teachers, including teachers in rural and remote areas, health personnel, social workers and personnel of childcare institutions. In this regard, the Committee recommends that human rights education be included in the official curriculum at all levels of education.**

**Cooperation with civil society**

409. The Committee welcomes the acknowledgement by the State party of the complementary role played by civil society in providing certain types of public services and its promotion of this process in order to create a basis for increased community participation. Nevertheless, the Committee notes that non-governmental organizations (NGOs) are not yet involved as members in the State party’s coordinating body.

**410. The Committee recommends that the State party further strengthen its collaboration with civil society and widen the scope of cooperation so as to ensure cooperation on a broad level in all areas related to the promotion and protection of the rights of the child. The Committee also recommends that the State party encourage the active, positive and systematic involvement of civil society, including NGOs in the promotion of children’s rights, including, their participation in the coordination of the implementation of the Convention and the follow-up to the concluding observations of the Committee.**

**2. Definition of the child  
(art. 1 of the Convention)**

411. The Committee welcomes the raising of the minimum age for marriage but remains concerned that a disparity between this minimum for boys and girls still exists.

**412. With reference to its previous recommendations (CRC/C/15/Add, 130, paras. 19-24), the Committee reiterates its recommendation that the State party bring the minimum age of marriage for boys and girls to the same internationally acceptable level of age 18.**

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

413. The Committee is concerned at the fact that discrimination against certain groups of children still exists in practice, particularly with regard to girls in general, children with disabilities, children living in poverty, children infected with HIV and/or affected by HIV/AIDS, and children belonging to ethnic minorities or indigenous peoples, recognizing the particular vulnerability of girls in these categories.

**414. The Committee urges the State party to take adequate measures, including expediting the establishment of the Equal Opportunity Commission, to ensure the practical application of the constitutional and legal provisions guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and to adopt a comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.**

**415. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account general comment No. 1 (CRC/GC/2001/1) on the aims of education.**

#### **Best interests of the child**

416. While some draft laws focus on guaranteeing the best interests of the child, the Committee is concerned that these laws have not yet been enacted and that the best interests of the child (art. 3) have still not been taken fully into account in the State party's legislation, policies and programmes relevant to children.

**417. The Committee reiterates its recommendation that the State party take all appropriate measures, including expediting the adoption of draft laws in this regard, to ensure that the general principle of the best interests of the child is appropriately integrated in all legal provisions, as well as in judicial and administrative decisions, and in projects, programmes, and services that have an impact on children.**

#### **Respect for the views of the child**

418. The Committee welcomes the activities of the National Youth Council. The Council advises the Government of Suriname on measures to be taken with respect to youth, and other measures taken to implement article 12 of the Convention, such as television and radio spots, a weekly child-rights radio programme and the draft bill meant to give effect to article 12 of the Convention. The Committee notes, however, that children are given little opportunity to express their views in the family, schools and the community.

419. **The Committee recommends that the State party continue and strengthen its efforts to implement article 12 of the Convention and promote child participation. It recommends more specifically that the State party expedite the adoption of the bill on hearing children in court proceedings and ensure its full implementation, while paying special attention to the right of the child under the age of 12 to express his or her views when capable of expressing them, and provide targeted training to that effect to judges and others involved in the legal procedures. The Committee also recommends that the State party promote the participation of children in all matters that concern them in the family, school, other children's institutions and the community.**

#### **4. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)**

##### **Birth registration**

420. **The Committee welcomes the various measures taken to ensure birth registration and recommends that the State party continue and strengthen its efforts to register all children, with a special focus on children in the remote areas of the interior, including the opportunity for late registration free of charge.**

##### **Torture and degrading treatment**

421. The Committee notes with appreciation that the Department of Youth Affairs of the Ministry of Justice and Police contains a mechanism to investigate complaints of police brutality against children living or working in the streets, that training programmes in youth and moral matters have been organized for police officers and that the rights of the child are part of the curricula of the Suriname Police Academy. However, the Committee remains concerned at incidences of police brutality and the use of force against children in detention.

422. The Committee recommends that the State party continue and strengthen its training programmes for police officers in order to ensure that the provisions of the Convention are respected in all contact of the police with children.

##### **Corporal punishment**

423. The Committee welcomes the fact that corporal punishment is prohibited in schools by ministerial decree, that awareness-raising and sensitization activities have been conducted related to better parenting, that April has been declared national child abuse prevention month, and that pilot projects have been conducted to reduce corporal punishment in schools. Nevertheless, the Committee remains concerned that corporal punishment continues to be used in the schools, and is not prohibited in homes or alternative care contexts.

424. **The Committee recommends that the State party explicitly prohibit by law all forms of violence against children, including corporal punishment, in all settings, including in the family, schools, alternative childcare and places of detention for juveniles, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns in order to promote the use of alternative forms of discipline**

**in a manner consistent with the child's human dignity and in accordance with the Convention, especially article 28, paragraph 2, taking into account the Committee's general comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8 (2006)).**

**5. Family environment and alternative care  
(arts. 5, 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

**Family environment**

425. While the Committee welcomes the Ministry of Social Affairs subsidy programmes for households below a certain income level, it is concerned that the financial provisions of such programmes are very low and do not cover all costs, particularly those of families caring for children suffering from HIV/AIDS. The Committee is also concerned that children of families in crisis situations (e.g. due to poverty), and particularly in female-headed households, may end up in care facilities or police detention facilities.

426. The Committee recommends that the State party take all necessary measures to render appropriate financial and other assistance to families in order to allow them to carry out their parenting obligations and responsibilities and to prevent children from being placed in institutions because of poverty-related problems of their parents.

**Children without parental care**

427. The Committee welcomes the various legislative and other efforts made to provide care and protection to children without parental care and shares the State party's concern over the high level of institutional care in the State party. The Committee is also concerned that the Division for Youth Care has functioned poorly over the past years owing to lack of qualified staff and budget cuts and that the shelter for girls has been closed since 1994. The Committee welcomes the increased awareness of minimum requirements among childcare institutions as a result of indicators of the Children in Need of Special Protection monitoring system. However, it regrets that no legal provisions have yet been made for the supervision and inspection of private institutions or for the periodic review of placement of children in institutions and that there is no independent complaints mechanism for children in alternative-care institutions.

**428. The Committee recommends that the State party expedite to the extent possible the adoption of the bill to regulate social assistance for youth and take the necessary measures thereafter for its full implementation. The Committee urges the State party, while taking into account the recommendations of the Committee's day of general discussion on children without parental care (2005), to take all necessary measures, including the provision of adequate human and financial resources, to ensure that the Division for Youth Care is able to fulfil its mandate. The Committee further recommends that the State Party continue to implement and support training programmes for personnel in the field of alternative care, ensure effective supervision and inspection of private childcare institutions and establish an independent complaints mechanism for children in alternative-care institutions.**

### Foster care

429. The Committee notes that a revised law on registration of foster children has been drafted and is in the process of being approved. It also notes that the Foundation for foster care is currently developing a project to recruit more foster families. The Committee notes with concern that the *kweekjes* system of informal foster care continues although the draft law on registration of foster children incorporates this system of care and tries to make it more structured.

**430. The Committee recommends that the State party expedite the adoption of the current draft pieces of legislation regarding foster care, ensure their full implementation and take other legislative measures in order to establish a foster-care system in conformity with the Convention which can be effectively monitored and evaluated and provide foster families with adequate financial and other support and training.**

### Adoption

431. The Committee notes that when revising the Suriname Civil Code, the State party indicated its intention to consider acceding to the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption (1993).

**432. The Committee recommends that when the State party is revising the Civil Code, it ensure that domestic and intercountry adoption is in conformity with article 21 and other provisions of the Convention. The Committee also recommends that the State party accede to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).**

### Violence, abuse and neglect

433. The Committee welcomes the establishment of the Child Abuse Prevention Network with the police as a participating agency and the fact that this Network has developed a strategic plan of action. The Committee notes with appreciation that the State party has undertaken studies on violence against children. It shares the State party's concern over the alarming increase in physical or sexual child abuse in the State party and the fact that adaptations to the legislation on sexual consent have not been approved, leaving children in a situation where they cannot be adequately protected. The Committee also shares the State party's concern over the shortage of alternative care and counselling services for abused children. The Committee welcomes the completion of the study on current legislation and practices relating to reporting child abuse by police, teachers, health workers and social workers. Nevertheless it remains concerned that no system exists for mandatory reporting of child abuse, maltreatment or neglect.

**434. The Committee reiterates the recommendation made in its previous concluding observations (CRC/C/15/Add.130, paras. 39-40) that all appropriate measures be taken to introduce mandatory reporting of abuse, including sexual abuse, of children. The Committee further recommends that the State party take the necessary measures to reform legislation on sexual consent so as to provide children with adequate protection against sexual abuse, as well as the necessary measures to eliminate the shortage of alternative care and counselling services for children who have been abused and other vulnerable children.**



435. **With reference to the United Nations Study on violence against children, the Committee recommends that the State party:**

**(a) Take all necessary measures for the implementation of the overarching and setting-specific recommendations contained in the report of the independent expert for the United Nations Study on violence against children (A/61/299) while taking into account the outcome and recommendations of the Regional Consultations for the Caribbean (held in Trinidad and Tobago on 10 and 11 March 2005);**

**(b) Use these recommendations as a tool for action in partnership with civil society, and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain support for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) In this regard, seek technical assistance from OHCHR, UNICEF and the World Health Organization (WHO).**

#### **6. Basic health and welfare**

**(arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)**

##### **Children with disabilities**

436. The Committee welcomes the implementation by the State party of a public-awareness campaign aimed at the inclusion of children with disabilities, the training of health workers at under-five clinics to improve skills for early detection of growth and development abnormalities, and the provision of test kits (Von Wieggen sets) to under-age-five clinics and other relevant agencies. The Committee also welcomes the development of a lesson plan for teachers from primary schools to create awareness for the children at those schools regarding disabilities, the setting up of a multi-disciplinary team for referrals of children to special education, and the existence of parent associations to educate parents on how to deal with children with disabilities. The Committee notes that special education facilities are available at primary and secondary level. Nevertheless, the Committee expresses its concern at the continued absence of legal protection and lack of adequate facilities and services for children with disabilities.

437. **In the light of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's general comment No. 9 on the rights of children with disabilities (CRC/C/GC/9, 2006), the Committee recommends that the State party:**

**(a) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification;**

**(b) Take all necessary measures, in particular the adoption of the Draft Law on Special Education, to ensure the implementation of legislation providing protection for children with disabilities;**

- (c) Make every effort to provide programmes and services for all children with disabilities;**
- (d) Intensify its awareness campaigns to sensitize the public to the rights and special needs of children with disabilities and further encourage their inclusion in society;**
- (e) Provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers.**

### **Right to health and access to health services**

438. The Committee notes with appreciation the introduction of the Integrated Management of Maternal and Child Health (IMMCH) strategy into the health system in Suriname. The Committee also notes with appreciation that primary health-care clinics and health-care centres in the interior of the country are free and welcomes actions taken by the State party in the areas of breastfeeding and nutrition, and in the training of health workers. The Committee notes with regret that the State party's mental health plan has not yet been implemented due to lack of human resources. The Committee also notes that there has been some evidence of reduction in malaria incidence but regrets that the full implementation of the action plan on malaria and the functioning of the Malaria Institute are hampered by a lack of funds. The Committee also notes with concern that the majority of children hospitalized because of malnutrition are from ethnic minorities. Furthermore, the Committee remains concerned about planning and management, human and financial resources in the health-care system. The Committee is also concerned about the attitude of health workers and the community vis-à-vis promoting the well-being of the child and the lack of preventive-care aspects, particularly in health-care systems in the interior of the country.

**439. The Committee recommends that the State party continue to conduct training for health workers, particularly in the rural and interior regions, that it continue to actively promote breastfeeding, that it address the problem of malnutrition, with special emphasis on minority ethnic groups, that it take measures to ensure that children, in particular those under the age of five, sleep under mosquito nets impregnated with insecticide and that it ensure that its public-health institutions, including the Malaria Institute, receive adequate funding and resources to carry out their work. The Committee encourages the State party to consider seeking technical assistance from UNICEF and WHO, among others.**

### **Adolescent health**

440. The Committee notes with appreciation the national adolescent health and needs assessment implemented by the Basic Life Skills Committee in 2000, and the ongoing implementation of Multi-Agency Health and Family Life Education (HFLE) by the Basic Life Skills Programme. The Committee notes with interest that the National Youth Parliament has forwarded proposals to policymakers on, inter alia, the problem of suicide among young people, and youth tobacco use. Nevertheless, the Committee regrets the continuing lack of data and the limited availability of programmes and services in the area of adolescent health. The Committee also notes with concern that early pregnancy, arranged marriages, drug and alcohol abuse, and mental health concerns among teenagers are increasing rather than decreasing.

441. **The Committee recommends that the State party, taking into account the Committee's general comment No. 4 (CRC/GC/2003/4) on adolescent health and development in the context of the Convention on the Rights of the Child, increase its efforts to establish more programmes and services in the area of adolescent health and to obtain valid data on adolescent health concerns through, inter alia, studies on this issue. The Committee also recommends that the State party, in collaboration with relevant partners such as the National Youth Parliament, draw up clear policies addressing the prevention of adolescent health-related issues, in particular, suicide, drug and alcohol abuse, early pregnancies, and mental-health concerns.**

#### **HIV/AIDS**

442. The Committee notes with appreciation the various activities that have been implemented over the past years by the National AIDS Programme and NGOs aimed at reducing stigma and discrimination, and at awareness-raising of human rights within the context of HIV and AIDS and other measures for the prevention and treatment of HIV/AIDS. However, the Committee is particularly concerned about the information that AIDS has become one of the leading causes of mortality among children below the age of 5 and that most children infected by HIV or affected by HIV/AIDS are placed in residential care facilities since there are no policies in place to strengthen the capacity of families and the community to provide care and support to these children.

443. **The Committee urges the State party, while taking into account the Committee's general comment No. 3 (CRC/GC/2003/3) on HIV/AIDS and the rights of the child and the International Guidelines on HIV/AIDS and Human Rights, to take measures to reduce HIV/AIDS in its territory, particularly with regard to the young people through, inter alia:**

**(a) Fully implementing the National Strategic Plan on HIV/AIDS and continuing and strengthening implementation of the "Prevention of Mother to Child Transmission" programme;**

**(b) Finalizing the Ministry of Health special prevention programmes for young people in the age group 10 to 19 years so that implementation can begin without delay;**

**(c) Developing policies and programmes to strengthen the capacity of families and the community to provide care and support for children infected by HIV or affected by HIV/AIDS;**

**(d) Continuing activities aimed at reducing stigma and discrimination related to HIV/AIDS providing awareness-raising on human rights within the context of HIV;**

**(e) Disseminating information and materials to the public, particularly to women and girls, on prevention and protection methods, including safe sex practices.**

#### **Right to an adequate standard of living**

444. The Committee notes that despite the State party's small population and large amount of natural resources, poverty remains high. The Committee welcomes the efforts of the State party

along with NGOs and community-based organizations to provide shelter, food, and clothing to the persons living in poverty and the homeless. The Committee also takes note of initiatives and programmes by both the State party and civil society related to lower-cost housing.

**445. The Committee recommends that the State party continue and strengthen the application of poverty-reduction strategies in order to provide economically disadvantaged families with, inter alia, adequate shelter, food and clothing and to specifically assist children to have access to education and healthcare.**

## **7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

### **Rights to and aims of education**

446. The Committee welcomes the fact that an adjustment of the maximum age for compulsory education has been incorporated into the draft amendment of the Law on primary education of 1960, creating a new maximum age of 14 years and eliminating the discrepancy with the minimum age to be legally employed. The Committee is encouraged by the finalization of the Sector Plan for Education, noting, however, that progress to date has been very slow. It also notes that a Law on Special Education has been drafted. It notes with concern that significant disparities exist in the quality and delivery of education between the coastal areas and the interior of the country and that a large number of primary schools in the interior are managed by teachers with limited training. While the Committee notes with appreciation the increased enrolment and completion rates in primary schools, it is nevertheless concerned at the significantly low primary school attendance rates of children living in the interior of the country, almost all belonging to indigenous and minority groups, and at the lack of early childhood education. The Committee also notes with concern the high number of children (especially boys) dropping out of schools, the outdated school curricula, and structural inefficiencies in the training of teachers at all levels.

**447. The Committee recommends that the State party, taking into account the Committee's general comment No. 1 (CRC/GC/2001/1) on the aims of education:**

**(a) Reduce socio-economic and regional disparities in access to and full enjoyment of the right to education, and take specific measures to significantly reduce the high rates of dropouts;**

**(b) Expand access to early childhood education, particularly in the interior;**

**(c) Ensure that primary education is free of charge, and also of other (additional) costs, in order to guarantee that all children receive primary education;**

**(d) Improve the quality of education through increasing the number of well-trained and fully qualified teachers, particularly those recruited to teach in the interior, modernizing teaching and learning methods and reforming the curricula, inter alia in order to better orient education to the competencies needed for social and economic participation in a developing society;**

**(e) Provide vocational education and training, including for children who have dropped out of primary or secondary schools;**

**(f) Widen the scope of second-chance opportunities for children (especially boys) who have dropped out of school and teenage girls who have become pregnant.**

**8. Special protection measures  
(arts. 22, 38, 39, 40, 37(b) and (d), 30, 32-36 of the Convention)**

**Children belonging to minorities and indigenous groups**

448. The Committee is concerned that despite laws prohibiting discrimination on the basis of race or ethnicity, children belonging to indigenous or minority groups such as Amerindians and Maroons, are subjected to discrimination in, inter alia, access to education, health and public services.

**449. The Committee urges the State party to recognize and implement the rights of persons, including children, belonging to indigenous and minority groups and recommends that the State party undertake awareness-raising activities to address negative attitudes and prejudices towards children or people belonging to such groups. In particular, the Committee urges the State party to ensure that children belonging to indigenous or minority groups have equal treatment and access to education, health and other services.**

**Street children**

450. While the Committee notes that some research has been carried out on street children, it regrets, nevertheless, that little information has been provided by the State party on the situation of street children and that discussions to identify measures that can be taken to address the issue only mention placement of street children in institutions.

**451. The Committee recommends that the State party elaborate and implement concrete proposals and measures, in close cooperation with civil society, to address the issue of street children, including measures to provide the necessary support to families from which children are likely to end up on the streets, such as low-income or single-parent households.**

**Economic exploitation, including child labour**

452. While welcoming the ratification of ILO Convention No. 182 and the intention to establish a multidisciplinary committee to develop a plan of action, the Committee notes with concern the existence of child labour, particularly in its worst forms and that, in addition, it has both an ethnic (Maroon children) and a gender (boys) bias, particularly with regard to involvement in the worst forms of child labour. The Committee also regrets the lack of updated data on working children.

453. The Committee urges the State party to ensure that the multidisciplinary committee to address child labour is set up and develops as soon as possible the policy plan to eradicate the worst forms of child labour and that the necessary human and financial resources are provided for the effective implementation of this plan, including the provision of support to civil society.

The Committee also urges the State party to ensure that any policies, plans and legislation to address child labour, particularly in its worst forms, also provide effective protection for girls and children belonging to minorities or indigenous peoples. Finally, the Committee urges the State party to take concrete action to address the reasons behind child labour, including the creation of educational opportunities in the interior and support to low-income households. The Committee encourages the State party to seek technical assistance from ILO/IPEC in this regard.

### **Sexual exploitation**

454. The Committee is concerned that according to some recent studies a considerable number of children are victims of sexual exploitation. The Committee is also concerned over reports of rape of girls belonging to indigenous and tribal groups in regions where mining and forestry operations have been developed.

455. **The Committee recommends that the State party:**

**(a) Take appropriate legislative measures to address the issue of sexual exploitation;**

**(b) Ensure that child victims of sexual exploitation are not criminalized or penalized;**

**(c) Implement appropriate policies and programmes for the prevention, recovery and social reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congress against Commercial Sexual Exploitation of Children.**

### **Juvenile justice**

456. The Committee notes with appreciation that an Action Plan for Children has been formulated by the Ministry of Justice and Police and that a pilot project “alternative sanctions for youngsters” began in November 2006 for a period of one year. However, the Committee is deeply concerned that the Criminal Code of the State party does not contain a set of child-specific alternative and other measures and sanctions for children in conflict with the law. The Code of Criminal Procedure also does not provide specific rules for children in conflict with the law, e.g. regarding the involvement of a specialized juvenile judge or court, the involvement of parents, the provision of legal assistance and the duration of police custody (*inverzekeringstelling*) and pre-trial detention, which is the same for children and adults. The Committee is also concerned that judges have the discretion to sentence a child between the ages of 16 and 18 as an adult, that visitation rights for children are not explicitly laid out in the law and that the media often does not respect a child’s right to privacy. Finally, the Committee is concerned that, currently, girls, both in pre-trial detention and after sentencing, are placed with adult women in adult facilities or are either being sent back home without adequate provision for guidance and counselling or placed in alternative homes.

457. **The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the**

“Beijing Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”). In particular the Committee recommends that the State party, while taking into account the Committee’s general comment No. 10 on the administration of juvenile justice (CRC/C/GC/10, 2007):

(a) Take the necessary steps to ensure that the revised Penal Code, which raises the age of criminal responsibility to 12 years, is adopted without further delay and that this revision includes the introduction of alternative and other measures and sanctions and of rules of criminal procedure specifically for children in conflict with the law and in conformity with the Convention, and to ensure the abolishment of the rules providing judges with discretionary power to treat a child between the ages of 16 and 18 as an adult;

(b) Take all necessary measures, including adopting a permanent policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible;

(c) Take all necessary measures to ensure that when detention is carried out, it is done so in compliance with the law and respects the rights of the child as set out under the Convention and that children are held separately from adults both in pre-trial detention and after being sentenced;

(d) Take all necessary measures to ensure that children are not ill-treated in detention and that their rights, including visitation rights, are not violated, and that cases involving juveniles are brought to trial as quickly as possible;

(e) Take all necessary measures, including, where appropriate, legislative ones, to ensure that the media respect the right of the child to privacy;

(f) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime (UNODC), UNICEF, OHCHR and NGOs.

## 9. Optional Protocols to the Convention on the Rights of the Child

458. The Committee welcomes the signature by the State party of the Optional Protocols to the Convention, on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, and recommends that the State party ratify them as soon as possible.

## 10. Follow-up and dissemination

### Follow-up

459. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented, inter alia by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to local governments and parliaments, when applicable, for appropriate consideration and further action.

## **Dissemination**

460. **The Committee further recommends that the second periodic report and written replies submitted by the State party and the related recommendations (concluding observations) it adopted be made widely available in the languages of the country, including (but not exclusively) through the Internet to the public at large, civil-society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.**

### **11. Next report**

461. **The Committee invites the State party to submit its combined third and fourth periodic report by 30 March 2010. This is an exceptional measure due to the large number of reports received by the Committee every year. This report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Committee.**

462. **The Committee also invites the State party to submit an updated core document in accordance with the requirements of the Common Core Document in the Harmonised Guidelines on Reporting, approved by the fifth Inter-Committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).**

### **Concluding observations: Malaysia**

463. The Committee considered the initial report of Malaysia (CRC/C/MYS/1) at its 1216th and 1217th meetings (see CRC/C/SR.1216 and 1217) held on 25 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.

#### **A. Introduction**

464. The Committee welcomes the submission of the State party's initial report and notes that it follows the guidelines for reporting, although the report itself was focused on legal provisions rather than de facto implementation of the Convention. However, it regrets that the report was received more than nine years after the date on which it should have been submitted. The Committee also welcomes the written replies to its list of issues (CRC/C/MYS/Q/1), which provided additional information and allowed for a clearer understanding of the situation of children in the State party.

465. The Committee notes with appreciation the high-level and multisectoral delegation of the State party and further notes with appreciation the constructive efforts made by the delegation to provide additional information and explanation in the course of the dialogue.

#### **B. Positive aspects**

466. The Committee commends the State party on its notable improvement in economic and social development, including continuous investments in the health services, the protection infrastructure and the educational system.



467. The Committee notes with appreciation the establishment of the Ministry of Women, Family and Community Development (originally the Ministry of Women and Family Development) in 2001 and the subsequent expansion of its responsibilities, including gender equality, family well-being, child issues and social development in general.

468. The Committee also notes with appreciation the establishment of the special Child Division in 2005 in the Department of Social Welfare to address issues and challenges of children.

469. The Committee welcomes the adoption of the Child Act 2001 (Act 611), which is guided by the principles of the Convention and aims at providing every child with care, protection and psychosocial assistance.

470. The Committee welcomes the adoption of many other laws aimed at protecting and promoting the rights of the child, which are referred to in the concluding observations below.

471. The Committee notes with appreciation the establishment of child-protection teams to coordinate support services at the community level for children in need of care and protection and families in crisis. It notes with satisfaction that the child-protection teams carry out preventive and rehabilitative programmes such as the establishment of child activity centres and crisis intervention centres for children and families in high-risk areas.

### **C. Factors and difficulties impeding the implementation of the Convention**

472. The Committee acknowledges that an exceptional natural disaster caused by the Indian Ocean tsunami of 26 December 2004 claimed many lives in Malaysia and left thousands of children and their families on the western coastline without homes and livelihoods. The Committee also acknowledges that the recent flooding in Malaysia has resulted in the displacement of many thousands of children and that the floods have largely devastated the states of Johor, Pahang and Sabah.

### **D. Principal subjects of concern, and recommendations**

#### **1. General measures of implementation (arts. 4, 42 and 44 (6))**

#### **Reservations**

473. The Committee notes with appreciation the State party's ongoing efforts to review its reservations to articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a), and 37 of the Convention. The Committee is of the opinion that many of the reservations are, with regard to the progress made in the adaptation of the legislation to the requirements of the Convention and in the light of the Vienna Declaration and Programme of Action adopted in 1993 by the World Conference on Human Rights, not necessary, as was also concluded at the forum on Malaysia's reservations to the Convention on the Rights of the Child, which was held on 29 September 2005.

**474. In the light of article 51, paragraph 2, of the Convention, the Committee recommends that the State party expedite its ongoing efforts to review the nature of its reservations to**

**articles 1, 2, 7, 13, 14, 15, 28, paragraph 1 (a), and 37 of the Convention with a view to withdrawing them in accordance with the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, in 1993.**

#### **Ratification of international human rights instruments**

475. Acknowledging the State party's accession to the Convention on the Elimination of All Forms of Discrimination against Women in 1995, the Committee is of the opinion that the ratification of or accession to other international core human rights instruments would strengthen the efforts of the State party to meet its obligations in guaranteeing the full realization of rights of all children under its jurisdiction.

**476. The Committee encourages the State party to ratify or accede to the other major international human rights instruments.**

#### **Legislation**

477. The Committee acknowledges that, in family and religious matters, all Muslims are subject to *Syariah* law and to the jurisdiction of *Syariah* courts and that, correspondingly, non-Muslims are subject to the provisions of civil law and to the jurisdiction of the civil-law judiciary. The Committee observes that these two systems apply different definitions of the child, and that differences in implementing a child's rights may result in legal disputes between non-Muslim mothers and fathers who have converted to Islam. It welcomes the establishment of the cross-sectoral Committee, which includes Muslim clerics, *Syariah* Court judges, legal practitioners, academics and government representatives to address the differences between the two legal systems. The Committee is concerned, however, at the slow pace of enacting and reforming the laws related to the implementation of the Convention.

**478. The Committee recommends that the State party conduct an international comparative study on the implications of the dual legal system of civil law and *Syariah* law and, based on the results of this assessment, take necessary measures to reform this dual system with a view to removing inconsistencies between the two legal systems in order to create a more harmonious legal framework that could provide consistent solutions, for example, to family-law disputes between Muslims and non-Muslims. The Committee also recommends that the State party undertake a comprehensive review of the national legal framework with a view to ensuring its full compatibility with the principles and provisions of the Convention. The Committee further recommends that the State party take all necessary measures to expedite the process of necessary law reforms.**

#### **National Plan of Action**

479. The Committee notes that the process of finalizing a second comprehensive National Plan of Action for Children by the Ministry of Women, Family and Community Development is currently under way and that the Plan will be streamlined with the National Child Policy.

**480. The Committee recommends that the State party:**

**(a) Ensure that all activities related to the second National Plan of Action are clearly oriented towards the implementation of the full range of rights of the child as enshrined in the Convention, and that the National Plan of Action takes into account the outcome document “A world fit for children”, adopted by the General Assembly of the United Nations at its special session on children, held in May 2002 (resolution S-27/2, annex);**

**(b) Provide a time schedule and sufficient human and financial resources allocation and adequate follow-up mechanisms for the full and effective implementation of the second National Plan of Action at all levels;**

**(c) Continue to ensure the wide participation of civil society, including children and youth, in all aspects of the implementation process.**

### **Coordination**

481. The Committee notes with satisfaction the establishment of two councils: the Coordinating Council for the Protection of Children, under the Child Act 2001 (Act 611), which is the main body mandated to advise the Minister of Women, Family and Community Development on all aspects of child protection, and to coordinate the resources of various government departments involved in child protection; and, also in 2001, the National Advisory and Consultative Council for Children, which acts as a national focal point for children's well-being and development. However, the Committee is concerned at the insufficient coordination of implementation at the horizontal and vertical levels, including the Government, states and local communities.

**482. The Committee recommends that the State party further strengthen coordination between the bodies and institutions working on the rights of the child at all levels in order to ensure uniform implementation of the Convention in all states. The Committee also recommends that the Coordinating Council for the Protection of Children regularly report on the monitoring and evaluation of the implementation of the Convention and that these reports be widely disseminated at all levels of society.**

### **Independent monitoring**

483. The Committee welcomes the establishment of the Human Rights Commission of Malaysia (SUHAKAM) by the Human Rights Commission of Malaysia Act in 1999 and, in particular, SUHAKAM's mandate, which includes carrying out analyses and awareness-raising and training activities, as well as receiving and investigating individual complaints of alleged human rights violations, and visiting places of detention. It notes with appreciation that SUHAKAM monitors the implementation of the Convention on the Rights of the Child through its working groups and organizes regular round tables to address the situation of children.

**484. The Committee recommends that the State party ensure that SUHAKAM is provided with adequate human, financial and technical resources and that it has well- trained and sufficient staff to monitor and evaluate progress in the implementation of the Convention at the national and local levels, as well as to receive, investigate and address complaints from children. The Committee emphasizes the need to ensure that this mechanism is easily**

**accessible to children. In these actions the State party should fully take into account the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2).**

#### **Allocation of resources**

485. The Committee commends the State party on its significant investment in social and health services, education and child protection but regrets that the impact of budgetary allocations on the implementation of child rights has not been systematically assessed.

**486. The Committee recommends that the State party continue to prioritize budgetary allocations for the realization of children's rights to the maximum extent of available resources for social and health services, education and child protection and to allocate more resources for the implementation of special protection measures for vulnerable groups of children (for example, the *Orang Asli*, children living in economic hardship, children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking). The Committee also recommends that the State party establish a systematic assessment of the impact of budgetary allocations on the implementation of the rights of the child and identify the yearly budgetary amount and proportion spent on persons under 18 years of age.**

#### **Data collection**

487. The Committee takes note of the extensive statistical data provided in the report and particularly in the written replies to the list of issues. It nevertheless, regrets the lack of a national data collection system in respect of all areas covered by the Convention, which limits the State party's capacity to adopt adequate policies and programmes, in particular with regard to under-served groups of children and under-served geographical areas (for example, poverty studies on *Orang Asli* and indigenous populations in Sabah and Sarawak). The Committee also regrets the insufficient data on, for instance, non-Malaysian children living in Malaysia, violence against children, child victims of trafficking for exploitative purposes, sexual exploitation of children, and working children.

**488. The Committee recommends that the State party strengthen its mechanisms for data collection by establishing a national central database on children and developing indicators consistent with the Convention in order to ensure that data are collected on all areas covered by the Convention and that they are disaggregated, for example by age (for all persons under 18), sex, urban and rural area and by group of children in need of special protection (i.e. under-served groups of children and under-served geographical areas, including *Orang Asli* and children belonging to indigenous populations in Sabah and Sarawak, non-Malaysian children living in Malaysia, child victims of violence and child victims of trafficking for exploitative purposes, including sexual exploitation and child labour). The Committee further recommends that the State party use these indicators, as well as collected data, to facilitate the formulation of policies and programmes for the implementation of the Convention.**

## **Dissemination of the Convention, and training activities**

489. The Committee welcomes the State party's efforts to promote awareness of the rights of the child, including the awareness-raising workshops organized by the Department of Social Welfare, as well as efforts to disseminate the Convention, in close collaboration with UNICEF, SUHAKAM and non-governmental organizations. Nevertheless, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention.

**490. The Committee recommends that the State party strengthen its efforts to disseminate the Convention to children, their parents and the broader public, including appropriate material specifically for children translated into the different languages spoken in Malaysia, including those spoken by migrant children, asylum-seeking and refugee children and indigenous children. In addition, it recommends that the State party undertake systematic education and training programmes on the provisions of the Convention for all professional groups working for and with children, such as civil servants, teachers, social workers, health personnel (including psychologists), judges, lawyers and law-enforcement officials.**

## **2. Definition of the child (art. 1)**

491. The Committee shares the State party's view that laws which are not consistent with the definition of the child under article 1 of the Convention should be reviewed to ensure full compliance with the Convention. However, the Committee is concerned at the existence of disparities in national laws. For example, the Children and Young Persons (Employment) Act 1966 (Act 350) defines a child as any person who has not completed his or her fourteenth year, whereas the Child Act 2001 (Act 611) defines a child as a person under the age of 18. The Committee also notes with concern the contradictions between the provisions of the civil law and the Syariah law: for example, the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and the Islamic Family Law Act (Federal Territory) 1984 (IFLA) define the minimum age for marriage inconsistently.

**492. The Committee recommends that the State party take all necessary measures to harmonize the definition of the child, including the terminology used, in the national laws so as to eliminate inconsistencies and contradictions.**

## **3. General principles (arts. 2, 3, 6 and 12)**

### **Non-discrimination**

493. While noting with appreciation the principle of non-discrimination in article 8 of the Federal Constitution, as well as in the preamble of the Child Act 2001 (Act 611) and the special measures taken to advance and protect the status and existence of indigenous peoples, the Committee is concerned that many children belonging to vulnerable groups are likely to experience de facto discrimination in everyday life. These include the *Orang Asli*, indigenous

and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers. Acknowledging the State party's challenges in providing quality services in remote areas of the country, the Committee is concerned that many children are still suffering from disparities in the field of access to social and health services and education. Concern is expressed at the insufficient efforts made to address discrimination based on sexual orientation.

**494. In the light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include the *Orang Asli*, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum-seeking and refugee children (for example, the unregistered children of Filipino refugees holding IMM13 refugee passes), children born out of wedlock and children of migrant workers.**

495. Despite the efforts of the State party to address the issue of equality of the sexes, the Committee notes with concern that the persistence of stereotypical attitudes concerning the roles and responsibilities of women and men still constitute an impediment to the full enjoyment of all human rights and fundamental freedoms by girls.

**496. The Committee recommends that the State party continue to address the problems faced by the girl child and to raise awareness among the population regarding the equality of girls and boys. It recommends that the State party carry out a study on gender role models. The Committee suggests that local, religious and other leaders be invited to take a more active role in supporting the efforts to prevent and eliminate discrimination against the girl child and to provide guidance to communities in this regard. The Committee also recommends that the State party promote the inclusive role of women in society, including by developing school curricula, such as recommended by the Committee on the Elimination of Discrimination against Women in its observations on the combined initial and second periodic report of Malaysia at its thirty-fifth session in 2006 (CEDAW/C/MYS/CO/2, paras. 15-16).**

**497. The Committee requests that in its next periodic report the State party include specific information on the measures and programmes relevant to the Convention which it adopted to follow up on the Durban Declaration and Programme of Action of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking into account the Committee's general comment No. 1 (2001) on the aims of education (CRC/GC/2001/1).**

### **Best interests of the child**

498. The Committee notes with appreciation the provisions of the Child Act 2001 (Act 611) which incorporate the principle of the best interests of the child, and takes note of many other national laws that enshrine this principle. However, it is concerned that this general principle is not fully applied and duly integrated in the implementation of the legislation, policies and

programmes of the State party as well as in administrative and judicial decisions. For example, while the State party has expressed its firm intention not to separate migrant children from their migrant parents to be deported, the implementation of current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining and deporting migrant workers without effective efforts to prevent the separation of children from their parents. The Committee also notes that the Law Reform (Marriage and Divorce) Act 1976 (Act 164), as well as the Islamic Family Statutes, are based on a primary presumption that a mother is the best person to take care of a child, leaving the consideration of the best interests of the child as a secondary concern.

**499. As regards article 3, paragraph 1, of the Convention, the Committee emphasizes that the Convention is indivisible, that its articles are interdependent and that the best interests of the child is a general principle of relevance to the implementation of the whole Convention. The State party should ensure that the best interests of the child is a primary concern, taken into account in all revisions of the legislation as well as in judicial and administrative decisions, and in projects, programmes and services that have an impact on children.**

#### **Right to life, survival and development**

500. The Committee welcomes the information provided by the State party that it will amend the Essential (Security Cases) Regulations of 1975 to abolish the imposition of capital punishment on children. The Committee notes that capital punishment is not imposed in practice for offences committed by persons who are under 18 at the time of the offence. Nevertheless, it notes with grave concern that the State party has not yet withdrawn its reservation to article 37.

**501. The Committee recommends that the State party, as a matter of priority, expedite its measures to amend the Essential (Security Cases) Regulations of 1975 to abolish the imposition of capital punishment on children. With regard to the State party's reservation to article 37, the Committee refers to its earlier recommendation in paragraph 474 above.**

502. The Committee notes with concern the relatively high number of deaths and injuries among children as a result of accidents, including road traffic accidents and drowning, despite the various measures taken by the State party to address this problem.

**503. The Committee recommends that the State party continue and strengthen as much as possible its efforts to prevent children's accident-related deaths by systematically enforcing the existing regulations and by introducing awareness-raising campaigns and education programmes aimed at parents, children and the public at large.**

#### **Respect for the views of the child**

504. The Committee notes with appreciation that children are given an opportunity to express their views on the Government's policies, programmes and matters pertaining to children through the Malaysian Youth Council. However, it expresses concern that traditional perceptions of children as objects and as the "property" of parents and elders rather than as subjects of rights hinder their right to express their views and to participate in the family, schools and local communities. It also notes with concern that in legal and administrative proceedings it is in

practice left to the discretion of the judge to decide whether the child is heard. The Committee regrets that the Child Act 2001 (Act 611) does not contain a specific provision on children's participation.

**505. The Committee recommends that the State party notably strengthen its efforts, including legislative, to ensure the active participation and involvement of children in all decisions affecting them in the family, schools and other institutions and local communities, in accordance with article 12 of the Convention. It recommends that children's views be systematically heard and taken into consideration in all judicial, administrative and other decisions affecting them, in accordance with the child's age and maturity. The Committee encourages the State party to continue and strengthen collaboration with civil society organizations in this respect. Furthermore, the Committee draws the attention of the State party to the recommendations adopted on the Committee's day of general discussion on the right of the child to be heard, held on 15 September 2006.**

#### **4. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a))**

##### **Birth registration**

506. While commending the State party on its efficient birth registration system, including the use of mobile birth registration units, the Committee notes with concern that delays in birth registrations are subject to additional fees. It also notes with concern that non-Malaysian children born in Malaysia, such as asylum-seeking and refugee children as well as children of undocumented migrant workers, children of single mothers and children born in remote areas of the country, are at risk of not being registered at birth.

507. In the light of article 7 of the Convention, the Committee recommends that the State party continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory. The Committee recommends that the State party improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country. Meanwhile, children without official documentation should be allowed to access basic services, such as health and education, while waiting to be properly registered.

##### **Freedom of expression and peaceful assembly**

508. The Committee is concerned that the right of the child to freedom of expression, including to present complaints publicly and to receive information, and the right to freedom of association and peaceful assembly are not fully guaranteed in practice.

**509. The Committee encourages the State party to take all necessary measures to ensure the full practical implementation of the rights to freedom of expression and freedom of association and peaceful assembly. It also encourages the State party to review its reservations to articles 13 and 15 of the Convention with a view to withdrawing them.**



### **Torture or other cruel, inhuman or degrading treatment or punishment**

510. The Committee, while welcoming the State party's statement that it will amend the provisions of the Child Act 2001 (Act 611) which provide for caning of male children, expresses its deep concern that caning is still a lawful penal sanction provided by the Child Act and that it is also used as a disciplinary measure in penal institutions.

**511. The Committee urges the State party to immediately abolish all forms of cruel, inhuman or degrading punishments, including caning and other forms of corporal punishment imposed on persons having committed a crime when under the age of 18 and as a disciplinary measure in penal institutions, taking into account the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).**

### **5. Family environment and alternative care (arts. 5; 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4, and 39)**

#### **Parental responsibilities and assistance to parents**

512. The Committee notes with appreciation the State party's efforts to develop and enhance the family institution, including the initiative to draft a National Family Policy and Plan of Action. While noting with appreciation the programme known as "Interactive Workshops", which assists parents in the upbringing of their children, the Committee is concerned about the often insufficiency of parenting skills to, among other things, hear and respect the views of the child appropriately. The Committee expresses its concern at part VII, section 46, of the Child Act 2001 (Act 611) on "children beyond control", according to which parents can request the Court for Children to take measures when their child is "beyond control". This results in many of these children being placed in approved schools, Henry Gurney schools and probation hostels together with children in conflict with the law.

**513. The Committee encourages the State party, in the light of article 5 and article 18, paragraphs 1 and 2, of the Convention, to increase its efforts in developing parental education and awareness, for example, by providing support to parents, including training in parental guidance, skills and joint parental responsibilities. It urges the State party to review part VII, section 46 of the Child Act 2001 (Act 611) on "children beyond control" with a view to abolishing the detention and institutionalization of children based on this provision and recommends that the State party provide special services to parents who have difficulties in the upbringing of their children, including the continuation of the Interactive Workshops, as well as home and community care support services, and involving the whole family in the counselling process.**

#### **Alternative and institutional care**

514. The Committee notes that in Malaysia a relatively small number of children live in residential care. It welcomes the cottage system children's homes and the guidelines on "Management of Child Related Care Centres" and in particular the involvement of children in

developing these guidelines. Nevertheless, the Committee regrets the absence of a comprehensive evaluation of the alternative-care system. It notes with concern that the quality of children's homes maintained by NGOs is often unknown.

**515. The Committee recommends that the State party, taking into account the recommendations adopted on its Day of general discussion on children without parental care, held on 16 September 2005 (see CRC/C/153), carry out a comprehensive, national evaluation of the alternative-care system and based on the results of this evaluation provide children residing in out-of-home care, including foster families, public and private residential institutions and care providers, with adequate social and educational services tailored to respond to the needs of these children. It also recommends that the State party establish effective mechanisms for complaints from children in care, as well as efficient regular periodic review of placement, taking into account the best interests of the child.**

**516. The Committee also recommends that the State party ensure - for example, by providing guidelines and standards for service provision - that both not-for-profit and for-profit NGOs fully comply with the principles and provisions of the Convention on the Rights of the Child. As regards privatizing or contracting out services to NGOs, the Committee recommends that the State party enter into detailed agreements with the service providers and ensure effective monitoring of implementation as well as transparency of the entire process.**

### **Adoption**

517. The Committee acknowledges that the State party has a traditional form of adoption of non-Muslim children as well as an Islamic form of foster care of Muslim children. As regards the adoption of non-Muslim children, the Committee is concerned at the absence of a uniform national adoption law in Malaysia and at the different procedures for adoption between states in Malaysia. Concern is also expressed at the prevalence of informal adoptions, which are neither registered nor monitored.

**518. The Committee recommends that the State party review the legislative framework of domestic adoption by introducing a national uniform adoption law to regulate the adoption of non-Muslim children in Malaysia. It urges the State party to strengthen its efforts to prevent informal adoption of children, which is neither registered nor monitored. As regards intercountry adoption, it recommends that the State party ratify the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).**

### **Violence, abuse and neglect, maltreatment**

519. The Committee notes with appreciation that violence against children, such as physical, sexual, mental and emotional violence, as well as abandonment and neglect, are addressed in the Child Act 2001 (Act 611), and that since August 2002 incest has been criminalized by the Penal Code (Act 574). It also notes with appreciation that the Domestic Violence Act 1994 (Act 521) protects the child against violence within the family. It also notes with appreciation the State party's willingness to establish a toll-free helpline for children. However, despite the measures

taken to provide protection against violence, abuse and neglect, the Committee notes with grave concern that domestic violence, including violence against children in the family, remains a serious human rights problem in the State party. The Committee notes with concern that, owing to the strong social and cultural taboos, victims and witnesses rarely report these cases, although there exist established mechanisms to receive reports on child abuse and neglect, including a toll-free helpline *Teledera* which is, however, limited to reporting on child-abuse cases. It also notes with concern that corporal punishment in the home is lawful.

**520. In the light of article 19 and other relevant provisions of the Convention, and taking into account the recommendations of the Committee adopted on its day of general discussion on violence against children within the family and in schools held on 28 September 2001 (CRC/C/111, paras. 701-745), the Committee urges the State party to:**

**(a) Develop, as part of the National Plan of Action for Children, a comprehensive national strategy to prevent and respond to domestic violence, ill-treatment of children and child abuse, and further adopt adequate measures and policies to contribute to changing attitudes and cultural practices;**

**(b) Strengthen the existing mechanisms and procedures to receive, monitor and investigate complaints of child abuse and neglect, including intervention where necessary, and to prosecute cases of abuse and ill-treatment, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected;**

**(c) Prohibit by law all forms of corporal punishment in the home and conduct a comprehensive study to assess the nature and extent of this phenomenon;**

**(d) Continue to sensitize and educate parents, guardians and professionals working with and for children by carrying out public education campaigns about the harmful impact of violent forms of “discipline” and promote positive, non-violent, participatory methods of child-rearing;**

**(e) Ensure that all child victims of violence and abuse have access to adequate care and counselling, and to assistance with recovery and reintegration;**

**(f) Establish a toll-free, 3-digit helpline with 24-hour service for children and facilitate the collaboration of this helpline with State alliances, such as the police, health, and social welfare systems, and child-focused NGOs, in order to enhance its intervention and follow-up model.**

**521. With reference to the United Nations study on violence against children, the Committee recommends that the State party:**

**(a) Take all necessary measures for the implementation of the overarching and setting-specific recommendations contained in the report of the independent expert for the United Nations study on violence against children (A/61/299) taking into account the outcome and recommendations of the Regional Consultations for East Asia and the Pacific (held in Thailand from 14 to 16 June 2005);**

**(b) Use the recommendations of the Regional Consultations as a tool for action in partnership with civil society and in particular with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain support for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) Consider seeking technical cooperation from UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO).**

**6. Basic health and welfare  
(arts. 6; 18, para. 3; 23; 24; 26; and 27, paras. 1-3)**

**Children with disabilities**

522. The Committee notes with appreciation that a number of measures have been taken by the State party to improve the situation of children with disabilities, particularly the establishment of community-based rehabilitation centres which provide diagnosis, rehabilitation, treatment and special education for children with disabilities. The Committee is encouraged by the information that the State party is in the process of finalizing a national policy on persons with disabilities, including a plan of action. Nevertheless, the Committee regrets the insufficient official data on the number of children with disabilities in the State party and that children with disabilities living in remote areas do not have access to the same level of services as children living in other parts of the country.

523. **The Committee recommends that the State party, taking into account the Committee's general comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), take all necessary measures to:**

**(a) Reinforce its efforts to adopt the national policy on persons with disabilities, including the national plan of action, and consider formulating a bill on persons with disabilities;**

**(b) Collect adequate statistical data on children with disabilities and ensure the use of such data in the development of policies and programmes for these children;**

**(c) Provide children with disabilities with equal access to adequate social and health services, including psychological and counselling services, and tailored services for children with learning difficulties and behavioural disorders, and raise awareness about all services available;**

**(d) Continue and increase the provision of community-based programmes and services in order to allow children with disabilities to stay at home with their families;**

**(e) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification.**

**Health and health services**

524. The Committee commends the State party on the significant progress achieved in the field of health care and the provision of health services, and especially on its efforts to improve maternal health care and to reduce infant mortality rates. While noting that 10 per cent of people in Malaysia have limited access to medical care, it welcomes the State party's efforts to address this human rights concern, including by launching the Village Health Promoters programme which helps to provide basic medical services to people living in the remote parts of the country. The Committee notes with concern that despite the declining rates of malaria and tuberculosis worldwide, these diseases are re-emerging in the State party. While noting that the State party promotes the six months of exclusive breastfeeding and that it is in the process of revising the Code of Ethics for Infant Formula Products of 1995, which will be released shortly, the Committee notes with concern that exclusive breastfeeding rates remain low. It is concerned that the private health sector does not fully implement the national Code of 1995 and that the distribution of samples and supplies of milk substitutes still takes place in private health facilities. The Committee regrets that the duration of maternity leave is only two months and that daily breastfeeding breaks for working mothers depend on the discretion of the employer.

525. **The Committee recommends that the State party continue its efforts to:**

**(a) Develop the health sector and strengthen the primary-care centres and the preventive health services and address the regional disparities in this regard;**

**(b) Prevent and reduce the spread of tuberculosis and malaria and, for instance, provide migrant children with regular physical examinations;**

**(c) Promote exclusive breastfeeding, among other things by strengthening the national Code of Ethics for Infant Formula Products, ensuring that it complies fully with the International Code of Marketing of Breast-milk Substitutes, and by monitoring the implementation of the national Code in both the public and the private health facilities, as well as by extending the length of maternity leave to comply with internationally acceptable standards, and by promoting daily breastfeeding breaks for working mothers who wish to continue breastfeeding their children for a longer period of time.**

526. **As regards the treatment of tsunami-affected children suffering from post-traumatic stress disorder and other emotional and mental problems, the Committee welcomes the project of Malaysia's HELP University College, with support from UNICEF and the Ministry of Health, which offers long-term psychosocial support, counselling and psychotherapy for these children and their families.**

527. The Committee recommends that the State party continue and increase, where necessary, the provision of long-term psychosocial support, counselling and psychotherapy for children and their families traumatized by natural or man-made disasters as long as needed.

### **Adolescent health**

528. The Committee welcomes the State party's efforts to promote adolescent health, including the My Peer Programme which trains peer educators on adolescent reproductive health and kafe@TEEN drop-in centres which provide information and knowledge on adolescent sexuality and reproductive health as well as guidance and other services specifically for adolescents. However, the Committee notes with concern the absence of a comprehensive national youth study, the last national comprehensive survey on sexual and reproductive health of adolescents having been conducted in 1994-1995. It also notes with concern that adolescents have a limited knowledge of reproductive health issues and that pregnant adolescents are often stigmatized.

**529. The Committee recommends that the State party, taking into account the general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child (CRC/GC/2003/4):**

**(a) Conduct a comprehensive national youth study and based on the results of this study provide adolescents with tailored and youth-sensitive health services and counselling, and respecting the privacy of the adolescent;**

**(b) Promote adolescent health, including sex and reproductive health education, in schools and in other appropriate places frequented by adolescents.**

### **HIV/AIDS**

530. While sharing the State party's concern that HIV/AIDS is an emerging health issue in Malaysia, the Committee notes with satisfaction that the State party has put the prevention of HIV infections high on its health agenda and has taken measures to raise awareness about HIV/AIDS among adolescents. In particular, the Committee notes with appreciation the adoption in 2006 of the new National Strategic Plan for HIV/AIDS 2006-2010 and its subprogrammes, the establishment of PROSTAR youth centres, in collaboration with UNICEF and with community support, which focus on HIV/AIDS prevention through youth-friendly activities and provide counselling, anonymous HIV screening, peer-to-peer education and leadership opportunities for young people. The Committee also notes with appreciation the initiation of a three-year project to involve Islamic religious leaders in the response to HIV/AIDS, in partnership with the United Nations Development Programme (UNDP), the Ministry of Health, the Department of Islamic Religious Affairs, and the Malaysian AIDS Council (MAC).

531. The Committee is concerned that, despite these actions, the incidence of HIV/AIDS is rapidly rising in the State party and that the existing resources are not sufficient to meet expanding demands in this respect. Since HIV/AIDS continues to be a culturally and religiously sensitive topic in the State party, the raising of awareness on HIV/AIDS in terms of transmission channels, treatment and preventive measures remains challenging. The Committee is also concerned at the increasing number of children orphaned by AIDS.

**532. The Committee recommends that the State party, taking into account the Committee's general comment No. 3 (2003) on HIV/AIDS and to the rights of the child (CRC/GC/2003/3) and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37):**

**(a) Strengthen its efforts to implement the National Strategic Plan for HIV/AIDS 2006-2010 and its subprogrammes in order to prevent the incidence and spread of HIV/AIDS;**

**(b) Ensure that children infected with HIV and/or affected by HIV/AIDS have access to adequate social and health services, including by strengthening the community-level prevention and treatment programmes;**

**(c) Ensure that children have access to child-sensitive and confidential HIV/AIDS counselling with full respect for the child's privacy, when such counselling is required by a child, and to accurate and comprehensive information about HIV/AIDS, its transmission channels, treatment and preventive measures, for example in schools;**

**(d) Establish special programmes to provide protection and support for children orphaned by AIDS;**

**(e) Seek technical assistance from, among others, the Joint United Nations Programme on HIV/AIDS (UNAIDS), WHO, UNICEF and UNDP and enhance collaboration with the Malaysian AIDS Council (MAC).**

#### **Standard of living**

533. The Committee commends the State party on its continuous and remarkably successful efforts to reduce poverty in Malaysia. It notes with appreciation the plans to implement the Ninth Malaysia Plan 2006-2010, as well as the estimate that the State party is able to reach the Millennium Development Goal target of halving poverty well before 2015. Despite the State party's considerable progress in poverty reduction, the Committee notes with concern that indigenous groups, especially indigenous communities in Sabah and Sarawak, and the *Orang Asli* in Peninsular Malaysia, are affected by poverty. It also notes with concern that urbanization and the growing number of low-income or unemployed migrant workers are likely to create new pockets of poverty in cities. Furthermore, the low-income level of single female-headed households gives rise to concern.

534. **The Committee recommends that the State party:**

**(a) Continue to implement the Ninth Malaysia Plan 2006-2010 and to allocate resources for effective poverty-reduction measures at all levels, particularly among the Orang Asli and in the indigenous communities of Sabah and Sarawak, as well as in the rural and remote areas of the other less developed states;**

**(b) Raise the standard of living among its population living in poverty and enhance the capacity to develop and monitor poverty-reduction strategies at all levels, and ensure that children living in low-income households have access to social and health services, education and adequate housing;**

**(c) Provide children living in poverty with an opportunity to be heard and to express their views when planning and implementing poverty-reduction programmes at the local and community levels.**

## 7. Education, leisure and cultural activities (arts. 28, 29 and 31)

### Education, including vocational training and guidance

535. The Committee commends the State party's progress in quantitative expansion and qualitative upgrading of the educational system. It welcomes the Education Amendment Act 2002 (Act A1152) which made primary education compulsory for all children aged 6. The Committee notes as a positive factor that the enrolment rate of girls and boys in primary education is relatively equal but it regrets that according to estimates 200,000 children of primary-school age are not attending school. It also notes with concern the regional disparities in the dropout rates. For example, in Sabah the proportion of children reaching grade 5 has decreased significantly. The Committee also regrets that many children, in particular boys, drop out from secondary education. It also notes the limited provision of vocational education and training.

536. The Committee notes with appreciation the State party's efforts to address the special educational needs of indigenous children and in particular the *Orang Asli* but it notes with deep concern their high dropout rate. Despite the fact that education is provided free of charge and that the State party implements many support programmes such as the Textbook Loan Scheme, the Committee is concerned that other costs of schooling, such as transportation, school uniforms, supplies and extra-curricular activities are likely to cause financial obstacles to education for children from low-income families and deny them equal access to education. It notes with concern that non-citizen children have to pay a school fee and that they are accepted in schools only if they have adequate documents and if places are available. The Committee also notes with concern that the education provided by NGOs does not necessarily comply with the national curricula and that children attending this kind of informal education do not have the right to sit official examinations.

537. **In the light of articles 28 and 29 of the Convention, and taking into account the Committee's general comment No. 1 (2001) on the aims of education (CRC/GC/2001/1), the Committee recommends that the State party continue to allocate adequate financial, human and technical resources in order to:**

**(a) Ensure that all children have equal access to quality education at all levels and that their access to education is not impeded by economic shortcomings;**

**(b) Continue to take measures to prevent children from dropping out of primary and secondary education, paying special attention to the reasons for boys' dropping out, and take all necessary measures to address regional disparities in this respect;**

**(c) Strengthen its efforts to address the special educational needs of the *Orang Asli* and children from other indigenous groups, including by implementing the "Stay with the School Programme";**

**(d) Provide vocational education and training for children who do not attend or complete regular school education, with a view to facilitating their future access to the labour market;**



**(e) Include human rights education, including the rights of the child, in the curricula, particularly with regard to the development of respect for human rights, tolerance and equality of the sexes as well as religious and ethnic minorities and indigenous peoples.**

**538. In this respect, the Committee recommends that the State party seek cooperation with, among others, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNICEF, to further improve the education sector.**

539. The Committee notes with concern that the corporal punishment of boys is still a lawful disciplinary measure and used in secondary schools.

**540. The Committee reiterates that corporal punishment is not compatible with the provisions of the Convention and is inconsistent with the requirement of respect for the child's dignity, as specifically required by article 28, paragraph 2, of the Convention. Therefore, the Committee recommends that the State party prohibit by law all forms of corporal punishment in schools.**

541. As regards pre-school education, the Committee welcomes the percentage of children enrolled in pre-school education which has notably risen and that the State party has taken several measures, including by making a national pre-school curriculum for children from five to six years old compulsory in 2003, to promote early childhood development. The Committee is nevertheless concerned at the limited access to pre-school education in Sabah and Sarawak.

**542. The Committee recommends that the State party continue to expand pre-school education to cover the whole country, including children living in the most remote areas. It recommends that the State party raise awareness with respect to pre-schools and early-learning opportunities by taking into account the Committee's general comment No. 7 (2005) on implementing child rights in early childhood (CRC/C/GC/7/Rev.1).**

## **8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36 and 30)**

### **Asylum-seeking and refugee children**

543. The Committee notes with appreciation efforts taken by the State party to improve the situation of asylum-seeking and refugee children and their families, particularly the increased cooperation the State party has extended to the United Nations High Commissioner for Refugees (UNHCR) in Malaysia. It notes with appreciation, for example: the issuance of written instructions in 2005 by the Attorney-General not to prosecute immigration-related offences committed by asylum-seekers and refugees holding valid UNHCR documentation; the issuance of written instructions by the Ministry of Health to reduce medical fees for asylum-seekers, refugees, and their children to 50 per cent of the foreigners' rate; and the statement made during the dialogue with the Committee that UNHCR shall be provided with access to refugee or asylum-seeker detainees, including in immigration detention centres.

544. Despite these positive steps taken, the Committee expresses concern at the absence of a legal framework in Malaysia for the protection of refugee and asylum-seeking children. In particular, the Committee regrets that the State party has not acceded to the 1951 Convention relating to the Status of Refugees or its 1967 Optional Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. The Committee is particularly concerned that the implementation of the current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining asylum-seeking and refugee children and their families at immigration detention centres, prosecuting them for immigration-related offences, and subsequently imprisoning and/or deporting them.

**545. In the light of articles 3 and 22 and other relevant provisions of the Convention, the Committee recommends that the State party, taking into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6):**

**(a) Take urgent measures not to detain children in connection with immigration proceedings unless it is necessary to protect their best interests - and then for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified;**

**(b) Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness;**

**(c) Develop a legislative framework for the protection of asylum-seeking and refugee children, particularly unaccompanied children, in line with international standards;**

**(d) In the absence of a national law on refugees, amend the Immigration Act 1959/63 (Act 155), or at least make use of the exception foreseen under Section 55 of the Immigration Act, with a view to legalizing the status of asylum-seekers and refugees in Malaysia;**

**(e) If detention is necessary in a particular, exceptional case, take all measures necessary to make this as short as possible and provide for special protection and assistance measures for refugee and asylum-seeking children and their families while in detention, in line with relevant international standards.**

546. The Committee notes with concern that many asylum-seeking and refugee children, among them the Muslim children from Myanmar, including the *Rohingya* refugee children who have lived in Malaysia since 1990s, lack access to formal education.

**547. With reference to articles 2, 22 and 28 of the Convention, the Committee recommends that the State party take urgent measures to ensure that asylum-seeking and refugee children have access to free and formal primary, secondary and other forms of education, and that in particular refugee and asylum-seeking children who are engaged in informal education have access to official examinations.**

548. **The Committee also recommends that the State party continue and strengthen its collaboration with UNHCR and other relevant agencies to address humanitarian concerns related to asylum-seeking and refugee children, including by providing them with access to detainees.**

#### **Children of migrant workers**

549. The Committee takes note of the information that the State party is in the process of submitting a Bill on Foreign Workers to Parliament in 2007. The Committee notes the large number of migrants both documented and undocumented and welcomes the State party's initiative to document and register children of migrant workers and to provide all children in the State party with unrestricted access to education and health services. However, the Committee remains concerned that children of migrant workers still face many difficulties in the enjoyment of their rights under the Convention.

550. **The Committee recommends that the State party continue and strengthen its efforts to register and document all children of migrant workers and ensure their unrestricted access to education and health care services. It further recommends that the State party ensure that repatriation of migrant workers with children to their country of origin takes place with due regard to the rule of article 3 of the Convention providing that the best interests of the child shall be a primary consideration. When assessing the best interests of the child, the State party should take into account the totality of the circumstances, including paying attention to issues like the fact that the child is born in the State party, the length of the stay of the child on the State party's territory, the years of education enjoyed in the State party and the need to not separate the child from her/his parents.**

551. **The Committee recommends that the State party take regional initiatives for negotiations with neighbouring countries in order to establish agreements on measures to deal with the high number of cross-border migrants and the various related problems in a constructive way and in full compliance with international human rights standards. In this regard the Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to seek technical assistance from the International Organization for Migration (IOM).**

#### **Economic exploitation, including child labour**

552. The Committee takes note of the information that the State party is in the process of amending the Children and Young Persons (Employment) Act 1966 (Act 350) to provide better protection for working children. The Committee, welcoming the ratification of the ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment in September 1997 and the ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in November 2000 by the State party, is concerned that the enforcement of these two labour rights conventions remains weak. It also notes with concern that the provisions of the Children and Young Persons (Employment) Act permits, among other things, employment involving light work and employment as a domestic servant without detailing the acceptable conditions of such work. The

Committee also regrets that the unclear definition of the child (see the Committee's concern in para. 29) impedes the full implementation of ILO Convention No. 182 on the Worst Forms of Child Labour.

553. The Committee is alarmed at the high number of migrant domestic workers in the State party, including child domestic workers who work under conditions that are hazardous and interfere with the child's education, and are harmful to the child's health and physical, mental, spiritual, moral or social development.

**554. In accordance with article 32 of the Convention, the Committee recommends that the State party:**

**(a) Amend the Children and Young Persons (Employment) Act 1966 (Act 350) and other relevant laws and regulations to ensure that acceptable conditions of permissible work, including light work and work as a domestic servant, are clearly and strictly detailed and that the national labour provisions fully comply with international labour standards as well as with the definition of the child as provided by the Convention (art. 1);**

**(b) Vigorously pursue enforcement of minimum-age standards, including requiring employers to have, and to produce on demand, proof of age of all children working on their premises;**

**(c) Strengthen the labour inspectorate and provide the labour inspectors with all the necessary support, including child labour expertise, with a view to enabling them to monitor effectively at the state and local level the implementation of labour law standards and to receive, investigate and address complaints of alleged violations;**

**(d) Ensure that all working children, including those in the informal sector, have access to free and compulsory primary education as well as to secondary education, including vocational training, and that the nature of work does not interfere with their schooling;**

**(e) Seek technical assistance from the ILO International Programme on the Elimination of Child Labour (IPEC).**

#### **Street children**

555. As regards children living and/or working in the streets, particularly in Sabah, the Committee regrets that the State party could not present studies on the extent and nature of this problem. It notes with concern that "cleaning operations" have resulted in detaining street children and that negative public attitudes and prejudices against street children exacerbate their difficult situation.

**556. The Committee recommends that the State party:**

**(a) Undertake a study on children living/working in the streets to identify the magnitude of this problem and based on the results of this study develop a comprehensive national strategy with the active participation of street children, NGOs and relevant professionals to address the situation of street children;**

**(b) Ensure that children living in the streets are not unlawfully arrested and detained, protect them from police brutality and, where needed, secure their access to adequate legal services;**

**(c) Ensure that street children are reached through trained street educators and counsellors and provided with adequate identity documents, nutrition, clothing and shelter as well as with social and health services and educational opportunities, including vocational and life skills training, in order to support their full development;**

**(d) Provide street children with adequate recovery and social reintegration services for physical, sexual and substance abuse and promote reunification with their families, when it is in the best interests of the child;**

**(e) Raise awareness about children living in the streets in order to change negative public attitudes about them;**

**(f) Collaborate with and support NGOs working with and for street children and seek technical assistance from, among others, UNICEF.**

#### **Trafficking in children for exploitative purposes**

557. The Committee notes with appreciation the establishment of a Coordinating Committee on Trafficking in July 2006 and it takes note of the information that the State party is in the process of submitting an Anti-trafficking of Persons Bill to Parliament in 2007. Considering that Malaysia is a destination country but also a source and transit country for trafficking in children for the purposes of sexual exploitation and forced labour, the Committee notes with grave concern the absence of a specific law and policy to combat intercountry trafficking. It also notes with concern that trafficked children, although they are victims, are often detained, for example, in the case of missing residence/work permits or falsified documents, and subsequently deported, and that they are not provided with adequate specialist support for social reintegration and recovery. The Committee also notes with deep concern reports suggesting that babies are trafficked from neighbouring countries for sale to childless couples in Malaysia. The absence of data and information on the magnitude of this problem is also a matter of concern.

**558. In the light of article 35 and other related articles of the Convention, the Committee recommends that the State party:**

**(a) Conduct a comprehensive study to assess the nature and magnitude of trafficking in children for exploitative purposes and, based on the findings and recommendations of the study, develop and adopt a national anti-trafficking law as well as a comprehensive national plan of action to prevent and combat all forms trafficking within the country and across its borders;**

**(b) Strengthen and expand bilateral and multilateral agreements and cooperation programmes with other countries of origin, transit and destination to prevent trafficking in children;**

**(c) Establish an effective screening process to identify child victims of trafficking and ensure that they are neither detained nor deported and that they are provided with adequate recovery and social reintegration services and programmes;**

**(d) Take all necessary measures for reunification of children with their families when this is in the best interests of the child;**

**(e) Ensure that all trafficking cases are investigated and that perpetrators are charged and punished;**

**(f) Continue to raise public awareness about the detrimental effects of child trafficking and train professionals working with and for children, as well as the general public, to identify, prevent and combat trafficking in children;**

**(g) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000);**

**(h) Strengthen cooperation with, among others, the ILO International Programme on the Elimination of Child Labour (IPEC), IOM and NGOs.**

#### **Drug abuse**

559. Noting the current policy of the State party to achieve a drug-free Malaysia by the year 2015 and related efforts to prevent and fight drug use by adolescents, including the school-based Student Resilience and Interpersonal Skills Development Education (STRIDE) curriculum, the Committee is concerned at the increasing use of illegal drugs, in particular amphetamines and ecstasy, among adolescents.

560. **The Committee recommends that the State party:**

**(a) Pursue its awareness-raising and preventive measures, including awareness-raising of the danger of drugs in the physical and virtual spaces frequented by adolescents, including schools, clubs and the Internet;**

**(b) Introduce free and easily accessible drug-abuse treatment and rehabilitation programmes and social-reintegration services carefully tailored for children and adolescents who are victims of drug abuse;**

**(c) Involve adolescents, including the family and the community at large, in all stages of the development of prevention programmes, and support peer-led prevention initiatives;**

**(d) Consider seeking technical assistance from, inter alia, UNICEF, the World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC).**

### **Sexual exploitation**

561. The Committee notes with appreciation that the Child Act 2001 (Act 611) criminalizes the sexual exploitation of children and that the various provisions of the Penal Code (Act 574) address the issue of the sexual exploitation of children, including child prostitution. It also notes with appreciation the preventive work of Child Protection Teams and Child Activity Centres in this field. Considering the reportedly high demand for commercial sex in Malaysia, the Committee is concerned about prostitution involving children, in particular the vulnerability of certain children to being exploited, such as those without any official record of their existence. It notes the provisions of the Penal Code that prohibit the selling, hiring and dissemination of obscene and offensive material in general, but regrets the absence of specific legislation against Internet-related sexual offences, including child pornography.

**562. In the light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake a national study on the sexual commercial exploitation of children with a view to designing and implementing appropriate policies and measures, including promoting the physical and psychological recovery and social reintegration of child victims of sexual exploitation, and to preventing and combating the sexual exploitation of children in a more targeted way, avoiding the criminalization of child victims. In this regard, the Committee encourages the State party to take into account the Declaration and Agenda for Action and the Global Commitment adopted at the First (Stockholm 1996) and Second (Yokohama 2001) World Congresses against Commercial Sexual Exploitation of Children.**

**563. The Committee recommends that the State party pay particular attention to the existing risk factors, such as the increasing sex tourism in the region, and continue to collaborate with the Malaysia Tourism Promotion Board (MTPB) and tourism service providers in this respect in order to better meet the Code of Conduct set up by the World Tourist Organization on the protection of children from sexual commercial exploitation in travel and tourism.**

**564. Finally, the Committee encourages the State party to consider adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.**

### **Administration of juvenile justice**

565. The Committee notes with concern the low minimum age of criminal responsibility, which is 10 years in the Penal Code (Act 574), and the discrepancies between the minimum age standards in the Penal Code, the interpretation of the Muslim jurists in the *Syariah* Court and the *Syariah* Criminal Procedure (Federal Territories) Act 1984. The Committee expresses its concern, among other things, at long (pre-trial) detention periods, delays in dealing with cases involving children and the fact that children in conflict with the law are often subject to negative publicity in the media. Furthermore, the Committee is concerned at the deprivation of liberty at the pleasure of the Yang di-Pertuan Agong or the ruler or the Yang di-Pertua Negeri, which results in the undetermined length of deprivation, causing problems in terms of the development of the child, including her/his recovery and social reintegration.

566. The Committee recommends that the State party continue and strengthen its efforts to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the “Havana Rules”), taking into account the Committee’s newly adopted general comment No. 10 on children’s rights in juvenile justice (CRC/C/GC/10). It recommends that the State party:

(a) Urgently raise the minimum age of criminal responsibility at least to the age of 12 and continue to increase it to a higher age level and carry out a study on the discrepancies between the minimum age standards in the Penal Code, the interpretation of the Muslim jurists in the *Syariah* Court and the *Syariah* Criminal Procedure (Federal Territories) Act 1984 to prevent different standards being imposed on children upon entering the criminal justice system;

(b) Develop and implement a comprehensive system of alternative measures to deprivation of liberty, such as probation, community service orders and suspended sentences, in order to ensure that deprivation of liberty is used only as a measure of last resort;

(c) Amend the existing laws, including the Child Act 2001 (Act 611), in order to ensure that the deprivation of liberty is in full conformity with articles 37 and 40, paragraph 1, of the Convention and take the necessary measures, for example suspended sentencing and early release, to ensure that deprivation of liberty is limited to the shortest time possible;

(d) Take efficient legislative and administrative measures to abolish the delays in disposal of cases involving children;

(e) Encourage and promote the positive involvement of the media in the reporting on children in conflict with the law and ensure that the media fully respect the right of the child to privacy;

(f) Seek technical assistance from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

567. As regards the protection of child victims and witnesses at all stages of the criminal justice process, the Committee draws the State party’s attention to the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20).

#### **Children belonging to minorities and indigenous peoples**

568. As regards the right of the child belonging to ethnic, religious or linguistic minorities or to indigenous peoples to enjoy his or her own culture, to profess and practice his or her own religion and to use his or her own language, in community with other members of his



or her group, the Committee refers to the respective concluding observations above. It also draws the attention of the State party to the recommendations adopted on the Committee's day of general discussion on the rights of indigenous children (2003) (CRC/C/133, paras. 608-624).

### **9. Optional Protocols to the Convention on the Rights of the Child**

569. The Committee recommends that the State party ratify the two Optional Protocols to the Convention: on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

### **10. Follow-up and dissemination**

#### **Follow-up**

570. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia by transmitting them to the members of the Cabinet and the bicameral Parliament, and to states, when applicable, for appropriate consideration and further action.

#### **Dissemination**

571. The Committee further recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) adopted by the Committee be made widely available in the languages of the country, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

### **11. Next report**

572. The Committee invites the State party to submit a combined second, third and fourth periodic report by 19 March 2012 (which is the due date of the fourth periodic report). This is an exceptional measure owing to the large number of reports received by the Committee every year. This report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

573. The Committee also invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, approved by the fifth Inter-Committee Meeting of the Human Rights Treaty Bodies in June 2006 (HRI/MC/2006/3).

### **Concluding observations: Chile**

574. The Committee considered the third periodic report of Chile (CRC/C/CHL/3) at its 1218th and 1219th meetings (see CRC/C/SR.1218 and 1219), held on 26 January 2007, and adopted at the 1228th meeting, held on 2 February 2007, the following concluding observations.

#### **A. Introduction**

575. The Committee welcomes the submission of the State party's third periodic report, the detailed written replies to its list of issues (CRC/C/CHL/Q/3) and the frank and open dialogue with a high-level, cross-sectoral delegation which enabled the Committee to have a clear understanding of the situation of children in the State party.

#### **B. Follow-up measures undertaken and progress achieved by the State party**

576. The Committee notes with appreciation the adoption of many legislative and programmatic measures taken with a view to implementing the Convention, including:

- (a) The Constitutional reform of 2003 extending compulsory schooling to a minimum of 12 years;
- (b) The establishment and coverage of the Plan for Universal Access and Explicit Guarantees (the AUGÉ health plan);
- (c) The creation of family courts by act no. 19.968 of 2004;
- (d) The establishment of offices for the protection of the rights of children (OPDs);
- (e) The reorganization of the National Service for the Protection of Minors (SENAME) through act no. 20.032.

577. The Committee also wishes to welcome the ratification of or accession to:

- (a) The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities on 26 February 2002;
- (b) The Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict on 21 July 2003 and on the sale of children, child prostitution and child pornography on 6 February 2003;
- (c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime on 29 November 2004;
- (d) The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families on 21 March 2005.

## C. Main subjects of concern and recommendations

### 1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

#### Committee's previous recommendations

578. The Committee appreciates that several concerns and recommendations (CRC/C/15/Add.173 of 3 April 2002) made upon the consideration of the State party's second periodic report (CRC/C/65/Add.13) have been addressed. However, it regrets that other concerns and recommendations have been insufficiently or only partly addressed, including those related to legislation, coordination, independent monitoring, non-discrimination, physical and sexual abuse of children within and outside the family, regional disparities in access to health care, reproductive health, refugee children, sexual exploitation and trafficking and juvenile justice.

579. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the second periodic report that have not yet or not sufficiently been implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the third periodic report. The Committee recommends that the State party take into account the recommendations of the sub-regional workshop on the implementation of the concluding observations of the Committee on the Rights of the Child held in Buenos Aires from 28 to 30 November 2005.

#### Legislation and implementation

580. The Committee welcomes the incorporation of numerous articles on child rights in the Constitution and numerous legislative amendments. The Committee however regrets that the reform of the Juvenile Act No. 16.618 of 1967 with a view to adopting a comprehensive act for the protection of children has not been completed, as recommended by the Committee in its previous concluding observations of 2002 (CRC/C/15/Add.173).

**581. The Committee reiterates its concern in this regard and recommends that the State party promptly complete the process of the reform of the Juvenile Act of 1967 in order to provide comprehensive protection for all children. The Committee also recommends that a clear distinction between children in need of protection and children in conflict with the law, in procedural and other actions, be established.**

**582. The Committee also recommends the State party to ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes e.g. child victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, are provided with the protection required by the Convention and to take fully into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).**

### **National Plan of Action**

583. The Committee welcomes the National Policy and Integrated Plan of Action in favour of Children and Adolescents 2001-2010, however it is concerned that the Plan has been insufficiently implemented and disseminated among stake holders and regrets that the State party has not submitted information regarding the evaluation of the results so far of the implementation of this Plan.

**584. The Committee encourages the State party to further disseminate and conduct an evaluation of the National Policy and Plan of Action in consultation with civil society and all sectors involved in the promotion and protection of children's rights, with the aim of refining its implementation, while taking into account the principles and provisions of the Convention and the plan of action entitled "A world fit for children", adopted at the twenty-seventh special session of the General Assembly in May 2002.**

### **Coordination**

585. The Committee recognises the efforts undertaken by the Council of Ministers for Children and Adolescents under the authority of the Ministry of Planning, however is concerned that institutional arrangements are still lacking in order to guarantee effective and consistent coordination at the national level.

**586. The Committee recommends the State party to ensure that the Council of Ministers for Children and Adolescents enjoys a stable institutional framework and adequate financial and human resources to provide effective and comprehensive coordination of the implementation of children's rights at the national level.**

### **Independent Monitoring**

587. The Committee, while noting the draft law presented to parliament in 2003, reiterates with reference to previous concluding observations, its concern over the absence of an independent national human rights institution (NHRI) in order to provide an accessible complaint and redress mechanism for children.

**588. The Committee reiterates its recommendation that the State party establish an independent national human rights institution and, in light of its general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2) and the Paris Principles (General Assembly resolution 48/134, annex), extend its presence nationwide including to the most vulnerable areas, in order to ensure that all children have easy access to this independent complaints mechanism in case of violations of their rights; and provide it with well-trained staff capable of dealing with these complaints in a child-sensitive manner.**

### **Allocation of resources**

589. The Committee welcomes the increased allocation for social expenditure, in particular in the areas of education and health, however remains concerned that unequal distribution of State

funds continues to have a negative impact on the well-being of children, in particular affecting those from more vulnerable sectors of society, such as indigenous peoples and female-headed households.

**590. The Committee strongly recommends that the State party, in accordance with article 4 of the Convention, further increase budget allocations for the implementation of the rights recognized in the Convention, to ensure a more balanced distribution of resources throughout the country. The Committee urges prioritization of children's economic, social and cultural rights, especially for marginalised children, and adequate budget allocations with a view to alleviating disparities. The Committee encourages the State party to start budget tracking from a child-rights perspective with a view to monitoring budget allocations for children and to seek technical assistance for this purpose from, inter alia, the United Nations Children's Fund (UNICEF).**

### **International cooperation**

591. The Committee welcomes the State party's participation in the project Niñ@sur within Mercosur, however it notes that inadequate resources have been devoted to cross-border issues relating to the rights of children.

**592. The Committee encourages the state party to dedicate further resources to regional cooperation on issues relating to children, in particular through Niñ@sur.**

### **Data collection**

593. The Committee welcomes the progress made in the compilation of statistical data and information, in particular through the *Index de infancia*, however it is concerned over the lack of disaggregated data, in particular regarding vulnerable groups and disparities between urban and rural areas.

**594. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system of collection of data on the implementation of the Convention. The data should cover all children below the age of 18 years and be disaggregated by sex and those groups of children who are in need of special protection. The Committee encourages the State party to further its cooperation with UNICEF in this regard.**

### **Training and dissemination of the Convention**

595. The Committee recognises measures undertaken to disseminate information about the content of the Convention to relevant professional categories, the general public and in particular to children themselves. However the Committee is concerned over the lack of systematic teaching on human rights, and in particular children's rights, as part of the curricula at all educational levels, and that the level of awareness of the Convention is low, particularly in rural areas.

**596. The Committee recommends that the State party strengthen its efforts to disseminate knowledge of the Convention throughout the country and to raise public awareness of its principles and provisions, in particular among children themselves and parents. The**

**Committee recommends that attention be given to the systematic inclusion of teaching on human rights, and in particular children's rights, in the curricula at all educational levels. Cooperation with civil society organizations, academic centres, media and non-governmental organizations (NGOs) should be developed for the above purpose.**

597. Furthermore, the Committee encourages the State party to strengthen its efforts to provide adequate and systematic training and/or sensitization on children's rights to professional groups working with and for children, in particular law enforcement officials, members of the armed forces, parliamentarians, judges, lawyers, health personnel, teachers, school administrators, academics, social workers and others as required. The Committee encourages the State party to seek technical assistance from UNICEF and the Inter-American Children's Institute for the training of professionals.

### **Cooperation with civil society**

598. The Committee welcomes the initiative establishing an advisory committee of civil society for children and adolescents in 2003, however regrets that cooperation with civil society is still limited.

599. **The Committee recommends that the State party encourage the active and systematic involvement of civil society, including NGOs and associations of children in the promotion and implementation of children's rights, including, inter alia, their participation in the preparation phase of the drafting of periodic reports and the follow-up to the concluding observations of the Committee.**

## **2. Definition of the child (art. 1 of the Convention)**

600. The Committee welcomes the fact that the minimum age for marriage has been raised to 16 for both boys and girls.

601. **The Committee recommends that the State party further review legislation with a view to establishing the minimum age for marriage at 18 years of age, equally applicable for both boys and girls.**

## **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

### **Non-discrimination**

602. The Committee recognises the policy measures undertaken to advance the implementation of the principle of non-discrimination, in particular in the area of health services, however remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities, as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education. The Committee further notes the prevalence of gender based discrimination and that pregnancy continues to result in the exclusion of girls from educational

establishments, despite an explicit prohibition of discrimination on this ground. Furthermore, the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized, indicating discrimination on the basis of sexual orientation.

**603. The Committee recommends that the State party increase its efforts to review, monitor and ensure implementation of legislation guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any other grounds and against all vulnerable groups throughout the country.**

**604. The Committee also request that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party, to provide special protection to vulnerable groups and to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).**

#### **Best interests of the child**

605. The Committee is concerned that current legislation and policy fail to take into account the principle of the best interests of the child. It further notes that paternalistic attitudes towards children affect the ability of children to enjoy the rights enshrined in the Convention.

**606. The Committee recommends that the State party fully incorporate the principle of the best interests of the child in all programmes, policies, judicial and administrative procedures, and in particular in the reform of the Juvenile Act and the implementation of the National Policy and Plan of Action. Furthermore, the Committee recommends that the State party undertake measure to raise awareness of the principle of the best interests of the child.**

#### **Respect for the views of the child**

607. The Committee recognizes as positive the increased participation of children and adolescents in student organizations, in the framework of article 15 of the Convention. However, the Committee notes that the views of children are inadequately taken into account when designing policies relating to e.g. family and criminal justice.

**608. The Committee recommends that the State party promote, facilitate and implement within the family, schools, the community and in institutions, as well as in judicial and administrative procedures, the principle of respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention, while taking into account the recommendations adopted by the Committee after the day of general discussion in 2006 on the right of the child to be heard.**

**4. Civil rights and freedoms  
(arts. 7, 8, 13-17 and 37 (a) of the Convention)**

**Torture**

609. The Committee welcomes the inquiry in 2003-2004 by the National Commission on Political Imprisonment and Torture into violations committed during the military rule. Furthermore, the Committee notes as positive the State party's intention to provide reparations to victims identified by the Commission and to continue to receive testimonies from persons who claim to have suffered abuse as children during the military rule, in order to provide comprehensive redress for victims of human rights violations.

**610. The Committee urges the State party to continue to support the National Commission on Political Imprisonment and Torture in order to ensure that all cases of abuse of persons during the military rule, including of those who were children at the time, are fully investigated and that victims are provided with adequate and comprehensive reparations. The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Statute of the International Criminal Court.**

611. The Committee is concerned that children continue to be submitted to cruel, inhuman and degrading treatment by law enforcement officials, including in detention facilities. Furthermore, the Committee, while acknowledging that certain officials have been sanctioned for abuses against students, is concerned over reports indicating excessive use of force and arbitrary detentions by police during student demonstrations in 2006.

**612. The Committee urges the State party to take effective measures to protect children from cruel, inhuman or degrading treatment. The Committee urges the State party to ensure that accessible complaints mechanisms are available and that independent investigation are carried out into all reported allegations of violations of the rights of the child enshrined in article 37 (a) of the Convention by law enforcement officials or any person acting in an official capacity. Furthermore, the Committee encourages the State party to ensure that members of all relevant professional categories are adequately trained on the obligations contained in the Convention. Finally, the Committee recommends that the State party ensure that all child victims of cruel, inhuman and degrading treatment are provided access to comprehensive reparations measures, including physical and psychological recovery and social reintegration.**

**Corporal punishment**

613. The Committee reiterates its previous concern (CRC/C/15/Add. 173 paras. 31-32) and regrets that article 234 of the Civil Code appears to authorize corporal punishment in the home. Furthermore the Committee notes the lack of statistical data on the number of reported cases and is concerned that corporal punishment continues to occur in the home, as well as in schools and institutions.



614. **The Committee recommends that the State party, while taking due account of general comment No. 8 of the Committee on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006), amend article 234 of the Civil Code and enforce legislation explicitly prohibiting all forms of corporal punishment of children in all settings, including the home. The State party should also conduct awareness-raising and public education campaigns against corporal punishment and promote non-violent, participatory methods of childrearing and education.**

**5. Family Environment and Alternative Care  
(arts. 5, 18, paras. 1-2, 9-11, 19-21, 25, 27, para. 4, and 39 of the Convention)**

**Family Support**

615. The Committee, while welcoming the initiatives taken to focus on the family as part of social policy, in particular as part of the Chile Solidario programme, notes that resources and support for vulnerable children and their families need to be further strengthened.

616. **The Committee recommends that the State party provide further support to families in order to prevent separation of children, e.g. in the form of counselling, parenting and financial allowances.**

**Alternative care**

617. The Committee, while noting efforts to improve foster care and the slight reduction in the number of children placed in institutions, is concerned that this number is still very high.

618. **The Committee recommends that the State party continue to promote foster care as a form of alternative care and suggests that institutionalization be used only as a measure of last resort, taking into account the best interests of the child. As regards indigenous children, the Committee supports the recommendation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people that the State party increase coordination efforts to reduce the number of indigenous children in institutional care and provide support to enable them to stay with their families. Furthermore, the Committee recommends adequate resource allocation, functioning and monitoring of the care institutions, including those run by NGOs, and the promotion and support of foster care as well as a periodic review of placement, in conformity with article 25 of the Convention, while taking into account the recommendations issued after the general day of discussion in 2005 on children without parental care.**

**Adoption**

619. The Committee welcomes certain legal amendments to improve the legal provision on adoption and the ratification of the 1993 Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption and the appointment of SENAME to act as the central authority. However, the Committee is concerned that the age of consent for adoption does not apply equally for boys and girls and that adoption is limited to married couples.

**620. The Committee recommends that the State party take all legislative and administrative measures to ensure that domestic and intercountry adoptions comply with article 21 of the Convention and the provisions of the 1993 Hague Convention No. 33 on Protection of Children and Co-operation in Respect of Intercountry Adoption, inter alia by establishing an age of consent for adoption equally applicable for both boys and girls. Taking into account the best interests of the child, and given the high number of children in institutions, the Committee recommends that the State party increase the possibility of domestic adoption, e.g. by considering the introduction of rules allowing unmarried couples to adopt a child.**

#### **Violence, abuse, neglect and maltreatment**

621. The Committee, while welcoming the provision in the new Criminal Procedure that children themselves may report offences, remains concerned that, despite government efforts to counter intra-family violence such as the National Committee for the Prevention of Maltreatment of Children, the incidence of violence and sexual abuse against children is rising. The Committee regrets the lack of updated statistics on victims of reported cases of violence, especially sexual and intra-family, the limited number of investigations and sanctions in relation to such cases and the lack of available physical and psychological recovery and social reintegration measures.

**622. The Committee urges the State party to:**

**(a) Reinforce mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation covered by article 19, including within the family, in schools and in institutional or other care;**

**(b) Ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;**

**(c) Strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure their access to adequate services for recovery, counselling and other forms of reintegration;**

**(d) Support national coverage of a 24-hour three digit toll-free child helpline service, in order to be able to reach out to children in remote areas throughout the country.**

**623. With reference to the Secretary-General's Study on violence against children, the Committee recommends the State party to:**

**(a) Take all necessary measures for the implementation of the overarching and setting-specific recommendations contained in the report of the independent expert of the United Nations study on violence against children (A/61/299), while taking into account the outcome and recommendations of the regional consultation for Latin America held in Argentina between 30 May and 1 June 2005;**

**(b) Use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse;**

**(c) Seek technical assistance from UNICEF, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO) for the above-mentioned purposes.**

#### **6. Basic health and welfare**

**(arts. 6, 18, para. 3, 23, 24, 26 and 27, paras. 1-3, of the Convention)**

##### **Children with disabilities**

624. The Committee is concerned that /the resources available for children with disabilities are inadequate, in particular in order to guarantee their right to education.

**625. The Committee recommends that the State party, taking into account general comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9):**

**(a) Ensure implementation of the Standard Rules for Equalizing the Possibilities for Persons with Disabilities, adopted by the United Nations General Assembly on 23 December 1993;**

**(b) Sign and ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol once open for ratification;**

**(c) Pursue efforts to ensure that children with disabilities may exercise their right to education to the maximum extent possible;**

**(d) Undertake greater efforts to make available the necessary professional (i.e. disability specialists) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups.**

##### **Health and medical services**

626. The Committee welcomes the substantially increased budget allocations in the public expenditure for health through the AUGE system and the attempts that have been made to improve access for low-income families by providing guaranteed medical treatment for several conditions relating specifically to the health of children. The Committee also notes the advances made in reducing infant mortality and the high vaccination rates among children. The Committee however notes that further efforts need to be undertaken in order to ensure access to health services in practice among indigenous peoples, low-income and rural population. Finally, the Committee is concerned about nutritional problems leading to obesity.

627. The Committee recommends that the State party continue and provide further resources for the AUGE health system and enhance the access to medical services in rural areas, among low-income families and indigenous peoples. The Committee recommends that the State party increase and strengthen strategies to promote the use of indigenous traditional medicine. Finally the Committee recommends the State party to take necessary measures to reduce and prevent the incidence of obesity among children.

### **Adolescent health**

628. The Committee, while noting certain progress in the area of sexual education in schools, is concerned over the high rate of teenage pregnancies, the criminalization of the termination of pregnancies in all circumstances and the lack of adequate sex education and accessible reproductive health services. These factors all contribute to the elevated incidence of maternal mortality among adolescent girls.

**629. The Committee recommends that the State party promote and ensure access to sexual and reproductive health services for all adolescents, including sex and reproductive health education in schools, as well as youth-sensitive and confidential counselling and health care services, taking into account the Committee's general comment No. 4 on adolescent health and development in the context of the Convention (CRC/GC/2003/4). The Committee urges the State party to review its criminalization of the termination of pregnancies in all circumstances, including in cases of rape, incest and situations where the life of the mother is at risk. Furthermore, the Committee recommends that an appropriate strategy dedicate adequate resources to awareness-raising, counselling services and other measures in order to prevent adolescent suicides.**

### **HIV/AIDS**

630. The Committee welcomes the legal guarantee to freely access antiretroviral treatment introduced in 2004, and the reduction in the incidence of HIV/AIDS, however it recommends that the State party undertake further awareness-raising campaigns in order to counteract discrimination against children living with HIV/AIDS.

**631. The Committee recommends that the State party:**

**(a) Conduct awareness-raising campaigns among adolescents, in particular among those belonging to vulnerable groups, such as street children;**

**(b) Provide adequate financial and human resources for prevention measures and information campaigns to combat discrimination against infected children, while taking into account the Committee's general comment No. 3 on HIV/AIDS and the rights of the child and the Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37, annex I);**

**(c) Seek technical assistance from, inter alia, the United Nations Joint Programme on HIV/AIDS (UNAIDS) and UNICEF.**

### **Standard of living**

632. The Committee, while recognising the overall reduction of poverty, is concerned over the discrepancies in the standard of living and the number of children living in poverty or extreme poverty, as it presents serious obstacles to enjoyment of the rights of the Convention. The Committee is concerned at the high percentage of the population that lacks access to basic services and is particularly concerned over the vast discrepancy in the coverage of clean and running water, as well as sewage systems, in urban compared to rural areas. The Committee notes that poverty levels are disproportionately high among female headed households and indigenous peoples.

**633. The Committee recommends that the State party prioritize and allocate sufficient funds in order to counteract the increasing inequality and effectively reduce the discrepancies in the standard of living, inter alia, between urban and rural areas. The Committee highlights the need to strengthen the capacity of departmental and municipal authorities to provide basic services. In particular, increased access to clean drinking water and sewage disposal should be a priority in rural areas.**

### **7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

634. The Committee welcomes the increase in the enrolment at all levels in the educational system, the considerable budget allocations for education and that free education during twelve years in school is enshrined as a constitutional right since 2003. The Committee also welcomes the priority given to education in the preschool years. The Committee recognises the measures taken to improve the quality of education in order to prepare children for their role in a productive and democratic society and notes the affirmative action undertaken to improve equal access to education, however it is concerned that access for children belonging to vulnerable groups, such as indigenous peoples, refugees and children living in poverty and rural areas is still inadequate.

**635. The Committee recommends that the State party:**

- (a) Continue to increase budget allocations to the educational sector;**
- (b) Focus on an overall improvement in the quality of education provided, in particular in rural areas;**
- (c) Ensure the expansion of the bilingual intercultural programme for indigenous peoples and maintain consultations with indigenous communities in order to evaluate the programme;**
- (d) Compile statistics disaggregated by urban/rural areas, ethnicity and sex in order to monitor the impact of anti-discrimination measures;**
- (e) Invest further resources in incorporating human rights education in school curricula.**

**8. Special protection measures  
(arts. 22, 30, 38, 39, 40, 37 (b)-(d), and 32-36 of the Convention)**

**Migrant and refugee children**

636. The Committee welcomes the amendments to the Constitution which seek to eliminate statelessness for children born to Chileans abroad, however remains concerned that children of foreigners without legal residence in Chile may remain exposed to statelessness. Furthermore, the Committee regrets that the State party has still not adopted adequate legislation in accordance with international obligations for refugee protection. The Committee is also concerned that refugee, asylum-seeking and migrant children lack adequate access to health services while their applications to the national registry system are being processed, and that they face de facto discrimination in exercising their right to education. Furthermore, the Committee regrets the paucity of information on the situation of refugee, asylum-seeking and migrant children in the State party report and the State party reply to the list of issues.

637. **The Committee recommends that the State party:**

**(a) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**

**(b) Ensure prompt adoption and implementation of adequate legislation in accordance with international obligations for refugee protection;**

**(c) Ensure that refugee, asylum-seeking and migrant children are guaranteed speedy processing of their registration and identity documents and that they not be denied access to health services and education during this period;**

**(d) Take all measures to guarantee protection of refugee children in line with international human rights and refugee law, while taking into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;**

**(e) Provide adequate information on the situation of refugee, asylum-seeking and migrant children in its next periodic report under the Convention;**

**(f) Seek the advisory services of the Office of the United Nations High Commissioner for Refugees (UNHCR).**

**Economic exploitation, including child labour**

638. The Committee, while welcoming initiatives of the State party to combat economic exploitation with technical support from the International Labour Office/the International Programme on the Elimination of Child Labour (ILO/IPEC), expresses concern over the high number of children who are victims of economic exploitation. In particular, the Committee is alarmed over the high number of children exposed to dangerous and/or degrading work.

639. **The Committee recommends that the State party continue and reinforce the efforts, including by adequate budget allocations, to prevent and combat economic exploitation through the effective implementation of the National Action Plan, in collaboration with ILO/IPEC and UNICEF.**

#### **Street children**

640. The Committee, while noting the measures taken by the programme Chile Solidario, is concerned over the high number of street children, the lack of available social services and reintegration measures and the stigma they continue to suffer.

641. **The Committee recommends that the State party:**

**(a) Carry out a comprehensive study to assess the scope, nature and root causes of the presence of street children and youth gangs in the country in order to develop a policy for prevention;**

**(b) Provide street children with recovery and social reintegration services, taking into account their views in accordance with article 12 of the Convention, taking due account of gender and ethnic aspects, and provide them with adequate nutrition, housing, and necessary health-care and educational opportunities;**

**(c) Develop a policy for family reunification, where possible and in the best interests of the child;**

**(d) Conduct public awareness campaigns to address the stigma attached to street children;**

**(e) Collaborate with NGOs and seek technical assistance from, inter alia, UNICEF;**

**(f) Provide the Committee with further information on the situation of street children in the next periodic State party report.**

#### **Sexual exploitation and sale of children**

642. The Committee welcomes the legislative changes in 2004 that criminalize child pornography, however regrets that the State party has not yet amended its Criminal Code in order to bring it in line with the provisions of the Convention and the Optional Protocol on the sale of children, child prostitution and child pornography. The Committee notes as positive the resources assigned to reintegration programmes for child victims of sexual exploitation and sale of children, however regrets that prevention measures are inadequate, that sexual tourism is a concern and that law enforcement lacks effective implementation.

643. **The Committee recommends that the State party:**

**(a) Bring legislation fully into compliance with its international obligations under the Convention and the Optional Protocol on the sale of children, child prostitution and child pornography;**

**(b) Undertake further in-depth studies on the sexual exploitation of children and sexual tourism in order to assess its scope and root causes and enable effective monitoring and measures to prevent, combat and eliminate it;**

**(c) Implement a coordinated national plan of action against sexual exploitation and trafficking of children, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;**

**(d) Dedicate further resources to prevention and awareness-raising;**

**(e) Continue to provide assistance and reintegration programmes for sexually exploited and/or trafficked children;**

**(f) Train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute cases, in a child-sensitive manner that respects the privacy of the victim;**

**(g) Ensure enforcement of the law to avoid impunity;**

**(h) Seek further technical assistance from among others, UNICEF and ILO/IPEC.**

#### **Administration of juvenile justice**

644. The Committee reiterates its previous concerns over the high number of children prosecuted in the adult criminal justice system. The Committee is concerned about the new legislation regarding juvenile justice that allows for deprivation of liberty for up to 5 years for adolescents between 14 and 16 and the application of penal responses for children under 14 in certain circumstances. It is also concerned at the lack of sufficient socio-educational measures for dealing with children in conflict with the law without resorting to criminal procedures and for limiting the use of deprivation of liberty. Furthermore, the Committee notes the lack of recovery and social reintegration programmes for children.

**645. The Committee reiterates its previous recommendation that the State party bring the system of juvenile justice, and in particular the new legislation before it enters into force, fully in line with the Convention, in particular articles 37, 40 and 39. It should also be in line with other United Nations standards in the field of juvenile justice, including: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules); the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee's general comment No. 10 (CRC/C/GC/10) on children's rights in juvenile justice. In this regard, the Committee recommends that the State party in particular;**

**(a) Provide the necessary human and financial resources for the implementation of the new law and establish a system of socio-educational measures with a view to facilitating its application, as well as providing a tool for periodic evaluation of its functioning;**



**(b) Ensure that deprivation of liberty is used only as a measure of last resort. When used as a last resort the facilities should comply with international standards;**

**(c) Take all necessary measures to ensure that every person below 18 deprived of his/her liberty be separated from adults, in accordance with article 37 (c) of the Convention;**

**(d) Provide the child with free legal assistance;**

**(e) Establish an independent child-sensitive and accessible system for the reception and processing of complaints by children and investigate, prosecute and punish cases of violations committed by law-enforcement personnel and prison guards;**

**(f) Ensure that children deprived of their liberty remain in regular contact with their families while in the juvenile justice system, notably by informing parents when their child is detained;**

**(g) Provide training for law enforcement officials, penitentiary staff, judges, lawyers, prosecutors, public defenders, health personnel, social workers and others as required, on children's rights and special needs;**

**(h) Request further technical assistance in the area of juvenile justice and police training from the United Nations Interagency Panel on Juvenile Justice, with the participation of United Nations Office on Drugs and Crime (UNODC), UNICEF, OHCHR and NGOs etc.**

### **Indigenous children**

646. The Committee regrets that the Constitution still does not contain specific provisions recognising indigenous peoples and their rights. The Committee is concerned over the high level of correlation between poverty and indigenous origins and the de facto discrimination indigenous children continue to face, in particular in the areas of education and health. The Committee welcomes the positive steps taken to establish a bilingual education programme, however it notes that the coverage and resources are limited and that dropout rates remain high. The Committee is concerned over reports that indigenous youth have been victims of police brutality. Finally, the Committee regrets the lack of detailed information on indigenous children in the State party report.

647. **The Committee recommends that the State party:**

**(a) Incorporate recognition of indigenous peoples and their rights in the Constitution;**

**(b) Ratify ILO Convention No. 169 (1989) on indigenous and tribal peoples in independent countries;**

**(c) Take affirmative measures to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the area of education and health;**

**(d) Ensure that indigenous youth are not victims of police brutality and take both preventive and corrective action when abuse is suspected;**

**(e) Take due account of the recommendations adopted by the Committee after its day of general discussion in September 2003 on the rights of indigenous children and pay particular attention to the recommendations presented in the report of the 2003 mission to Chile of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2004/80/Add.3);**

**(f) Provide further detailed information on the implementation of article 30 in the next periodic State party report.**

### **9. Optional Protocols to the Convention on the Rights of the Child**

**648. The Committee welcomes the submission of the initial reports under both Optional Protocols in January 2007.**

### **10. Follow-up and dissemination**

#### **Follow-up**

**649. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to members of the Congress, relevant ministries, departmental governments and the judiciary, for appropriate consideration and further action.**

#### **Dissemination**

**650. The Committee further recommends that the third periodic report and written replies submitted by the State party and related recommendations (concluding observations) it has adopted be made widely available in the relevant languages (such as those of indigenous peoples), including (but not exclusively) through internet, to the public at large, the press, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.**

### **11. Next report**

**651. The Committee invites the State party to submit a consolidated 4th and 5th report, by 12 September 2012 (the due date of the fifth report). This report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report every five years thereafter, as foreseen by the Convention.**

**652. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved by the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3).**

**Concluding observations: Kyrgyzstan**  
**(Optional Protocol on the involvement of children in armed conflict, OPAC)**

653. The Committee considered the initial report of Kyrgyzstan (CRC/C/OPAC/KGZ/1) at its 1220th meeting (see CRC/C/SR.1220), held on 29 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.

**A. Introduction**

654. The Committee welcomes the submission of the State party's initial report; however, it regrets that it did not follow the established reporting guidelines. The Committee appreciates the written replies to its list of issues, as well as the constructive dialogue with the high-level delegation.

655. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted in relation to the State party's second periodic report of 1 October 2004 (CRC/C/15/Add.244).

**B. Positive aspects**

656. The Committee notes with appreciation the following:

- (a) Ratification of seven human rights treaties;
- (b) Ratification in 2004 of the ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- (c) Adoption of the Code of the Kyrgyz Republic on Children in June 2006.

657. The Committee welcomes that mandatory military service begins at the age of 18 and that no derogation is accepted, and that article 124 of the Criminal Code provides criminal penalties for the use of minors in armed conflicts.

**C. Principal areas of concern, and recommendations**

**1. General measures of implementation**

**Legislation**

658. The Committee is concerned at the lack of any specific provision providing extraterritorial jurisdiction in case of recruitment of a child of Kyrgyz nationality outside the country or recruitment of children by a Kyrgyz citizen, or a person that has other links with the State party, outside Kyrgyzstan.

**659. The Committee recommends that the State party, in order to strengthen the national and international measures for the prevention of the recruitment of children for armed forces or armed groups and their use in hostilities:**

**(a) Establish extraterritorial jurisdiction for the violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities when they are committed by or against a person who is a citizen of or has other links with the State party;**

**(b) Ensure, through legislation, that military personnel do not undertake any act that violates the rights enshrined in the Optional Protocol, regardless of any military order to that effect.**

660. The Committee is concerned that small arms and light weapons may be exported to countries where persons who have not attained the age of 18 take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State.

**661. The Committee recommends that the State party review its domestic law with a view to abolishing trade of small arms and light weapons to countries with current or recent armed conflict that may involve children. In this respect, the Committee recommends that the State party indicate, in its next periodic report, what changes to the domestic law have been made and how the implementation of these changes has contributed to halting sales of small arms to those countries.**

#### **Coordination and evaluation of the implementation of the Optional Protocol**

662. The Committee welcomes the information provided by the State party, that the establishment of a permanent mechanism to coordinate the policies and activities on children's rights is being discussed.

**663. The Committee recommends that the State party speedily establish a permanent mechanism to coordinate the policies and activities on children's rights. This mechanism should include the appropriate and effective coordination and regular evaluation of the implementation of the Optional Protocol.**

#### **Dissemination and training**

**664. While the Committee notes that the Optional Protocol is included in the school curricula of military schools, it recommends that the State party make the provisions of the Convention and its Optional Protocol widely known to children and their parents. The Committee also recommends that the State party develop systematic awareness-raising campaigns, education and training on the provisions of the Optional Protocol for all relevant professional groups (such as teachers, medical professionals, social workers, lawyers, judges and military personnel), including those who are working with asylum-seeking, refugee and migrant children that may have been recruited or used in hostilities. The State party is invited to provide information in that respect in its next report.**

## 2. Recruitment of children

### **Military schools**

665. The Committee is concerned at the lack of information on any complaints and investigation mechanism to deal with complaints by students attending military schools. Furthermore, the Committee is concerned at the limited information provided on training in the use of weapons in regular schools for pupils in grade 11.

**666. The Committee recommends that the State party ensure that all children attending military schools receive education in a manner consistent with the Convention, in particular articles 28 and 29, duly taking into account its general comment No. 1 on the aims of education. It also recommends that children attending such schools be provided with access to complaint and investigation mechanisms and that the State party provide further information on training in the use of weapons in regular schools.**

### **3. Measures adopted with regard to disarmament, demobilization, physical and psychological recovery and social reintegration**

#### **Measures of recovery and social reintegration**

667. The Committee welcomes the information that medical assistance and educational services for refugee children are part of the State policy and that the State party closely cooperates in that regard with the World Health Organization (WHO) and the Office of the United Nations High Commissioner for Refugees (UNHCR). Furthermore, the Committee notes the existence of day and evening schools for refugee children traumatized by military conflicts.

**668. The Committee encourages the State party to continue and strengthen, where necessary, protection for asylum-seeking, refugee and migrant children living in Kyrgyzstan who may have been recruited or used in hostilities in their country of origin by taking, inter alia, the following measures:**

**(a) Systematically collecting data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been involved in hostilities in their home-country. In this regard, the Committee recommends that the State party take note of the Committee's general comment No. 6 (CRC/GC/2005/6) on the treatment of unaccompanied and separated children outside their country of origin;**

**(b) Providing children, who have fled with or without their families, either refugee status or another status which will allow social integration in Kyrgyz society and provide them with equal access to education, health care and other social services;**

**(c) Provide affected children with multidisciplinary assistance for their physical and psychological recovery and social reintegration.**

#### **4. International assistance and cooperation**

##### **Protection of victims**

669. While the Committee notes the State party's intention to undertake international cooperation to provide assistance for children affected by armed conflict, the Committee encourages the State party to pursue efforts to obtain international and bilateral technical cooperation and financial assistance. The Committee requests that the State party in its next report submit information on international assistance provided for children affected by armed conflict.

#### **5. Follow-up and dissemination**

670. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to the Ministry of Defence and the Zhogorku Kenesh and to the Oblast authorities, where applicable, for appropriate consideration and further action.

671. In the light of article 6, paragraph 2, of the Optional Protocol, the Committee recommends that the initial report submitted by the State party and concluding observations adopted by the Committee be made widely available to the public at large and to children in particular in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

#### **6. Next report**

672. In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third and fourth periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 6 May 2010.

#### **Concluding observations: Kyrgyzstan (Optional Protocol on the sale of children, child prostitution and child pornography, OPSC)**

673. The Committee considered the initial report of Kyrgyzstan (CRC/C/OPSC/KGZ/1) at its 1221st meeting (see CRC/C/SR.1221), held on 29 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.

##### **A. Introduction**

674. The Committee welcomes the submission of the State party's initial report; however, it regrets that it does not follow the established reporting guidelines. The Committee also appreciates the written replies to its list of issues, as well as the constructive dialogue with the high-level delegation.

675. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 1 October 2004 contained in CRC/C/15/Add.244.

## **B. Positive aspects**

676. The Committee notes with appreciation the following:

- (a) Ratification of seven human rights treaties;
- (b) Agreement on Labour Activity and Social Protection of Migrants Employed in Agriculture in Border Areas signed by Kyrgyzstan and Kazakhstan, signed 2002;
- (c) Presidential Decree, of 2002, on measures to combat the smuggling and trafficking of persons in the Kyrgyz Republic;
- (d) Adoption of the Code of the Kyrgyz Republic on Children in 2006.

## **C. Principal areas of concern and recommendations**

### **1. General measures of implementation**

#### **National Plan of Action and Coordination**

677. The Committee welcomes the establishment of the “New Generation” programme on trafficking in and commercial and sexual exploitation of children. However, the Committee is concerned at the absence of a specific plan of action in relation to the sale of children, child prostitution and child pornography. Furthermore, the Committee is concerned that existing financial resources provided to the “New Generation” programme are insufficient and that the coordination and cooperation between the different bodies is not fully effective.

**678. The Committee recommends that the State party strengthen its efforts, in consultation and cooperation with its relevant stakeholders, to improve its “New Generation” programme, by paying particular attention to the implementation of all provisions of the Optional Protocol and taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the first and second World Congress against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001). Furthermore, the Committee recommends that the State party provide the “New Generation” programme with an increased budget allocation and clearly define the competencies of the different bodies involved in the implementation of this programme in order to improve its cooperation and coordination.**

#### **Dissemination and training**

679. The Committee appreciates the numerous training and dissemination activities, provided by the State party in collaboration with international organizations and NGOs. The activities included the training of police and justice personnel on trafficking issues, the agreement between Kyrgyzstan and the Government of Sweden on support for training in and development of social work with children in high-risk groups and the requirement for specialists working with children to have obligatory knowledge of the fundamental provisions of the Convention and relevant Kyrgyz legislation. However, the Committee remains concerned that the efforts to raise awareness of the Protocol among relevant professional categories and the public at large and to

provide adequate training for judges, prosecutors and social workers who are working with and for children are scattered and fragmented, and thus insufficient, and that they do not cover all areas of the Protocol.

**680. The Committee recommends that the State party allocate adequate and earmarked resources for the development of training materials and courses for all relevant professionals including police officers, public prosecutors, judges, medical staff and other professionals involved in the implementation of the Optional Protocol. Furthermore, in the light of article 9, paragraph 2, of the Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, inter alia, school curricula and long-term awareness-raising campaigns and training, about the preventive measures and harmful effects of all offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims.**

#### **Data collection**

681. The Committee regrets the lack of statistical data on issues covered by the Protocol as well as the lack of research on the prevalence of national and cross-border trafficking, sale of children, child prostitution and child pornography.

**682. The Committee recommends that the State party ensure that data disaggregated, inter alia, by age and sex are systematically collected and analysed. The Committee encourages the State party to undertake research on the nature and extent of all forms of exploitation of children, including prostitution, pornography and child labour, in order to identify the causes and the extent of the problem.**

#### **Budget allocations**

683. The Committee welcomes the information provided on budget allocations for the implementation of the Optional Protocol. However, the Committee remains concerned that the budget allocated does not cover all areas of the Optional Protocol.

684. The Committee recommends that the State party continue and strengthen its budget allocation in order to cover all areas of the Optional Protocol.

## **2. Prohibition of the sale of children, child pornography and child prostitution**

#### **Existing criminal or penal laws and regulations**

685. The Committee welcomes that the Optional Protocol takes precedence over national legislation, that a provision on trafficking, including of children, is contained in the Criminal Code and in the recently adopted Code of the Kyrgyz Republic on Children. However, the Committee is concerned that the prohibition of the sale of children, child prostitution and child pornography has not been explicitly included in the national Criminal Code and/or the Code of the Kyrgyz Republic on Children, in conformity with articles 2 and 3 of the Optional Protocol.



686. **The Committee urges the State party to implement the Protocol by taking immediate measures to amend the provisions with a view to fully including all purposes and forms of the sale of children, child pornography and child prostitution in accordance with article 3, paragraphs 1 and 2, of the Optional Protocol. The Committee therefore recommends that the State party undertake a legal study in order to identify inconsistencies and gaps between the national legal system and the Protocol and to seek assistance from UNICEF and other relevant international organizations.**

### **3. Penal/criminal procedure**

#### **Jurisdiction**

687. While noting the rules contained in the Criminal Code on extraterritorial jurisdiction, the Committee is concerned that this jurisdiction seems to be limited to crimes committed by Kyrgyz citizens and stateless persons and that there is no reference to cases where the victim of a crime covered in the Protocol is a citizen of Kyrgyzstan.

688. **The Committee recommends the State party to take the necessary legislative measures to ensure that the domestic law provides for extraterritorial jurisdiction in full compliance with article 4 of the Protocol.**

689. The Committee welcomes recent attempts to conduct investigations and prosecutions for incidents involving the sale of children and child prostitution. However, it remains concerned that in a number of cases investigations and prosecutions have not been initiated.

690. **The Committee recommends that the State party increase the number of investigations and prosecutions for incidents involving the sale of children and child prostitution and especially for pornography and make the data available.**

### **4. Protection of the rights of child victims**

#### **Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol**

691. The Committee is concerned that the provisions of article 8 of the Optional Protocol have not been adequately integrated into the relevant laws of the State party, in particular that the status of the victim is not well defined in the Criminal Code and the Code of the Kyrgyz Republic on Children and that legislation fails to provide clear sanctions for physical and psychological pressure during interrogations. It is further concerned that measures undertaken for the physical and psychological recovery of child victims of sale, child prostitution and child pornography are exclusively carried out by non-governmental organizations (NGOs) and that no funds are specifically allocated by the State party for the support of child victims.

692. **The Committee recommends that the State party:**

**(a) In the light of article 8, paragraph 1, of the Optional Protocol, protect child victims and witnesses at all stages of the criminal justice process, by taking into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20);**

**(b) Collaborate with NGOs and the International Organization for Migration (IOM) to ensure that adequate services are available for child victims, including for physical and psychological recovery and social reintegration, in accordance with article 9, paragraph 3, of the Optional Protocol;**

**(c) Ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol;**

**(d) Allocate adequate funds to programmes and measures necessary for the rehabilitation of child victims.**

693. The Committee is deeply concerned to learn that child victims of crimes covered by the Optional Protocol are often stigmatized and socially marginalized and may be held responsible, tried and placed in detention.

**694. The Committee recommends that the State party ensure that child victims of exploitation and abuse are neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children.**

**695. The Committee recommends that the State party establish, in collaboration with every child and other interested NGOs, a 24-hour, toll-free helpline number to assist child victims. In this regard, it recommends that the State party ensure that children are aware of and can access the helpline and facilitate the collaboration of the helpline with child-focused NGOs and the police, as well as health and social workers.**

**696. While appreciating the fact that the Family Code refers to article 3 of the Convention (best interest of the child) for adoption, the Committee reiterates its recommendations (CRC/C/15/Add. 244) in which it asked for amendment of the legislation and policies with regard to adoption, in order to set up a mechanism for monitoring all adoption processes and the accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.**

## **5. Prevention of the sale of children, child prostitution and child pornography**

### **Measures adopted to prevent offences referred to in the Optional Protocol**

697. The Committee remains concerned about allegations of complicity by State officials in trafficking and that corruption is impeding the effectiveness of prevention measures.

**698. The Committee urges the State party to ensure that any suspicion of complicity by State officials is thoroughly investigated and adequately sanctioned, if proven.**

699. The Committee is especially concerned about the difficult situation of certain groups of children, such as street children and working children, who are particularly vulnerable to all forms of exploitation.

**700. The Committee recommends that the State party pay particular attention to the situation of vulnerable groups of children who are at particular risk of being exploited and abused. In this respect it recommends that the State party allocate adequate human and financial resources for the implementation of programmes for the protection of the rights of vulnerable children, with special attention to their education and health care. More attention should also be devoted to raising awareness among these children of their rights.**

701. The Committee notes the government programme (approved by the Government decision No. 96 of February 2005) which creates conditions for sustainable, balanced socio-economic development and poverty reduction in Kyrgyzstan.

**702. The Committee recommends that further attention be given to the implementation of this programme, including through the appropriate allocation of financial resources for the prevention of sexual and all other forms of exploitation.**

703. The Committee welcomes the awareness-raising campaigns that have been conducted for the public, inter alia, via radio and television for the prevention of trafficking. Furthermore, the Committee notes the establishment of a hotline providing information on questions concerning labour migration and the information campaigns conducted in rural areas as well as the creation of special instruction booklets for migrants. However, the Committee is concerned that targeted preventive measures against the exploitation of children, including prostitution, pornography and all forms of labour exploitation, as well as measures to identify the causes and extent of the problem, remain outstanding.

**704. The Committee encourages the State party to undertake further targeted preventive measures and liaise with NGOs concerning the implementation of awareness-raising campaigns on all areas covered by the Optional Protocol. In particular, the Committee encourages the State party to undertake research on the nature and extent of exploitation of children, including prostitution and pornography, to identify the causes and extent of the problem.**

## **6. International assistance and cooperation**

**705. The Committee encourages the State party to continue its cooperation with UNICEF and international NGOs to implement the “New Generation” programme for children’s rights in Kyrgyzstan.**

### **Law enforcement**

**706. The Committee encourages the State party to undertake regional and international judicial, police and victim-oriented cooperation activities with other States with a view to preventing and combating the sale of children, child prostitution and child pornography and to provide more detailed information in the next report.**

## **7. Follow-up and dissemination**

### **Follow-up**

**707. The Committee recommends that the State party undertake all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government ministries, the Zhogorku Kenesh and to the Oblast authorities for appropriate consideration and further action.**

### **Dissemination**

**708. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

## **8. Next report**

**709. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third and fourth periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 6 May 2010.**

## **IV. COOPERATION WITH UNITED NATIONS AND OTHER COMPETENT BODIES**

710. Before and during the meeting of the pre-sessional working group and the session, the Committee held various meetings with United Nations bodies and specialized agencies, as well as with other competent bodies, in the framework of its ongoing dialogue and interaction with those bodies in the light of article 45 of the Convention. The Committee met with:

- Paulo Sergio Pinheiro, independent expert of the Secretary-General's Study on violence against children
- Defence for Children International
- Mr. Maarten Brekelman, World Initiative for Orphans
- Ms. Jeroo Billimoria, Aflatoun, Child Savings International

## **V. GENERAL COMMENTS**

711. At its 1228th meeting, held on 2 February 2007, the Committee adopted its general comment No. 10 on juvenile justice (CRC/C/GC/10). The Committee also discussed the progress of drafts of its forthcoming general comments on the rights of indigenous children and on the right of the child to express views and be heard.

## **VI. FUTURE DAY OF GENERAL DISCUSSION**

712. At its 1228th meeting, held on 2 February 2007, the Committee adopted the outline for its day of general discussion on article 4 of the Convention, scheduled to take place during the Committee's forty-sixth session, on 21 September 2007 (see annex II).

## **VII. FUTURE MEETINGS**

713. The following is the draft provisional agenda for the forty-fifth session of the Committee:

1. Solemn declaration by new members
2. Adoption of the agenda.
3. Organizational matters.
3. Submission of reports by States parties.
4. Consideration of reports of States parties.
5. Cooperation with other United Nations bodies, specialized agencies and other competent bodies.
6. Methods of work of the Committee.
7. General comments.
8. Future meetings.
9. Other matters.

## **VIII. ADOPTION OF THE REPORT**

714. At its 1228th meeting, held on 2 February 2007, the Committee considered the draft report on its forty-fourth session. The report was adopted unanimously by the Committee.

**Annex I**

**MEMBERSHIP OF THE COMMITTEE ON THE RIGHTS OF THE CHILD**

<i>Name of member</i>	<i>Country of nationality</i>
Ms. Ghalia Mohd Bin Hamad AL-THANI**	Qatar
Ms. Joyce ALUOCH**	Kenya
Ms. Alison ANDERSON*	Jamaica
Mr. Jakob Egbert DOEK*	Netherlands
Mr. Kamel FILALI*	Algeria
Ms. Moushira KHATTAB*	Egypt
Mr. Hatem KOTRANE*	Tunisia
Mr. Lothar Friedrich KRAPPMANN*	Germany
Ms. Yanghee LEE**	Republic of Korea
Mr. Norberto LIWSKI*	Argentina
Ms. Rosa Maria ORTIZ*	Paraguay
Ms. Awa N'Deye OUEDRAOGO*	Burkina Faso
Mr. David Brent PARFITT**	Canada
Mr. Awich POLLAR**	Uganda
Mr. Kamal SIDDIQUI**	Bangladesh
Ms. Lucy SMITH**	Norway
Ms. Nevena VUCKOVIC-SAHOVIC**	Serbia
Mr. Jean ZERMATTEN**	Switzerland

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\* Term expires on 28 February 2007.

\*\* Term expires on 28 February 2009.

## Annex II

### DAY OF GENERAL DISCUSSION

#### “Resources for the rights of the child - responsibility of States”

##### **Investments for the implementation of economic, social and cultural rights of children and international cooperation (art. 4, Convention on the Rights of the Child)**

1. In accordance with rule 75 of its provisional rules of procedures, the Committee on the Rights of the Child has decided to devote periodically one day of general discussion to a specific article of the Convention or to a child rights issue.
2. At its forty-third session (11-29 September 2006), the Committee decided to devote its 2007 day of general discussion to article 4 of the Convention, and notably to its second sentence concerning the implementation of economic, social and cultural rights. The discussion will take place on 21 September 2007 during the forty-sixth session of the Committee at the United Nations Office at Geneva.
3. The purpose of the day of general discussion is to foster a deeper understanding of the contents and implications of the Convention as they relate to specific topics. The discussions are public. Government representatives, United Nations human rights mechanisms, United Nations bodies and specialized agencies, as well as national human rights institutions, non-governmental organizations and individual experts are invited to take part.

##### **The context: resources for children and the implementation of economic, social and cultural rights**

4. For the purpose of reporting under the Convention, the Committee has grouped the Convention's provisions in eight “clusters” of articles. Article 4 has been included in the first cluster entitled “General measures of implementation”. This demonstrates how essential the implementation of article 4 is in order to implement the whole Convention effectively and explains the importance the Committee attaches to it throughout its dialogue with States parties.
5. One of the main aspects of article 4 to which the Committee devotes much attention, is States parties' responsibility to provide adequate resources for children and to prioritize the best interests of the child in their economic and social planning as well as in budgetary and fiscal policies. Investing in basic social services for children is an essential precondition to reach the goal of universal access to basic social services and a fundamental step towards the eradication of poverty.
6. Under article 4 of the Convention on the Rights of the Child, States parties are required to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the [present] Convention”. However, its second sentence suggests that - with regard to economic, social and cultural rights - State parties shall “undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation”. The wording of the second sentence is similar to that of

article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>1</sup> and explicitly recognizes that lack of resources may affect the full implementation of economic, social and cultural rights, introducing the concept of “progressive realization”.

7. As mentioned before, in the guidelines for periodic reports adopted by the Committee in 1996 and 2005,<sup>2</sup> the Committee has asked States parties to provide, inter alia, information on allocation of budgetary and other resources for children under each cluster of the Convention, the amount and percentage of the national budget devoted annually to children as well as on the measures undertaken to ensure the implementation of the economic, social and cultural rights of children to the maximum extent of available resources. Likewise, in its consideration and review of States parties’ reports on the implementation of the Convention, the Committee has systematically addressed these issues. However, neither in the Convention nor in the Committee’s reporting guidelines or jurisprudence, there is a clear indication of how to assess whether a State has undertaken measures to the “maximum extent” of “available resources”.

### **Approaches and objectives for the day of general discussion**

8. In its general comment No. 5 (2003) on the general measures of implementation of the Convention (arts. 4, 42 and 44, para. 6, of the Convention), the Committee outlined States parties’ obligations to develop general measures of implementation and already reflected to some extent on issues related to budget allocation for children, the progressive realization of economic, social and cultural rights enshrined in the Convention and international cooperation.<sup>3</sup> In the introduction to this general comment, the Committee indicated that, given the complexity of the concept, it was “likely to issue more detailed general comments on individual elements in due course”.

9. The purpose of the 2007 day of general discussion is to elaborate in more detail some of the issues raised by the second part of article 4 which require further discussion and consideration and notably the State party’s obligations with regard to the implementation of economic, social and cultural rights. In particular, participants will be expected to reflect on the meaning and definition of “maximum extent” and “available resources”, the process of identification of resources and analysis of budget at national level as well as on how to assess whether a State party has undertaken all possible measures to apply its available resources to the maximum extent. Furthermore, aspects related to the identification of national priorities in the

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<sup>1</sup> “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

<sup>2</sup> See in particular CRC/C/58, paras. 20-21 and CRC/C/58/Rev.1, paras. 6 (c) and 12 (a) and (b).

<sup>3</sup> See general comment No. 55 on general measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/5, November 2003).



allocation and use of resources, the need for a rationale and effective use of resources and for monitoring and accountability procedures for States and other actors in the implementation of article 4 will be discussed.

10. This discussion should focus on those aspects of the issues which have proved most problematic for States parties to address, and which would therefore benefit from the views and experiences of the wide range of partners the discussion day is able to bring together. Given the complexity of the concepts and issues involved as well as the concerns raised and experiences gathered to date in the Committee's efforts to address these issues, it is proposed that participants to this meeting be divided in two working groups on the following themes:

#### **Working Group 1 (“available resources” and their allocation to children)**

11. This group will focus on the concept of “available resources”. As a precondition to determine whether resources are used “to the maximum extent”, it is necessary to assess what are the resources available in a country. Thus, this group will discuss how to identify and analyse what are the resources available at the national level, including those obtained through international cooperation. Resource mobilization and aspects related to the process of allocation of resources for children, including national priorities and the need to increase transparency in this process will also be considered. Among the main questions to discuss are:

- What does “available resources” mean and how could allocation of resources for children be identified?
- How to ensure greater coherence, consistency and coordination between economic and social policies?
- What mechanisms and practical measures should be developed to ensure that adequate resources, including through rights-based budgetary and fiscal policy as well as poverty reduction strategies, are devoted to children?
- What should be the principles and priorities guiding the process of allocation of resources for children at the national level?
- How can it be determined whether countries have actively sought international cooperation, if required?
- Which body and/or institution should be included in the process and to what extent and how civil society and the children themselves should be involved?
- What measures should be taken to increase transparency in resource allocation for children?

#### **Working Group 2 (the use of resources to the “maximum extent”)**

12. This group will focus on how the resources allocated to children have been used and discuss the meaning and definition of the States parties' obligation to undertake measures to the maximum extent of their available resources with regard to the implementation of economic, social and cultural rights. It will also analyse ways and means of ensuring an efficient use of

resources and reducing as much as possible their waste. This group will also debate the related issue of a “minimum core content” of economic, social and cultural rights and minimum standards for their realization. Among others, this group could address the following questions:

- How can it be meaningfully assessed whether measures have been undertaken “to the maximum extent” of the “available resources”? Is there a need to establish parameters/indicators to make this assessment? If so, what should they be?
- What measures should be taken to reduce waste of resources and foster their rational and effective use? And what kind of monitoring, coordination and/or accountability mechanisms should be developed in this respect?
- What should be the principles and priorities guiding the use of the available resources for children? How to ensure that the resources are used in a non-discriminatory and equitable manner?
- Is there a minimum standard of economic, social and cultural rights that State parties have the obligation to fulfil? If yes, what are these minimum standards?

#### **Expected outcome**

13. At the end of the forty-sixth session, the Committee will adopt a set of recommendations aimed at improving the implementation of the Convention in the area discussed. In adopting the recommendations, the Committee is guided by the discussion day, the recommendations proposed by the working groups and the written contributions. The recommendations, which are intended to provide pragmatic guidance, are aimed primarily at States parties but also at other relevant actors.

#### **Participation in the day of general discussion**

14. The day of general discussion is a public meeting at which government representatives, United Nations bodies and specialized agencies, non-governmental organizations, including youth groups, and individual experts are welcome. The meeting will be held during the forty-sixth session of the Committee, at the Office of the United Nations High Commissioner for Human Rights (Palais Wilson, Geneva), on Friday, 21 September 2007.

15. The format of the discussion day is meant to allow participants to exchange views in a frank and open dialogue. The Committee therefore asks participants to avoid presenting formal statements during the discussion day. Written contributions are invited on the issues and topics mentioned, within the framework outlined above. In particular, the Committee is interested in receiving information specifically related to the themes mentioned above. Contributions should be sent electronically, before 29 June 2007, to:

CRCgeneraldiscussion@ohchr.org

16. For more information on submission and registrations, please refer to the guidelines posted on the Committee’s webpage at: <http://www.ohchr.org/english/bodies/crc/discussion.htm>.

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